



Information and Privacy
Commissioner of Ontario

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

February 20, 2024

VIA ELECTRONIC MAIL & ONLINE SUBMISSION

Goldie Ghamari
Chair of the Standing Committee on Justice Policy
Legislative Assembly of Ontario
99 Wellesley Street West Room 1405, Whitney Block, Queen's Park
Toronto, ON M7A 1A2

Dear Chair Ghamari:

**RE: Written Submission to the Standing Committee on Justice Policy for the
Legislative Assembly of Ontario: Schedule 4 of Bill 157, Enhancing Access to
Justice Act, 2023**

I am writing with reference to one aspect of Schedule 4 of Bill 157, *Enhancing Access to Justice Act, 2023*.

Comments and Recommendations of the Information and Privacy Commissioner of Ontario (IPC)

If passed, section 5 of Schedule 4 of the Bill would repeal section 262 of the *Community Safety and Policing Act, 2019* (CSPA). Section 262 establishes a transparent and accountable public consultation process for making or changing any of the critical regulations governing policing listed in section 261(1) of the CSPA. In this submission, the IPC urges the government not to repeal section 262, but rather to maintain it as a robust accountability and transparency measure to ensure ongoing public engagement and promotion of public confidence in policing and community safety regulations under the CSPA.

Before enacting such a regulation, section 262 requires that the Lieutenant Governor in Council (Cabinet) provide the public with prescribed information and forty-five (45) days in which to provide comments, and then consider the public's comments and the Solicitor General's report before enacting any new policing related regulations. Anyone concerned that the required public consultation process had not been followed could go to court to ensure that the required steps are taken.

The public consultation requirements in section 262 apply to a wide range of policing matters of significant interest to the public, including, for example, regulations governing:

- the use of information technology by police officers and special constables,
- the collection, use or disclosure of police generated personal information by the Solicitor General or the Inspector General,
- the conduct of, reporting on, and record keeping with respect to street checks,
- the use of force and use of force reporting by police officers and special constables,
- other reports required of the police in relation to the *Anti-Racism Act*.



2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel/Tél : (416) 326-3333
1 (800) 387-0073
TTY/ATS : (416) 325-7539
Web : www.ipc.on.ca

Section 262 of the CSPA is modelled on the public consultation requirements outlined in section 74 of the *Personal Health Information Protection Act, 2004* (PHIPA). Section 74 of PHIPA was instituted to help ensure the transparent and accountable enactment of regulations affecting Ontarians' personal health information. Like section 74 of PHIPA, section 262 of the CSPA provides the government with discretionary "carveouts" that allow Cabinet to enact new regulations or amend existing ones without consulting the public where, for example, the urgency of the situation requires quick action, or the changes are minor or technical in nature. Given that the existing carveout provisions provide the government with significant flexibility, we see no justification for repealing section 262 in its entirety.

Transparency around the regulation-making process under the CSPA is even more compelling given:

- the increasing adoption and deployment of emerging information technologies in policing (such as artificial intelligence and facial recognition) that put Ontarians' access and privacy rights at heightened risk, and
- the heightened public interest in enhanced transparency and accountability when it comes to both the governance of police powers and the mitigation of systemic discrimination associated with policing.

In closing, section 262 of the CSPA was designed to help ensure there will be ongoing, transparent, and robust public and community engagement opportunities related to the regulation of policing for years to come. The IPC recommends against the repeal of this important transparency and accountability mechanism.

In the spirit of openness and transparency, I am providing a copy of this letter to the Minister and Deputy Minister and will be posting this letter on my office's website.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Kosseim', with a stylized flourish at the end.

Patricia Kosseim
Commissioner

Cc: Hon. Michael Kerzner, Solicitor General
Mario Di Tommaso, Deputy Solicitor General, Community Safety
Karen Ellis, Deputy Solicitor General, Correctional Services
Thushitha Kobikrishna, Committee Clerk, Standing Committee on Justice Policy