



Commission of Inquiry Respecting the Muskrat Falls Project

**STANDING APPLICATIONS FOR
DEMOCRACY ALERT, THE ST. JOHN'S CHAPTER OF THE COUNCIL
OF CANADIANS AND SOCIAL JUSTICE COOPERATIVE OF
NEWFOUNDLAND AND LABRADOR
FOR THE MUSKRAT FALLS INQUIRY**

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] Democracy Alert, the St. John's Chapter of the Council of Canadians and the Social Justice Cooperative of Newfoundland and Labrador have jointly applied for standing at the hearings to be held by the Commission of Inquiry Respecting the Muskrat Falls Project. At the hearing on April 6, the applicants' representative stated that their application was for special standing. No information regarding each of these entities has been included in their application. As well, no request for a funding recommendation is included but at the hearing it was indicated that if standing was granted, a funding request would be subsequently forthcoming.

[2] The request for special standing is based upon "Government's arrangements and decision-making processes" associated with the Muskrat Falls Project. This particular phrase can be found in section 4(d) of the Order in Council establishing the Inquiry. However, to apply the full contextual meaning to these words, it is necessary to consider the full wording of the section.

[3] Section 4(d) states as follows:

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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 and underline government's arrangements and decision-making processes.

[4] As can be seen from the full wording of that section, the matter of "governance and decision-making processes" is related to the Government of Newfoundland and Labrador's information and knowledge of the Project's viability, risks and costs at the time of sanction and the Government's subsequent oversight of the Project.

[5] The applicants now seek to broaden the meaning and context of those words so that the Commission of Inquiry would have the authority to examine the present democratic process in this Province. It is submitted by the applicants that due to "political duopoly", an electoral system dominated by two parties resulting in majority governments, projects like Muskrat Falls proceed notwithstanding disagreement by those not in power. It is also suggested that party loyalty stifles appropriate legislative debate with MHAs wielding little real power. The applicants suggest that those who disagree with Government initiatives and policies risk penalization for their views and that this results in people at our education institutions, for instance, who have expertise not being willing to speak out against something proposed by Government. The applicants go on to state that rather than the Inquiry only determining what happened here and placing blame, it should "address the misuse of the democratic process" in this Province.

[6] As stated in my interpretation of the mandate of this Inquiry, I am limited in my jurisdiction and authority to what is set out in the Order in Council establishing the Commission of Inquiry. Going beyond the mandate given is not something that I have the ability or authority to do.

[7] Upon my review of the Commission's Terms of Reference, I am satisfied that I am not able to inquire into what the applicants are seeking standing to raise at this Inquiry. It is beyond the scope of this Commission of Inquiry to investigate the

democratic process in this Province. (See my comments at paragraph 48 of my interpretation of the Terms of Reference.) While the applicants submit that it is not sufficient to merely conduct an investigation into the Project circumstances related to sanction, construction and oversight, this is precisely what the Lieutenant-Governor in Council has mandated this Commission to do.

[8] Also to be considered is the need to conclude this Inquiry and submit a final report by December 31, 2019. Based upon the extent of the document disclosure to date and that expected to be brought forward, the size of this Project and its costs as well as the complexity of the issues raised by the Terms of Reference, there simply is not enough time to inquire into the general democratic process as described by the applicants even if I had the jurisdiction to do so.

[9] As a result, I regret that I must conclude that I see no basis pursuant to section 5(2) of the *Public Utilities Act, 2006*, S.N.L. 2006 c. P-38.1 to grant standing to the applicants.

[10] I would also indicate to the applicants that a denial of standing does not mean that they cannot make submissions in writing to the Commission on such matters as public involvement and transparency for major projects or initiatives requiring Government approval. That is something the Commission will likely be considering as part of the recommendations to be made. The applicants might wish to provide a paper to the Commission on the subject of public involvement and transparency requirements for future major projects

[11] I thank the applicants for their submissions.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER