



Commission of Inquiry Respecting the Muskrat Falls Project

**STANDING APPLICATIONS FOR
FORMER GOVERNMENT OFFICIALS 2003 – 2015
AS REPRESENTED BY DANNY WILLIAMS, Q.C. THOMAS
MARSHALL, Q.C., PAUL DAVIS, SHAWN SKINNER,
JEROME KENNEDY, Q.C. AND DERRICK DALLEY
FOR THE MUSKRAT FALLS INQUIRY**

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Danny Williams, Q.C., Thomas Marshall, Q.C., Paul Davis, Shawn Skinner, Jerome Kennedy, Q.C. and Derrick Dalley have applied as a group, referred to as Former Government Officials 2003 – 2015. All are members of past Progressive Conservative administrations in place from 2003 up to December 2015. It was during this period of time that the Muskrat Falls Project was initiated, sanctioned and construction commenced. Mr. Williams, Mr. Marshall and Mr. Davis were the Premier of the Province at various times throughout this period while Mr. Skinner, Mr. Kennedy and Mr. Dalley, along with Mr. Marshall, were the Minister of Natural Resources at various times. In those capacities all were significantly involved with this Project. The applicants now apply as a group for full standing at the Inquiry hearings on the basis that they have a common or similar interest in the Inquiry's investigative mandate.

RL

[2] The applicants also seek a funding recommendation for one counsel to act on behalf of the group in order to represent their interests at the Inquiry hearings.

[3] There is also a request by the applicants that they individually be entitled to retain their own separate legal counsel, without any funding request, to represent the interests of each individual as they may arise during the course of the Inquiry. Included with this would be a right to have their individual counsel assist them in preparing to give evidence when interviewed by Commission co-counsel and should they be requested to testify at the hearings.

[4] Based upon the application filed, as a result of their positions in the various Government administrations between 2003 and 2015, as well as the degree of their involvement with the Muskrat Falls Project during that time period, it is obvious to me that they meet the criteria set out in section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P-38.1, for standing. Clearly, based upon the Terms of Reference for this Inquiry and my decision interpreting those Terms of Reference on March 14, 2018, the individual interests of those involved in this group could be adversely affected by the findings reached by the Commission. As well, this group's participation would likely further the conduct of the Inquiry and contribute to its openness and fairness.

[5] In line with Rule 12 of the Commission's Rules of Procedure, the individual applicants have applied for standing as a group based upon their similar interests. I appreciate their willingness to do so as this will promote time and cost efficiencies in the conduct of the Inquiry.

[6] Regarding the application for standing by each of the individuals in the group, I am unable to conclude that this is necessary or required at this time. Full standing has been granted to the individuals as a collective or group and I am satisfied that this will provide for participation at the hearings that is needed. Counsel retained by the group can be expected to represent the interests of each of the group members. Rules 28 and 35 of the Commission's Rules of Procedure will allow them what they are seeking individually in that, if desired, they can retain their own counsel to assist them in preparing for interviews and in questioning at the hearings.

[7] As regards the other two arguments submitted to support standing for the members of this group individually, these being possible conflict of interest for the group's counsel and where a personal matter for one group member might arise different from the interest of other group members, these are situations that I will deal with if and when they arise.

[8] One further comment must be made regarding the present application for standing. It is suggested by the applicants that the current Government administration as represented by Premier Dwight Ball and Minister Siobhan Coady, will be applying for standing. Such an application has not been made and nor do I see the standing application filed by Her Majesty the Queen in right of Newfoundland and Labrador as being one made on behalf of the present Government administration. That applicant will be speaking to the actions of the Government public service and all governing administrations, both Progressive Conservative and Liberal, as they relate to the Commission's mandate at the Inquiry hearings.

[9] I wish to make it clear that the Commission's investigation will not take on the political differences as between differing political parties. As stated in my decision in interpreting the Terms of Reference, the Commission's role is to examine the actions of the individuals involved in the conception, sanction and construction of this Project. It matters not what political stripe these individuals might have. I intend to deal here with facts and not politics and it should be understood that the hearings will be conducted in that manner.

[10] As indicated earlier, the group of individuals have applied for one counsel to be retained to represent that group. Full standing will be granted to this group on that basis. A funding recommendation has also been sought by the group to have their one counsel funded as well as expenses related to attendance at the hearings.

[11] I have decided to make the recommendation for funding as requested as I believe it is appropriate to do so in these circumstances. One of the reasons I am doing so is not as is suggested in the group's funding application. There they argue that this group should be funded in the same manner as the present Government

administration. As pointed out earlier, the present Government administration has not applied for funding.

[12] I am prepared to recommend funding for one counsel along with expenses for attendance at the Inquiry hearings where travel is required. It is relevant here to consider that when each of the individual group members were involved with the Muskrat Falls Project, they were doing so as elected representatives of the people of this Province. As such, I am satisfied that it would be unfair to expect them to personally pay for legal representation for what will be lengthy public hearings. By applying for standing and funding as a group, these individuals have acted in accordance with the Commission's request to do so where such was possible. Doing so will significantly reduce the cost of legal representation for them at this Inquiry. As a result, I will be recommending that they be provided with funding for one legal counsel along with expenses for attendance at the Inquiry where travel is necessary.

[13] Finally, I would remind this group that, upon being granted standing, they are bound by the Commission's Rules of Procedure and particularly Rule 19 which requires the provision of all relevant information and documents within the possession of each individual member of the group to be to the Commission within 14 days of the grant of standing. Counsel for the group is encouraged to discuss this obligation with Commission co-counsel as soon as is possible so that compliance with this Rule as well as all other Rules will not be an issue. An extension of this time frame may be considered based upon the reasons given.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER