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APPENDIX B

PRIVACY OVERSIGHT BY PROVINCIAL AND TERRITORIAL PRIVACY COMMISSIONERS

Following are the powers and authorities granted to provincial and territorial Commissioners¹ for oversight of public sector access to information and privacy laws. Included, where applicable, are any corresponding obligations of Public Bodies or others in support of these powers.

Explanatory notes

Only those provinces and territories whose laws were amended to facilitate sharing of information or use of technology are included in this Appendix.²

Only those powers and authorities related to privacy oversight in these laws, including general powers extending to privacy protection, are referenced in this Appendix.

The provisions marked in red are not included in the ATIPP Act.

BC'S FIPPA

BC's Commissioner has the following general powers under BC's FIPPA which are set out in subsection 42 (1).

General powers of commissioner

42 (1) In addition to the commissioner's powers and duties under Part 5 with respect to reviews, the commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

(a) conduct investigations and audits to ensure compliance with any provision of this Act or the regulations,

(b) make an order described in section 58 (3), whether the order results from an investigation or audit under paragraph (a) or an inquiry under section 56,

(c) inform the public about this Act,

(d) receive comments from the public about the administration of this Act,

¹ This includes the Ombudsman of Manitoba.

² This excludes Saskatchewan, and Nova Scotia.

(e) engage in or commission research into anything affecting the achievement of the purposes of this Act,

(f) comment on the implications for access to information or for protection of privacy of proposed legislative schemes or programs or activities of public bodies,

(g) comment on the implications for access to information or for protection of privacy of automated systems for collection, storage, analysis or transfer of information,

(h) comment on the implications for protection of privacy of using or disclosing personal information for data linking,

(i) authorize the collection of personal information from sources other than the individual the information is about, and

(j) [This provision is solely about access.]

With respect to the Commissioner's audit power, the office of BCs' Commissioner indicated that all the general powers work together and therefore are necessary for the proper exercise of this power.

Included in the BC's Commissioner's general powers, is the power to investigate complaints.

42 (2) Without limiting subsection (1), the commissioner may investigate and attempt to resolve complaints that

(a) a duty imposed under this Act has not been performed,

(d) a correction of personal information requested under section 29 (1) has been refused without justification, and

(e) personal information has been collected, used or disclosed in contravention of Part 3 by

(i) a public body or an employee, officer or director of a public body, or

(ii) an employee or associate of a service provider.

Under subsection 52 (1), BC's Commissioner has the authority to conduct a review of any decision, act or failure to act of the head related to a request made to the head of a public body, including any matter that could be subject of a complaint under subsection 42 (2). Section 55 provides BC's Commissioner with the authority to try and settle a matter under review. Section 56 provides her with authority to conduct an inquiry and to decide all questions of fact and law when conducting an inquiry.

In accordance with the BC's Commissioner's authority under paragraph 42 (1)(b) to "make an order under subsection 58 (3), whether the order results from an investigation or audit under section [42 (1)] (a) or an inquiry under section 56," BC's Commissioner has the authority to do the following.

58 (3) If the inquiry is into any other matter, the commissioner may, by order, do one or more of the following:

(a) confirm that a duty imposed under this Act has been performed or require that a duty imposed under this Act be performed;

(d) confirm a decision not to correct personal information or specify how personal information is to be corrected;

(e) require a public body or service provider to stop collecting, using or disclosing personal information in contravention of this Act, or confirm a decision of a public body or service provider to collect, use or disclose personal information;

(f) require the head of a public body to destroy personal information collected in contravention of this Act.

Under section 58 (4) of BC's FIPPA, BC's Commissioner may specify any terms and conditions in an order made and under section 59.01 and she can apply to the court to have the order enforced.

A BC Public Body must comply with an order issued by BC's Commissioner unless an application for judicial review of the decision is made to the court.³

Additional powers and authority of BC's Commissioner are as follows.

- Under section 44, she has the power to order a person to appear before her, to produce documents, and, she may apply to the court to enforce an order.
- Under section 44.1, she has power to maintain order at hearings.
- Under section 44.2, she has the authority to apply to the court to hold a person in contempt for failing to comply with an order issued under section 44.

AB'S FOIP ACT

AB's Commissioner has the following general powers under the FOIP Act which are set out in subsection 53 (1).

General powers of Commissioner

³ Section 59 of BC's FIPPA.

53(1) *In addition to the Commissioner's powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may*

- (a) conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of records,*
 - (i) set out in any other enactment of Alberta, or*
 - (ii) set out in a bylaw, resolution or other legal instrument by which a local public body acts or, if a local public body does not have a bylaw, resolution or other legal instrument setting out rules related to the destruction of records, as authorized by the governing body of a local public body,*
- (b) make an order described in section 72(3) whether or not a review is requested,*
- (c) inform the public about this Act,*
- (d) receive comments from the public concerning the administration of this Act,*
- (e) engage in or commission research into anything affecting the achievement of the purposes of this Act,*
- (f) comment on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes or programs of public bodies,*
- (g) comment on the implications for protection of personal privacy of using or disclosing personal information for record linkage,*
- (h) authorize the collection of personal information from sources other than the individual the information is about,*
- (i) [This provision is solely about access], and*
- (j) give advice and recommendations of general application to the head of a public body on matters respecting the rights or obligations of a head under this Act.*

Included in AB's Commissioner's general powers, is the ability to investigate complaints.

53 (2) *Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that*

- (a) [This provision is solely about access],*
- (b) [This provision is solely about access],*
- (c) [This provision is solely about access],*

(d) a correction of personal information requested under section 36(1) has been refused without justification, and

(e) personal information has been collected, used or disclosed by a public body in contravention of Part 2.

AB's Commissioner has the powers of a Commissioner under AB's *Public Inquiries Act* when conducting investigations under paragraph 53 (1)(a) and under section 56 the power to compel production of records. AB's Commissioner also has authority under section 54 to give advice and recommendations.

AB's Commissioner has the power under section 64 to make recommendations regarding information management by Alberta Public Bodies.

Records management

64 On the recommendation of the Information and Privacy Commissioner, the Standing Committee may make an order

(a) respecting the management of records in the custody or under the control of the Office of the Information and Privacy Commissioner, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction and their transfer to the Provincial Archives of Alberta;

(b) establishing or governing the establishment of programs for any matter referred to in clause (a);

(c) defining and classifying records;

(d) respecting the records or classes of records to which the order or any provision of it applies.

AB's Commissioner has the power to review complaints about improper collection, use and disclosure of personal information.

Right to ask for a review

65 (3) A person who believes that the person's own personal information has been collected, used or disclosed in contravention of Part 2 may ask the Commissioner to review that matter.

Under section 68, AB's Commissioner has the power to try and settle a matter under review. Under section 68 she has the power to conduct an inquiry and under section 69 to decide all questions of fact and law arising in the inquiry. Under section 70, she also has the authority to refuse to conduct an inquiry in certain circumstances.

AB's Commissioner has the power to issue orders which a public body must comply with unless the public body applies to the court for judicial review.

Commissioner's orders

72(1) On completing an inquiry under section 69, the Commissioner must dispose of the issues by making an order under this section.

(2) [This provision is solely about access].

(3) *If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:*

(a) require that a duty imposed by this Act or the regulations be performed;

(b) [This provision is solely about access];

(c) [This provision is solely about access];

(d) confirm a decision not to correct personal information or specify how personal information is to be corrected;

(e) require a public body to stop collecting, using or disclosing personal information in contravention of Part 2;

(f) require the head of a public body to destroy personal information collected in contravention of this Act.

(4) *The Commissioner may specify any terms or conditions in an order made under this section.*

(5) *The Commissioner must give a copy of an order made under this section*

(a) to the person who asked for the review,

(b) to the head of the public body concerned,

(c) to any other person given a copy of the request for the review, and

(d) to the Minister.

(6) A copy of an order made by the Commissioner under this section may be filed with a clerk of the Court of Queen's Bench and, after filing, the order is enforceable as a judgment or order of that Court.

No appeal

73 An order made by the Commissioner under this Act is final.

Duty to comply with orders

74(1) *Subject to subsection (2), not later than 50 days after being given a copy of an order of the Commissioner, the head of a public body concerned must comply with the order.*

(2) The head of a public body must not take any steps to comply with a Commissioner's order until the period for bringing an application for judicial review under subsection (3) ends.

(3) An application for judicial review of a Commissioner's order must be made not later than 45 days after the person making the application is given a copy of the order.

(4) If an application for judicial review is made pursuant to subsection (3), the Commissioner's order is stayed until the application is dealt with by the Court.

(5) Despite subsection (3), the Court may, on application made either before or after the expiry of the period referred to in subsection (3), extend that period if it considers it appropriate to do so.

Under section 63, AB's Commissioner must report annually to the Speaker of the Legislative Assembly on the work of the office including any matters relating to the protection of personal privacy that the Commissioner considers appropriate.

MB'S FIPPA

MB's Ombudsman has the following general powers under the FIPPA which are set out in section 49.

General powers and duties

49 In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may

(a) conduct investigations and audits and make recommendations to monitor and ensure compliance

(i) with this Act and the regulations, and

(ii) with requirements respecting the security and destruction of records set out in any other enactment or in a by-law or other legal instrument by which a local public body acts;

(b) inform the public about this Act;

(c) receive comments from the public about the administration of this Act;

- (d) *comment on the implications for access to information or for protection of privacy of proposed legislative schemes or programs of public bodies;*
- (e) *comment on the implications for protection of privacy of*
- (i) using or disclosing personal information for record linkage, or*
 - (ii) using information technology in the collection, storage, use or transfer of personal information;*
- (f) [This provision is related solely to access.]
- (g) *recommend to a public body, after giving the head an opportunity to make representations, that the public body*
- (i) cease or modify a specified practice of collecting, using or disclosing information that contravenes this Act, or*
 - (ii) destroy a collection of personal information that was not collected in accordance with this Act;*
- (h) *make recommendations to the head of a public body or the responsible minister about the administration of this Act;*
- (i) *consult with any person with experience or expertise in any matter related to the purposes of this Act; and*
- (j) *engage in or commission research into anything affecting the achievement of the purposes of this Act.*

The Ombudsman also has the power:

- under subsections 50 (1) to (3) to compel witnesses to appear before her and production of; and
- under sections 51 and 52 to enter and make copies of records and to converse in private with a MB Public Body employee.

The Ombudsman has the following powers to in respect of complaints made under FIPPA.

Complaint about privacy

59 (3) An individual who believes that his or her own personal information has been collected, used or disclosed in violation of Part 3 may make a complaint to the Ombudsman.

Ombudsman may initiate a complaint

59 (5) *The Ombudsman may initiate a complaint respecting any matter about which the Ombudsman is satisfied there are reasonable grounds to investigate under this Act.*

Informal resolution

62 (2) *The Ombudsman may take any steps the Ombudsman considers appropriate to resolve a complaint informally to the satisfaction of the parties and in a manner consistent with the purposes of this Act.*

Under subsection 62 (1), the Ombudsman must investigate a complaint unless under subsection 63 (1) she decides not to investigate. She may try and informally resolve the complaint under subsection 62 (2). If MB's Ombudsman completes an investigation she must prepare a report containing her findings and recommendations.

Once the Ombudsman issues her report, the following steps must be taken by the public body and the Ombudsman.

Head's response to the report

66 (4) *If the report contains recommendations, the head of the public body shall, within 15 days after receiving the report, send the Ombudsman a written response indicating*

(a) that the head accepts the recommendations and describing any action the head has taken or proposes to take to implement them; or

(b) the reasons why the head refuses to take action to implement the recommendations.

Notice to the complainant

66 (5) *The Ombudsman shall notify the complainant about the head's response without delay.*

Compliance with recommendations

66 (6) *When the head of a public body accepts the recommendations in a report, the head shall comply with the recommendations*

(a) [This provision is solely about access.]

(b) within 45 days in any other case;

or within such additional period as the Ombudsman considers reasonable.

Recommendations published

66 (7) *The Ombudsman must make recommendations made under this section available to the public, and may do so by publishing them on a website on the Internet.*

The Ombudsman has authority under FIPPA to request an adjudicator with order making power to review the actions of a public body regarding recommendations made.

Request for review

66.1(1) The Ombudsman may ask the adjudicator to review a matter described in subsection (2) or (3) if he or she has given a report to the head of a public body under section 66 and

(a) the head's response indicates that the public body refuses to take action to implement any of the Ombudsman's recommendations;

(b) the head's response indicates an acceptance of the Ombudsman's recommendations, but action is not taken to implement them within the required time; or

(c) the head fails to respond as required by subsection 66(4).

66.1 (1) [This provision is solely about access.]

Request re privacy

66.1 (3) If the Ombudsman considers that an individual's personal information has been collected, used or disclosed in contravention of Part 3 (Protection of Privacy), the Ombudsman may ask the adjudicator to review the matter.

Review by adjudicator

66.3 On receiving a request from the Ombudsman, the adjudicator must conduct a review of the matter and decide all questions of fact and law arising in the course of the review.

Ombudsman as party

66.5 (3) The Ombudsman has a right to be a party in any review conducted by the adjudicator if the Ombudsman considers that the review raises an issue of public interest.

Adjudicator's order

66.8 (1) Upon completing a review under section 66.3, the adjudicator must dispose of the issues by making an order under this section.

66.8(3) If the review concerns any other matter, the adjudicator may, by order,

(a) require that a duty imposed by this Act be performed;

(e) require a public body to cease or modify a specified practice of collecting, using or disclosing personal information in contravention of Part 3;

(f) require the head of a public body to destroy personal information collected in contravention of this Act.

Order may contain terms or conditions

66.8(5) The adjudicator may specify terms or conditions in an order made under this section.

Order given to parties

66.8(6) The adjudicator must give a copy of an order made under this section to each of the following:

(a) the complainant;

(b) the head of the public body concerned;

(c) the Ombudsman;

(d) any other person given notice under section 66.2;

(e) the responsible minister.

Orders published

66.8(7) The adjudicator must make orders made under this section available to the public, and may do so by publishing them on a website on the Internet.

FIPPA requires a public body to comply with an order issued by the Adjudicator unless the public body applies for judicial review of the order.

Duty to comply with orders

66.9(1) Subject to subsection (2), the head of the public body concerned must comply with an adjudicator's order

(a) within 30 days after being given a copy of the order; or

(b) within any longer period specified in the order;

unless an application for judicial review of the order is brought before that period ends.

Judicial review

66.10(1) An application for judicial review of an adjudicator's order must be made within 25 days after the person making the application is given a copy of the order, unless the court extends the period.

Order stayed if application made for judicial review

66.10(2) If an application for judicial review is made under subsection (1), the adjudicator's order is stayed until the court deals with the application.

Under subsection 58 (3), MB's Ombudsman has authority to publish a special report relating to any matter within the scope of powers and duties of the Ombudsman under FIPPA, including a report referring to and commenting on any particular matter investigated by the Ombudsman.

ON'S FOIPPA

ON's Commissioner has the following general powers which are set out in section 59 of ON's FOIPPA.

Powers and duties of Commissioner

59. The Commissioner may,

(a) offer comment on the privacy protection implications of proposed legislative schemes or government programs;

(b) after hearing the head, order an institution to,

(i) cease collection practices, and

(ii) destroy collections of personal information, that contravene this Act;

(c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;

(d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;

(e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and

(f) receive representations from the public concerning the operation of this Act.

ON's Commissioner does not have any express authority in FOIPPA to investigate privacy complaints. He does on the basis of his obligation under section 58 of FIPPA (below) to report annually on the effectiveness of the FOIPPA to the Speaker of Ontario's Legislative Assembly.⁴

Annual report of Commissioner

⁴ The question of the ON Commissioner's authority or duty to investigate complaints was addressed in *Reynolds v. Binstock*, 2006 CanLII 36624 (ON SCDC), paras. 24 to 30.

58. (1) *The Commissioner shall make an annual report to the Speaker of the Assembly in accordance with subsections (2) and (3).*

Contents of report

(2) *A report made under subsection (1) shall provide a comprehensive review of the effectiveness of this Act and the Municipal Freedom of Information and Protection of Privacy Act in providing access to information and protection of personal privacy including,*

(a) a summary of the nature and ultimate resolutions of appeals carried out under subsection 50 (1) of this Act and under subsection 39 (1) of the Municipal Freedom of Information and Protection of Privacy Act;

(b) an assessment of the extent to which institutions are complying with this Act and the Municipal Freedom of Information and Protection of Privacy Act; and

(c) the Commissioner's recommendations with respect to the practices of particular institutions and with respect to proposed revisions to this Act, the Municipal Freedom of Information and Protection of Privacy Act and the regulations under them.

ON's Commissioner also has authority to audit.

Audits by Commissioner

65.1 (8) *The Commissioner may audit a service provider organization to check that there has been no unauthorized access to or modification of personal information in the custody of the organization and the organization shall co-operate with and assist the Commissioner in the conduct of the audit.*

ON's Commissioner's review power relates only to access to records, including those containing personal information, and correction of personal information.⁵

NB'S RTIPPA

NB's Commissioner has the following general powers which are set out in section 60 of NB's RTIPPA.

Powers and duties

60(1) *In addition to the powers conferred or duties imposed under Part 5⁶, the Commissioner may*

⁵ Sections 50 to 54.

⁶ This Part authorizes NB's Commissioner to investigate complaints made in respect of access to information.

- (a) make recommendations with regard to this Act and the regulations,*
- (b) inform the public about this Act,*
- (c) receive comments from the public about the administration of this Act,*
- (d) comment on the implications for access to information or for protection of privacy of proposed legislative schemes or programs of public bodies,*
- (e) comment on the implications for protection of privacy of*
 - (i) using or disclosing personal information for record linkage, or*
 - (ii) using information technology in the collection, storage, use or transfer of personal information,*
- (f) [This provision is solely about access to information],*
- (g) conduct audits, on the Commissioner's own initiative or on request and in accordance with the regulations, if any, in order to evaluate the level of conformity with Part 3, or*
- (h) make recommendations, on the Commissioner's own initiative or on request, to the head of a public body or the responsible Minister of the Crown about the administration of this Act.*

NB's Commissioner also has the power under NB's *Inquiries Act* and the right to enter the premises of a NB Public Body to the purposes of RTIPPA.

NB's Commissioner has no express authority to investigate complaints about privacy. It is indicated on the NB's Commissioner's website, however, that individuals can convey concerns regarding the collection or use of their personal information to the NB's Commissioner's office.⁷

PEI'S FOIPP ACT

PEI's Commissioner has the following general powers in PEI's FOIPP Act.

50. (1) In addition to the Commissioner's functions under Part IV, with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

⁷ Frequently Asked Questions, What if I am concerned about my privacy?, Office of the NB's Commissioner's website, located at: <http://info-priv-nb.ca/faq.asp>.

- (a) conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of records set out in any other enactment of Prince Edward Island;*
- (b) make an order described in subsection 66(3) whether or not a review is requested;*
- (c) inform the public about this Act;*
- (d) comment on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes or programs of public bodies;*
- (e) comment on the implications for protection of personal privacy of using or disclosing personal information for record linkage;*
- (f) authorize the collection of personal information from sources other than the individual the information is about;*
- (g) [This provision is solely about access]; and*
- (h) give advice and recommendations of general application to the head of a public body on matters respecting the rights or obligations of a head under this Act.*

Included in PEI's Commissioner's general powers, is the power to investigate complaints.

50 (2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

- (a) [This provision is solely about access];*
- (b) [This provision is solely about access];*
- (c) [This provision is solely about access];*
- (d) a correction of personal information requested under subsection 34(1) has been refused without justification; and*
- (e) personal information has been collected, used or disclosed by a public body in violation of Part II.*

Under section 51, PEI's Commissioner has **authority to give advice to public bodies**.

In conducting investigations and inquiries under PEI's FOIP Act, PEI's Commissioner has, under subsections 53 (1) and (2), the powers under PEI's *Public Inquiries Act* and may require records to be produced.

PEI's Commissioner has the power under subsection 60 (3) to review improper collections, uses or disclosures of personal information.

60 (3) A person who believes that the person's own personal information has been collected, used or disclosed in violation of Part II may ask the Commissioner to review that matter.

Under section 63, PEI's Commissioner may try and settle a matter under review. Under subsection 64 (1), she may conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry. At the conclusion of the inquiry, under subsection 66 (1), she may issue an order.

66. (1) On completing an inquiry under section 64, the Commissioner shall dispose of the issues by making an order under this section.

(3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:

(a) require that a duty imposed by this Act or the regulations be performed;

(b) [This provision is solely about access];

(c) [This provision is solely about access];

(d) confirm a decision not to correct personal information or specify how personal information is to be corrected;

(e) require a public body to stop collecting, using or disclosing personal information in violation of Part II;

(f) require the head of a public body to destroy personal information collected in violation of this Act.

Under subsection 66. (4), PEI's Commissioner may specify any terms or conditions in an order and under subsection 66. (6), she may file the order with the court to enforce it. Section 67 states the PEI's Commissioner's order is final.

After PEI's Commissioner issues an order to a NB Public Body, the Public Body must do the following.

68. (1) Subject to subsection (1.1), not later than 40 days after being given a copy of an order of the Commissioner, the head of the public body concerned shall comply with the order.

(1.1) The head of a public body shall not take any steps to comply with an order of the Commissioner until the end of the period for bringing an application for judicial review of the order under the Judicial Review Act R.S.P.E.I.

(2) If an application for judicial review is made before the end of the period referred to in subsection (1.1), the order of the Commissioner is stayed until the application is dealt with by the court.

PEI's Commissioner also has authority under subsection 64 (2) to conduct an inquiry in private and under section 64.1, to refuse to conduct an inquiry in certain circumstances.

PEI's Commissioner has the following authority to report.

59 (1) The Commissioner shall report annually to the Speaker of the Legislative Assembly on

- (a) the work of the Commissioner's office;*
- (b) any complaints or reviews resulting from a decision, act or failure to act of the Commissioner as head of a public body; and*
- (c) such other matters relating to freedom of information and protection of personal privacy as the Commissioner considers appropriate.*

NU'S ATIPP ACT

NU's Commissioner does not have general powers. She has the following powers to review improper collections, uses and disclosures of personal information.

Right to request review

49.1. (1) An individual may request the Information and Privacy Commissioner to review whether a public body has collected, used or disclosed the individual's personal information in contravention of this Act.

Information and Privacy Commissioner may initiate review

(2) Where the Information and Privacy Commissioner has reason to believe that a public body has or may have collected, used or disclosed personal information in contravention of this Act, the Information and Privacy Commissioner may review the practices of the public body with respect to the collection, use and disclosure of personal information.

Review by Information and Privacy Commissioner

49.2. (1) The Information and Privacy Commissioner may conduct a review under section 49.1 if he or she is of the opinion that a review is warranted in the circumstances.

Information and Privacy Commissioner to report

49.5. On completing a review, the Information and Privacy Commissioner shall (a) prepare a written report setting out the recommendations of the Information and Privacy Commissioner with respect to the collection, use or disclosure of the individual's personal information and the reasons for the recommendations.

Decision of head

49.6. *Within 90 days after receiving the report of the Information and Privacy Commissioner under section 49.5, the head of the public body concerned shall*

(a) make a decision to follow the recommendation of the Information and Privacy Commissioner or make any other decision the head considers appropriate; and

(b) give written notice of the decision to the Information and Privacy Commissioner and the individual who requested the review under subsection 49.1(1).

Under subsection 49.2 (2), NU's Commissioner has the authority to refuse to conduct a review and under section 49.3 she has the power to conduct the review in private. She also has the power under section 49.4 to compel the production of records.

Under section 49.9, a NU Public Body is required to report a breach of privacy to NU's Commissioner upon reasonable belief that a breach of privacy has occurred involving personal information and the breach is material. Upon receiving a breach report, NU's Commissioner has the following powers.

Recommendation from Information and Privacy Commissioner to public body

49.12. If the Information and Privacy Commissioner receives a report under section 49.9 about a breach of privacy with respect to personal information under the control of a public body and determines that the breach of privacy creates a real risk of significant harm to one or more individuals to whom the information relates, the Information and Privacy Commission [sic] may recommend the public body to

(a) take steps specified by the Information and Privacy Commission [sic] relating to notifying those individuals about the breach of privacy, if the Information and Privacy Commissioner is of the opinion that the steps taken by the public body to comply with section 49.10 were not sufficient;

(b) take steps specified by the Information and Privacy Commission [sic] to limit the consequences of the breach of privacy; and

(c) take steps specified by the Information and Privacy Commissioner to prevent the occurrence of further breaches of privacy with respect to personal information under the public body's control, including, without limitation, implementing or increasing security safeguards within the public body.

After receiving NU's Commissioner's recommendation, the NU Public Body must do the following.

Decision of head

49.13. Within 30 days after receiving a recommendation under section 49.12, the head of the public body concerned shall

(a) make a decision to follow the recommendation of the Information and Privacy Commissioner or make any other decision the head considers appropriate; and

(b) give written notice of the decision to the Information and Privacy Commissioner and any individual notified under section 49.10.

If the NU Public Body does not comply with NU's Commissioner's recommendation in respect of notification of individuals, NU's Commissioner has the following power to notify individuals or the public about the breach.

Disclosure by Information and Privacy Commissioner

49.14. If the Information and Privacy Commissioner receives a report under section 49.9 about a breach of privacy with respect to personal information under the control of a public body and determines that the breach of privacy creates a real risk of significant harm to one or more individuals to whom the information relates, the Information and Privacy Commissioner may, despite section 56,

(a) disclose the breach of privacy to the individuals in the manner that the Information and Privacy Commissioner considers appropriate, if the Information and Privacy Commissioner has given the public body a recommendation under clause 49.12(a) and the public body has not taken the steps specified in the recommendation within the times specified in the recommendation; and

(b) disclose the breach of privacy to the public in the manner that the Information and Privacy Commissioner considers appropriate, if the Information and Privacy Commissioner is of the opinion that the disclosure is in the public interest.

NL'S ATIPPA

NL's Commissioner has the following general powers under NL's ATIPPA.

General powers and duties of commissioner

95. (1) In addition to the commissioner's powers and duties under Parts II and III, the commissioner may

(a) conduct investigations to ensure compliance with this Act and the regulations;

- (b) *monitor and audit the practices and procedures employed by public bodies in carrying out their responsibilities and duties under this Act;*
- (c) *review and authorize the collection of personal information from sources other than the individual the information is about;*
- (d) *consult with any person with experience or expertise in any matter related to the purpose of this Act; and*
- (e) *engage in or commission research into anything relating to the purpose of this Act.*

(2) *In addition to the commissioner's powers and duties under Parts II and III, the commissioner shall exercise and perform the following powers and duties:*

- (a) *inform the public about this Act;*
- (b) *develop and deliver an educational program to inform people of their rights and the reasonable limits on those rights under this Act and to inform public bodies of their responsibilities and duties, including the duty to assist, under this Act;*
- (c) *provide reasonable assistance, upon request, to a person;*
- (d) *receive comments from the public about the administration of this Act and about matters concerning access to information and the confidentiality, protection and correction of personal information;*
- (e) *comment on the implications for access to information or for protection of privacy of proposed legislative schemes, programs or practices of public bodies;*
- (f) *comment on the implications for protection of privacy of*
 - (i) *using or disclosing personal information for record linkage, or*
 - (ii) *using information technology in the collection, storage, use or transfer of personal information;*
- (g) *take actions necessary to identify, promote, and where possible cause to be made adjustments to practices and procedures that will improve public access to information and protection of personal information;*
- (h) *[This provision is solely about access];*
- (i) *make recommendations to the head of a public body or the minister responsible for this Act about the administration of this Act;*

- (j) inform the public from time to time of apparent deficiencies in the system, including the office of the commissioner; and*
- (k) establish and implement practices and procedures in the office of the commissioner to ensure efficient and timely compliance with this Act.*

(3) The commissioner's investigation powers and duties provided in this Part are not limited to an investigation under paragraph (1)(a) but apply also to an investigation in respect of a complaint, privacy complaint, audit, decision or other action that the commissioner is authorized to take under this Act.

Under subsection 97 (2), NL's Commissioner has the powers under NL's *Public Inquiries Act* and under subsection 97 (3) may require records to be produced. Under section 98, NL's Commissioner **also has a right of entry and to converse in private with NL Public Body employees.**

Under section 112., the Minister responsible for NL's ATIPPA is required to consult with NL's Commissioner on proposed Bills prior to their introduction into NL's House of Assembly. Under this section, NL's Commissioner has authority to advise the Minister about implications to access or privacy and may comment publicly on a proposed Bill.

Review of Legislation

112. (1) A minister shall consult with the commissioner on a proposed Bill that could have implications for access to information or protection of privacy, as soon as possible before, and not later than, the date on which notice to introduce the Bill in the House of Assembly is given.

(2) The commissioner shall advise the minister as to whether the proposed Bill has implications for access to information or protection of privacy.

(3) The commissioner may comment publicly on a draft Bill any time after that draft Bill has been made public.

Under section 105, NL's Commissioner is required to **include in his annual report to NL's House of Assembly through the Speaker his recommendations and if they were complied with, the administration of the ATIPPA by NL's Public Bodies and the Minister responsible for NL's ATIPPA, and any other matters about access to information and protection of privacy that the NL's Commissioner considers appropriate.**

Under section 106, NL's Commissioner **also has authority to make special reports to NL's House of Assembly through the Speaker relating to the resources of the office, another matter affecting the operation of NL's ATIPPA, and any matter within the scope of powers and duties of NL's Commissioner under NL's ATIPPA.**

Under section 107, NL's Commissioner is required to prepare a report upon completing an investigation or audit and to provide the report to the NL Public Body involved and to make the report public.

Report – investigation or audit

107. On completing an investigation under paragraph 95 (1)(a) or an audit under paragraph 95 (1)(b), the commissioner

- (a) shall prepare a report containing the commissioner’s findings and, where appropriate, his or her recommendations and the reasons for those recommendations;*
- (b) shall send a copy of the report to the head of the public body concerned; and*
- (c) may make the report public.*

NL’s Commissioner is also obligated under section 111 to create a standard for publication of information to be used by public bodies for records in their custody and control.

Publication scheme

111. (1) The commissioner shall create a standard template for the publication of information by public bodies to assist in identifying and locating records in the custody or under the control of public bodies.

(2) The head of a public body shall adapt the standard template to its functions and publish its own information according to that adapted template.

(3) The published information shall include

- (a) a description of the mandate and functions of the public body and its components;*
- (b) a description and list of the records in the custody or under the control of the public body, including personal information banks;*
- (c) the name, title, business address and business telephone number of the head and coordinator of the public body; and*
- (d) a description of the manuals used by employees of the public body in administering or carrying out the programs and activities of the public body.*

(4) The published information shall include for each personal information bank maintained by a public body

- (a) its name and location;*
- (b) a description of the kind of personal information and the categories of individuals whose personal information is included;*
- (c) the authority and purposes for collecting the personal information;*

- (d) the purposes for which the personal information is used or disclosed; and*
- (e) the categories of persons who use the personal information or to whom it is disclosed.*

(5) Where personal information is used or disclosed by a public body for a purpose that is not included in the information published under subditsection (2), the head of the public body shall

(a) keep a record of the purpose and either attach or link the record to the personal information; and

(b) update the published information to include that purpose.

(6) This section or a subsection of this section shall apply to those public bodies listed in the regulations.