

From: [Llewelyn Pritchard](#)
To: [Admin](#)
Subject: Share Your Comments Form
Date: Wednesday, February 7, 2018 2:56:08 AM

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Llewelyn Pritchard

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Message

Messages 2/2 Sent 7 February 2018 Regarding Independent Submission to Commissioner, The Honourable Justice Richard LeBlanc about the Terms of Reference of Commission of Inquiry Respecting the Muskrat Falls project. Llewelyn Pritchard MA Submitted 1: 'Share Your Comments' <https://www.muskratfallsinquiry.ca/> Commission of Inquiry Respecting the Muskrat Falls Project Commissioner The Honourable Justice Richard LeBlanc Submitted 2: admin@muskratfallsinquiry.ca

Today's Date: 7 February 2018

Dear Justice Leblanc

I humbly submit that the interpretation or evaluative process regarding terms of reference of all inquiries are ultimately judged in context of their reported findings and the content of your report will be implied and given meaning by your own terms of reference or context.

In the particular case of the interpretation of your terms of reference [in context of your findings] it will be a Test Case of the Independence of Canada's Judiciary from the Provincial Government of Newfoundland Labrador and from the Federal Government of Canada based on the following established facts:

- 1 The inequitable nature of the Court Injunctions used by Nalcor to criminalize the inspirational Labrador Land Protectors, journalist and all people willing to make a stand against unfair legislation.
- 2 Canada's unfair, discriminatory and non-democratic Justice System which has been used to implement the appalling criminalization process.

3 The use of inequitable, indigenous land rights legislation by the Governments of NL and Canada which is not in accordance with International Law and Standards.

4 The Commission of Inquiry is not a Criminal Investigation

5 The Provincial and Federal Governments' Quality of Governance regarding Nalcor Muskrat Falls hydro dam has not been evaluated by a truly independent body.

6. The Petition to suspend the dangerous operations at Muskrat Falls also provides detailed reasons why the findings by Justice LeBlanc is a Test Case of the Independence of Canada's Judiciary from its Parliaments:

"On September 13, 2017, the United Nations Committee on the Elimination of Racial Discrimination called for the immediate suspension of "all permits and approvals for the construction of the Site C dam" and called for "a full review in collaboration with indigenous peoples of the violations of the right to free, prior and informed consent, of treaty obligations and of international human rights law from the building of this dam and identify alternatives to irreversible destruction of indigenous lands and subsistence, which will be caused by this project." We believe the same suspension should apply to the dangerous Muskrat Falls hydro project in Labrador, where any further construction must be immediately halted until a full, properly independent, mutually agreed upon, and transparent process has been undertaken that addresses, among other issues:

The need to seek and obtain the free, prior and informed consent of all Indigenous peoples affected by the project (and not simply a few handpicked leaders of the communities affected), through a deep consultation by the Crown;

The equal need to fully and transparently consult all non-Indigenous people affected by the project, and to receive their consent as well;

The lethal threat posed by the Muskrat Falls project to traditional Indigenous ways of life and culture that have existed since time immemorial by introducing and bioaccumulating methylmercury poisoning of water and country food relied upon by the Indigenous peoples of Labrador, a future that could look much like the destructive legacy of mercury poisoning at Grassy Narrows, Ontario, and which qualifies as a potential act of genocide;

The significant threat facing thousands of residents living downstream of the project given the risk of catastrophic dam break and flash flood from a portion of the project known as the North Spur, which is built on a neck of

land containing quick clay (a substance that is subject to liquefaction and movement);

The criminalization of Indigenous people and their allies for conducting sacred ceremonies and peaceful acts of land and water protection on their traditional territories;

The criminalization of journalists who have reported on the peaceful efforts of Labrador Land Protectors;

The failure of the Newfoundland and Labrador government to abide by an October 26, 2016 agreement to mitigate the effects of methylmercury poisoning with proper clearance of trees, vegetation and soil in the upstream reservoir;

The debt load that will be carried by Newfoundland and Labrador residents to pay for this largely designed-for-export project, which will see hydro rates double or triple, forcing many low income residents to make choices between eating and heating and keeping the lights on;

The secretive, unaccountable decisions made by provincial crown corporation NALCOR, whose CEO has publicly called Muskrat Falls a “boondoggle,” and which refuses to release details of contracting agreements that have seen project costs more than double from the original \$6.2 billion price tag (as well as the provincial government’s refusal to overturn the legislation that keeps these documents hidden from public scrutiny);

The myth that Muskrat Falls mega-dam is being constructed as a green alternative that will wean Newfoundland and Labrador and Nova Scotia off oil and coal, and the denial of the science that concludes major hydro projects like Muskrat Falls contribute significant amounts of methane to the mix of greenhouse gas emissions;

And the very real, affordable, and environmentally harmonious alternatives to the Muskrat Falls project.

The Newfoundland and Labrador government and crown corporation NALCOR have not upheld “the honour of the Crown” in their dealings with all affected Indigenous peoples downstream from Muskrat Falls, nor has a federal government that has refused to use its considerable leverage (\$9.2 billion in loan guarantees) to ensure that Indigenous rights are respected and honoured in harmony with the United Nations Declaration on the Rights of Indigenous Peoples, which the federal government has promised to respect and fully implement.

We therefore call on all parties to the Muskrat Falls development to cease operations until the above conditions have been satisfied. We particularly call on the federal government to withdraw their \$9.2 billion in loan guarantees if the above issues have not been addressed to the

satisfaction of all affected by the Muskrat Falls project."

<https://www.change.org/p/help-stop-an-act-of-cultural-genocide-at-muskrat-falls-labrador-a-call-to-suspend-the-dangerous-operations-at-muskrat-falls-labrador>

Message ½ Sent 26 January 2018 Regarding Independent Submission to Commissioner, The Honourable Justice Richard LeBlanc about the Terms of Reference of Commission of Inquiry Respecting the Muskrat Falls project. Llewelyn Pritchard MA Submitted 1: 'Share Your Comments' @ <https://www.muskratfallsinquiry.ca/> Commission of Inquiry Respecting the Muskrat Falls Project Commissioner The Honourable Justice Richard LeBlanc

Submitted 2: admin@muskratfallsinquiry.ca

Today's Date: 26 January 2018

Dear Justice Leblanc

Since Your Terms of Reference [TR] must be considered in context and since, "7. The commission of inquiry shall not express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization." It is my submission that your TR is a good example of bad, clang, crash machine code!!!

I humbly submit that your Commission's TR represent dishonourable practice - lacking in honesty and integrity for what they leave out as much as for what they leave in. Your TR do not honourably represent the safety, health and environmental issues deeply concerning Labradorians and all those good people who understand the damage caused by hydro dams. Who wrote the shameful TR and why?

It's style reminds me of smart civil service gobbledygook obviously trying to 'pull the wool over the eyes' of everybody who reads it. Your TR is so opaque, unclear and unspecific, for example "risk assessments" for whom? Certainly not for those most likely to be affected by the project! So who are the so called "risk assessments" really for?

Who are the TR really for?

Your TR means your Commission of Inquiry will fundamentally be a waste of time.

Your TR fail to prioritize the humanitarian needs of everybody who will be affected by the project.

They fail to include a provision to halt construction until you publish your findings? Surely by not doing so, your TR betray the very trust of those people you are meant to serve?

How can anybody have trust and confidence in your results? Your TR taken in context are worthless because just like the madness of the Muskrat Falls construction project they are attempting to ignore public opposition in their path.

I take no pleasure whatsoever in continuing to 'gut' your TR [in context!!!!]...How can the Commission rightfully and properly consider the "participation in the inquiry by the established leadership of Indigenous people, whose settled or asserted Aboriginal or treaty rights to areas in Labrador may have been adversely affected by the Muskrat Falls Project" when Canada is not fully signed up to the United Nations Declaration of Rights of Indigenous People? Surely that makes certain your Commission's findings will lack credibility?

How well-informed were the indigenous leaders in the first place? Application of established principles of Free Consent, Prior Consent and Informed Consent about indigenous land rights around the hydro project have blatantly been abused and disrespected by the Governments and Nalcor.

Surely your TR should be immediately consigned to the dustbin of history? Or should they be re-written with a genuine, real sense of urgency, priority, honour and integrity?

In other words, start again Justice Richard Leblanc or do the honourable thing.

Yours sincerely

Llewelyn Pritchard MA

Source/Background Information:

"Terms of reference

4. The commission of inquiry shall inquire into

(a) the consideration by Nalcor of options to address the electricity needs of Newfoundland and Labrador's Island interconnected system customers that informed Nalcor's decision to recommend that the government sanction the Muskrat Falls Project, including whether

(i) the assumptions or forecasts on which the analysis of options was based were reasonable,

(ii) Nalcor considered and reasonably dismissed options other than the Muskrat Falls Project and the Isolated Island Option, and

(iii) Nalcor's determination that the Muskrat Falls Project was the least-cost option for the supply of power to Newfoundland and Labrador Island interconnected system over the period 2011-2067 was reasonable with the knowledge available at that time;

(b) why there are significant differences between the estimated costs of the Muskrat Falls Project at the time of sanction and the costs by Nalcor during project execution, to the time of this inquiry together with reliable

estimates of the costs to the conclusion of the project including whether

- (i) Nalcor's conduct in retaining and subsequently dealing with contractors and suppliers of every kind was in accordance with best practice, and, if not, whether Nalcor's supervisory oversight and conduct contributed to project cost increases and project delays,
- (ii) the terms of the contractual arrangements between Nalcor and the various contractors retained in relation to the Muskrat Falls Project contributed to delays and cost overruns, and whether or not these terms provided sufficient risk transfer from Nalcor to the contractors,
- (iii) the overall project management structure Nalcor developed and followed was in accordance with best practice, and whether it contributed to cost increases and project delays,
- (iv) the overall procurement strategy developed by Nalcor for the project to subdivide the Muskrat Falls Project into multiple construction packages followed industry best practices, and whether or not there was fair and competent consideration of risk transfer and retention in this strategy relative to other procurement models,
- (v) any risk assessments, financial or otherwise, were conducted in respect of the Muskrat Falls Project, including any assessments prepared externally and whether
 - (A) the assessments were conducted in accordance with best practice,
 - (B) Nalcor took possession of the reports, including the method by which Nalcor took possession,
 - (C) Nalcor took appropriate measures to mitigate the risks identified, and
 - (D) Nalcor made the government aware of the reports and assessments, and
- (vi) the commercial arrangements Nalcor negotiated were reasonable and competently negotiated;
- (c) whether the determination that the Muskrat Falls Project should be exempt from oversight by the Board of Commissioners of Public Utilities was justified and reasonable and what was the effect of this exemption, if any, on the development, costs and operation of the Muskrat Falls Project; and
- (d) whether the government was fully informed and was made aware of any risks or problems anticipated with the Muskrat Falls Project, so that the government had sufficient and accurate information upon which to appropriately decide to sanction the project and whether the government employed appropriate measures to oversee the project particularly as it relates to the matters set out in paragraphs (a) to (c), focusing on governance arrangements and decision-making processes associated with the project."

"Conclusion or recommendations limited

7. The commission of inquiry shall not express any conclusion or

recommendation regarding the civil or criminal responsibility of any person or organization."

Additional pertinent background information:

NB. This is a complete copy of the official version with bold highlighting added for ease of reference.

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St. John's, Newfoundland and Labrador, Canada

Important Information

(Includes details about the availability of printed and electronic versions of the Statutes.)

Newfoundland and Labrador Regulation 2017

NEWFOUNDLAND AND LABRADOR

REGULATION 101/17

Commission of Inquiry Respecting the Muskrat Falls Project Order under the Public Inquiries Act, 2006 (O.C. 2017 - 339) (Filed November 20, 2017)

Under the authority of section 3 of the Public Inquiries Act, 2006, the Lieutenant-Governor in Council makes the following Order.

Dated at St. John's, November 20, 2017.

Ann Marie Hann

Clerk of the Executive Council

ORDER

Analysis

1. Short title
2. Definitions
3. Commission of inquiry established
4. Terms of reference
5. Commission's considerations
6. Findings and recommendations
7. Conclusion or recommendations limited
8. Special expertise services
9. Final report

Short title

1. This Order may be cited as the Commission of Inquiry Respecting the Muskrat Falls Project Order.

Definitions

2. In this Order

(a) "government" means the government of the province;

(b) "Isolated Island Option" means the isolated island option as defined in the June 17, 2011 reference question to the Board of Commissioners of Public Utilities;

(c) "Muskrat Falls Project" means the Muskrat Falls Project, as defined in subsection 2.1(1) of the Energy Corporation Act; and

(d) "Nalcor" means Nalcor Energy and its subsidiaries;

Commission of inquiry established

3. There is established a commission of inquiry respecting the Muskrat Falls Project and the Honourable Richard D. LeBlanc is appointed as the sole member of the commission.

Terms of reference

4. The commission of inquiry shall inquire into

(a) the consideration by Nalcor of options to address the electricity needs of Newfoundland and Labrador's Island interconnected system customers that informed Nalcor's decision to recommend that the government sanction the Muskrat Falls Project, including whether

(i) the assumptions or forecasts on which the analysis of options was based were reasonable,

(ii) Nalcor considered and reasonably dismissed options other than the Muskrat Falls Project and the Isolated Island Option, and

(iii) Nalcor's determination that the Muskrat Falls Project was the least-cost option for the supply of power to Newfoundland and Labrador Island interconnected system over the period 2011-2067 was reasonable with the knowledge available at that time;

(b) why there are significant differences between the estimated costs of the Muskrat Falls Project at the time of sanction and the costs by Nalcor during project execution, to the time of this inquiry together with reliable estimates of the costs to the conclusion of the project including whether

(i) Nalcor's conduct in retaining and subsequently dealing with contractors and suppliers of every kind was in accordance with best practice, and, if not, whether Nalcor's supervisory oversight and conduct contributed to project cost increases and project delays,

(ii) the terms of the contractual arrangements between Nalcor and the various contractors retained in relation to the Muskrat Falls Project contributed to delays and cost overruns, and whether or not these terms provided sufficient risk transfer from Nalcor to the contractors,

(iii) the overall project management structure Nalcor developed and followed was in accordance with best practice, and whether it contributed to cost increases and project delays,

(iv) the overall procurement strategy developed by Nalcor for the project to subdivide the Muskrat Falls Project into multiple construction packages followed industry best practices, and whether or not there was fair and competent consideration of risk transfer and retention in this strategy relative to other procurement models,

(v) any risk assessments, financial or otherwise, were conducted in respect of the Muskrat Falls Project, including any assessments prepared externally and whether

(A) the assessments were conducted in accordance with best practice,

- (B) Nalcor took possession of the reports, including the method by which Nalcor took possession,
- (C) Nalcor took appropriate measures to mitigate the risks identified, and
- (D) Nalcor made the government aware of the reports and assessments, and
- (vi) the commercial arrangements Nalcor negotiated were reasonable and competently negotiated;
- (c) whether the determination that the Muskrat Falls Project should be exempt from oversight by the Board of Commissioners of Public Utilities was justified and reasonable and what was the effect of this exemption, if any, on the development, costs and operation of the Muskrat Falls Project; and
- (d) whether the government was fully informed and was made aware of any risks or problems anticipated with the Muskrat Falls Project, so that the government had sufficient and accurate information upon which to appropriately decide to sanction the project and whether the government employed appropriate measures to oversee the project particularly as it relates to the matters set out in paragraphs (a) to (c), focusing on governance arrangements and decision-making processes associated with the project.

Commission's considerations

5. The commission of inquiry, in carrying out the terms of reference referred to in section 4 shall consider
- (a) participation in the inquiry by the established leadership of Indigenous people, whose settled or asserted Aboriginal or treaty rights to areas in Labrador may have been adversely affected by the Muskrat Falls Project;
 - (b) the need to provide consumers in the province with electricity at the lowest possible cost consistent with reliable service;
 - (c) the powers, duties and responsibilities of a Crown Corporation;
 - (d) the need to balance commercial considerations and public accountability and transparency in carrying out a large-scale publicly-funded project; and
 - (e) the need to balance the interests of ratepayers and the interests of taxpayers in carrying out a large-scale publicly-funded project.

Findings and recommendations

6. The commission of inquiry shall make findings and recommendations that it considers necessary and advisable related to section 4.

Conclusion or recommendations limited

7. The commission of inquiry shall not express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization.

Special expertise services

8. The commission of inquiry may engage the services of persons having

special expertise or knowledge including those with financial, engineering and construction expertise.

Final report

9. The commission of inquiry shall terminate its work and deliver the final report to the Minister of Natural Resources, who shall be the minister responsible for the commission of inquiry, on or before December 31, 2019.

Sent from [Commission of Inquiry Respecting the Muskrat Falls Project](#)