



**Standing Committee on  
Public Accounts, Independent Officers and Other Entities**

***Report on the Review of the 2015-2016 Annual Report of the  
Information and Privacy Commissioner of Nunavut***

**3<sup>rd</sup> Session of the 4<sup>th</sup> Legislative Assembly of Nunavut  
Fall 2016 Sitting**

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## Introduction

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The *Access to Information and Protection of Privacy Act* provides for the Commissioner of Nunavut to appoint, on the recommendation of the Legislative Assembly, the Information and Privacy Commissioner for a five-year term of office.

Ms. Elaine Keenan Bengts was reappointed on February 24, 2015, for a 5-year term of office as Nunavut's Information and Privacy Commissioner. This is her fourth term as Information and Privacy Commissioner of Nunavut. Ms. Keenan Bengts also serves as the Information and Privacy Commissioner of the Northwest Territories.

The Legislative Assembly of the Northwest Territories enacted the *Access to Information and Protection of Privacy Act* prior to division. As the Information and Privacy Commissioner has noted:

“The *Access to Information and Protection of Privacy Act* was created to promote, uphold and protect access to the information that government creates and receives and to protect the privacy rights of individuals.”

The *Access to Information and Protection of Privacy Act* and regulations made under the Act were inherited from the Northwest Territories on April 1, 1999. Between 1999 and 2012, a number of minor amendments to the legislation were made to address conflicts with other territorial statutes. The changes that have been made to the regulations since April 1, 1999, have been largely housekeeping in nature. The list of public bodies has been amended to reflect changes to the organizational structure of the government.

Bill 38, *An Act to Amend the Access to Information and Protection of Privacy Act*, received 1<sup>st</sup> Reading on June 1, 2012. Bill 38 received Assent on June 8, 2012. These amendments provided clear authority for the Information and Privacy Commissioner to undertake privacy-related reviews concerning personal information held by public bodies. The amendments also established a statutory requirement for public bodies to notify the Information and Privacy Commissioner where a material breach of privacy has occurred with respect to personal information under their control. The amendments came into force on May 11, 2013.

Amendments to the *Access to Information and Protection of Privacy Regulations* were published in the April 2015 edition of Part II of the *Nunavut Gazette*. The most significant amendment is the inclusion of housing associations and housing authorities under the definition of “public body.” This means that the *Access to Information and Protection of Privacy Act* now applies to Local Housing Organizations.

As the Information and Privacy Commissioner has noted, her office is mandated to:

“...conduct reviews of decisions of public bodies and to make recommendations to the Minister involved ... the Information and Privacy Commissioner has the obligation to promote the principles of the Act through public education. She is also mandated to provide the government with comments and suggestions with respect to legislative and other government initiatives which affect access to information or the distribution of private personal information in the possession of a government agency.”

Under section 68 of the *Access to Information and Protection of Privacy Act*, the Information and Privacy Commissioner is required to prepare and submit an annual report to the Legislative Assembly on her office’s activities.

The standing committee’s televised hearings provide an opportunity for the issues raised in each report to be discussed in a public forum. Government accountability is fostered through the *Rules of the Legislative Assembly of Nunavut*, which requires that the government table a comprehensive response to the standing committee’s report and recommendations within 120 days of its presentation to the House.

In 2005, the Government of Nunavut began the practice of tabling an annual report on the administration of the *Access to Information and Protection of Privacy Act*. The government’s most recent annual report on the administration of the Act was tabled in the Legislative Assembly on November 3, 2015.

The Information and Privacy Commissioner’s 2015 appearance before the standing committee took place on September 28, 2015, on the occasion of its televised hearing on her 2014-2015 annual report to the Legislative Assembly. Officials from the Government of Nunavut’s Department of Executive and Intergovernmental Affairs subsequently appeared before the standing committee.

The standing committee’s report on its hearing was subsequently presented to the Legislative Assembly on November 4, 2015. The Government of Nunavut’s response to the standing committee’s report was tabled in the Legislative Assembly on March 15, 2016. The *Final Report on the Department of Family Services’ Current Privacy Safeguards and Next Steps in Drafting the Protocol for Handling Personal Information Provided to Third Parties Under the Adoption Act and the Child and Family Services Act* was tabled on June 7, 2016.

The Information and Privacy Commissioner's 2015-2016 annual report was backdoor tabled under the provisions of Rule 44(2) of the *Rules of the Legislative Assembly of Nunavut* on July 24, 2016. The September 13-14, 2016, appearances of the Information and Privacy Commissioner and Government of Nunavut officials before the standing committee took place in the Chamber of the Legislative Assembly. The standing committee's hearings were televised live across the territory and were open to the public and news media to observe from the Visitors' Gallery. Transcripts from the standing committee's hearings will be available on the Legislative Assembly's website.

## Observations and Recommendations

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**Issue: Government of Nunavut Responses to the Information and Privacy Commissioner's Review Recommendations**

The Information and Privacy Commissioner's annual reports to the Legislative Assembly include summaries of each formal review recommendation that she made during the period of time covered by the annual report.

The standing committee applauds the Information and Privacy Commissioner for ensuring that the full text of each review recommendation is publicly available on her office's website. These review recommendations contain detailed analysis and commentary on each matter that formally comes before her during the course of the year, and are invaluable for achieving a full understanding of the complexities of the issues that her office addresses.

Section 68 of the *Access to Information and Protection of Privacy Act* provides that:

Annual Report

68. The Information and Privacy Commissioner shall, by July 1 in each year, submit to the Legislative Assembly an assessment of the effectiveness of this Act and a report on the activities of the Information and Privacy Commissioner under this Act during the previous year, **including information concerning any instances where recommendations made by the Information and Privacy Commissioner after a review have not been followed.**

In its November 4, 2015, report, the standing committee recommended that the Government of Nunavut's formal written responses to the Information and Privacy Commissioner's review recommendations be made publicly accessible through posting on the website of the Office of the Information and Privacy Commissioner.

The standing committee applauds the Information and Privacy Commissioner for undertaking this work in a timely manner and making publicly available all review recommendations that have been completed by her office.

In her 2015-2016 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

“Sections 36 and 49.6 of the *Access to Information and Protection of Privacy Act* require the head of a public body to respond to recommendations made and to either follow those recommendations or make any other decision considered appropriate. This decision must be in writing and must be provided to the Applicant or Complainant, as the case may be, and to my office.

There is, however, very little accountability for public bodies after this step has been taken. Public bodies are not required to report back to my office or to the Applicant/Complainant once the recommendations have been implemented. Until now, the public would not even know whether or not the recommendations were accepted, let alone be able to follow up with the public body on whether the recommendations had been completed. The posting of the government’s responses on my website, alongside the Review Recommendations, will help to promote an increased ability for the public to follow up and demand accountability.”

During her September 13, 2016, appearance before the standing committee, the Information and Privacy Commissioner stated that:

“I’d like to see provisions that would make the recommendations made by the Information and Privacy Commissioner something that has to be addressed one way or another. Right now I make recommendations and they’re accepted most of the time but at that point, I don’t know whether they’re ever followed through. I would like to see something that gives back to government, the accountability to address the recommendations made. How one does that, I don’t know. Require the public bodies to report back to the Information and Privacy Commissioner once the recommendations have been completed, perhaps.”

Section 49.6 of the *Access to Information and Protection of Privacy Act* provides that:

#### Decision of Head

49.6. Within 90 days after receiving the report of the Information and Privacy Commissioner under section 49.5, the head of the public body concerned shall (a) make a decision to follow the recommendation of the Information and Privacy Commissioner or make any other decision the head considers appropriate; and (b) give written notice of the decision to the Information and Privacy Commissioner and the individual who requested the review under subsection 49.1(1).”

The standing committee notes that the Information and Privacy Commissioner has made numerous recommendations to the Government of Nunavut since the establishment of her office. While a number of these recommendations relate to specific reviews of the Information and Privacy Commissioner, the standing committee notes that a number of these recommendations are more general in nature and relate to policies and practices concerning the administration of the *Access to Information and Protection of Privacy Act*.

The standing committee applauds the government for accepting, in large part, the recommendations of the Information and Privacy Commissioner. However, the standing committee notes with concern that the government does not clearly account for its **actual implementation** of these recommendations.

**Standing Committee Recommendation #1:**

**The Standing Committee recommends** that the Government of Nunavut begin the practice of including in its annual report on the administration of the *Access to Information and Protection of Privacy Act* a detailed account of the extent to which public bodies have implemented the recommendations that were made by the Information and Privacy Commissioner during the fiscal year covered by the annual report.

**Issue: Privacy Audits of Government of Nunavut Departments, Crown Agencies and Territorial Corporations**

During her September 18, 2014, appearance before the Standing Committee, the Information and Privacy Commissioner stated that:

“There are lots of projects that I would like to involve myself more in. For example, with the new authority given to me under the privacy provisions of the Act, I would like to be able to undertake privacy audits of various departments and organizations to see how they’re doing and make suggestions for improvement.”

In its October 28, 2014, report to the House, the standing committee recommended that the Government of Nunavut:

“... co-operate with the Office of the Information and Privacy Commissioner in undertaking at least one formal privacy audit of a department, Crown agency or territorial corporation during the 2015-2016 fiscal year, and that the results of the privacy audit be tabled in the Legislative Assembly as soon as practicable.”

In its formal response to the standing committee’s October 28, 2014, report, the Government of Nunavut indicated that it:

“... welcomes all tools that can help to improve the privacy of our programs. The Information and Privacy Commissioner can expect full compliance with any privacy audit conducted within the Government of Nunavut. We consider this an opportunity to improve internal processes as well as a learning experience for our employees.”

During her September 13, 2016, appearance before the standing committee, the Information and Privacy Commissioner stated in her opening comments that:

“The Committee also encouraged me to undertake at least one formal privacy audit of a GN department in 2015-16. I chose the Qikiqtani [General] Hospital for this review largely because it is a large public body which collects large quantities of the most sensitive personal information about Nunavummiut. In order to do a thorough and effective job of this, my first privacy audit, I engaged the services of Robert Gary Dickson, the former Information and Privacy Commissioner of Saskatchewan and one of Canada’s pre-eminent experts in health privacy law, to assist me.”

Members engaged in a broad dialogue with the Information and Privacy Commissioner concerning the outcomes of her privacy audit of the Qikiqtani General Hospital. In response to questions concerning the challenges associated with conducting her office's audit, the Information and Privacy Commissioner stated that:

“Actually we found that the staff and management at the hospital were very open and went out of their way to get us what we needed. We did, however, run into more difficulty with the Department of Health because at the moment, the hospital is not a public body in and of itself. It is part of the Department of Health and the Department of Health was a little less inviting, shall we say, or interested in having us there and there was a little bit more reluctance. It took us a little bit more digging to get what we needed from them.”

The standing committee notes with concern that these challenges echo the Office of the Languages Commissioner's challenges, which it faced while conducting a systemic investigation of the Qikiqtani General Hospital. On March 1, 2012, the Office of the Languages Commissioner began its systemic investigation of the Qikiqtani General Hospital. On November 24, 2015, the Languages Commissioner appeared before the standing committee on the occasion of its televised hearings to review her 2013-2014 annual report. At that time, the Languages Commissioner stated that:

“It was very difficult to do the systemic investigation of the whole hospital. In the requests we made in previous years that were documented, we were never responded to and I have been thinking that once the Act is being reviewed ... I feel that there needs to be an obstruction clause to not investigate, but to give our office more authority on such matters. Whenever we requested a document or anything from them during our investigation, it seemed like it didn't matter if they ignored us and there was really no recourse for us. We even started thinking about using the courts to get those documents. They were finally given to us when we started thinking like that.”

**Standing Committee Recommendation #2:**

**The Standing Committee reaffirms** its support for ensuring that the Government of Nunavut protects the privacy of individuals to the greatest extent possible.

**The Standing Committee strongly urges** the Government of Nunavut's departments, Crown agencies and territorial corporations to demonstrate a clear commitment to openness, co-operation and transparency with respect to the work of all independent officers of the Legislative Assembly whose statutory mandates are to ensure government compliance with the provisions of such statutes as the *Access to Information and Protection of Privacy Act*, the *Official Languages Act*, the *Inuit Language Protection Act* and the *Representative for Children and Youth Act*.

**The Standing Committee looks forward** to reviewing the Information and Privacy Commissioner's final report on her office's privacy audit of the Qikiqtani General Hospital.

**Issue: Obligation of Government of Nunavut Departments, Crown Agencies and Territorial Corporations to Report Privacy Breach Notifications**

In June of 2012, the Legislative Assembly passed Bill 38, *An Act to Amend the Access to Information and Protection of Privacy Act*. These amendments came into force on May 11, 2013. These amendments established a statutory requirement for public bodies to notify the Information and Privacy Commissioner where a material breach of privacy has occurred with respect to personal information under their control.

Subsection 49.9(1) of the *Access to Information and Protection of Privacy Act* provides that:

Public Body to report to Information and Privacy Commissioner  
49.9(1) A public body that knows or has reason to believe that a breach of privacy has occurred with respect to personal information under its control shall report the breach of privacy to the Information and Privacy Commissioner in accordance with this section if the breach is material.

In her 2015-2016 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

“Nunavut was the first jurisdiction in Canada to make it a requirement that all public bodies report material breaches of privacy to my office and to report such breaches to the individuals involved when the breach creates a real risk of significant harm to those individuals. That Nunavut was first to do this is to be applauded. This is now one of the amendments being discussed in most Canadian jurisdictions currently reviewing their Acts. I am concerned, however, that those who work within the GN are not yet fully aware of the obligations imposed on them to report breaches. While I have received a few breach reports under this section, I would have expected there to be more. This is a significant obligation and, if only because humans are imperfect, there are bound to be instances in which information is lost or falls into the wrong hands. Every employee who deals in any way with personal information should be receiving at least basic training about how to recognize a breach of privacy and what to do when a breach happens. More education of GN employees is called for in this regard.”

**Standing Committee Recommendation #3:**

**The Standing Committee recommends** that the Government of Nunavut’s response to this report include a detailed account of how its employee orientation and training programs provide information on the requirements to report material breaches of privacy under the *Access to Information and Protection of Privacy Act*.

**Issue: Application of Access to Information and Protection of Privacy Legislation to Municipalities**

An ongoing issue that has been raised in the context of annual hearings on the reports of the Information and Privacy Commissioner is the application of access to information and protection of privacy legislation to Nunavut's municipalities.

At present, Nunavummiut have statutorily-prescribed rights under federal and territorial legislation concerning access to information and protection of privacy in relation to the institutions of the Government of Canada and the Government of Nunavut. However, there is still no legislative framework concerning access to information and protection of privacy with respect to the municipal level of government in Nunavut. In her 2015-2016 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

“While I understand the limitations that Nunavut municipalities face in terms of resources, expertise and infrastructure, I am starting to receive more and more requests that involve municipal governments and I have seen no real progress in ensuring that municipalities are responsible for either access or privacy protection. Steps, even small ones, need to be taken to move municipalities toward basic access to information rights and privacy protections.”

In its formal response to the standing committee's November 4, 2015, report, the Government of Nunavut indicated that it is:

“... dedicated to working with municipalities to prepare them for implementation of access and privacy principles in the near future. The ultimate goal is to bring them under the ATIPP Act, with the appropriate authoritative oversight.

It should be noted that the current business plan of the Department of Executive and Intergovernmental Affairs indicates that:

“The department will continue discussions with the City of Iqaluit and Nunavut Association of Municipalities on potential revisions to the ATIPP Act that would allow for the inclusion of municipalities, and ensure meaningful compliance and effective implementation.”

It should also be noted that, in its September 14, 2016, opening statement to the standing committee, the Government of Nunavut's lead witness indicated that:

“The Department of Executive and Intergovernmental Affairs has engaged municipalities and the Nunavut Association of Municipalities for a number of years on their inclusion under the Act. At this time, the GN is working on creating the necessary legislative framework that will support the application of access and privacy legislation within municipalities.”

Extensive discussion on these issues took place during the September 13-14, 2016, appearances of the Information and Privacy Commissioner and witnesses from the Government of Nunavut.

#### **Standing Committee Recommendation #4:**

**The standing committee reaffirms** its support for ensuring that appropriate legislative frameworks concerning access to information and protection of privacy apply to the federal, territorial and municipal levels of government in Nunavut.

**The standing committee reiterates its recommendation** that the Government of Nunavut's response to this report provide a detailed update on its progress to date in working with the Nunavut Association of Municipalities, the Municipal Training Organization and the Office of the Information and Privacy Commissioner to review the issue of access to information and protection of privacy at the municipal level in Nunavut.

**The standing committee further recommends** that the Government of Nunavut's response to this report provide specific details on the dates, attendance and outcomes of meetings that it has held to date with municipalities and the Nunavut Association of Municipalities.

**The standing committee further recommends** that the Government of Nunavut's response to this report provide a detailed update on its collaborative training initiatives involving municipal employees, Government Liaison Officers, the Municipal Training Organization and other parties, including:

- The number of training initiatives involving municipal employees; and
- The attendance of each training initiative.

**The standing committee further recommends** that the Government of Nunavut, in partnership with appropriate stakeholders, examine such options as introducing access to information and protection of privacy legislation that is specific to municipalities and/or having the territorial *Access to Information and Protection of Privacy Act* apply to municipalities in a manner that would address such operational concerns as the ability of municipalities to respond to historical access requests.

**The standing committee further recommends** that the Government of Nunavut's response to this report provide a list of the specific options that the government is currently considering with respect to how it plans to apply the *Access to Information and Protection of Privacy Act* to municipalities.

**Issue: Application of Access to Information and Protection of Privacy Legislation to District Education Authorities**

An ongoing issue that has been raised in the context of annual hearings on the reports of the Information and Privacy Commissioner is the application of access to information and protection of privacy legislation to District Education Authorities (DEAs).

In its November 4, 2015, report on the review of the 2014-2015 annual report of the Information and Privacy Commissioner, the standing committee indicated the following:

“The standing committee notes that recently-passed amendments to the *Access to Information and Protection of Privacy Regulations* make Local Housing Authorities and Local Housing Associations subject to the *Access to Information and Protection of Privacy Act*. However, these regulations designate the Minister responsible for the Nunavut Housing Corporation as the “head of each housing authority and housing association” for the purpose of administering the legislation. The standing committee suggests that a similar approach with respect to District Education Authorities and the role of the Minister of Education might serve to help address capacity concerns.”

In her 2015-2016 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

“In recent years there have been more and more complaints involving various education authorities, which are currently not public bodies under the *Access to Information and Protection of Privacy Act*. Schools and Education Authorities not only use public money to deliver programs but they also collect significant amounts of sensitive personal information. While I have, to date, been able to address these issues indirectly by making the Department of Education responsible for access and privacy within the school system, it makes much more sense to make Education Authorities directly responsible for both access and privacy. There is clearly a current lack of awareness or concern about these issues, as was demonstrated by the facts in Review Recommendation 15-194 discussed above. This needs to change. It makes sense to include Education Authorities as public bodies under the Act.”

In its formal response to the standing committee's November 4, 2015, report, the Government of Nunavut indicated that it has:

"... been in discussion with the Department of Education for a number of years regarding the inclusion of District Education Authorities (DEA) and the Commission scolaire francophone du Nunavut (CSFN) under the ATIPP Act. We fully support their inclusion, and believe consultation with the Information and Privacy Commissioner would be constructive and could help outline the consultations that will need to take place between the GN and the DEAs and the CSFN."

It should also be noted that in its September 14, 2016, opening statement to the standing committee, the Government of Nunavut's lead witnesses indicated that:

"Although the Department of Education has voluntarily complied with access to information requests for DEAs in the past, the GN is now undergoing the work to formally bring the DEAs under the ATIPP Act, similar to the approach taken with the inclusion of local housing organizations in 2015."

**Standing Committee Recommendation #5:**

**The Standing Committee reiterates its recommendation** that the Government of Nunavut formally consult with the Information and Privacy Commissioner concerning a practicable timetable for having the *Access to Information and Protection of Privacy Act* apply to District Education Authorities.

**The Standing Committee further recommends** that the Government of Nunavut formally consult with District Education Authorities as it works to determine a method by which the *Access to Information and Protection of Privacy Act* may apply to District Education Authorities.

**The Standing Committee further recommends** that the Government of Nunavut's response to this report provide a detailed timetable by which it plans to complete consultations with each District Education Authority on this matter.

**Issue: Health-Specific Privacy Legislation**

An ongoing issue that has been raised in the context of annual hearings on the reports of the Information and Privacy Commissioner is the development of health-specific privacy legislation for Nunavut.

In her 2009-2010 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

“Nunavut needs to begin the process of creating separate legislation to deal with privacy of health records. The country is charging into the era of electronic health records and electronic medical records. Every jurisdiction in Canada, other than Nunavut, has now either passed health specific privacy legislation or is developing such legislation to address the very real privacy concerns raised by electronic records. The issues are significant and complicated. All Canadian jurisdictions are talking about an integrated electronic health record system to allow any person in Canada to be able to access their electronic medical records, no matter where they happen to be in the country. The challenges of such a system are enormous, but there seems to be the will in most of the country to make it happen ...”

In its formal response to the standing committee’s November 4, 2015, report, the Government of Nunavut indicated that:

“In 2015-2016, the department began the necessary work to develop health-specific privacy legislation, including conducting a jurisdictional scan. In 2016-2017, the department will continue work on this file by developing a workplan and a committee to lead the work.”

In her 2015-2016 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

“I understand that the Department of Health has started to work on health-specific privacy legislation, though I am not convinced that it is one of the department’s priorities. Work on this legislation is necessary, not only to provide appropriate privacy protections for personal health information, but also to allow the necessary use and disclosure of personal health information within the health system so as to allow for the provision of good health care services and to accommodate the use of an electronic health records management system.”

### **Standing Committee Recommendation #6:**

**The standing committee recommends** that the Government of Nunavut's response to this report provide a detailed update on specific work that has been completed to date in relation to the development of health-specific privacy legislation in Nunavut.

**The standing committee further recommends** that the Government of Nunavut's response to this report include a copy of the workplan by which it plans to develop health-specific privacy legislation in Nunavut.

**The standing committee further recommends** that the Government of Nunavut's response to this report provide a detailed account of activities of the committee that has been formed to lead the government's work to develop health-specific privacy legislation in Nunavut, including the following information:

- Committee membership;
- Frequency of committee meetings;
- Any specific outcomes and planned actions resulting from committee meetings; and,
- Any specific recommendations that have been made by the committee.

**Issue: Protection of Personal Information Provided to Third Parties Under the *Adoption Act* and the *Child and Family Services Act***

The Auditor General of Canada's 2011 *Report to the Legislative Assembly on Children, Youth and Family Programs and Services in Nunavut* noted that:

"The [territorial] *Adoption Act* requires the Department to consult with the applicable Aboriginal organization for the child (that is, the Aboriginal organization of which the child or his or her parent is, or is eligible to be, a member) when a private adoption is taking place. The Department has interpreted consultation to be contact through written correspondence. As such, the Department writes to one of the three regional Inuit associations (which represent the interests of Inuit and are affiliated with Nunavut Tunngavik Incorporated, the organization that represents the rights and interests of *Nunavut Land Claims Agreement* beneficiaries) to inform it that an adoption plan has been developed for an Inuk child to be privately adopted, usually by a non-Inuit family. This provides an opportunity for the Regional Inuit Association (RIA) to respond with an alternate plan of care for the child, should it choose to do so.

We found that the files we reviewed contained a copy of a letter to the RIA with the appropriate information. However, we were informed that the Department has never received a response from an RIA. Furthermore, when asked during the audit whether they were aware of this correspondence from the Department, two of the three RIAs had no knowledge of it. The Department has made little effort to follow up with the RIAs to determine why it has not heard back from them."

The territorial *Child and Family Services Act* also contains provisions concerning the role of Inuit organizations in relation to such areas as child protection.

Following its April 18, 2013, hearing on the 2011-2012 annual report of the Information and Privacy Commissioner, the Standing Committee reported back to the House on May 14, 2013. In its report, the Standing Committee recommended that the Government of Nunavut:

"... in partnership with the Information and Privacy Commissioner, work co-operatively with designated Inuit organizations to develop appropriate guidelines to ensure that safeguards are in place with respect to personal information that is provided concerning matters arising under the *Adoption Act* and the *Child and Family Services Act*."

This issue was revisited during the standing committee's September 2014 hearings on the Auditor General's 2014 *Follow-up Report on Child and Family Services in Nunavut*, September 2014 hearings on the 2012-2013 and 2013-2014 annual reports of the Information and Privacy Commissioner of Nunavut, and the September 2015 hearings of the 2014-2015 annual report of the Information and Privacy Commissioner of Nunavut.

The standing committee provided a comprehensive set of recommendations on this issue in its November 4, 2015, report to the House.

In its June 7, 2016, *Final Report on the Department of Family Services' Current Privacy Safeguards and Next Steps in Drafting the Protocol for Handling Personal Information Provided to Third Parties Under the Adoption Act and the Child and Family Services Act* the Department of Family Services indicated that the following consultations had taken place:

“In February 2015, the Department of Family Services sought advice from the Information and Privacy Commissioner regarding the provisions critical to ensuring personal information is adequately protected. In July 2015, the Commissioner acknowledged the Department's letter and provided advice surrounding the consultation requirement in the *Adoption Act* and *Child and Family Services Act*. ... As such, the Commissioner provided a number of questions to consider in drafting a protocol that protects the privacy of individuals and families, while meeting the requirement for consultation with RIAs. ...

In December 2015, the Department met with two of the three RIAs to not only address privacy concerns related to the *Adoption Act* and *Child and Family Services Act*, but to also examine the role of RIAs in child protection and adoption proceedings. Representatives from Qikiqtani Inuit Association and Kivalliq Inuit Association participated in the meeting. Although representatives from Kitikmeot Inuit Association (KIA) were not present, they provided comment through email regarding their current privacy safeguards.”

In its June 7, 2016, *Final Report on the Department of Family Services' Current Privacy Safeguards and Next Steps in Drafting the Protocol for Handling Personal Information Provided to Third Parties Under the Adoption Act and the Child and Family Services Act* the Department of Family Services also indicated that:

“The Department is coordinating further consultation with RIAs via teleconference during May 2016, to discuss current privacy safeguards and determine whether there has been further discussion within their organizations with respect to their role in child protection and adoption proceedings. ... A final consultation with RIAs regarding the Protocol is expected to occur September 2016.”

Finally, in its June 7, 2016, *Final Report on the Department of Family Services' Current Privacy Safeguards and Next Steps in Drafting the Protocol for Handling Personal Information Provided to Third Parties Under the Adoption Act and the Child and Family Services Act* the Department of Family Services indicated that:

“The Department will complete the Protocol for tabling during the 2017 Winter Sitting of the Legislative Assembly. This will allow enough time for the Department to adequately consult with the Information and Privacy Commissioner, and assist RIAs in understanding their involvement and subsequent responsibility in ensuring privacy safeguards are in place.”

**Standing Committee Recommendation #7:**

**The standing committee recommends** that the Government of Nunavut, in its response to this report, provide a detailed update on the status of its work to develop a new *Protocol for Handling Personal Information Provided to Third Parties Under the Adoption Act and the Child and Family Services Act*.

**Issue: Disclosure of Government of Nunavut Contracting, Procurement and Leasing Activities**

An ongoing issue that has been raised in the context of annual hearings on the reports of the Information and Privacy Commissioner is the public disclosure of information concerning the contracting, procurement and leasing activities of the Government of Nunavut's departments, Crown agencies and territorial corporations.

In her 2013-2014 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

“Another issue that has come up on numerous occasions again this year, after a bit of a hiatus, is how the Government of Nunavut awards contracts, especially the large, multi-million dollar, multiple year contracts. While Nunavut has done some work with respect to proactive disclosure of these contracts, this government is far behind many provincial/territorial governments in disclosing information relating to contracts, particularly large contracts. While information is available online, the amount of information is sparse and, when it comes to the very large contracts, really not very helpful.

Nunavut is a small jurisdiction and everyone has a connection in one way or another. A very high percentage of individuals and companies rely, to a very large degree, on government contracts for their livelihood. For this reason, interest in the contracting process is very high and much higher than it is in other jurisdictions. The general public in Nunavut is generally far more aware about who is getting government contracts than in other parts of the country where the pool is larger. There are lots of questions about why certain individuals and businesses are successful in obtaining government contracts and others are not.

The public is, at times, going to question the hows and the whys of certain awards. The more of this information that can be made proactively available, the less room there is for any suggestion of favouritism, nepotism, fraud or other allegations of improper considerations. The larger the contract and the longer its duration, the more important it is to ensure that the process and the outcome are open. The Government of Nunavut, generally, can and should do a much better job of this.”

In her 2014-2015 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

“In my last annual report, I commented on the issue of proactive disclosure of information with respect to government contracts. I commented in particular about the difficulty I had in finding information about contracts awarded ... It appears that there is far more information on line than I first thought, if you know where to look for it. I would encourage all public bodies to continue to improve their proactive disclosure of as much information as possible and to make finding that information intuitive and easy. Many Canadian jurisdictions are making progress in this, making records available in electronic form at a ‘one stop shop’ so that it can be found and downloaded with the least amount of effort on the part of the public.”

The standing committee notes that the government’s Contract Reporting Database provides information on the contracts that are issued on behalf of government departments. The standing committee applauds the government for making this online resource available to the public.

However, the standing committee notes that the government’s Contract Reporting Database does not provide information on contracts issued on behalf of Crown agencies and territorial corporations.

In its October 29, 2010, report on the review of the 2009-2010 annual report of the Information and Privacy Commissioner, the standing committee reiterated a recommendation that the Government of Nunavut table annual reports in the Legislative Assembly on the contracting, procurement and leasing activities for all of its Crown agencies and territorial corporations. This recommendation was reiterated in its March 5, 2012, report on the review of the 2010-2011 annual report of the Information and Privacy Commissioner. This recommendation was reiterated in its May 14, 2013, report on the review of the 2011-2012 annual report of the Information and Privacy Commissioner. This recommendation was reiterated in its October 28, 2014, report on the review of the 2012-2013 and 2013-2014 annual reports of the Information and Privacy Commissioner.

In its November 4, 2015, report on the review of the 2014-2015 annual report of the Information and Privacy Commissioner, the standing committee recommended that:

“... the responsible Ministers of the Government of Nunavut table in the Legislative Assembly, in a timely manner, annual reports on the contracting, procurement and leasing activities for all of the government’s Crown agencies and territorial corporations, which are the:

- Nunavut Business Credit Corporation;
- Nunavut Development Corporation;
- Nunavut Housing Corporation;
- Qulliq Energy Corporation; and
- Nunavut Arctic College.”

The standing committee notes that this issue has been addressed in recent Ministerial *Letters of Expectation* to the Chairs of the boards of directors of Crown agencies and territorial corporations. On June 7, 2016, the Minister of Finance tabled the 2016-2017 *Letters of Expectation to Nunavut Crown Agencies*.

As of October 24, 2016, the most recent annual reports to have been tabled in the Legislative Assembly on the contracting, procurement and leasing activities of Crown agencies and territorial corporations were as follows:

- Nunavut Business Credit Corporation: 2015-2016 report tabled on October 21, 2016
- Nunavut Development Corporation: 2014-2015 report tabled on October 21, 2016
- Nunavut Housing Corporation: 2014-2015 report tabled on March 16, 2016
- Qulliq Energy Corporation: 2013-2014 report tabled on May 28, 2015
- Nunavut Arctic College: Not yet tabled

### **Standing Committee Recommendation #8:**

**The standing committee recommends** that the responsible Ministers of the Government of Nunavut table in the Legislative Assembly, in a timely manner, annual reports on the contracting, procurement and leasing activities for all of the government's Crown agencies and territorial corporations, which are the:

- Nunavut Business Credit Corporation;
- Nunavut Development Corporation;
- Nunavut Housing Corporation;
- Qulliq Energy Corporation; and
- Nunavut Arctic College.

**The standing committee further recommends** that the Government of Nunavut, as part of its ongoing review of procurement, contracting and leasing practices, work to develop a method that will allow it to clearly differentiate between the approved "maximum values" of contracts and the actual expenditures undertaken pursuant to such contracts.

**Issue: Ability of the Information and Privacy Commissioner to Appeal a Decision Made by a Head of a Public Body Under Section 36 of the Access to Information and Protection of Privacy Act to the Nunavut Court of Justice**

An outstanding issue from prior years' annual reports of the Information and Privacy Commissioner to the Legislative Assembly concerns her ability to appeal a decision made by a head of a public body under section 36 of the *Access to Information and Protection of Privacy Act* to the Nunavut Court of Justice.

Section 37 of the *Access to Information and Protection of Privacy Act* provides that:

Appeal of decision of head

37. (1) An applicant or a third party may appeal a decision made by a head of a public body under section 36 to the Nunavut Court of Justice.

Notice of appeal

(2) An applicant or third party who wishes to appeal a decision of a head shall file a notice of appeal with the Nunavut Court of Justice and serve the notice on the head within 30 days after the day the appellant receives the written notice of the decision.

Written notice to third party

(3) A head who has refused an application for access to a record or part of a record shall, as soon as is reasonably practicable after receipt of the notice of appeal, give written notice of the appeal to any third party to whom a report was sent under paragraph 35(b).

Written notice to applicant

(4) A head who has granted an application for access to a record or part of a record shall, as soon as is reasonably practicable after receipt of the notice of appeal, give written notice of the appeal to the applicant.

Parties to appeal

(5) An applicant or a third party who has been given notice of an appeal under this section may appear as a party to the appeal.

Information and Privacy Commissioner not a party

(6) The Information and Privacy Commissioner is not a party to an appeal.

During her November 24, 2011, appearance before the standing committee, the Information and Privacy Commissioner stated that:

“... I would like that power, to take something to court, because when I make a recommendation, it’s because that’s what I believe the Act says and if it’s not followed, there are some instances. I don’t think I take everything to court where my opinion wasn’t followed, but there are some instances where I think that it would have more impact, where we really need to know whether my interpretation is correct or the public body’s interpretation is correct, and a court can do that. So yes, I would love to have that option, many of my colleagues do, and it’s used within reason and on occasion to take governments to court on recommendations. I think it would be an extra tool in my toolbox and very useful.”

The standing committee has previously noted that systemic barriers, including financial resources, generally preclude private citizens from exercising their notional right under section 37 of the *Access to Information and Protection of Privacy Act* to appeal a decision by a head of a public body to the Nunavut Court of Justice.

In its formal response to the standing committee’s November 4, 2015, report, the Government of Nunavut indicated that it is:

“... committed to the continual review of practices, procedures and legislation to ensure the access and privacy rights of Nunavummiut are protected. Our next consultation with the Information and Privacy Commissioner will include the right of the Commissioner to appeal a decision to the Nunavut Court of Justice.”

During her September 13, 2016, appearance before the standing committee, the Information and Privacy Commissioner stated that:

“I can say that since I was last here, the Newfoundland and Labrador legislation has come into effect and I kind of like the way they do things there. I like the fact that the government is the one that has to take things to court if they don’t like the recommendations made. That wasn’t something I had thought of at the time.”

Members engaged in a broad dialogue with the Information and Privacy Commissioner concerning the advantages and disadvantages of Newfoundland and Labrador’s newly amended access to information legislation.

The standing committee notes that amendments to Newfoundland and Labrador's *Access to Information and Protection of Privacy Act* came into force in June of 2015. This legislation provides that the province's Information and Privacy Commissioner may make a number of recommendations to a public body concerning access to information. This legislation also provides that, upon receipt of such a recommendation from the province's commissioner, a public body must make an application to the province's court if it decides not to comply with the recommendation.

**Standing Committee Recommendation #9:**

**The Standing Committee reiterates its recommendation** that the Government of Nunavut in its response to this report include a detailed timeline by which it plans to introduce amendments to the *Access to Information and Protection of Privacy Act* that would permit the Information and Privacy Commissioner to appeal a decision made by a head of a public body under section 36 of the *Access to Information and Protection of Privacy Act* to the Nunavut Court of Justice.

**Issue: Information and Privacy Commissioner’s Discretion to Extend the Time for Requesting a Review**

An outstanding issue from prior years’ annual reports of the Information and Privacy Commissioner to the Legislative Assembly concerns her ability to extend the time for requesting a review under the Act in certain circumstances.

In her 2009-2010 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

“... it would be my recommendation that the Information and Privacy Commissioner be given discretion to extend the time for requesting a review in appropriate circumstances, except in the case where the issue involves a third party objection to the disclosure of information. It may also be appropriate to consider extending the time for asking for a review from 30 days to 45 or 60 days.”

In its formal response to the standing committee’s November 4, 2015, report, the Government of Nunavut indicated that it is:

“... committed to the inclusion of this provision in the next revision of the ATIPP Act. Until the amendment has been completed, the GN will continue to accept reviews initiated by the Information and Privacy Commissioner that are received after the designated time period.”

**Standing Committee Recommendation #10:**

**The Standing Committee reiterates its recommendation** that the Government of Nunavut in its response to this report include a detailed timeline by which it plans to introduce amendments to the *Access to Information and Protection of Privacy Act* that would address the Information and Privacy Commissioner’s recommendations concerning her ability to exercise discretion to extend the time for requesting a review under the Act in certain circumstances.

**Issue: Information and Privacy Commissioner’s Review of the Access to Information and Protection of Privacy Act**

In 2015, the Information and Privacy Commissioner discontinued her private law practice in order to allow her to focus on her work as Information and Privacy Commissioner for both Nunavut and the Northwest Territories.

The standing committee is of the view that this will help enable the Information and Privacy Commissioner to engage in more training, education and outreach activities, as well as helping to ensure that her website is kept up-to-date on an ongoing basis.

In her 2014-2015 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that she had plans to:

“...begin to lay the groundwork for a full review of the *Access to Information and Protection of Privacy Act* with a view to modernizing the legislation and making it more responsive to today’s business realities.”

The Information and Privacy Commissioner’s 2014-2015 annual report also highlighted a number of thematic areas that she believes to be worthy of consideration during the review of the legislation:

- A legislated duty to document;
- Broadening and clarifying which public entities are covered by the Act;
- Limiting the ability of public bodies to extend the time for responding to access requests;
- Clarifying that disclosure is the rule, even where discretionary exemptions might apply;
- Establish[ing] clear accountability mechanisms for managing information at all steps of the digital information life cycle (collection, use, disclosure, retention and disposal) including proper monitoring and sanctions for non-compliance among other things;
- Requiring the completion of privacy impact assessments for all new projects undertaken by a public body, with a review by the Information and Privacy Commissioner; and
- Strengthening reporting requirements to the public with respect to the disclosure of personal information between public bodies and/or between public bodies and the private sector.

In her 2015-2016 annual report to the Legislative Assembly, the Information and Privacy Commissioner indicates that:

“As noted, I will be preparing my own recommendations in this regard by the end of fiscal 2016-2017 and am happy to assist in any way I can with completing a full government review and the drafting of necessary comprehensive amendments.”

During her September 13, 2016, appearance before the standing committee, the Information and Privacy Commissioner stated that:

“Another important task given to me by this Committee last year was to undertake a comprehensive review of the *Access to Information and Protection of Privacy Act* and to provide my comments and recommendations for appropriate amendments. As noted in my annual report, this recommendation was both timely and welcome.

The Act is now some 20 years old and the way government does business has changed dramatically during that time. Most Canadian jurisdictions, in fact, have been going through a similar review in recent years.

It is important to me, being given the opportunity, that my review be comprehensive, thorough, and complete. As a result, while the project is well underway, I simply could not get it done by September 1, which was the date suggested by this Committee. My goal is to have it completed before the end of this fiscal year. My actual goal is really the end of this calendar year, but I’m also trying to be realistic and not promise beyond my means.”

**Standing Committee Recommendation #11:**

**The Standing Committee reaffirms** its support for ensuring that a review of the *Access to Information and Protection of Privacy Act* includes consultation with the Information and Privacy Commissioner and looks forward to reviewing the Information and Privacy Commissioner’s comprehensive and specific recommendations for possible amendments to the *Access to Information and Protection of Privacy Act*.

**The Standing Committee notes** that the Information and Privacy Commissioner’s review should be submitted to the Office of the Speaker of the Legislative Assembly for subsequent transmittal to the standing committee and tabling in the House.

## **Issue: Consultation with the Inuit Qaujimajatuqangit Katimajit**

On March 24, 2003, the Government of Nunavut announced the establishment of the Inuit Qaujimajatuqangit Katimajit (IQK), an external and non-governmental body with the mandate to monitor the government's initiatives to incorporate Inuit Qaujimajatuqangit into its laws, policies, programs, and services. As an advisory body to the government, the IQK meets with departmental officials on a regular basis to assess the government's initiatives related to the integration of Inuit Qaujimajatuqangit.

On June 1, 2015, the Legislative Assembly passed a motion to amend the terms of reference of the standing committee to "explicitly address the integration of Inuit societal values and Inuit Qaujimajatuqangit into the laws, policies, programs, and services of the Government of Nunavut, including the holding of public hearings on the annual reports of the Inuit Qaujimajatuqangit Katimajit."

On September 23, 2015, representatives from the Inuit Qaujimajatuqangit Katimajit (IQK) made their first-ever appearance to present the most recent annual reports of that body.

In its November 4, 2015, report, the standing committee recommended that the Information and Privacy Commissioner meet with the Inuit Qaujimajatuqangit in order to exchange perspectives on issues related to access to information and protection of privacy.

In her 2015-2016 annual report to the Legislative Assembly, the Information and Privacy Commissioner noted that:

"The Committee has also suggested that I meet in person with representatives from the Inuit Qaujimajatuqangit Katimajit at least once during the 2015-2016 fiscal year. By the time I received the Committee's report, it was late in the fiscal year and I was not able to follow up. I have, however, since reached out to the group and am hoping, in the next few months, to be able to arrange such a meeting."

### **Standing Committee Recommendation #12:**

**The Standing Committee reiterates its recommendation** that the Information and Privacy Commissioner of Nunavut meet in person with representatives from the Inuit Qaujimajatuqangit Katimajit in order to exchange perspectives on issues related to access to information and protection of privacy at the earliest practicable opportunity.

**The Standing Committee further recommends** that the Information and Privacy Commissioner include in her respective annual report to the Legislative Assembly, a detailed account of her discussions with the Inuit Qaujimajatuqangit Katimajit.