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Legislative Assembly

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Assemblée législative

*Commissaire à l'information et
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Clare Cudmore
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December 5, 2025

VIA EMAIL

Dear Clare Cudmore,

Re: Proposed *Combative Sports Commissioner Act* (Consultation Draft)

Thank you for the opportunity to give our feedback on the Consultation Draft of the proposed *Combative Sports Commissioner Act* (the “CSC Act”).

We have reviewed the proposed new legislation and have a few comments and concerns we would like to provide for consideration.

1. Application of *Freedom of Information and Protection of Privacy Act*

It is unclear whether the intention is for the *Freedom of Information and Protection of Privacy Act* (“FOI/PP Act”) to be applicable to this legislation. While section 2 states that the Minister of the Department of Fisheries, Tourism, Sport and Culture (the “Minister”) is responsible for the administration of the *CSC Act*, and the Minister is a public body under the *FOI/PP Act*, there are specified entities, such as the Athletics Commissioner, the PEI Combative Sport Advisory Council, inspectors and adjudicators, established in the proposed legislation, all of whom have specified duties and authorities under the proposed legislation, and have powers and authorities separate from the Minister.

In your email of November 20, 2025, you specifically mentioned sections 57 and 58 regarding the sharing of personal information and personal health information. It is unclear how section 58 applies, as it is a provision that requires any money received under the *CSC Act* to be paid into the Consolidated Revenue Fund. It is possible that this was a typographical error.

With regard to section 57, while section 57 of the proposed *CSC Act* is titled “Confidentiality of information”, this is not what the section actually is about. It only addresses when/to whom certain information can be disclosed. Further, while it refers to the *FOIPP Act* and the *Health Information Act*, it does not make any entity created under the *CSC Act* subject to the *FOIPP Act* or *Health Information Act*.

The *FOIPP Act* is much broader than what is set out in this section. If the entities established under the *CSC Act* are not designated as public bodies under the *FOIPP Act*/its Regulations, the *FOIPP Act* will not be applicable to them. We foresee this being problematic due to the large amounts of personal information that will be required or authorized to be collected by these entities. In addition, it is foreseeable that these bodies will hold other information that may be relevant to the accountability and transparency of government, access to which is an important consideration when contemplating the application of the *FOIPP Act*. Further, as set out more fully later in our correspondence, we do not believe the *Health Information Act* is applicable.

We will address each of the entities established under the proposed *CSC Act* below.

a) Athletics Commissioner

If the Athletics Commissioner is appointed under clause 5(1)(a) of the *CSC Act*, the person would be an employee of the Department and, theoretically, might be able to be considered part of the Department, which is a public body under the *FOIPP Act*, and be subject to the same statutory obligations as the Minister. However, this would have to be an issue to be decided if challenged.

Further, if the Athletics Commissioner is appointed under clause 5(1)(b), the *CSC Act* specifically provides in subsection 5(6) that a person so appointed is not an agent of Government. It is unclear why this distinction was made in the draft legislation. However, what it results in is a situation where, if a person is appointed under clause 5(1)(b), they would be in a different legal position than a person appointed under clause 5(1)(a), despite having all the same powers and authorities, particularly with regard to any obligations under the *FOIPP Act*.

Regardless of how the Athletics Commissioner is appointed, or under which authority, the *SCS Act* gives the Athletics Commissioner significant authority to act independently, including decision-making, regulation, licensing, charging and collecting fees, and collecting and disclosing information, among other authorities and duties. The Athletics Commissioner also has independent authority to delegate any power or function of the Athletics Commissioner, appoint inspectors, officials and others, and carry out other functions. It is unclear whether the

Athletics Commissioner will also have the authority to hire employees to assist in carrying out the various functions of the Athletics Commissioner conferred by the proposed legislation, but it is doubtful that one person could carry out all of the legislated duties alone. Therefore, it is reasonable to presume that the Athletics Commissioner will also be able hire their own employees to assist in carrying out their statutory duties, which also supports a role independent of the Minister/Department.

In addition, the Athletics Commissioner has significant authority to collect personal information, including but not limited to sensitive information such as health information, criminal record information, and in some cases financial information. Although section 57 of the draft *CSC Act* refers to the *FOIPP Act* and the *Health Information Act*, it is only for the purpose of authorizing the Athletics Commissioner to disclose information to specific entities for specific purposes. There is no corresponding duty to protect the personal information the Athletics Commissioner is authorized to collect. If the Athletics Commissioner is designated as a public body under the *FOIPP Act*, though, the Athletics Commissioner would be required to comply with the provisions of the *FOIPP Act* for this purpose. It would also provide independent oversight of the Athletics Commissioner's actions in relation to the collection, use, and disclosure of personal information.

In light of these considerations, we recommend that the Athletics Commissioner be designated as a public body. We recommend that consideration be given to accomplishing this by adding to the draft *CSC Act* a consequential amendment to the *FOIPP Act*, to ensure that the Athletics Commissioner is added to the *FOIPP Act* upon proclamation of the *CSC Act*.

b) Adjudicators

Under section 4 of the proposed *CSC Act*, the Minister may appoint adjudicators to conduct reviews of decisions of the Athletics Commissioner regarding licensing and permits. The functions of an adjudicator set out in Part 3 of the proposed legislation are similar to that of an administrative tribunal, in that they can conduct reviews of certain decisions of the Athletics Commissioner and issue orders, and the orders are final except for questions of law which can be appealed to the Court of Appeal.

Because an adjudicator appointed under the proposed *CSC Act* has a function of an independent decision-maker, and has the authority to collect information in carrying out their functions, we recommend that an adjudicator appointed under this legislation also be designated as a public body under the *FOIPP Act*.

c) Inspectors

Part 5 of the proposed legislation authorizes the Athletics Commissioner to appoint inspectors to conduct inspections for the purposes of enforcement of the *CSC Act*, and the legislation confers certain authorities upon inspectors, including entering and inspecting premises with or without a warrant, require production of records, examination of records and persons, and issuing orders.

It is unclear from the legislation as it is written whether inspectors are intended to act independently of the Athletics Commissioner or as agents of the Athletics Commissioner. We recommend that the relationship between these entities be clarified in the legislation. We also recommend that, if it is clarified that an inspector is independent of the Athletics Commissioner, that inspectors also be designated as public bodies under the *FOIPP Act*, due to the nature of their roles, function, and authorities.

d) PEI Combative Sport Advisory Council

It is unclear what the role of the PEI Combative Sport Advisory Council will be. Under the draft legislation, it refers to the Council providing advice and guidance to the Minister in accordance with Part 4 of the draft legislation. If the intention is for the Advisory Council to have any role other than strictly advisory, we recommend that consideration be given to designating the Advisory Council as a public body as well, or in the alternative to more specifically defining the relationship between the Advisory Council and the Minister and whether or not the records of the Advisory Council are under the authority of the Minister or separate.

2. *Health Information Act*

Your email mentioned the applicability of the *Health Information Act*, and the proposed *CSC Act* makes mention of “personal health information” in several places. However, personal health information is a specific term that refers to personal information collected for the purposes of providing health care services as set out in the *Health Information Act*. Further, the *Health Information Act* only applies to personal health information custodians, which is also a defined term within the *Health Information Act*. More specifically, a [personal health information] custodian is a person or organization that collects, maintains, uses or discloses personal health information for the purposes of providing or assisting in the provision of health care or treatment, or the planning and management of the health care system or delivering a government program or service related to health care [subsection 1(e) of the *Health Information Act*].

Neither the *CSC Act*, nor anyone acting under its authority, qualifies as a health information custodian and the information collected, maintained, used or disclosed is not for the purposes set out in the *Health Information Act*, even if it is health information of an individual. Therefore, the *Health Information Act* would not apply.

Having said that, however, health-related information of an individual is most certainly “personal information”. We note that the *CSC Act* authorizes the Athletics Commissioner to collect information from a health care provider. Such information would be “personal health information” while in the custody of the health care provider but, once it is collected by the Athletics Commissioner, it would simply be “personal information”.

As the purpose of collecting such information under the proposed legislation is not for the provision of health care services, we recommend that this term not be used in this context. We recommend that the references to the Commissioner disclosing “personal health information” under the *Health Information Act* be removed. A clarification can be inserted explaining that the Athletics Commissioner has authority to collect personal health information from a custodian, where authorized, but once in the custody and control of the Athletics Commissioner, it is considered “personal information”. If our recommendation is accepted that the Athletics Commissioner is designated as a public body under the *FOIPP Act*, then the Athletics Commissioner becomes responsible for ensuring such information is collected, used, disclosed, and protected in accordance with the *FOIPP Act*.

Conclusion

For the reasons set out above, we strongly recommend that the Athletics Commissioner, adjudicators and, if appropriate, inspectors and the Advisory Council be designated as public bodies under the *FOIPP Act*. This would best protect personal privacy of individuals whose personal information is being collected, maintained, used and disclosed under the proposed *CSC Act*, and foster transparency and accountability of Government. This will also provide for independent oversight of the actions of these bodies in relation to access to information and protection of privacy.

In the event our recommendation to designate these as public bodies under the *FOIPP Act* is not accepted, we recommend that the proposed *CSC Act* be amended to specifically provide for the protection of personal information that is authorized to be collected, maintained, used and disclosed pursuant to the proposed *CSC Act*, and access to information in the custody and control of the Athletics Commissioner and others under the *CSC Act*.

These are our preliminary comments on review of the consultation draft. We recognize that there may be amendments to the draft legislation once consultations are completed. We would be pleased to review any future versions of this proposed legislation and provide comment. We also note that the Regulations are not yet prepared. We would also be pleased to review the Regulations once they are available.

In the spirit of openness and transparency, I will be posting a copy of this letter to our website. We would be pleased to answer any questions you may have. Please do not hesitate to contact our office.

Sincerely,



Denise N. Doiron
Information and Privacy Commissioner

cc. Online Consultation (consultFTSC@gov.pe.ca)