



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA ELECTRONIC MAIL & ONLINE SUBMISSION

May 25, 2021

Amarjot Sandhu
Chair of the Committee
Standing Committee on Finance and Economic Affairs
Legislative Assembly of Ontario
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Dear Chair Sandhu:

RE: Written Submission to the Standing Committee on Finance and Economic Affairs of the Legislative Assembly of Ontario: Bill 288, the *Building Opportunities in the Skilled Trades Act, 2021*

As the Officer of the Legislature with a mandate to protect the privacy rights of Ontarians within the public sector, I am writing you with respect to Bill 288, the *Building Opportunities in the Skilled Trades Act, 2021*.

If passed, Bill 288 would replace the *Ontario College of Trades and Apprenticeship Act, 2009* and the *Modernizing the Skilled Trades and Apprenticeship Act, 2019*. It would establish a new Crown agency called Skilled Trades Ontario (the Corporation), which would be responsible for the training and certification of the skilled trades and apprenticeship system in Ontario. The Corporation would replace the existing Ontario College of Trades (the College) and would assume many of the functions currently carried out by the College, including issuing certificates and maintaining a public register of individuals who hold such certificates.

Bill 288 would enact several provisions governing the collection, use and disclosure of personal information, which would apply to the Corporation and the Minister responsible for the administration of the bill.

Specifically, the bill would grant very broad powers to the Minister and the Corporation to disclose personal information at sections 63(5) and 63(6):

Disclosure, Minister

63 (5) The Minister may disclose personal information that is collected under the authority of or for the purposes of the Act.

Disclosure, Corporation

63 (6) With the approval of the chief executive officer, the Corporation may disclose personal information that is collected under the authority of or for the purposes of the Act.



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These disclosure provisions are remarkably open-ended. Under the proposed legislation, the Minister and the Corporation may directly or indirectly collect information – some of which may include sensitive personal information – for a broad array of purposes. Through the disclosure provisions outlined above, the Minister and the Corporation are given authority to disclose any of that information, to any person, for any purpose.

Privacy rights within the provincial public sector are protected by the *Freedom of Information and Protection of Privacy Act (FIPPA)*. *FIPPA* protects privacy by setting out rules defining the limitations on the collection, use, retention and disclosure of personal information by institutions, and the requirements they must follow relating to the security of personal information.

I understand that the government intends to designate the Corporation as an institution under *FIPPA*. This means *FIPPA* would govern their handling of information, as it already does for the Ministry, including by setting limits on their disclosure of personal information. However, if passed in its current form, the provisions outlined above would circumvent *FIPPA*'s disclosure limits and essentially give carte blanche to both the Corporation and Minister to disclose personal information as they see fit.

In contrast, I note that the *Ontario College of Trades and Apprenticeship Act, 2009 (OCTAA)*, which would be repealed and replaced by Bill 288, includes a more limited disclosure authority for both the Minister and the Ontario College of Trades. The *OCTAA* permits the Registrar of the College and the Minister (at sections 62(6)(b) and 79(8)(b), respectively) to disclose personal information collected for the purposes of the *OCTAA* but only to a person employed in the administration of similar legislation in another province or territory of Canada or if, in the opinion of the Registrar or the Minister, the disclosure or communication would clearly benefit the individual who is the subject of the information. Also under the current *OCTAA*, the Minister may require the College (or sponsors or employers of apprentices) to disclose to him or her personal information, but only as is reasonably necessary for specified purposes explicitly enumerated in the law. Bill 288 would remove these conditions and purpose limitations altogether.

I appreciate that Bill 288 does include what we sometimes refer to as data minimization limits on the Minister and Corporation (at sections 63(1) and (2)) by prohibiting them from collecting, using or disclosing more personal information than is *reasonably necessary to meet the purpose* of the collection, use or disclosure. While these data minimization clauses are helpful, they do not address the fact that Bill 288 would allow the Minister or Corporation to disclose personal information for *any purpose*, including purposes unrelated to their functions.

There are several examples of legislation which permit a Ministry or other *FIPPA* institution to make disclosures of personal information beyond what is already permitted by *FIPPA*. However, these provisions tend to be specific and limited in nature. We are not aware of any provisions that are as open-ended as what is being proposed in Bill 288.

Accordingly, I am concerned about the precedent Bill 288 would set and therefore, would urge the Committee to consider amending Bill 288 by placing appropriate limits on the disclosure provisions at sections 63(5) and (6). This could be achieved in several ways, including by:

- contemplating the types of disclosures that the Minister and Corporation would need to make to fulfil their functions under the legislation and which would not already be covered by *FIPPA*

(section 42), and drafting a disclosure provision targeted to these specific circumstances, as is currently the case under the *OCTAA*;

- specifying that disclosure of personal information by the Minister and Corporation must be for the purpose of administering the Act, or achieving its purposes; and/or
- specifying that disclosure of personal information by the Minister and Corporation must be in the public interest, or in the interest of the individual whose information is to be disclosed.

We appreciate the opportunity to make this submission with a view to enabling the achievement of the legislative objectives, while also improving the privacy protections applicable to the Minister and Corporation under Bill 288. The IPC would be pleased to answer any questions you may have in connection with our recommendation above, and is committed to working with the Committee to help craft and implement the recommended amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "Kosseim", with a horizontal line underneath the name.

Patricia Kosseim
Commissioner