



## Commission of Inquiry Respecting the Muskrat Falls Project

### **DECISION ON APPLICATION FOR FUNDING FOR LEGAL COUNSEL – MARK DENNIS TURPIN FOR THE MUSKRAT FALLS INQUIRY**

#### **DECISION**

**November 15, 2018**

**LEBLANC, J.:**

#### **INTRODUCTION**

[1] Mark Dennis Turpin has applied for funding to retain legal counsel as a result of a request by Grant Thornton to interview him, such coming at the behest of the Commission of Inquiry. Grant Thornton has been retained by the Commission of Inquiry to conduct an audit regarding the sanction and construction phases of the Muskrat Falls Project. It is also expected that Mr. Turpin will be eventually interviewed by Commission Counsel. No decision has yet been made as to whether he will be called as a witness at the Commission's hearings.

[2] Mr. Turpin, in his application, has advised that he sought the assistance of Nalcor Energy, with whom he had been associated, to fund him to obtain legal advice as has been done by Nalcor for its other employees, consultants and Project Management team members who have been interviewed at the behest of the Commission. As he wanted counsel other than Nalcor Energy's lawyer, he was referred to another law firm but it was subsequently determined by that firm that they would be in a conflict of interest if they were to represent Mr. Turpin. Mr. Turpin requested that Nalcor Energy provide him with other counsel but Nalcor Energy has advised him that it is not prepared to fund any other counsel for him.

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## ANALYSIS

[3] The ability to fund the services of a lawyer for the purposes of participating in an Inquiry is set out in section 5 of the *Public Inquiries Act, 2006*, S.N.L. 2006 c.P-38.1. Section 5(5) permits a Commission of Inquiry to recommend that the Government of Newfoundland and Labrador provide funding for counsel and other expenses of a person “who is permitted to participate in an Inquiry”. It is then left to the Government to decide if funding will be provided.

[4] In assessing Mr. Turpin’s application, I would first of all question whether Section 5(5) of the Act permits me to recommend that funding for legal counsel should be recommended for a person who does not have standing before the Commission of Inquiry.

[5] The full content of Section 5 of the Act provides an important context for my consideration in this regard. It states as follows:

- 5.(1) A commission of inquiry shall give those persons who believe that they have an interest in a 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.
- (3) A person who is permitted to participate in an inquiry may participate on his or her own behalf or be represented by counsel of his or her choice and, where an opportunity to appear before the commission is provided, may accompany and appear with his or her counsel.
- (4) A commission shall not make a report against a person until the commission has given reasonable notice to the person of the charge of misconduct alleged against him or her and the person has been allowed full opportunity to be heard in person or by counsel.

- (5) A commission may recommend that the government of the province provide funding for counsel and other expenses of a person who is permitted to participate in an inquiry.
- (6) Where a commission makes a recommendation under subsection (5), the minister shall consider the recommendation and advise the person concerned of the decision of the government and the level of funding to be provided, if any.

[6] From the context presented, participation in an Inquiry appears to mean participation to a far greater extent than merely being requested to attend an interview by Commission counsel or a designate of the Commission such as Grant Thornton. Generally speaking, section 5(2) provides a means for individuals or others to apply for standing so as to participate in Inquiry hearings. In the present circumstances, I can see no basis upon which Mr. Turpin would meet the requirements of Section 5(2) (a) (b) and (c) to obtain standing. Furthermore, I likewise see no basis for any type of notice at this stage as required in Section 5(4) of the Act.

[7] As stated earlier, at this point in time, only interviews of Mr. Turpin are proposed. There has been no decision that I am aware of that he will be called as a witness at the Inquiry hearings.

[8] Based on all that is before me, I am unable to conclude that Mr. Turpin is entitled to a recommendation for funding based upon the interpretation that I am giving to Section 5 of the Act and his present circumstances. Even if I am wrong in my interpretation of the Act, I am not persuaded that a recommendation for funding for legal counsel should be made at this time. I say this recognizing what I see as being a rather surprising position being taken by Nalcor Energy limiting Mr. Turpin's choice to be represented by external legal counsel where he has already been advised that counsel approved by Nalcor Energy are not prepared to represent him. Having said this, Nalcor Energy's policy in providing counsel to its employees is not of any significant relevance on the decision that I am being asked to make at this time.

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[9] In denying a recommendation for funding for Mr. Turpin, I am not foreclosing the possibility that a person not being a party with standing might obtain a funding recommendation. For instance, there could be a situation where a person could be faced with an allegation of misconduct and counsel representation may be necessary.

[10] In conclusion then, the application for a recommendation for funding must be denied considering what I have stated above and the specific circumstances involved. Should Mr. Turpin wish to be represented by legal counsel, there is nothing before me to suggest that he is unable to afford representation. To avoid costs, I would request that Commission counsel attempt to arrange any interview either be conducted by telephone or electronic means should Mr. Turpin be required to be at his place of employment at that time or, alternately, that any interview take place on a weekend when Mr. Turpin will be in St. John's.

  
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**JUSTICE RICHARD D. LEBLANC**  
**COMMISSIONER**