

## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

**IN THE MATTER OF an Application by  
Robert Thompson, 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, Robert Thompson, states as follows:

**The Applicant:**

1. The Applicant, Robert Thompson, was Clerk of the Executive Council (October 2003 - May 2007). Reporting to the Premier, the Clerk oversees the operation of Cabinet Secretariat, oversees performance of Deputy Ministers, and provides advice to the Premier on program administration and policy development. Mr. Thompson was privy to discussions and documents, attended numerous meetings and briefings, and participated in communications to the Premier and Cabinet involving the Lower Churchill project.
2. The Applicant was Deputy Minister of Natural Resources (December 2008 - December 2010). Reporting to the Minister of Natural Resources and the Clerk of the Executive Council, this position provides leadership to employees of the Department, program and

policy advice to the Minister, and is accountable for administrative and program results of the Department. In this position, Mr. Thompson was privy to discussions and documents, attended numerous meetings and briefings, and participated in communications to the Minister, the Premier and Cabinet involving the Muskrat Falls Project.

3. The Applicant resumed the position of Clerk of the Executive Council (December 2010 - August 2013). Reporting to the Premier, this position oversees operation of Cabinet Secretariat, oversees the performance of Deputy Ministers, and provides advice to the Premier on program administration and policy development. Mr. Thompson was privy to discussions and documents, attended numerous meetings and briefings, and participated in communications to the Premier and Cabinet involving the Muskrat Falls Project.
4. The Applicant retired from public service August 2013.

**Submissions in Support of Standing:**

5. 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.

6. With respect to Section 5(2) of the *Public Inquiries Act, 2006*, the positions held by the Applicant within the provincial government between 2003 and 2013 provided him with insight into several of the matters covered by the Terms of Reference, mainly during the pre-sanction period, and mainly in respect of the information presented to the government by NL Hydro / Nalcor, and subsequently considered by the government, including:

4(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 the Newfoundland and Labrador Island interconnected system over the period 2011 - 2067 was reasonable with the knowledge available at that time;

4(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

4(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 Muskrat Falls Project and whether the government employed appropriate measures to oversee the Project particularly as it relates to the matters set out in paragraphs 4(a) to (c), focusing on governance arrangements and decision-making processes associated with the Project.

7. With respect to s. 4(d) of the Terms of References, Commissioner Leblanc 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 a senior government role during the sanction process. 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 his 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 he will further the conduct of the Inquiry as he 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.
8. The Applicant has a significant interest in the subject matter of this Inquiry given the numerous senior roles and functions he performed in relation to the Muskrat Falls Project. As a result of the various duties he performed as the Province’s most senior public servant and Deputy Minister of Natural Resources, the Applicant has a unique perspective with respect to the Project, communications with the Premier and Cabinet, communications between the government and Nalcor, and any recommendations or advice provided with respect to the Project. The Applicant’s participation will further the conduct of the Inquiry and contribute significantly to the openness and fairness of the Inquiry.
9. It is also anticipated that the Applicant will be called to testify during the Inquiry in light of the senior management roles he occupied during the pre-sanction period and the sanction process of the Muskrat Falls Project. It is also likely that there will be a

significant number of exhibits involving the Applicant that will be entered into evidence. The Applicant has a significant interest in most 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, his personal interests could be adversely affected and standing is necessary to ensure his rights are protected and that the evidence that the Commissioner receives is complete and accurate.

10. The Applicant has attached an Affidavit related to funding.

**Relief Requested:**

11. In light of the foregoing, the Applicant, Robert Thompson, 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 <sup>28<sup>th</sup></sup> day of March, 2018.



---

Robert Thompson

*March 28, 2018*

## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

**IN THE MATTER OF an Application by  
Robert Thompson, 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***

### AFFIDAVIT OF ROBERT THOMPSON

The Applicant, Robert Thompson, of St. John's, NL, hereby makes oath and says as follows:

1. I am the Applicant in the attached Application for Standing.
2. The news release from the Commission of Inquiry, dated March 15, 2018, addresses the issue of funding as follows:

The Commissioner may make a recommendation to the Government of Newfoundland and Labrador with respect to funding. The criteria that the Commissioner will consider in making such a recommendation are set out in sections 15 to 17 of the Commission's Rules of Procedure.

3. The following addresses the matters raised in section 16.

Applications for funding shall be in writing, submitted with an application for standing, and shall contain the following:

- a) an affidavit stating whether an applicant would be able to participate without such funding, supported by relevant documentation, which may include financial information and, for organizations, financial statements, operating budgets, the number of members and membership fee structure. Applicants should also indicate whether they have contacted other groups or individuals with a view to forming an amalgamated group for the purpose of seeking standing and/or funding and the results of any such contacts;

*My full and appropriate participation in the Inquiry will not be possible without the support of legal counsel. Given my previous employment with the Government of Newfoundland and Labrador and my involvement in the Muskrat Falls Project as described in my application for standing, my need for the assistance of legal counsel will be extensive. The cost of such legal support should be borne by the Crown given my status as a former employee, and I seek a recommendation by the Commission to the Crown that it be so covered.*

*The possibility of forming an amalgamated group with shared interests is not possible in my circumstance. My interests are individual and are linked to the unique work that I performed for the Crown between 2003 and 2013.*

b) a description of the purposes for which the funds are required, how the funds will be disbursed, and how they will be accounted for;

*My proposal is that I contract with legal counsel and fees be charged directly to the Crown. I am prepared to consider recommendations from the Department of Justice and Public Safety as to which legal counsel is appropriate, but wish to retain the final decision on who to engage.*

c) a statement of the extent to which the applicant will contribute its own funds and personnel to participate in the Inquiry;

*I will use a considerable amount of my personal time, including leave from my current employer, to participate in the Inquiry as appropriate.*

d) the name, address, telephone number and position of the individual who would be responsible for administering the funds, and a description of the financial controls that would be put in place to ensure that any funding provided is disbursed for the purposes of the Inquiry.

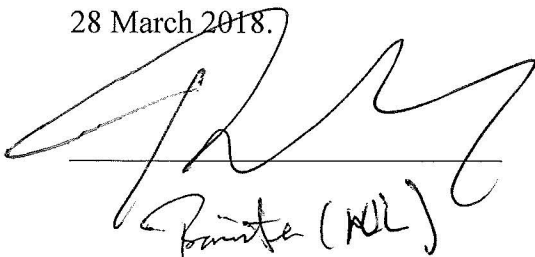
*Not applicable if the Department of Justice and Public safety receives invoices directly from my Counsel. I am prepared to administer funds directly should that method be chosen.*

4. This affidavit is made in support of my application requesting a recommendation for funding for counsel for me as a person with standing before the Inquiry.

**Sworn** to before me

at St. John's, NL, on

28 March 2018.



*Notary Public (NL)*



Robert Thompson