



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**

April 18, 2023

Ernie Hardeman  
Chair of the 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 Hardeman:

**RE: Written Submission to the Standing Committee on Finance and Economic Affairs  
for the Legislative Assembly of Ontario: Schedules 4, 6 and 7 of Bill 79, the *Working  
for Workers Act, 2023***

As the Officer of the Legislature with a mandate to protect the privacy and transparency rights of Ontarians, I am writing with respect to Schedules 4, 6 and 7 (herein referred to as the "Schedules") of Bill 79, the *Working for Workers Act, 2023* (the "Bill").

The Office of the Information and Privacy Commissioner of Ontario (the "IPC") recognizes the intent of the Government of Ontario's employment services transformation ("EST") and its laudable objective to better integrate programs and services and improve ultimate outcomes for all job seekers, including those who receive social assistance. Equally important, however, is that these critical supports be grounded in a legislative framework that protects the privacy of Ontarians who avail themselves of such programs or services, and is transparent and accountable to them, and to all Ontarians.

To achieve the EST objective, the IPC understands that the Ministry of Labour, Immigration, Training and Skills Development (the "Ministry") and the Ministry of Children, Community and Social Services intend to use a shared database for the collection, use and disclosure of the personal information under the Schedules. Given the significant volume and sensitivity of the personal information contemplated by the Schedules, including information relating to the medical, psychiatric, psychological and employment history of social assistance recipients, the privacy implications of the Schedules must be thoroughly and carefully assessed prior to their adoption.

The IPC has three main comments with respect to the Schedules, that we set out below for your consideration.



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### **1. Legal authority for the Ministry's delivery of employment programs and services is not clear**

Any government proposal related to the delivery of programs and services should be grounded first and foremost in clear legal authority to deliver those programs and services. Based on the information received by the IPC and the provisions set out in the Schedules, it is not clear that the Ministry (or those who deliver services on behalf of the Ministry) has the legal authority to deliver the employment programs and services for which the proposed collection, use and disclosure authorities under the Schedules are intended to support. Moreover, it is not clear whether the Ministry's proposed activities include delivering employment programs and services under all three statutes in the Schedules.

### **2. Authorities for collection, use and disclosure of personal information under *Freedom of Information and Protection of Privacy Act* should be utilized**

Clarifying the ambiguity in respect of the legal authority referred to above is a critical part of assessing whether the Ministry has the requisite lawful authority to collect, use and disclose personal information needed to properly administer the employment programs and services as being contemplated under the EST. Where an institution has proper lawful authority to deliver employment programs and services, it may then rely on the applicable direct and indirect collection, use and disclosure provisions enumerated under the *Freedom of Information and Protection of Privacy Act (FIPPA)*. This includes the ability to collect personal information as long as it is necessary for the proper administration of its lawfully authorized activity and to use and disclose personal information for purposes consistent therewith or other permissive purposes set out in *FIPPA*. If the Ministry determines it is necessary to establish express new collection, use and disclosure authorities under another statute, as is being proposed under the Schedules, it must be well-justified and well-constructed in both its purpose and limitation. Overbroad data collection, use and disclosure provisions in other statutes should not be used as a way of exempting government activity from independent scrutiny and circumventing the privacy protections afforded under *FIPPA*.

### **3. The Schedules do not adequately address data minimization principles**

Any new proposed authority should, at minimum, be balanced by data minimization principles that prohibit, 1) the collection, use and disclosure of personal information if other information will serve the purpose, and 2) the collection, use and disclosure of *more* personal information than is reasonably necessary to meet the stated purpose. The Schedules, as drafted, do not adequately address these principles. For example, Schedules 6<sup>1</sup> and 7<sup>2</sup> appear to permit the Ministry to collect personal information without the expectation of using it. The Ministry has not provided clear rationale as to why it should be able to collect Ontarians' personal information when doing so is not necessary for the purpose of delivering the employment programs and services being contemplated as part of the EST.

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<sup>1</sup> Bill 79, the *Working for Workers Act, 2023*. Schedule 6 section 53.1 (1), (2)

<sup>2</sup> Bill 79, the *Working for Workers Act, 2023*. Schedule 7 section 72.1 (1), (2)

### **The IPC's Recommendation**

The IPC usually strives to recommend concrete amendments that can help achieve the policy intent of a proposed bill with minimal incursions on the right to privacy and transparency. However, in this case, we do not believe that the above issues can be resolved simply by amending the Schedules as currently proposed. As a result, we strongly recommend the Schedules be withdrawn from the Bill to give the Ministry additional time to clarify the significant ambiguities identified above and address our comments in a more holistic manner. Doing so will enable the Ministry to better protect the privacy and confidentiality of individuals while also achieving the ultimate objective of transforming employment services for the benefit of Ontarians.

The IPC remains available to consult with the Ministry, should the Schedules not proceed within the Bill. In the spirit of openness and transparency, I am providing a copy of this letter to the Minister, as well as the Deputy Minister, and will be posting this letter on my office's website.

Thank you for receiving my comments regarding the Schedules and I would be pleased to answer any questions Committee members may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Kosseim', with a stylized flourish underneath.

Patricia Kosseim  
Commissioner

Cc: Hon. Monte McNaughton, Minister of Labour, Immigration, Training and Skills  
Development  
Greg Meredith, Deputy Minister of Labour, Immigration, Training and Skills  
Development  
Vanessa Kattar, Committee Clerk, Standing Committee on Finance and Economic Affairs