



Standing Committee on Oversight of Government Operations and Public Accounts

*Report on the Review of the 2022-2023 Annual Report of the
Information and Privacy Commissioner of Nunavut*

**2nd Session of the 6th Legislative Assembly of Nunavut
Spring 2024 Sitting**

Chair

George Hickes

Co-Chair

Alexander Sammurtok

Members

Bobby Anavilok
Janet Pitsiulaaq Brewster
Mary Killiktee
Adam Arreak Lightstone
Solomon Malliki
Joanna Quassa
Joseph Quqqiaq
Joe Savikataaq
Craig Simailak

www.assembly.nu.ca

Introduction

The Standing Committee on Oversight of Government Operations and Public Accounts held a televised hearing from April 19-20, 2024, on the 2022-2023 annual report of the Information and Privacy Commissioner of Nunavut.

The standing committee's hearing was held in the Chamber of the Legislative Assembly and was televised live across the territory. The hearing was open to the public and news media to observe from the Visitors' Gallery, and was livestreamed on the Legislative Assembly's website. The transcripts from the standing committee's hearing are available from the Legislative Assembly's website.

Witnesses appearing before the standing committee included the Information and Privacy Commissioner and a number of Government of Nunavut officials representing the Department of Executive and Intergovernmental Affairs, the Department of Community and Government Services, the Department of Health and the Department of Justice. The standing committee notes its appreciation to the witnesses.

Overview and Chronology of Recent Events

The *Access to Information and Protection of Privacy Act* was inherited upon division on April 1, 1999.

The most recent set of significant amendments to the *Access to Information and Protection of Privacy Act* were made in 2017. Bill 48, *An Act to Amend the Access to Information and Protection of Privacy Act*, received 1st Reading on June 6, 2017. The Bill received Assent on September 19, 2017.

Section 61 of the statute provides, in part, that:

Appointment of Information and Privacy Commissioner

61. (1) The Commissioner, on the recommendation of the Legislative Assembly, shall appoint an Information and Privacy Commissioner to carry out the duties and functions set out in this Act and shall undertake other duties and functions in addition as required by other legislation.

The current incumbent, Graham Steele, assumed office on January 11, 2021. His term office expires on January 10, 2026. His predecessor, the late Elaine Keenan Bengts, served from November 15, 1999 to January 10, 2021.

The 2016-2017 annual report of the Information and Privacy Commissioner was tabled in the Legislative Assembly on September 12, 2017. The 2017-2018 annual report was tabled on October 26, 2018. The 5th Legislative Assembly of Nunavut's Standing Committee on Oversight of Government Operations and Public Accounts held a

televised hearing on the annual report on April 11, 2019. The standing committee presented its *Report on the Review of the 2015-2016 Annual Report of the Information and Privacy Commissioner* at the Legislative Assembly's sitting of June 6, 2019. The Government of Nunavut's response to the standing committee's report was tabled in the Legislative Assembly on October 25, 2019.

The 2018-2019 annual report of the Information and Privacy Commissioner was tabled in the Legislative Assembly on October 17, 2019. The 2019-2020 annual report was tabled on October 21, 2020. As a consequence of the COVID-19 pandemic, televised hearings were not held on these reports.

The 2020-2021 annual report of the Information and Privacy Commissioner was tabled in the Legislative Assembly on September 9, 2021. The 2021-2022 annual report was tabled on May 25, 2022. The standing committee held a televised hearing on the annual reports from September 26-27, 2022. The standing committee subsequently presented its report to the House on November 8, 2022. The Information and Privacy Commissioner's response to the report of the standing committee was tabled in the Legislative Assembly on March 6, 2023. The Government of Nunavut's response to the standing committee's report was tabled in the Legislative Assembly on May 24, 2023.

The 2022-2023 annual report of the Information and Privacy Commissioner was tabled in the Legislative Assembly on May 24, 2023. The Information and Privacy Commissioner's 2024-2027 business plan was tabled in the Legislative Assembly on February 27, 2024.

The Government of Nunavut's Department of Executive and Intergovernmental Affairs has overarching responsibility for the government's administration of the *Access to Information and Protection of Privacy Act* and related regulations and policies (the *Access to Information and Protection of Privacy Policy*, the *Privacy Breach Policy* and the *Privacy Impact Assessment Policy*). The government's 2019-2020 annual report on the administration of the *Access to Information and Protection of Privacy Act* was tabled in the Legislative Assembly on March 16, 2021. The 2020-2021, 2021-2022 and 2022-2023 annual reports have not yet been tabled. The annual report is not required by statute to be tabled.

Observations and Recommendations Directed to the Government of Nunavut

Issue: **Annual Reports on the Administration of the *Access to Information and Protection of Privacy Act***

The Government of Nunavut's Department of Executive and Intergovernmental Affairs has overarching responsibility for the government's administration of the *Access to Information and Protection of Privacy Act* and related regulations and policies (the *Access to Information and Protection of Privacy Policy*, the *Privacy Breach Policy* and the *Privacy Impact Assessment Policy*).

The government's 2019-2020 annual report on the administration of the *Access to Information and Protection of Privacy Act* was tabled in the Legislative Assembly on March 16, 2021. The 2020-2021, 2021-2022 and 2022-2023 annual reports have not yet been tabled. The annual report is not required by statute to be tabled.

The standing committee emphasizes the importance of timely tabling of annual reports to the Legislative Assembly.

Standing Committee Recommendation #1:

The standing committee recommends that the Government of Nunavut's 2020-2021, 2021-2022 and 2022-2023 annual reports on the administration of the *Access to Information and Protection of Privacy Act* be tabled in the Legislative Assembly at the earliest practicable opportunity.

The standing committee further recommends that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* to provide for a statutory requirement for the Minister responsible for the Act to table, within six months after the end of each fiscal year, an annual report in the Legislative Assembly on the administration of the legislation.

Issue: Capacity-Building and Centralization

Significant attention was paid during the standing committee's televised hearings of September 26-27, 2022, and April 19-20, 2024, to the issues of capacity and centralization.

In his 2021-2022 annual report to the Legislative Assembly, the Information and Privacy Commissioner indicated that "there are too many vacancies, too much turnover, not enough training and little or no management support" with respect to the government's Access to Information and Protection of Privacy Coordinators.

In his 2022-2023 annual report to the Legislative Assembly, the Information and Privacy Commissioner indicated that "capacity issues inside the Government of Nunavut are killing access to information and protection of privacy."

The standing committee recognizes that the government continues to face a number of significant capacity challenges in filling critical positions, such as health care workers.

On August 12, 2022, the Government of Nunavut issued *Request for Proposals 2022-52: Standing Offer Agreement - Privacy and Information Management-Specific Training and Consulting Services*. The Request for Proposals closed on September 16, 2022.

The annual budget of the Department of Executive and Intergovernmental Affairs' Access to Information and Protection of Privacy Office has increased by 115% from \$293,000 in the 2022-2023 fiscal year to \$630,000 in the 2024-2025 fiscal year. The Department of Executive and Intergovernmental Affairs' 2024-2025 main estimates indicated that the number of positions in its Access to Information and Protection of Privacy Office was projected to increase from 2.0 PYs in the 2022-2023 fiscal year to 5.0 PYs in the 2024-2025 fiscal year.

The department's current business plan indicates that the territorial Access to Information and Protection of Privacy Office "has full training modules for Access Requests and Privacy Breach Investigations. Work on a training module for Privacy Impact Assessments will commence after full review of the current Privacy Impact Assessment process. The Access to Information and Protection of Privacy Office will initiate the development of online self-guided courses."

The department's current business plan also indicates that the "Government of Nunavut's Information Technology Security Awareness Training Program includes Access to Information and Protection of Privacy specific training. The Access to Information and Protection of Privacy Office also worked with the Department of Health to develop an online privacy module for health professionals. The Access to Information and Protection of Privacy Office has developed training material that can be used as part of on-boarding and orientation of new staff ... work on creating a mandatory training regime will continue in 2024-2025."

The department's current business plan also indicates that two of its current priorities are to "modernize Access to Information and Protection of Privacy interfaces for the public and for the public service" and "create a mandatory training regime for Government of Nunavut employees at each organizational level regarding their Access to Information and Protection of Privacy obligations and responsibilities."

Standing Committee Recommendation #2:

The standing committee recommends that the Government of Nunavut's response to this report provide a detailed update on the status of filling positions in the Access to Information and Protection of Privacy Office of the Department of Executive and Intergovernmental Affairs.

The standing committee further recommends that the Government of Nunavut's response to this report provide a detailed update on what specific actions are being taken to enhance centralized support to departments and other public bodies in respect to the administration of the *Access to Information and Protection of Privacy Act*.

The standing committee further recommends that the Government of Nunavut's response to this report provide a detailed description of work performed to date by entities under the terms of *Request for Proposals 2022-52: Standing Offer Agreement - Privacy and Information Management-Specific Training and Consulting Services*.

The standing committee further recommends that the Government of Nunavut's response to this report provide a detailed update on the status of the Access to Information and Protection of Privacy-related training and modernization initiatives that are referenced on page 8 of the 2024-2026 business plan of the Department of Executive and Intergovernmental Affairs.

Issue: Sunsetting Policies

The Government of Nunavut's Department of Executive and Intergovernmental Affairs administers the *Access to Information and Protection of Privacy Policy*. The policy was most recently revised in October of 2019 and sunsets in October of 2024.

The Government of Nunavut's Department of Executive and Intergovernmental Affairs administers the *Privacy Breach Policy*. The policy was most recently revised in October of 2019 and sunsets in October of 2024.

The Government of Nunavut's Department of Executive and Intergovernmental Affairs administers the *Privacy Impact Assessment Policy*. The policy was most recently revised in October of 2019 and sunsets in October of 2024.

Standing Committee Recommendation #3:

The standing committee recommends that the Government of Nunavut's response to this report provide a detailed update on the status of its reviews of the *Access to Information and Protection of Privacy Policy*, the *Privacy Breach Policy* and the *Privacy Impact Assessment Policy*.

Issue: Privacy Impact Assessments

In 2017, the Legislative Assembly passed a number of amendments to the *Access to Information and Protection and Privacy Act*, including the addition of new provisions concerning privacy impact assessments.

The statute defines a "privacy impact assessment" to mean "an assessment that is conducted by a public body as defined in section 2, but not including a municipality, to determine if a current or proposed program or service meets or will meet the requirements of Part 2 of this Act."

Section 42.1 of the statute provides that:

Privacy impact assessment

42.1. (1) A minister shall, during the development of a program or service by a public body or the redesign of an existing program or service by a public body, submit to the Minister responsible for this Act

(a) a privacy impact assessment for the Minister's review and comment; or

(b) the results of a preliminary assessment showing that a privacy impact assessment of the program or service is not required.

Preliminary assessment

(2) A minister shall conduct a preliminary assessment and, where required, a privacy impact assessment in accordance with the directions of the Minister responsible for this Act.

Municipality not included

(3) A municipality is not a public body for the purposes of subsection (1).

Standing Committee Recommendation #4:

The standing committee recommends that the Government of Nunavut's response to this report include detailed descriptions of the findings of each privacy impact assessment and preliminary assessment undertaken under section 42.1 of the *Access to Information and Protection of Privacy Act* between April 1, 2022 and March 31, 2024, and that these descriptions detail the extent to which the Information and Privacy Commissioner was consulted in their preparation.

Issue: Non-Disclosure Agreements

Significant attention was paid during the standing committee's televised hearings of September 26-27, 2022, and April 19-20, 2024, to the subject of non-disclosure agreements.

In his testimony to the standing committee of September 27, 2022, the Information and Privacy Commissioner stated that:

“The answer to your question is that, in my opinion as your Information and Privacy Commissioner, and as a lawyer of more than 30 years' experience, the information law prevails over non-disclosure agreements, especially in the government context, because it is the people's money. If there's a non-disclosure agreement entered into by the Government of Nunavut, it means that there is some aspect of the public interest at play, and although the issue has not come before me, if somebody applied to see an agreement and the government said, 'No, we're not giving it to you because there is a non-disclosure clause in the agreement,' I'm very likely to say that that is legally wrong and the agreement should be disclosed. To put it in one sentence, Member, I do not believe that governments should enter into non-disclosure agreements and, if they do, it is very much subject to the information and privacy law.”

In his testimony to the standing committee of April 19, 2024, the Department of Justice's witness stated that:

“To get to your second part about out-of-court settlements, sometimes confidentiality agreements are part of those settlements. It is usually protective of the personal information of individuals and sometimes to protect the specific details of a financial settlement. As the privacy commissioner has said before, and we certainly agree, the dollar value that the Government of Nunavut spends is your business and it's the public's business, and that is something that we would disclose. It's not something that would be generally under the cloak of a confidentiality undertaking in a settlement, unless the court ordered something different.”

Standing Committee Recommendation #5:

The standing committee recommends that the Government of Nunavut's response to this report include a detailed list of non-disclosure agreements entered into between the Government of Nunavut and other entities and individuals between April 1, 2022 and March 31, 2024.

The standing committee further recommends that the Government of Nunavut's response to this report disclose the aggregate amount of public funds expended from the Consolidated Revenue Fund during the 2021-2022 and 2022-2023 fiscal years in respect to matters described in Note 21(b) of the 2021-2022 *Public Accounts of Nunavut*.

Issue: Public Sector Salary Disclosure

In 2017, the Legislative Assembly passed a number of amendments to the *Access to Information and Protection and Privacy Act*, including the addition of new provisions to allow, through regulation, the disclosure of remuneration of prescribed classes of public employees. However, new regulations to give effect to these changes have not yet been passed.

The standing committee notes that section 36 of the *Legislative Assembly and Executive Council Act* provides that:

Annual report by Speaker

36. (1) The Speaker shall, during each fiscal year, cause a report to be laid before the Legislative Assembly

(a) setting out any policies made under subsection 33.1(1) in the previous fiscal year; and

(b) showing the amounts paid by the Legislative Assembly by way of indemnity, allowance, expense or benefit during the previous fiscal year to each person who had been a member during that previous fiscal year, other than those amounts paid pursuant to a policy made under subsection 33.1(2).

Annual report by Premier

(2) The Premier shall, during each fiscal year, cause a report to be laid before the Legislative Assembly

(a) setting out any policies made under subsection 33.1(2) in the previous fiscal year; and

(b) showing the amounts paid pursuant to a policy made under subsection 33.1(2), by way of allowance, expense or benefit, during the previous fiscal year to each person who had been a member of the Executive Council during that fiscal year.

Combined report

(3) For further clarity, the information required to be reported under this section may be combined into one report.

The standing committee supports enhanced levels of public disclosure of remuneration for Government of Nunavut employees in the executive and senior management occupational categories.

Standing Committee Recommendation #6:

The standing committee recommends that the Government of Nunavut's response to this report provide a detailed update on the current status of the development of regulations under sections 73(1.1) and (1.2) of the *Access to Information and Protection of Privacy Act* in respect to the disclosure of remuneration of prescribed classes of public employees.

Issue: Information-Sharing Agreements

A significant number of territorial statutes allow for the government to enter into information-sharing agreements with other entities.

Standing Committee Recommendation #7:

The standing committee recommends that the Government of Nunavut's response to this report provide a detailed description of each information-sharing agreement entered into by the Government of Nunavut under the authority of a territorial statute between April 1, 2022 and March 31, 2024, and that these descriptions indicate the extent to which the Information and Privacy Commissioner was consulted in their preparation.

Issue: *Police Act*

Nunavut's new *Police Act* was passed by the 5th Legislative Assembly and received Assent on June 8, 2021. It is not yet in force. The legislation provides, in part, that:

Agreement - contracted investigative body

6. (1) The Minister may, from time to time, on behalf of the Government of Nunavut, enter into an agreement with an independent investigative body, or with its government, to authorize the independent investigative body to be a contracted investigative body for the purposes of this Part.

Agreement - contracted police force

(2) The Minister may, from time to time, on behalf of the Government of Nunavut, enter into an agreement with a police force in Canada, or with its government, municipality or other authority, to authorize the police force to be a contracted police force for the purposes of this Part.

These provisions concern investigations into serious incidents occurring within the meaning of the federal *Royal Canadian Mounted Police Act*.

In his 2021-2022 annual report to the Legislative Assembly, the Information and Privacy Commissioner indicated that his office had not yet been consulted by the Department of Justice concerning proposed agreements between the Government of Nunavut and independent investigative bodies and other entities.

Although the Government of Nunavut's May 2023 response to the November 2022 report of the standing committee on the review of the 2020-2021 and 2021-2022 annual reports of the Information and Privacy Commissioner indicated that the Department of Justice had "had discussions with the Information and Privacy Commissioner in April and September of 2022 on the regulatory process," the Information and Privacy Commissioner's testimony of April 19, 2024, indicated that:

"As of today, there has still been no consultation on the topic that was promised on June 7, 2021. Now, I would like to add, Mr. Chairman, that new *Police Act* is still not in force. It is still not the law of Nunavut. It's sitting there waiting for the government, probably specifically the Department of Justice, to do certain things that need to be done before it's ready. When I say that there's been no consultation, I don't want anybody to take that as blame or criticism. What it means is that underlying work has not been done yet. I'm confident that the promise will be kept, but I believe it's my duty to inform you, the Members, that it has not yet been kept yet."

The standing committee notes the importance of ensuring that agreements entered into between the Government of Nunavut and independent investigative bodies and other entities include disclosure requirements that are comparable to those which are in place in other Canadian jurisdictions in respect to the public reporting of investigative findings.

Standing Committee Recommendation #8:

The standing committee recommends that the Government of Nunavut's response to this report provide a detailed update on the status of consultations with the Office of the Information and Privacy Commissioner regarding the entering into of agreements with contracted investigative bodies and contracted police forces under the new *Police Act*.

The standing committee further recommends that the Government of Nunavut's response to this report provide a detailed timeline for the coming into force of the new *Police Act*.

Issue: Prosecutions under Section 59 of the *Access to Information and Protection of Privacy Act*

In his 2022-2023 annual report to the Legislative Assembly, the Information and Privacy Commissioner indicated that:

“Section 59 of the *Access to Information and Protection of Privacy Act* creates an offence, punishable on summary conviction, for anyone who knowingly breaches privacy or who wilfully interferes with the work of this office. There has never been a prosecution under this section.

In this fiscal year, there was one file for which prosecution should at least have been considered. It was a privacy breach case. Unfortunately, both the Royal Canadian Mounted Police and the Public Prosecution Service of Canada are doubtful that investigating (in the case of the Royal Canadian Mounted Police) or prosecuting (in the case of the Public Prosecution Service of Canada) is within their mandate. Investigation and prosecution of territorial offences is normally done by the Government of Nunavut’s Department of Justice. The problem is that an *Access to Information and Protection of Privacy Act* offence will almost always involve someone employed by or contracted to the GN. The Government of Nunavut’s Department of Justice will usually be in a conflict of interest.

In short, it appears that there is nobody to investigate or prosecute an *Access to Information and Protection of Privacy Act* offence. Even if there were, the maximum fine (\$5,000) is hardly worth the effort. Section 59, as currently written, is an empty threat. This is not a desirable situation. I bring it to the attention of the Legislative Assembly because a legislative response may be required.”

In its formal response to the Information and Privacy Commissioner’s *Review Report 23-239*, the Government of Nunavut indicated that it “did not refer this matter for prosecution as it was uncovered well after the expiry of the six-month limitation period for the prosecution of territorial offences as specified in section 3 of the *Summary Conviction Procedures Act*. In light of the challenges posed by the six-month limitation, the Government of Nunavut would be open to discussing with the [Information and Privacy] Commissioner the possibility of a limitation period or an administrative penalty regime specific to offences under the *Access to Information and Protection of Privacy Act*.”

Standing Committee Recommendation #9:

The standing committee recommends that the Government of Nunavut’s response to this report provide a detailed update on the status of developing amendments to address the issue of prosecutions under section 59 of the *Access to Information and Protection of Privacy Act*.

Issue: Missing Persons Legislation and Clare’s Law

Information published by the Government of the Northwest Territories indicates that:

“In the *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Call for Justice Number 5.8 calls upon provinces and territories to adopt legislation related to missing persons.

As of June 2023, missing persons legislation has been enacted in Saskatchewan, Alberta, Nova Scotia, New Brunswick, Manitoba, British Columbia, Newfoundland, and Ontario. Yukon’s *Missing Persons Act* received assent in 2017 but is not yet in force.

Time is of the essence when a person goes missing. When police begin a missing person investigation, they often have no reason to suspect that a crime has been committed and therefore cannot obtain a production order under the Criminal Code or otherwise compel parties to release personal information about the missing person. Legislation provides mechanisms so police can access information more quickly and efficiently when conducting a missing person investigation. Most legislation in Canada related to missing persons provides for court orders that allow police to access records related to, and to enter premises to search for, a missing person. In many jurisdictions, legislation also allows police in certain situations to make emergency demands for records without a court order, for example, if it is suspected that records may be destroyed or that a missing person may be harmed during the time that would be required to obtain a court order.

When an investigation spans more than one jurisdiction, having similar legislation across provinces and territories can help police work together more effectively to locate a missing person.”

In his testimony to the standing committee of April 19, 2024, the Information and Privacy Commissioner stated that:

“What I can say is how it relates to the existing access and privacy law, and the sort of things that Members would want to be thinking about if such a piece of legislation is tabled in this House for consideration.

What the law does essentially is it opens up one more avenue for the police to obtain information that they do not currently have because, in our system of justice, we do not let the police go out and get information if no crime is suspected or if there’s no actual crime. This would say, well, under certain circumstances, not all circumstances but under certain circumstances, they could go out even if there’s no evidence of a crime and obtain information that they can’t already get.

Now, under the existing law in Nunavut, it would not be allowed and that's why a piece of legislation is required. If such a piece of legislation were adopted, then it would fit in with the privacy law because the privacy law says, among other things, that it is okay to disclose information as long as there is a law that says that it's okay. If this House were to pass that legislation, it would fit in with the existing privacy law."

During his September 2022 televised appearance before the standing committee, the Information and Privacy Commissioner confirmed that he had provided formal written input in July of 2021 to the Department of Justice concerning the development of a "Clare's Law" for Nunavut, the purpose of which is to address the issue of intimate partner violence. This submission was tabled in the Legislative Assembly by an individual Member on September 14, 2021, as part of an exchange of correspondence with the Information and Privacy Commissioner.

In his testimony to the standing committee of April 19, 2024, the Department of Justice's witness stated that "... it is still on the legislative priority list for the department and it is still being looked at by colleagues in Justice policy."

Standing Committee Recommendation #10:

The standing committee recommends that the Government of Nunavut's response to this report include a detailed timeline for the introduction of missing persons legislation for Nunavut.

The standing committee further recommends that the Government of Nunavut's response to this report include a detailed timeline for the introduction of a Clare's Law for Nunavut.

Issue: Health-Specific Privacy Issues and Related Matters

Significant attention was paid during the standing committee's televised hearings of September 26-27, 2022, and April 19-20, 2024, to health-specific privacy issues.

The standing committee again takes note of the September 2022 resolution concerning digital healthcare that was issued at the annual meeting of federal, provincial and territorial information and privacy commissioners.

The standing committee also notes that the Government of Nunavut's *Information Sharing Agreement with Nunavut Tunngavik Incorporated on Tuberculosis Data* was tabled in the Legislative Assembly on February 22, 2024.

The Information and Privacy Commissioner's 2022-2023 annual report indicated that:

"The *Access to Information and Protection of Privacy Act* is inadequate to deal with information and privacy in the health system. Almost every other Canadian jurisdiction has health-specific legislation. There is no reason that Nunavut should be so far behind."

Subsection 67(c) of the *Access to Information and Protection of Privacy Act* provides that the Information and Privacy Commissioner may "offer comment on the implications for privacy protection of proposed legislative schemes or government programs."

Standing Committee Recommendation #11:

The standing committee recommends that the Government of Nunavut's response to this report include a detailed update on the current status of the development of health-specific privacy legislation, and that this update provide a clear timeline for when a Bill is planned to be introduced in the Legislative Assembly.

The standing committee further recommends that the Department of Health formally consult with the Office of the Information and Privacy Commissioner regarding the development of health-specific privacy legislation, and that the Office's recommendations be tabled in the Legislative Assembly.

The standing committee further recommends that the Government of Nunavut's response to this report include a detailed update on the current status of the administration of the Government of Nunavut's *Information Sharing Agreement with Nunavut Tunngavik Incorporated on Tuberculosis Data*, and that this update include a description of what privacy training, if any, has been offered to, and taken by, employees of Nunavut Tunngavik Incorporated in respect the organization's responsibilities and obligations under the *Agreement*.

Issue: Application of the *Access to Information and Protection of Privacy Act* to Municipalities, District Education Authorities and Alcohol Education Committees

In April of 2015, the *Access to Information and Protection and Privacy Regulations* were amended to designate housing authorities and housing associations as public bodies. However, District Education Authorities (DEAs) are not yet covered by the legislation. In 2017, the Legislative Assembly passed a number of amendments to the *Access to Information and Protection and Privacy Act*, including the addition of new provisions to allow, through regulation, for the designation of municipalities as public bodies. However, new regulations to give effect to these changes have not yet been passed.

On November 9, 2021, the Iqaluit City Council passed a formal motion directing the municipal administration to “work with the Government of Nunavut and the Office of the Information and Privacy Commissioner of Nunavut on funding, training and file management systems, with the goal of coming under the *Access to Information and Protection of Privacy Act* by January 2023.”

In his 2022-2023 annual report to the Legislative Assembly, the Information and Privacy Commissioner indicated that:

“In my last annual report, I wrote that access to information for municipalities appeared to be back on the agenda. One year later, municipal access to information and protection of privacy is off the agenda and shows no signs of being revived. At the Standing Committee on Oversight of Government Operations and Public Account’s [televised] hearing in September 2022, the deputy minister of Executive and Intergovernmental Affairs indicated that municipal access to information and protection of privacy is not being pursued by this government. The City of Iqaluit, which adopted a motion on November 9, 2021, to explore the possibility of coming under the *Access to Information and Protection of Privacy Act*, has taken no further steps towards coming under the *Access to Information and Protection of Privacy Act*.”

Although the standing committee supports the principle of having federal, territorial and municipal levels of government being covered by appropriate legislative frameworks in respect to access to information and protection of privacy, it recognizes the reality of capacity challenges facing smaller entities.

Consequently, it is incumbent on the government to develop clear and realistic timetables in respect to such entities as municipalities, District Education Authorities and Alcohol Education Committees.

Standing Committee Recommendation #12:

The standing committee recommends that the Government of Nunavut's response to this report provide a detailed update on the current status of the development of regulations under section 73(a) of the *Access to Information and Protection of Privacy Act* in respect to the designation of municipalities as public bodies.

The standing committee further recommends that the Government of Nunavut's response to this report provide a detailed update on the current status of the development of regulations under section 73(a) of the *Access to Information and Protection of Privacy Act* in respect to the designation of District Education Authorities as public bodies.

The standing committee further recommends that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* to allow, through regulation, for the designation of Alcohol Education Committees established under section 50 of the *Liquor Act* as public bodies.

Issue: Labour Relations and the *Access to Information and Protection of Privacy Act*

The Information and Privacy Commissioner has written in a number of his formal review reports that the *Access to Information and Protection of Privacy Act* has become a “proxy battleground for labour relations issues within the Government of Nunavut.”

In his testimony to the standing committee of April 20, 2024, the Information and Privacy Commissioner stated that:

“In my first year here in Nunavut, I would say that easily the majority of the cases that I saw fit within that category. So that is why I mentioned it. I used a fancy phrase; the proxy battleground, but really all that means is people were using this law to fight each other inside the Government of Nunavut. That’s really what I meant.

Now interestingly, in my second year and into my third year here in Nunavut, that kind of faded away and it was never clear to me why. Since the Department of Executive and Intergovernmental Affairs hasn’t been producing any statistics for a number of years now, it hasn’t been clear to me what’s going on down on the ground. I only see the appeals, but there was a period when I was getting very few of that kind of thing, and it’s interesting; just in the last few months it has come back again.

Since the beginning of this calendar year, 2024, I would say the majority of the new cases that I’ve seen have involved fights inside the Government of Nunavut. I’ve been hoping that they were gone forever, but that has turned out, sadly, not to be the case.”

The Government of Nunavut’s May 2023 response to the standing committee’s November 2022 report indicated that “to date, the Government of Nunavut has not had any discussions to revise the grievance processes in relation to Access to Information and Protection of Privacy. The issue can be raised this at the next meeting with the Nunavut Employees Union.”

Section 1104 of the Government of Nunavut’s *Human Resources Manual* (“Release of Information”) was last updated on April 10, 2006, over fifteen years ago.

On February 20, 2024, the Minister responsible for the *Public Service Act* announced the appointment of Nunavut’s first resident Ethics Officer.

Standing Committee Recommendation #13:

The standing committee recommends that the Government of Nunavut's response to this report describe, in detail, what specific discussions it has had with the Nunavut Employees Union and the Nunavut Teachers' Association concerning potential changes to the grievance process in respect to access to information and protection of privacy.

The standing committee further recommends that the Government of Nunavut's response to this report describe, in detail, the status of work to update *Human Resources Manual Section 1104 - Release of Information*.

The standing committee further recommends that the Minister responsible for the *Public Service Act* formally request the Office of the Ethics Officer to initiate contact with the Office of the Information and Privacy Commissioner to discuss areas of potential collaboration between the two entities.

Issue: Information Technology

Significant attention was paid during the standing committee’s televised hearings of September 26-27, 2022, and April 19-20, 2024, to the issues of information technology, cybersecurity and ransomware. In his 2021-2022 annual report to the Legislative Assembly, the Information and Privacy Commissioner indicated that “we live in a world of surveillance and cyberattacks.”

On June 1, 2023, the Information and Privacy Commissioner issued *Special Report 23-245-SR* concerning the Government of Nunavut’s network Y-drive. The Information and Privacy Commissioner’s testimony of April 19, 2024, indicated that:

“... in my special report, I made a number of recommendations to the government. The most fundamental recommendation was that the Y-drive needs to be replaced. Because of its design, it is not possible to fix the Y-drive to protect privacy the way it needs to be protected ... I have told them that ‘My overall recommendation is you need a better system. You need a better warehouse for the information that protects privacy.’ How, when, and with what they do it, I have left up to their best judgment, given budget priorities and procurement and all those things. I know this is a multi-year task.”

The Government of Nunavut’s formal response of August 31, 2023, to the Information and Privacy Commissioner’s *Special Report 23-245-SR* indicated, in part, that:

“Given the Y-drive's inherent limitations and inability to provide automated functionalities essential for recordkeeping, security, and compliance with the *Access to Information and Protection of Privacy Act*, we agree with your recommendation for its decommissioning. The Information Management/Information Technology Division of the Department of Community and Government Services is in the advanced stages of considering a cloud-based solution that integrates with our existing Microsoft 365 framework. We will ensure that our next information management system incorporates privacy by design and can adapt to evolving digital landscapes.”

Standing Committee Recommendation #14:

The standing committee recommends that the Government of Nunavut’s response to this report provide a detailed update on the status of work to decommission and replace the network Y-drive.

The standing committee further recommends that the Government of Nunavut’s response to this report describe the results of any Privacy Impact Assessments that have been undertaken to date in respect to migrating information in the possession of the Government of Nunavut to “cloud-based solutions.”

Issue: Artificial Intelligence and Bill C-27

An emerging theme of the standing committee's deliberations concerns the impact of artificial intelligence on the government's administration of access to information and protection of privacy legislation and policies.

In his testimony to the standing committee of April 20, 2024, the Information and Privacy Commissioner stated that:

"I've been the [Information and Privacy] Commissioner here in Nunavut for three years, and during the first two years, hardly heard the words artificial intelligence at all. Now when I go to a conference or I meet with my colleagues, it's all everybody is talking about.

This technology has burst into the public in a way that I think none of us imagined and it has profound implications for the way information is handled within a government. It has profound implications for access to information and also on privacy.

My very fundamental recommendation, Member, is that the Government of Nunavut needs to get ahead of this issue. The technology is developing so fast that the Government of Nunavut is already behind. I cannot urge them enough to at least give to their employees a framework for how artificial intelligence should be used within the Government of Nunavut. First of all, in decision-making, artificial intelligence has the ability to be used to make decisions, but suddenly now the decision is not being made by a human being; it's being made by a machine. If you apply for information about how that decision was made, it's not clear at all how the access law applies to that, or whether the Government of Nunavut would even be able to explain how it made that decision. So that's the big implication on the access side.

On the privacy side, the way that artificial intelligence works is to gather an enormous amount of information, an unimaginable amount of information and analyze it so that essentially it can predict what the next word in a sentence is going to be, or should be, or usually is. That means that the models take in as much information as they can get their hands on. I think people would be shocked if they knew how much information is being taken up by these models, and that includes the information of Nunavummiut."

On June 16, 2022, Bill C-27, *An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts*¹ received First Reading in the House of Commons.

¹ The Short Title of the Bill is the *Digital Charter Implementation Act, 2022*.

The official summary of the Bill indicates that:

“Part 1 enacts the *Consumer Privacy Protection Act* to govern the protection of personal information of individuals while taking into account the need of organizations to collect, use or disclose personal information in the course of commercial activities. In consequence, it repeals Part 1 of the *Personal Information Protection and Electronic Documents Act* and changes the short title of that Act to the *Electronic Documents Act*. It also makes consequential and related amendments to other Acts.

Part 2 enacts the *Personal Information and Data Protection Tribunal Act*, which establishes an administrative tribunal to hear appeals of certain decisions made by the Privacy Commissioner under the *Consumer Privacy Protection Act* and to impose penalties for the contravention of certain provisions of that Act. It also makes a related amendment to the *Administrative Tribunals Support Service of Canada Act*.

Part 3 enacts the *Artificial Intelligence and Data Act* to regulate international and interprovincial trade and commerce in artificial intelligence systems by requiring that certain persons adopt measures to mitigate risks of harm and biased output related to high-impact artificial intelligence systems. That Act provides for public reporting and authorizes the Minister to order the production of records related to artificial intelligence systems. That Act also establishes prohibitions related to the possession or use of illegally obtained personal information for the purpose of designing, developing, using or making available for use an artificial intelligence system and to the making available for use of an artificial intelligence system if its use causes serious harm to individuals.”

Standing Committee Recommendation #15:

The standing committee recommends that the Government of Nunavut’s response to this report provide a detailed description of what policies, directives and guidelines have been approved and/or are in development concerning the use of artificial intelligence technology by public bodies in respect to their obligations under the *Access to Information and Protection of Privacy Act* and related regulations and policies.

The standing committee further recommends that the Government of Nunavut’s response to this report clarify, in detail, its position concerning Bill C-27.

Issue: Amendments to the *Access to Information and Protection of Privacy Act*

Section 37 of the *Access to Information and Protection of Privacy Act* provides, in part, 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.

However, the Information and Privacy Commissioner does not have the explicit authority under the legislation to appeal a decision made by a head of a public body in respect to their recommendations.

The Information and Privacy Commissioner indicated in his 2021-2022 annual report that the *Access to Information and Protection of Privacy Act* should be amended to “give the Information and Privacy Commissioner the power to order the disclosure of documents.” This recommendation was reiterated in his 2022-2023 annual report.

In his testimony to the standing committee of September 27, 2022, the Information and Privacy Commissioner stated that:

“The whole system would work better if I had the order power, but I know that inside the government, what they’re really afraid of is what if I make a bad decision, what if I do something that they think is just stupid, what do they do? They don’t want to give me that power, to which I say, ‘But the answer is simple and, that is, that if they don’t like my order, they go to court to have it overturned.’

If I issue an order that doesn’t make a lot of sense, they just get it overturned in court. Otherwise it becomes an order of the court and then they have to obey an order of the court or the government is in contempt of court. That’s using a technical, legal word, in contempt of court. That’s what happens in other jurisdictions in Canada.

That’s what should happen here. I am very happy to have my work looked at by a judge and, if a judge says I’m wrong, that’s great. That’s what judges are for, but the system right now in my view is quite unsatisfactory where, no matter what I say, the government can just keep doing what they’re doing. That’s what I would suggest, but there has to be a combination. I should have order power and the government can take me to court ...”

The standing committee’s November 2022 report on the review of the 2020-2021 and 2021-2022 annual reports of the Information and Privacy Commissioner recommended that that the Government of Nunavut introduce amendments to sections 36, 49.6 and 49.13 of the *Access to Information and Protection of Privacy Act* that would provide for a requirement on the part of the head of a public body to provide written reasons for

decisions made in respect to recommendations made by the Information and Privacy Commissioner. The standing committee also recommended that that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* to provide the Information and Privacy Commissioner with the authority to appeal a decision made by a head of a public body under sections 36, 49.6 and 49.13 of the *Access to Information and Protection of Privacy Act* to the Nunavut Court of Justice.

The Government of Nunavut's May 2023 response to the November 2022 report of the standing committee indicated that:

"The Government of Nunavut will consider these revisions when the *Access to Information and Protection of Privacy Act* is next reviewed. A review and amendment of the *Access to Information and Protection of Privacy Act* is expected to commence in 2025."

Standing Committee Recommendation #16:

The standing committee recommends that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* to provide order-making power to the Information and Privacy Commissioner in respect to the office-holder's duties under Division D of Part 1 of the *Access to Information and Protection of Privacy Act* and Division D of Part 2 of the *Access to Information and Protection of Privacy Act*.

The standing committee further recommends that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* to provide the head of a public body with the authority to appeal a decision or order of the Information and Privacy Commissioner to the Nunavut Court of Justice.

Observations and Recommendations Directed to the Office of the Information and Privacy Commissioner

Issue: Office of the Information and Privacy Commissioner's Annual Report

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

Annual report

68. (1) The Information and Privacy Commissioner shall, within six months after the end of each fiscal year, submit to the Speaker of 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 fiscal year, including information concerning any instances where recommendations made by the Information and Privacy Commissioner after a review have not been followed.

Laying report before Legislative Assembly

(2) The Speaker shall, at the first opportunity, lay a copy of the annual report referred to in subsection (1) before the Legislative Assembly.

The 2022-2023 annual report of the Office of the Information and Privacy Commissioner was tabled in the Legislative Assembly on May 24, 2023, less than 60 days after the end of the 2022-2023 fiscal year. The standing committee applauds the Information and Privacy Commissioner for the timeliness of his reporting.

The Legislative Assembly's 2022-2023 main estimates included \$400,000 in funding for the Office of the Information and Privacy Commissioner. The standing committee recognizes that the annual budget of the Office of the Information and Privacy Commissioner has been stable in recent years.

Standing Committee Recommendation #1:

The standing committee recommends that the Office of the Information and Privacy Commissioner's annual reports to the Legislative Assembly which are prepared and submitted under section 68 of the *Access to Information and Protection of Privacy Act* include a budget expenditure summary that is broadly comparable to those which are included in the annual reports of the Chief Electoral Officer, Languages Commissioner and Representative for Children and Youth.

Issue: Community Travel

The standing committee continues to be of the view that the Information and Privacy Commissioner's work, especially in respect to the potential future application of the *Access to Information and Protection of Privacy Act* to municipalities, District Education Authorities and other entities, would benefit from first-hand exposure to the environment in which they operate.

The standing committee recognizes that pandemic-related travel restrictions during the 2020-2021 and 2021-2022 fiscal years precluded the Information and Privacy Commissioner from undertaking community travel within Nunavut during that time.

Standing Committee Recommendation #2:

The standing committee recommends that the Office of the Information and Privacy Commissioner, in cooperation with the Government of Nunavut and the Nunavut Association of Municipalities, undertake at least one visit to a smaller Nunavut community outside of Iqaluit prior to the end of the 2024-2025 fiscal year, and that the results of the visit be reported in the office's 2024-2025 annual report to the Legislative Assembly.

Issue: Information-Sharing Agreements

The standing committee's report on the review of the 2020-2021 and 2021-2022 annual reports of the Information and Privacy Commissioner recommended that the office's response include copies of information-sharing agreements entered into with other federal, provincial and territorial information and privacy commissioners between January 11, 2021 and September 30, 2022.

The Information and Privacy Commissioner's response included a copy of the *Memorandum of Understanding Between the Office of the Privacy Commissioner of Canada and the Office of the Information and Privacy Commissioner of Nunavut* that was entered into on October 14, 2021.

Standing Committee Recommendation #3:

The standing committee recommends that the Office of the Information and Privacy Commissioner's response to this report include copies of all information-sharing agreements entered into with other federal, provincial and territorial information and privacy commissioners between October 1, 2022 and March 31, 2024.

Issue: Access to Information and Protection of Privacy in Respect to Inuit Organizations

The Information and Privacy Commissioner's 2022-2023 annual report indicated that the office "provided comments on policy proposals and/or advice on specific situations to a number of different organizations and individuals, including an Inuit organization."

During the standing committee's televised hearing, the Information and Privacy Commissioner stated that:

"My office acts as a general resource for the people of Nunavut on the access and privacy law. When it comes to that specific function that the Member is referring to, that is, a request for comments or advice, that part of my work is not limited to the Government of Nunavut. In the particular example that the Member refers to, there was an Inuit organization that was developing a submission to an entity of the Government of Nunavut. They wanted to refer to the access and privacy law in their submission and they just wanted to check with me to make sure that they had understood correctly how the legislation works so that their submission to the government would be stronger. Whether it's an Inuit organization, or a private citizen, or a Member of this legislature, I am willing to provide that kind of general advice to anybody. "

The standing committee applauds the Information and Privacy Commissioner for his proactive approach.

The standing committee recognizes that Inuit organizations are not considered to be public bodies within the meaning of the territorial *Access to Information and Protection of Privacy Act*. However, the standing committee also notes that Inuit organizations are likely to be in possession of significant amounts of personal information concerning Nunavut Inuit. For example, the 2011 *Report of the Auditor General of Canada to the Legislative Assembly of Nunavut on Children, Youth and Family Programs and Services in Nunavut* indicated that:

"The *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."

Other examples include personal information held in respect to the administration of the Elders Support Program/Nunavut Elders Pension Program and personal information held in respect to the administration of compassionate/bereavement travel programs.

During her June 23, 2021, televised appearance before a standing committee, the President of Nunavut Tunngavik Incorporated stated that:

“Inuit organizations have been recognized by the governments, for many purposes, as public bodies performing the function of a government, and are holding Inuit-owned lands for the collective benefit of Inuit, and should be treated akin to governments instead of a private, for-profit entity like a mining company or a regular private land owner.”

The extent to which Nunavut Tunngavik Incorporated and/or the three Regional Inuit Organizations (Qikiqtani Inuit Organization, Kivalliq Inuit Organization and Kitikmeot Inuit Organization) are actively considering establishing access to information and protection of privacy systems that can be utilized by Nunavut Inuit in respect to information in the possession of these organizations is unclear.

The standing committee would be strongly supportive of efforts on the part of the Information and Privacy Commissioner to provide advice and support to these organizations in respect to such an initiative.

Standing Committee Recommendation #4:

The standing committee recommends that the Office of the Information and Privacy Commissioner proactively contacts Nunavut Tunngavik Incorporated and the three Regional Inuit Organizations with an offer to provide advice and support to the organizations regarding the establishment of access to information and protection of privacy systems that can be utilized by Nunavut Inuit in respect to information in the possession of these entities.