

**Standing Committee on Oversight of Government Operations and Public
Accounts - Report on the Review of the 2014-2015 Annual Report of the
Information and Privacy Commissioner of Nunavut**

**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***

In response to Standing Committee's recommendations from the *Report on the Review of the 2014-2015 Annual Report of the Information and Privacy Commissioner of Nunavut*, the Department is pleased to table its final report outlining 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 final report is intended to outline the Department's consultation process with Regional Inuit Associations (RIAs), address current privacy concerns, and identify next steps in drafting the Protocol.

Background

Both the territorial *Adoption Act* and *Child and Family Services Act* contain provisions concerning the role of Inuit organizations in relation to adoption and child protection matters respectively.

Section 25 of the *Child and Family Services Act* states that:

“A Child Protection Worker must serve a copy of the originating notice commencing an application for a declaration that a child needs protection and for a child protection order and an affidavit in support of the application on

- (a) the following persons, if their identities and whereabouts are known:
 - (i) the child's parents,
 - (ii) the person having actual care of the child at the time the investigation under subsection 9(1) or 11(3) commenced, where the child was not apprehended,
 - (iii) the person having actual care of the child at the time the child was apprehended, where the child was apprehended;
- (b) the child, where the child has attained the age of 12 years;
- (b.1) the members of the plan of care committee not otherwise served under this section or, where a plan of care committee was not established and there is a Child and Family Services Committee in the child's community, the chairperson of the Child and Family Services Committee; and

- (c) if the child is an Inuk child, whichever of the following Inuit organizations the child, or the mother or father of the child, is or is eligible to be a member:
- i) Kitikmeot Inuit Association,
 - ii) Kivalliq Inuit Association,
 - iii) Qikiqtani Inuit Association.”

Section 7(7) of the *Adoption Act* states that:

“...where the Director has reason to believe that the child who is to be placed is or will be an aboriginal child, the Director shall, before making a decision in respect of the proposed placement, consult with the aboriginal organization that would be the applicable aboriginal organization for the child in the circumstances described in section 25 of the *Child and Family Services Act*.”

Privacy concerns regarding these provisions were first identified by the Auditor General’s 2011 *Report to the Legislative Assembly on Children, Youth and Family Programs and Services in Nunavut*. The report 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...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 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 issue was also identified during the Standing Committee’s hearing on the 2011-2012 annual report of the Information and Privacy Commissioner. In its report to the House on May 14, 2013, the Standing Committee recommended that the Government of Nunavut:

“... in partnership with the Information and Privacy Commissioner, work cooperatively 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 further revisited during the Standing Committee’s September 2014 hearings on the 2012-2013 and 2013-2014 annual reports of the Information and Privacy Commissioner of Nunavut. The Standing Committee was disappointed at the government’s lack of progress in this area. Testimony provided by the Information and Privacy Commissioner during her 2014 appearance before the Standing Committee indicated that consultations with her office had not yet occurred.

Consultation Process

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*. The Commissioner noted that:

“...the requirement to consult with aboriginal organizations under the *Adoption Act* and *Child and Family Services Act* do not breach the privacy provisions of the Access to Information and Protection of Privacy Act. Section 48 of the ATIPP Act allows for the disclosure of personal information for the purpose, among other things, of complying with a law of Nunavut or in accordance with any Act that authorizes or requires the disclosure.”

The Commissioner did, however, raise concerns in the letter regarding the *Child and Family Services Act* which mandates the consultation with RIAs without the consent of the parent or the child. The Commissioner noted:

“While I appreciate the policy reasons for mandating such a consultation, the information in these proceedings can be exceedingly sensitive and in some situations, the sharing of that information may serve to exacerbate an already difficult situation for a family in crisis...It is troublesome, as well, that the designated aboriginal organizations do not appear to have set up any system to receive or deal with these notices, which has resulted in confusion and a lack of privacy protective systems around the information disclosed once it leaves the confines of the Department.”

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. The questions addressed the goals and objectives of informing RIAs of child protection and adoption proceedings, the role of

RIAs in these proceedings, and the mechanisms in place to ensure the protection of personal information.

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.

During the meeting, it became clear that RIAs are unclear on how to respond to child protection documents or adoption notifications, and on their ongoing role in these proceedings.

The RIAs noted the importance of receiving direction from their respective boards in determining their involvement with future child protection and adoption proceedings. For RIAs, further consultation and collaboration with their boards is required to determine the direction and next steps of their involvement.

Current Privacy Safeguards

As per current process, the Department of Family Services' Adoption Specialist is responsible for serving adoption documents to the Regional Directors of RIAs, informing them that a private adoption is occurring in-Territory or out-of-Territory. The documents include a form that allows RIAs an opportunity to respond to the proposed adoption plan.

With respect to child protection, Community Social Service Workers are responsible for serving court documents to RIAs notifying them that a child protection order has commenced. These documents include originating notices commencing child protection applications, and affidavits of support and service.

During the consultation in December 2015, RIAs agreed they will accept child protection and adoption documents and after review, will ensure they are safely secured within the local head office.

- **Qikiqtani Inuit Association:** child protection and adoption documents are secured in a locked cabinet within the policy division of the local office.
- **Kitikmeot Inuit Association:** child protection and adoption documents are served to the Executive Director. Once they are reviewed, they are secured in a locked cabinet in the local office.

- **Kivalliq Inuit Association:** child protection and adoption documents are handled by the office's legal representative, and secured in a locked cabinet in the local office.

Next Steps in Drafting a Protocol

In moving forward, the Department would like to acknowledge the goals outlined by the Information and Privacy Commissioner who identified the importance of limiting the disclosure of sensitive personal information about children and their families to the least number of people possible. Furthermore, the Commissioner notes that if disclosure is necessary, there are clear parameters regarding the use of the information and the processes around proper destruction or disposal of the information once it is no longer needed.

To this end, 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. The Department will be reaching out to RIAs to help facilitate their understanding of the *Adoption Act* and *Child and Family Services Act*, and their potential levels of involvement in child protection and adoption proceedings. Once RIAs identify their roles and subsequent levels of involvement, the Department will work collaboratively with them in solidifying the current privacy safeguards in place, and developing further safeguards if necessary based on their role and involvement. A final consultation with RIAs regarding the Protocol is expected to occur September 2016.

The Department envisions a Protocol that will outline privacy safeguards, and incorporate clear guidelines and additional materials to facilitate RIAs ongoing and active involvement in child protection and adoption matters. The Department looks forward to collaborating with RIAs, as prescribed in both the *Adoption Act* and *Child and Family Services Act*, to not only help keep children safe, but to maintain their cultural ties and community connections.

The Department of Family Services recognizes the direction and advice provided by the Information and Privacy Commissioner and will continue to work collaboratively with the Commissioner in finalizing the Protocol. 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.