

**From:** [Sister Elizabeth Davis](#)  
**To:** [Admin](#)  
**Subject:** Submission re Interpretation of Terms of Reference  
**Date:** Tuesday, February 13, 2018 3:57:05 PM  
**Attachments:** [Submission to the Commission of Public Inquiry on Muskrat Falls Re Terms of Reference.13 February 2018.pdf](#)

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To the Commissioner:

Attached is a submission concerning the interpretation of the Terms of Reference of the Commission of Inquiry Respecting the Muskrat Falls Project.

I trust the submission is properly formatted.

Thank you for the opportunity to speak to this matter which has such implications for the future of Newfoundland and Labrador -- the people and the land.

May your work on this Inquiry be blessed as you undertake such an important endeavour on behalf of all of us in this Province.

Respectfully submitted,  
Sister Elizabeth Davis

**Submission to the  
Commission of Inquiry Respecting the Muskrat Falls Project**

**With respect to**

**The Interpretation of the Terms of Reference  
for the Commission of Inquiry Respecting the Muskrat Falls Project**

**“We do not inherit the land from our parents.  
We borrow it from our children.”**

**Elizabeth M. Davis, RSM**

**13 February 2018**

## **Introduction**

“We do not inherit the land from our parents; we borrow it from our children.” These words from the Inuit elders must echo through the work of the Inquiry on the Muskrat Falls Project. The Muskrat Falls Project had an admirable vision: meeting the province’s long-term energy needs by providing clean, renewable energy for future generations. But the way to that vision appears to members of the public to be failing. This Inquiry, established by Government in response to public concerns, has the potential to help the province find a new way forward which may not achieve the original vision but could achieve the best possible outcome given the present realities. The terms of reference of the Inquiry could be interpreted as focused only on the Project’s high costs and low transparency. However, if this Inquiry is to truly respond to public concerns, it must not only look back at the costs. It must look forward to the ongoing costs and risks which are rooted in steps taken from the first envisioning of this Project.

## **Risks or Problems – Article 4 (d)**

*(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*

Four “risks or problems” associated with the Muskrat Falls Project have emerged since the Project began. All four have the potential to have significant negative impact on the lives of the people of the province and, therefore, should have been part of the “sufficient and accurate information” upon which the decision to sanction the Project was based. There is evidence that all four risks were predicted prior to the decision to go forward.

1. ***An Incredibly High Debt*** – It appears that the debt resulting from the Project (the initial building and the ongoing costs) will be much higher than was originally estimated or, at least, reported to the public. If that is so, residential electricity rates and customer bills will increase significantly (possibly doubling). This will affect every person, every family and every business in the province. More people will have to make choices between paying their electricity bills and eating nourishing meals. In addition, the Government will have to allocate much of its revenues away from support for important programs and services. Once again, the most vulnerable people in this province who are recipients of these programs and services – poor people, children in our schools, sick people and older people – will be the ones who will suffer most.
  
2. ***Ongoing Environmental Damage*** – Reputable researchers have consistently pointed out that the damage caused by the Project and already happening to the land and water of Labrador is not the end of the environmental risk. They point to two major areas of concern: (i) methyl mercury and its impact on water sources, wildlife and the health of the people near the River, and (ii) dangers to the stability of the North Spur, the large natural dam with its sensitive glacial clays. There is a universally accepted precautionary principle, first acknowledged at the United Nations Earth Summit in 1992, which relates to the prevention of environmental degradation. The precautionary principle states that, if objective information suggests that serious and irreversible damage may result, a project should be halted or modified, even in the absence of indisputable proof. Halting does not seem to be any longer an option, but modification is.

3. ***Ongoing Negative Social Consequences*** – the people most immediately at risk are those who live adjacent to the Churchill River, primarily Indigenous peoples. Representatives of the people have been speaking out on the destruction of the land and waters and on the long-term health effects on the people. All Newfoundlanders and Labradorians will be negatively affected by the high debt load from the Project – the capital costs combined with the ongoing operating costs. Doubled electricity rates and reduced health, education and social programs will lead to a higher number of people in this province desperately needing services which may not be available to them.
  
4. ***Failure to Put in Place a System of Monitoring*** – There is little evidence from a public point of view that an appropriate structure or system has been put in place to monitor, assess and manage the financial, social, health and environmental consequences created by the development of the Project and by the operation of the generating station and transmission lines. Given the above risks, the need for such a monitoring system seems self-evident; yet, the public has not been made aware that such a system has been established or even is being developed.

The Commissioner is well within the Terms of Reference in addressing these four “risks” or “problems.” Indeed this Inquiry seems to be the only option available to the citizens of the Province at this time to re-direct a Project which seems to have moved far from its original vision. The Muskrat Falls Project now threatens to be an ongoing burden which could weaken this province and its people in fundamental ways.

## **Participation by the Indigenous People – Article 5 (a)**

*(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*

As noted above, representatives of Indigenous peoples have been speaking out about the environmental, financial, health and social impacts on them from the Muskrat Falls Project. Their voices do not appear to have been heard or to have had any influence on major decisions along the way. Indeed some have been imprisoned for their actions on behalf of their people and their land. It will be important that their voices are heard not only respectfully but with the awareness that they are the people most immediately affected by the operation of the Project.

The principle of “social license”, increasingly being associated with projects having significant environmental impacts, is applicable here. Social license means that a project has either ongoing approval or at least broad social acceptance within the local community and among other stakeholders. Social license is rooted in the beliefs, perceptions and opinions held by the people; it is granted by the community; and it is dynamic continuing not only in the initial building of the project but throughout the lifetime of its operation.

## **Lowest Possible Cost – Article 5 (b)**

Note: the points included in Article 5 (*The Commission’s Considerations*) are to be considered as the part of the context for reviewing the elements of Article 4.

- (b) the need to provide consumers in the province with electricity at the lowest possible cost consistent with reliable service*
- (d) the need to balance commercial considerations and public accountability and transparency in carrying out a large-scale publicly-funded project*

The interpretation of Article 5 (b) and (d) cannot possibly mean that the provision of electricity at the lowest possible cost does not take into consideration any impacts which might lead to subsidization of those costs from other provincial expenditures including those spent on education, health care and other services for poor people. Whether or not this Project was the lowest cost option in providing electricity, the impact on other essential services provided by the Provincial Government must be understood and, if necessary, addressed.

Although the balance with commercial considerations is understandably important, public accountability and transparency are requirements of any democracy. In this instance, accountability and transparency not only refer to the actual project but to the indirect implications of long-term financing, environmental impact, and social and health-related impacts on the people living closest to the dam and generating station. Again this Article of the Terms of Reference which outlines the context for Article 4 allows for and reinforces the consideration of the four concerns noted above under Article 4.

#### **Findings and Recommendations – Articles 6 and 7**

- 6. The commission of inquiry shall make findings and recommendations that it considers necessary and advisable*
- 7. The commission of inquiry shall not express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization.*

Articles 6 and 7 taken together suggest that, absent recommendations regarding civil or criminal responsibility, the Inquiry has more scope to focus its recommendations on social, environmental and financial matters. This means considering the above four areas of risk, not only the failure to address them up to this point in time, but the necessity of addressing them going forward.

### **Engagement of Persons with Special Expertise or Knowledge – Article 8**

*8. The commission of inquiry may engage the services of persons having special expertise or knowledge including those with financial, engineering and construction expertise.*

Given the potential impact of the Muskrat Falls Project on some of the poorest and most vulnerable people of this province, this Article of the Terms of Reference has particular relevance. The “special expertise or knowledge” needed goes far beyond those who have financial, engineering and construction expertise. The Commissioner is encouraged not only to commit to listen to the citizens of this province but to find creative ways of facilitating effective public participation, community engagement and input. Without this step, the voices will not be heard. With this step, the people most affected will truly have a voice and the Commissioner will be able to have real understanding of the depth and breadth of the social, health and environmental risks that are being realized by the building of the Project and by its operation.

A second level of interpretation of this Article concerns a possible innovative approach to bringing together the diverse interests and perspectives which exist around this Project – the



creation of a community or a network of persons and organizations. Such a network would be made up of people and groups with diverse perspectives but with like interests in the health of the people and the land. Such a network, in its diversity, can find new ways to redirect the Project to ensure the future health of this province. What a positive change the Commission could possibly effect by bringing together Indigenous people, businesses, professions, the voluntary sector, academic researchers, religious organizations, activists, journalists and citizens all focused on finding the ways of re-directing the Project from its present path which could undermine the future of the province back to its original vision of strengthening the future of the province.

#### **Timeframe – Article 9**

*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.*

The timeframe for the completion of the Inquiry will possibly coincide with the completion of the Project itself. This will have particular relevance for the environmental concerns which must be addressed sooner rather than later. The Commissioner may have to release an interim report with strong recommendations for the remediation of these major environmental concerns.