

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

**IN THE MATTER OF an Application by
Julia Mullaley, seeking standing pursuant to s.5 (b)
of the *Public Inquiries Act, 2006 S.N.L. 2006*
c. P-38.1, and ss. 15-17 of the *Commission's*
*Rules of Procedure***

APPLICATION FOR STANDING

The Applicant, Julia Mullaley, states as follows:

The Applicant:

1. The Applicant, Julia Mullaley, was Deputy Clerk of the Executive Council from April 4, 2011 to August 22, 2012. In carrying out her role as Deputy Clerk of the Executive Council the Applicant was privy to discussions, documents, attended numerous meetings and briefings, and participated in communications to Cabinet involving the Muskrat Falls project.
2. On August 17, 2013 the Applicant was appointed Clerk of the Executive Council. The Clerk of the Executive Council is the most senior public service position in the Province of Newfoundland and Labrador and is the administrative liaison between the public service and the Office of the Premier. The Clerk of the Executive Council is responsible for leading the operations and managing the financial and human resources of the Office of the Executive Council, and acts as Deputy Minister to the Premier. The Clerk of the Executive Council also provides support and advice to the Premier and coordinates work across government to ensure the effective implementation of government's strategic

priorities. The Clerk of the Executive Council also performs the role as Secretary to Cabinet, and in doing so supports the Premier, Cabinet, and Cabinet committees by leading the coordination of cabinet meetings and agendas, analyzing and providing advice on cabinet submissions, overseeing the preparation of briefing materials for the Premier, and ensuring that decisions of Cabinet are recorded and disseminated for effective implementation. During her time as Clerk of the Executive Council, the Applicant was directly involved in discussions, and reviewed, analyzed and summarized documentation regarding the Muskrat Falls Project. The Applicant had numerous communications involving the Muskrat Falls Project with officials in cabinet, throughout government, and with Nalcor.

3. The Applicant, in carrying out her duties as Clerk of the Executive Council, attended meetings, presentations, and briefings with representatives of Nalcor, including its former chairperson, Mr. Edward Martin, regarding the progress, oversight, and other issues involving the Muskrat Falls Project.

4. On March 13, 2014 the Applicant was appointed to the Muskrat Falls Oversight Committee. As Clerk of the Executive Council the Applicant was the Chairperson of this committee. According to its July 29, 2014 Terms of Reference, the objective of the Committee was to provide reliable and transparent oversight on the cost and schedule performance of the Project and to establish a direct and effective communication channel to Cabinet and the general public. In addition to the Committee's objective, its mandate was as follows:
 1. *The Project cost and schedule is well managed – the Committee will examine issues such as whether management processes and controls are well-designed and followed, contracts are being managed diligently and financial drawdowns comply with the established processes;*

 2. *The Project is meeting the cost and schedule objectives – the Committee will examine issues such as how schedule performance and forecast compare to the plan, how cost performance and forecast compare with the budget, how cost and schedule forecasts*

compare with current performance, and how cash flow forecasts reflect the project's funding requirements; and

3. *The cost and schedule risks are being reasonably anticipated and managed – the Committee will examine issues such as whether risks are being sufficiently identified and addressed and whether Nalcor has established adequate contingency to address outstanding Project risks.*

5. The Applicant, as chairperson of the Muskrat Falls Oversight Committee, was privy to discussions, authored and reviewed documentation, and participated in numerous communications regarding the oversight of the Muskrat Falls project, including communications between the Oversight Committee and Cabinet.

6. On December 7, 2017, the Applicant was appointed as Auditor General of Newfoundland and Labrador. The Office of the Auditor General in Newfoundland and Labrador is the independent legislative auditor of government, its departments, all agencies of the Crown and Memorial University of Newfoundland. The Office of the Auditor General audits financial statements and other accountability documents, evaluates management practices and control systems, and determines compliance with legislative and other authorities.

Submissions in Support of Standing:

7. Section 5 of the *Public Inquiries Act, 2006* reads as follows:
 5. (1) A commission shall give those persons who believe they have an interest in the subject of the inquiry an opportunity to apply to participate.
 - (2) A commission shall determine whether a person may participate in an inquiry, and how he or she may participate, after considering
 - (a) whether the person's interests may be adversely affected by the findings of the commission;
 - (b) whether the person's participation would further the conduct of the inquiry; and

- (c) whether the person's participation would contribute to the openness and fairness of the inquiry.

8. On March 14, 2018, Leblanc J. issued a decision addressing the Interpretation of the Terms of Reference for the Muskrat Falls Inquiry. This decision was meant to focus the Inquiry and to inform parties that are applying for standing. It is submitted that in light of this decision it is necessary to examine s.5 of the *Public Inquiries Act, 2006* in the context of the Terms of Reference and the decision addressing its interpretation.
9. With respect to Section 4(a) of the Terms of Reference, the Applicant held the position of Deputy Clerk of the Executive Council prior to sanction in December 2012, and subsequently, following sanction, was Clerk of the Executive Council. According to the decision of Leblanc J., an examination of section 4(a) includes “what information and, by extension, whether all necessary information, was provided to Government at the time.” The Applicant has a perspective both pre and post sanction that will help inform the Commissioner. Furthermore, given the Applicant’s senior positions in government, and the functions it involved with respect to preparing Cabinet Agendas, briefing Cabinet, and ensuring that Cabinet decisions were followed, the Applicant can provide a unique perspective with respect to “whether Government was aware of and appropriately considered all relevant matters prior to its sanction of the project” and after sanction was granted. The Applicant is familiar with the issues surrounding the Muskrat Falls Project before and after sanction, including the Federal Loan Guarantee, and can ensure her position is accurately represented before the Commission. Furthermore, given the Applicant’s role it is anticipated that she will be the subject of testimony that may impact her professionally and personally and standing will ensure that the Commission has a complete and accurate picture regarding information provided to and from government, while at the same time the Applicant can ensure her positions are presented in a clear and accurate fashion.

10. With respect to s. 4(b) of the Terms of Reference, the decision of Leblanc J. indicates that the Inquiry is to consider how “reports and assessments received by Nalcor and whether they were made available to the Board of Nalcor as well as the Government will also be part of the investigation.” The Applicant was directly involved with communications between Nalcor and government. She also attended briefing sessions for government provided by Nalcor where reports and assessments were provided. As it is likely that both exhibits and testimony surrounding s.4(b) of the Terms of Reference will include significant references to the conduct of the Applicant she has a significant interest in being granted standing in this Inquiry to inform the Commission and present her position clearly and accurately.
11. With respect to s.4(c) of the Terms of Reference, Leblanc J. indicates that the Commission will examine the Public Utilities Board exemption, including “the impact of the decision of the PUB on March 30, 2012 wherein it requested an extension of time to conduct its review and the response by Government to this. To be determined as well is whether there was any interference on the part of Nalcor or Government with respect to the PUB’s consideration of the Project.” The Applicant is familiar with some aspects of governments role vis a vis the Public Utilities Board with respect to the Muskrat Falls Project given her role as Clerk of the Executive Council. Her participation will enhance the examination of this aspect of the Terms of Reference and allow for a more thorough review of this issue.
12. With respect to s.4(d) of the Terms of References, Leblanc J., indicated in his decision that the Inquiry will review both “past and present administrations” and will examine “the reporting structures between Nalcor and the various government administrators, the governance model employed and the communications between the two entities as the project progressed. The Commission will examine both what Government knew and what it ought to have known as well as what it did to ensure reasonable and appropriate oversight of the Project and how it progressed. Implicit in such an investigation will be a consideration of the decisions made by Government to continue to proceed with the Project.” The Applicant occupied senior government roles in administrations both pre and post sanction, and in her role as Clerk of the Executive Council was Chair of the

Muskrat Falls Oversight Committee. Given the Applicant's involvement in this matter over an extended time period and over the life of multiple administrations, there is a greater likelihood that her interests may be adversely affected by the findings of the Commission than many other individuals. In addition, given the Applicant's roles in multiple administrations she will further the conduct of the inquiry as she will provide a level of continuity with respect to the senior management of government with respect to the Muskrat Falls Project. The Applicant's participation is proper and necessary to contribute to the openness and fairness of the inquiry and standing should be granted.

13. The Applicant has a significant interest in the subject matter of this inquiry given the numerous senior roles and functions she performed throughout the life of the Muskrat Falls Project. As a result of the various duties she performed as the Province's most senior public servant and chair of the Muskrat Falls Oversight Committee, the Applicant has a unique perspective with respect to the project, communications with the Premier and Cabinet, communications between government and Nalcor, and any recommendations or advice provided with respect to the project and its oversight. The Applicant's participation will further the conduct of the inquiry and contribute significantly to the openness and fairness of the inquiry.

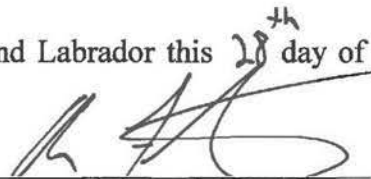
14. It is also anticipated that the Applicant will be called to testify during the inquiry in light of the senior management roles she occupied during the life of the Muskrat Falls Project. It is also likely that there will be a significant number of exhibits involving the Applicant which will be entered into evidence. The Applicant has a significant interest in all of the evidence that will arise at the hearing, and in particular any testimony arising out of the exhibits and documents. Given the interest that the Applicant will have in this evidence her personal interests could be adversely affected and standing is necessary to ensure her rights are protected and that the evidence that the Commissioner receives is complete and accurate.

15. Finally, the Applicant advises that she will not be seeking funding from the Commission should standing be granted as her legal costs will be paid by the Province.

Relief Requested:

16. In light of the foregoing, the Applicant, Julia Mullaley, hereby requests standing before the Commission of Inquiry respecting the Muskrat Falls Project for the entire hearing. In the event that oral submissions are necessary the Applicant requests to be heard at the sitting of the Commission in St. John's, NL, on April 6, 2018.

DATED at St. John's, in the Province of Newfoundland and Labrador this 28th day of March, 2018.



Andrew A. Fitzgerald
Lewis, Sinnott, Fitzgerald
Solicitors for the Applicant

