



## **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***

**3<sup>rd</sup> Session of the 4<sup>th</sup> Legislative Assembly of Nunavut  
Fall 2015 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. This is an issue that received considerable attention during the standing committee's 2014 televised hearing. The standing committee applauds the Government of Nunavut for having acted in a timely manner to address this issue.

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 on the annual reports of independent officers of the Legislative Assembly provide an opportunity for the issues raised in each report to be discussed in a public forum.

Government accountability is fostered through the requirement in the *Rules of the Legislative Assembly of Nunavut* 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 4, 2014.

The Information and Privacy Commissioner's 2014 appearance before the standing committee took place on September 18, 2014, on the occasion of its televised hearing on her 2012-2013 and 2013-2014 annual reports 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 this hearing was subsequently presented to the Legislative Assembly on October 28, 2014. The Government of Nunavut's response to the Standing Committee's report was tabled in the Legislative Assembly on February 26, 2015.

The Information and Privacy Commissioner's 2014-2015 annual report was backdoor tabled under the provisions of Rule 44(2) of the *Rules of the Legislative Assembly of Nunavut* on July 7, 2015. The September 28-29, 2015, 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 are available on the Legislative Assembly's website.

## Observations and Recommendations

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**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.”

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

“In the interest of increased transparency, accountability and effectiveness, Ministers responsible for public agencies and territorial corporations have issued directives to provide important information to the Government of Nunavut and Nunavummiut, including the tabling of yearly reports on procurement, contracting and leasing activities.”

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.

As of **October 21, 2015**, 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: 2010-2011 report tabled on October 23, 2012
- Nunavut Development Corporation: Not yet tabled
- Nunavut Housing Corporation: 2012-2013 report tabled on March 20, 2014

- Qulliq Energy Corporation: 2011-2012 and 2012-2013 reports tabled on October 21, 2014
- Nunavut Arctic College: Not yet tabled

### **Standing Committee Recommendation #1:**

**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 refine its public reporting practices to more clearly differentiate between the approved "maximum values" of contracts and the actual expenditures undertaken pursuant to such contracts.

**The standing committee further recommends** that the Government of Nunavut, as part of its ongoing review of procurement, contracting and leasing practices, work to refine its public reporting practices to more clearly account for contract awards made under standing offer agreements.

**The standing committee further recommends** that the Government of Nunavut, in its response to this report, clarify what specific actions are undertaken by the Financial Management Board, the Executive Council and the Public Agencies Council in circumstances where Crown agencies and/or territorial corporations do not fulfill, in a timely manner, their tabling requirements in respect to procurement, contracting and leasing activities.

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

"I am aware that the Access to Information and Protection of Privacy Office in the Department of the Executive and Intergovernmental Affairs is working, in particular, with the City of Iqaluit on these issues. Some progress is being made but it is very slow and is focused only on the larger communities at this point.. Once again, I would encourage the Government of Nunavut to engage municipal and community governments to establish and implement privacy policies as a starting point.

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

"... is committed to moving forward with the implementation of access and privacy within the Nunavut municipalities."

It should be noted that the current business plan of the Department of Executive and Intergovernmental Affairs indicates that one of its priorities for the 2015-2016 fiscal year is to:

"... explore options regarding municipal access to information and protection of privacy legislation."

It should also be noted that the September 29, 2015, opening statement of the Government of Nunavut's witnesses to the standing committee indicated that:

"... there is a huge discrepancy between the capacities of the larger communities versus the smaller communities and that is being considered as we move forward with consultations."

Extensive discussion on these issues took place during the September 28-29, 2015, appearances of the Information and Privacy Commissioner and witnesses from the Government of Nunavut.

## **Standing Committee Recommendation #2:**

**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 recommends** 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 a detailed update on its collaborative training initiatives involving municipal employees, Government Liaison Officers, the Municipal Training Organization and other parties.

**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 suggests** that such concerns could be addressed through such means as explicitly providing that the legislation does not provide a right to access in respect to information that was generated by municipalities prior to an effective commencement date.

**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 smaller municipalities and the role of the Minister of Community and Government Services might serve to help address capacity concerns.



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

A new issue that emerged during the Standing Committee's September 28, 2015, hearing on the 2014-2015 annual report of the Information and Privacy Commissioner to the Legislative Assembly is the application of access to information and protection of privacy legislation to District Education Authorities (DEAs).

During her September 28, 2015, appearance before the standing committee, the Information and Privacy Commissioner noted that:

"The District Education Authorities come to mind because there's an issue right now involving the privacy of a teacher in a particular community. The District Education Authority clearly didn't know how to deal with the issue and that's because they're not under Act. They never had to deal with it before. On the other hand, the teachers are government employees, so it's a confusing juxtaposition of different people and different organizations that are responsible for different things and nobody knows what."

During his appearance before the standing committee, the Government of Nunavut's lead witness stated that:

"We will work closely with the [Information and Privacy] Commissioner on that. I don't have a firm decision on that for District Education Authorities, but as we mentioned, we continue to improve and this year, we included the local housing authorities and the local housing associations under the Nunavut Housing Corporation. That's something similar that we are working with the Department of Education to see how we can go and resolve this."

**Standing Committee Recommendation #3:**

**The Standing Committee recommends** 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 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.

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

“As I have advocated for a number of years, once again I would encourage the development of health specific privacy legislation which will not only accommodate the realities of how personal information is used within the health system, but will also create the privacy framework around electronic medical records as the system moves more and more in that direction. Nunavut is now the only Canadian jurisdiction which does not have this kind of legislation.”

It should be noted that the current business plan of the Department of Health indicates that one of its priorities for the 2017-2018 fiscal year is to “introduce health-specific privacy legislation.”

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

**The Standing Committee recommends** that the Government of Nunavut’s formal response to this report contain a detailed timeline for the development and introduction of health-specific privacy legislation for Nunavut.

**The Standing Committee further recommends** that copies of the Department of Health’s privacy and security directives concerning electronic health records be tabled in the Legislative Assembly at the earliest opportunity.

**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.

The Standing Committee notes that the personal information provided by the government in such circumstances is, by its very nature, likely to be sensitive. However, it has not been clear what agreements and/or understandings and/or protocols are in place between the government and designated Inuit organizations to ensure that such personal information is subject to appropriate safeguards after it has been provided to the designated Inuit organization.

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*."

The government's formal response to the report of the standing committee was tabled in the Legislative Assembly on September 6, 2013. The response stated that:

“The Department of Family Services understands the importance of protecting personal information and commits to working collaboratively with both the Information and Privacy Commissioner and designated Inuit organizations to ensure that appropriate safeguards are in place to protect personal information concerning matters arising under the *Adoption Act* and the *Child and Family Services Act*. Initial work will involve consulting with designated Inuit organizations to determine privacy safeguards currently in effect. Consultation with the Information and Privacy Commissioner to assess current practices and to determine if additional safeguards are required will also take place. The Department of Family Services anticipates completion of this recommendation by the fall of 2013.”

This issue was 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 and the Auditor General's 2014 *Follow-up Report on Child and Family Services in 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.

The standing committee provided a comprehensive set of recommendations on this issue in its October 28, 2014, report to the House.

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

“... is committed to working with the Office of the Information and Privacy Commissioner and to working 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*.

The Government of Nunavut is also taking steps to conduct a review of the necessity and effectiveness of the current statutory provisions and a letter has been forwarded seeking consultation with the Information and Privacy Commissioner for Nunavut. The tentative date for the meeting is February 24, 2015.

The objective of the meeting/consultation is to seek advice from the [Information and Privacy] Commissioner as to what types of provisions we might put into an agreement to ensure that personal information is adequately protected. The meeting will be between the relevant senior staff in the Family Services division impacted upon by the stipulations of the above mentioned Acts.

We feel that this consultation is prudent prior to beginning the consultation process with the Inuit organizations on the development of a *Protocol for Handling Personal Information Provided to Third Parties Under the Adoption Act and the Child and Family Services Act*.

Once the provisions required are clarified, an internal meeting will be held in March of 2015 during which a committee will be struck to develop the terms of reference for the consultations which will be drafted by April 2015. The consultation process will then commence with expected completion in the fall of 2015. A final report will be drafted by March 31, 2016.”

During her September 28, 2015, appearance before the standing committee the Information and Privacy Commissioner stated that:

“... I had a fairly long meeting with departmental officials and I have also since written them an even longer letter outlining some the suggestions that came out of that meeting and how we could proceed going forward. I know that since then, there have been additional meetings with the various officials in I believe it was Health, but it could have been Family Services. I know the issue is being dealt with. I know that there are ongoing discussions within the government and I expect that I will hear from them again soon. My letter went out just a couple of months ago. With the summer ensuing, I’m thinking that I may hear from them again in the next few months. I know it’s an ongoing issue and we are having some fruitful discussions.”

**Standing Committee Recommendation #5:**

**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*.

**The standing committee further recommends** that the March 31, 2016, “final report” that was referred to in the Government of Nunavut’s formal response to the October 28, 2014, report of the standing committee, be tabled in the Legislative Assembly during its spring 2016 sitting.

**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.

This observation was echoed during the Information and Privacy Commissioner's September 28, 2015, appearance before the standing committee, during which she stated that:

"I think one of the things I've talked about, if there were to be a review of the Act, and we've talked about it; I think we even talked about it last year, is that in certain cases, it would be helpful, I think, if the Information and Privacy Commissioner had the ability to appeal something because an individual isn't likely to do it for a number of reasons: the costs; the effort; the time; the need for a lawyer; the need to have at least some knowledge about how the system works if you wanted to do it yourself. I had a situation, not in Nunavut, but in the Northwest Territories, where a member of the press, who you would think has some resources behind them, started an appeal and withdrew it very quickly because they soon realized that the appeal required more than simply appearing in court and asking the court to review my recommendations. So there is a weakness in the Act, definitely."

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

"... begun looking at other jurisdictions in terms of the powers of their oversight equivalent to see what the best approach would be for us to allow the [Information and Privacy] Commissioner more power to initiate an appeal or participate in an appeal of a decision of a head of a public body under the *Access to Information and Protection of Privacy Act*. We commit to further review of the [Information and Privacy] Commissioner's power as it relates to appeals to the Nunavut Court of Justice under section 36 of the *Access to Information and Protection of Privacy Act*."

**Standing Committee Recommendation #6:**

**The Standing Committee recommends** that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* within the next twelve months 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 October 28, 2014, report, the Government of Nunavut indicated that it has:

“... committed to making this amendment to the *Access to Information and Protection of Privacy Act*. Currently, this issue is addressed administratively as the GN accepts reviews that are not placed within the 30-day time period, that are done so in good faith. his amendment will be included in the next round of amendments to the *Access to Information and Protection of Privacy Act*.”

**Standing Committee Recommendation #7:**

**The Standing Committee recommends** that the Government of Nunavut introduce amendments to the *Access to Information and Protection of Privacy Act* within the next twelve months 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**

Earlier this year, 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 notes that she plans to:

“... work on creating more content for my web site so as to provide resources, guidelines, FAQs, suggestions and papers on various subjects to assist government agencies and the public. I will also be taking more time to focus on new initiatives and legislation proposed by public bodies and the Legislative Assembly so as to provide comment on projects which may have an impact on either access to information or on the privacy of individuals. **Thirdly, I will 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 highlights 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.

During her September 28, 2015, appearance before the standing committee, a number of questions were posed to the Information and Privacy Commissioner concerning the scope of this review. Recognizing that the *Access to Information and Protection of Privacy Act* was originally passed in 1994, at the dawn of the Internet age, Members engaged in a broad dialogue with the Information and Privacy Commissioner concerning the impact that technology has had on the administration of the legislation.

**Standing Committee Recommendation #8:**

**The Standing Committee recommends** that the Information and Privacy Commissioner of Nunavut submit, no later than September 1, 2016, a set of comprehensive and specific recommendations for possible amendments to the *Access to Information and Protection of Privacy Act*.

**The Standing Committee further recommends** that the Information and Privacy Commissioner's review of the *Access to Information and Protection of Privacy Act* include consideration of the following matters:

- The extent to which the legislation takes into account Inuit Qaujimajatuqangit and Inuit Societal Values;
- The extent to which the legislation has kept pace with the Internet and other communications technology;
- The extent to which the legislation is being used for the purpose of furthering private commercial interests; and
- The extent to which the legislation is being used for the purpose of pursuing interpersonal workplace disputes in public bodies.

**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.

**The Standing Committee further notes** that this timeline will allow it to begin consideration of the recommendations during its televised hearing on the Information and Privacy Commissioner's 2015-2016 annual report to the Legislative Assembly, with the ultimate goal of passing legislation prior to the dissolution of the 4<sup>th</sup> Legislative Assembly.

**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.

During her September 28, 2015, appearance before the standing committee, the Information and Privacy Commissioner engaged in a thoughtful dialogue with Members concerning privacy rights and the obligations of government in the unique cultural context of Nunavut. This dialogue took place against the backdrop of the recently-completed coroner's inquest into suicide in Nunavut, a process which has led to recommendations for amendments to statutes such as the *Mental Health Act*.

**Standing Committee Recommendation #9:**

**The Standing Committee recommends** that the Information and Privacy Commissioner of Nunavut meet in person with representatives from the Inuit Qaujimajatuqangit Katimajit on at least one occasion during the 2015-2016 fiscal year in order to exchange perspectives on issues related to access to information and protection of privacy.

**The Standing Committee further recommends** that the Information and Privacy Commissioner's 2015-2016 annual report to the legislation account, in detail, for her discussions with the Inuit Qaujimajatuqangit Katimajit.

**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:

"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.**"

During her September 28, 2015, appearance before the standing committee, the Information and Privacy Commissioner noted that her recommendations "were not accepted in two instances" during the 2014-2015 fiscal year.

It is the position of the standing committee that it is incumbent on both the government and the Office of the Information and Privacy Commissioner to ensure that the public also has access to the government's formal responses to each review recommendation made by the Information and Privacy Commissioner.

The standing committee further notes that this would be consistent with the manner in which government responses to reports and recommendations of standing committees are made available to the public.

**Standing Committee Recommendation #10:**

**The Standing Committee recommends** 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.

**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 28, 2015, appearance before the standing committee, the Information and Privacy Commissioner was asked to provide an update on the status of this initiative. The Information and Privacy Commissioner stated that:

“I’m playing catch-up right now since coming on full-time. The fact is that prior to January 1, I was probably spending 60 percent of my time on these matters on access and privacy and only 40 percent of my time on my private law practice. Now I’ve got 100 percent of the time, but it’s not like it’s double the time or anything like that. I’m still catching up. I still have that on my radar. Hopefully by this time next year I’ll have a plan in place and we will be working towards that or maybe even completed one.”

**Standing Committee Recommendation #11:**

**The Standing Committee recommends** that the Information and Privacy Commissioner undertake at least one formal privacy audit of a Government of Nunavut department, Crown agency or territorial corporation during the 2015-2016 fiscal year, and that the findings of the audit be accounted for, in detail, in the Information and Privacy Commissioner's 2015-2016 annual report to the Legislative Assembly."