



# **Standing Committee on Oversight of Government Operations and Public Accounts**

## ***Report on the Review of the 2012-2013 and 2013-2014 Annual Reports of the Information and Privacy Commissioner of Nunavut***

**2<sup>nd</sup> Session of the 4<sup>th</sup> Legislative Assembly of Nunavut  
Fall 2014 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.

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

Elaine Keenan Bengts was reappointed for a 5-year term as Nunavut's Information and Privacy Commissioner on March 4, 2010. This is her third term as Information and Privacy Commissioner of Nunavut. Her current term expires on March 10, 2015. 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* in 1996. 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 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.

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.”

Standing Committee 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* 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 September 6, 2013.

The Information and Privacy Commissioner’s 2011-2012 annual report was tabled in the Legislative Assembly on October 26, 2012. The Information and Privacy Commissioner appeared before the 3<sup>rd</sup> Legislative Assembly’s Standing Committee on Oversight of Government Operations and Public Accounts on April 18, 2013. Officials from the Department of Executive and Intergovernmental Affairs (EIA) subsequently appeared before the Standing Committee.

The Standing Committee’s *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut* was presented to the Legislative Assembly on May 14, 2013. The Government of Nunavut’s response to the Standing Committee’s report was tabled in the Legislative Assembly on September 6, 2013.

The Information and Privacy Commissioner’s 2012-2013 annual report was tabled in the Legislative Assembly on September 16, 2013. The Information and Privacy Commissioner’s 2013-2014 annual report was backdoor tabled under the provisions of Rule 44(2) of the *Rules of the Legislative Assembly of Nunavut* on August 13, 2014.

The September 18-19, 2014, appearances of the Information and Privacy Commissioner and Government of Nunavut officials before the Standing Committee took place in the Chamber of the Legislative Assembly. The Standing Committee’s hearings were televised live across the territory and were open to the public and news media to observe from the Visitors’ Gallery. Transcripts from the Standing Committee’s hearings will be available on the Legislative Assembly’s website.

## Observations and Recommendations

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**Issue: Government of Nunavut's *Privacy Management Manual***

In its formal response to the 3<sup>rd</sup> Legislative Assembly's Standing Committee on Oversight of Government Operations and Public Accounts' May 2013 *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut*, the Government of Nunavut indicated that:

“A copy of the *Privacy Management Manual* (previously referred to as the *Privacy Management Framework*) will be tabled in the Legislative Assembly.”

As of September 1, 2014, this document had not been tabled in the Legislative Assembly. It should be noted that the Government of Nunavut's *Access to Information and Protection of Privacy Policy* and *Privacy Breach and Incident Policy* are available on the website of the Department of Executive and Intergovernmental Affairs.

In response to Members' questions concerning this issue during the Standing Committee's September 19, 2014, hearing, the Deputy Minister of Executive and Intergovernmental Affairs stated that:

“The *Privacy Management Manual* applies to the whole government ... at this time, it is being reviewed on an interdepartmental level and this manual is nearing completion, and, upon completion, the document would be tabled. At this time, it is still under review but the foundation will serve to assist our staff across the government.”

**Standing Committee Recommendation #1:**

**The Standing Committee recommends** that the Government of Nunavut's new *Privacy Management Manual* be tabled in the Legislative Assembly as soon as practicable.

**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 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.

In its formal response to the 3<sup>rd</sup> Legislative Assembly's Standing Committee on Oversight of Government Operations and Public Accounts' May 2013 *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut*, 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.”

However, as of October 24, 2014, 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

In response to Members' questions concerning this issue during the Standing Committee's September 19, 2014, hearing, the Deputy Minister of Executive and Intergovernmental Affairs stated that:

“The *Access to Information and Protection of Privacy Act* is a very fine balance between ensuring the right of access to information and protecting the privacy rights of individuals and their organizations who deal with the government. That's what, as government, we've been trying to find that right balance. From my opinion, yes, there should be more information provided and we are quite open in the discussion with our [Information and Privacy] Commissioner in providing that right balance ... there is a fine balance that we are trying to find, and this is a work in progress that we will continue to do.”

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

**The Standing Committee recommends** that the Government of Nunavut table, in a timely manner, annual reports in the Legislative Assembly on the contracting, procurement and leasing activities for all of its Crown agencies and territorial corporations, including 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 co-operatively with the Office of the Information and Privacy Commissioner to identify ways in which to expand the range of information that is publicly disclosed in this area, and that the Government of Nunavut's 2014-2015 annual report on the administration of the *Access to Information and Protection of Privacy Act* account, in detail, for progress in this area.

**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.

During her November 24, 2011, testimony to the Standing Committee, the Information and Privacy Commissioner stated that:

“... the Northwest Territories, the Yukon, and Nunavut are the only remaining jurisdictions that don't include municipalities under their access to information and protection of privacy legislation.”

In its formal response to the 3<sup>rd</sup> Legislative Assembly's Standing Committee on Oversight of Government Operations and Public Accounts' May 2013 *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut*, the Government of Nunavut indicated that:

“The Government of Nunavut is committed to providing information on consultation and collaborative training initiatives involving municipal employees, Government Liaison Officers, the Municipal Training Organization and other parties in its annual report on the administration of the *Access to Information and Protection of Privacy Act*. The Government of Nunavut will continue to work collaboratively with the [Information and Privacy] Commissioner, the Municipal Training Organization, the Nunavut Association of Municipalities and the municipal administrations to ensure accountability and transparency throughout all levels of government in Nunavut. The Government of Nunavut will examine options for ensuring municipalities meet requirements of transparency and openness as expected of any 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.

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 2016-2017 fiscal year is to “provide support to the municipalities in implementing access [to information] and [protection of] privacy principles, based on the successful implementation within the City of Iqaluit.”

**Standing Committee Recommendation #3:**

The Standing Committee affirms 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 next annual report on the administration of the *Access to Information and Protection of Privacy Act* account, in detail, for 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 next annual report on the administration of the *Access to Information and Protection of Privacy Act* account for 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.

**Issue: Application of Access to Information and Protection of Privacy Legislation to Local Housing Organizations (LHOs)**

A new issue that emerged during the Standing Committee's September 18-19, 2014, hearings on the 2012-2013 and 2013-2014 annual reports of the Information and Privacy Commissioner to the Legislative Assembly is the application of access to information and protection of privacy legislation to Local Housing Organizations (LHOs).

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

"While the Nunavut Housing Corporation is named as a public body in the regulations [under the *Access to Information and Protection of Privacy Act*], LHOs are not. This run of issues surrounding LHOs, however, suggests to me that it is time to make it absolutely clear that these organizations do, indeed, fall under the Act and have obligations and responsibilities under the Act. There is, in my opinion, nothing that would weight against such specific inclusion - these are public organizations, whose leadership is most often appointed by the Minister, which are funded exclusively or almost exclusively with public funds and which are given policy direction by a public body (the Nunavut Housing Corporation)."

In response to Members' questions concerning this issue during the Standing Committee's September 19, 2014, hearing, testimony from the Department of Executive and Intergovernmental Affairs indicated that:

"We've actually done a lot of work with the Nunavut Housing Corporation in the recent past regarding LHOs and the accessibility of their information. Technically, LHOs are not currently considered a public body under the *Access to Information and Protection of Privacy Act*. However, due to their management agreement[s] they have with NHC, they are required to comply with all access to information and protection of privacy provisions which include the allowance of access to information of all records held by LHOs, as well. The NHC will process requests made to LHOs for all records that they are in custody and control of. We are working toward, hopefully, their eventual inclusion under the *Access to Information and Protection of Privacy Act* in some form."

**Standing Committee Recommendation #4:**

**The Standing Committee recommends** that Local Housing Organizations be designated as public bodies under Schedule A of the *Access to Information and Protection of Privacy Regulations* no later than April 1, 2015.

**The Standing Committee further recommends** that copies of all management agreements between the Nunavut Housing Corporation and Local Housing Organizations be tabled in the Legislative Assembly on the first sitting day of the winter 2015 sitting of the House.

**Issue: Development of Health-Specific Privacy Legislation, Electronic Health Records and the *Nutaqqavut* Health Information System**

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, even if it is still many years away ... this is an issue that Nunavut needs to address, sooner rather than later.”

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

“Nunavut is now the only Canadian jurisdiction without health-specific privacy legislation. The Yukon, the Northwest Territories and Prince Edward Island have all passed health-specific privacy legislation over the last year and are in the process of implementation.”

In its formal response to the 3<sup>rd</sup> Legislative Assembly’s Standing Committee on Oversight of Government Operations and Public Accounts’ May 2013 *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut*, the Government of Nunavut indicated that:

“The Department of Health will be reviewing health-specific privacy legislation in other jurisdictions. Based upon this review, it will consider how to move forward in this area. Nine privacy and security directives with respect to electronic health records have been completed, approved and implemented.”

It should be noted that the current business plan of the Department of Health indicates that one of its priorities for the 2015-2016 fiscal year is to “begin [the] legislative process to introduce health-specific privacy legislation.”

**Standing Committee Recommendation #5:**

**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 as soon as practicable.

**The Standing Committee further recommends** that the Department of Health's *Privacy Impact Assessment* concerning the *Nutaqqavut* Health Information System be tabled in the Legislative Assembly as soon as practicable.

**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 both the 2012-2013/2013-2014 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 appearance before the Standing Committee indicated that consultations with her office had not yet occurred.

Testimony from the Acting Deputy Minister of Family Services indicated a lack of awareness of the issue.

In response to Members' questions concerning this issue, the Deputy Minister of Executive and Intergovernmental Affairs stated that:

"... in our discussions with Family Services, they are supportive of moving forward the creation of some form of an information-sharing agreement with designated Inuit organizations that they share personal information with. This will be done in collaboration with the Department of Justice and our department. The department will seek input from the Information and Privacy Commissioner before moving forward with implementation of any agreement."

**Standing Committee Recommendation #6:**

**The Standing Committee recommends** that the Government of Nunavut, in partnership with the Office of 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*; and that this work include a review of the necessity and effectiveness of the current statutory provisions.

**The Standing Committee further recommends** that the government's response to this report provide a detailed action plan and timeline for the completion of this work, including a detailed description of specific departmental accountabilities.

**The Standing Committee further recommends** that the government's formal response to this report account, in detail, for the specific factors that resulted in its failure to meet its fall 2013 goal of completing consultations in this area.

The Standing Committee notes that this issue is also being addressed in its *Report on the Review of the Auditor General's 2014 Follow-up Report on Child and Family Services in Nunavut*.

**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.

In her November 24, 2011, testimony to 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."

In her April 18, 2013, testimony to the Standing Committee, the Information and Privacy Commissioner stated that:

"Where the Information and Privacy Commissioner has order[-making] power, it doesn't make sense. It's like appealing their own decision to a higher court and that just doesn't happen, that's just not the way things work, but where I make only recommendations it makes more sense for that to be considered."

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

In its formal response to the 3<sup>rd</sup> Legislative Assembly's Standing Committee on Oversight of Government Operations and Public Accounts' May 2013 *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut*, the Government of Nunavut indicated that:

"The Government of Nunavut agrees that it could be a useful tool for both the Information and Privacy Commissioner and the GN to obtain clarity on important matters where significant disagreement exists. Furthermore, the GN agrees with the Information and Privacy Commissioner that by enabling the Information and Privacy Commissioner to appeal a decision made by a head of a public body under section 36 to the Nunavut Court of Justice, an obstacle for applicants who currently see it as overwhelming to appeal themselves would be removed. The government is willing to consider including this in a future amendment to the 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 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 3<sup>rd</sup> Legislative Assembly’s Standing Committee on Oversight of Government Operations and Public Accounts’ May 2013 *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut*, the Government of Nunavut indicated that:

“The Government of Nunavut agrees that providing the [Information and Privacy] Commissioner with this discretion may prove to be beneficial for both the public and the Government of Nunavut. The Department [of Executive and Intergovernmental Affairs] will include this amendment in future amendments to the *Access to Information and Protection of Privacy Act*. As the *Access to Information and Protection of Privacy Act* was amended in June 2012, with the amendments brought into force as of May 10, 2013, the immediate priority will be to commence a review of the *Access to Information and Protection of Privacy Regulations*.”

**Standing Committee Recommendation #8:**

**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.

**The Standing Committee further recommends** that the Government of Nunavut, in its response to this report, provide a detailed update on the status of the review of the *Access to Information and Protection of Privacy Regulations* that was referenced in its formal response to the 3<sup>rd</sup> Legislative Assembly’s Standing Committee on Oversight of Government Operations and Public Accounts’ May 2013 *Report on the Review of the 2011-2012 Annual Report of the Information and Privacy Commissioner of Nunavut*.

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

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

“My office has seen a steadily increasing number of requests for review and privacy complaints over the years. As you may know, my work as the Information and Privacy Commissioner is currently done on an “as needed” basis. In addition to my role as the Information and Privacy Commissioner in Nunavut, I also continue to hold the same position for the Northwest Territories in addition to running a busy legal practice in Yellowknife.

While this configuration has worked well for many years, it is becoming more and more difficult to stay on top of all of the files arriving in my office and to deal with everything on a timely basis. There is little time to be proactive or to keep on top of new initiatives and programs that might benefit from my input.

In light of this, I have made the decision to discontinue my law practice so that I can concentrate more fully on the work of the Information and Privacy Commissioner and I anticipate that by the end of 2014, my work will be focused solely on my role as the Information and Privacy Commissioner in both Nunavut and the Northwest Territories. This will mean that I will have more time to deal with requests on a more timely basis and to address, more pro-actively, those issues that arise from time to time.

While I do not believe that a full-time Information and Privacy Commissioner for Nunavut is yet justifiable, I do believe that it is time to begin planning for the day in which it will not only be justifiable, but required. It may not happen in the next year, or even the next three years, but certainly within the next five or six years, there will have to be some serious thought about a permanent office in Nunavut with a full time Commissioner/staff.”

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 response to Members' questions concerning this issue during the Standing Committee's September 19, 2014, hearing, testimony from the Department of Executive and Intergovernmental Affairs indicated that:

"We believe that privacy audits are actually a great tool in determining risk factors to breaches in privacy that, as frontline employees who are working towards the function of service, we don't necessarily see ourselves. We believe that doing privacy audits could be a great tool and the expertise of the Information and Privacy Commissioner would be a great asset for us moving forward [in] ensuring that we're living up to our expectations under the *Access to Information and Protection of Privacy Act*."

**Standing Committee Recommendation #9:**

**The Standing Committee recommends** 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.