

Information Note
Department of Environment and Climate Change (ECC)

Title: Independent Expert Advisory Committee (IEAC) Terms of Reference (TOR) Progress Update

Issue: This note was prepared by the department to provide a progress update respecting discussions with the three Indigenous Organizations regarding the TOR.

Background and Current Status:

- On Dec. 9, 2016, a draft TOR was provided to ECC representing consensus reached by the three Indigenous organizations. Further to ECC's information note of December 30, 2017, ECC forwarded suggested changes to the officials of the three Indigenous organizations just prior to a scheduled conference call held on January 12, 2016.
- Subsequent to the January 12 call, consensus comments from the Indigenous organizations were received by ECC on January 23rd. ECC provided a progress update on January 30th, following which a modified TOR was sent to the three Indigenous organizations on February 1st, with a conference call held on February 3rd.
- Post the February 3rd call, a summary TOR (see annex), highlighting the areas that required federal signoff as well as the areas for which agreement had not yet been reached, was sent to the three Indigenous organizations.
- On February 10th, consensus comments from the Indigenous organizations were received.

Analysis:

- Prior to the Feb 3rd conference call, the outstanding areas pertained to:
 - absence of a voting role for federal/provincial governments on the Oversight committee;
 - prohibition on any person with past or present affiliation with Nalcor, even from a consultant/external contractor perspective, from being appointed on the expert sub-group;
 - intent for the IEAC to be able to determine new research needed and direct it to be done (vs recommend it to regulators), inclusive of a budget to support same; and,
 - restriction of the type of research considered to that of 'peer reviewed' research.
- The conference call found wording regarding 'peer reviewed' research that addresses the province's concerns and met the approval of officials of the three Indigenous groups.
- While the call identified issues regarding the proposed location of the IEAC office (Cherrywood Drive, HVGB, where ECC has wildlife staff but ample vacant space), it appears there is agreement if suitable barriers (physical and IT) and signage can be installed.
- There also appeared to be acceptance of the setting of a small research budget that the IEAC could control and direct, with any additional research funding requirements needing to come to the Regulator(s) as a recommendation for approval.
- On the call there continued to be resistance to the issue of voting for the provincial and federal representatives, as well as the wording on the prohibition of any individual with past or present affiliation with Nalcor from consideration for the scientific expert committee. However, post the call the Indigenous organizations indicated they are willing to strike any

wording regarding the Nalcor prohibition, if government was willing to forgo a voting role on the Committee.

- A new issue arose in the February 3 discussions, pertaining to payments for the expert members (and in some cases for Oversight committee members). Provincial officials indicated that further internal discussion would be needed but that any agreed to payment would likely be predicated on adherence to Treasury Board established rates for Agencies, Boards, Commissions and Committees of this nature. Subsequent to the call, the Treasury Board Guidelines (publically available) were shared with the Indigenous organizations.
- While there is acceptance that payment would not be provided to any representative who is an employee of one of the Committee's member organization, and a suggestion that an employee of a University also should not receive the rate, there is a strong objection to the TB rates for the other expert members. In the February 10th comments from the Indigenous groups they suggested these experts be paid at external consultant rates (market driven), with such rates applied to preparatory and travel time, in addition to meeting time. The Ontario Energy Board was cited as a model.
- Aside from requiring TB approval, payment at such rates could set a costly precedent for the province. Furthermore, equating committee membership with the role of contracted expert consultants is inappropriate.
- The risks of forgoing a voting role for the provincial representative on the Oversight Committee may be mitigated if appropriate changes are made to other areas of the TOR. In particular: ensuring dissenting opinions, including those of the non-voting members, must be documented in any recommendations being brought forward (the Indigenous organizations have agreed to this change); and, ensuring that the scientific experts are chosen by consensus among the members of the Oversight Committee, inclusive of the provincial and federal representatives, with the inability to achieve consensus resulting in each OC member (except Nalcor) choosing one expert each from those nominated (not yet proposed). It should be noted that even with a vote provincially and federally, the Indigenous organization can carry the vote (if they are aligned) even if provincial and federal representatives are not in agreement.
- It is not known what the federal government's reaction would be to a non-voting role. The four federal departments contacted regarding participation on the IEAC declined to comment on the governance and reporting structure pending a further developed TOR. A draft should be provided to them for comment in the coming weeks.

Action Being Taken:

- A response to the recent proposal, in the terms of a new draft of the TOR, is under discussion by ECC, NR and LAA.
- Assessment of the timing and approach to seeking federal comment on the TOR is underway and Intergovernmental Affairs will be engaged in that regard.

Prepared/Approved by: C. Janes (in consultation with A. Gover, LAA and W. Parsons, NR)
Reviewed by: D. Whelan/K. Quinlan, Cabinet Secretariat
Ministerial Approval: Received from Hon. Perry Trimper

February 16, 2017

ANNEX A**Independent Expert Advisory Committee
Draft Terms of Reference****Mission:**

To oversee and provide independent assessment of the adequacy of mitigation, monitoring and management measures, and provide recommendations to the Responsible Minister[s] with respect to those and addition of any further such measures for the protection of the health of the Indigenous and local population impacted by the Lower Churchill Project, and in particular increases of methylmercury in country foods in the Churchill River near Muskrat Falls and downstream, all along the river and including Lake Melville.

Mandate:

The protection of the health of the Indigenous and local populations will guide the work of the IEAC. With this in mind the IEAC mandate is:

- to use the best available peer reviewed science and Indigenous knowledge, and may consider other relevant research only in addition to and not instead of the above-mentioned peer reviewed science, to assess and recommend options for mitigation of methylmercury impacts, including but not limited to discussing the feasibility, necessity and potential impacts of further clearing of the Muskrat reservoir;
- to review the plans for monitoring, monitoring results and key findings arising from research and monitoring, about or relevant for mitigation of methylmercury impacts; and
- to direct the research activities and recommend the design of new monitoring and mitigation measures for the protection of the health of Indigenous and local populations.

Objectives:

1. To review existing and direct new scientific research and Indigenous knowledge research, as necessary, so as to develop evidence-based recommendations on the protection of health of the Indigenous and local populations who harvest and consume country foods in the Churchill River near Muskrat Falls and downstream, all along the river and including Lake Melville.

2. To review existing plans for monitoring impacts on human health, and recommend, as necessary, the design of additional plans and protocols necessary for a robust, integrated monitoring plan to protect human health, associated with methylmercury in the environment and its effects on human health.

3. To review the results from any monitoring plans, measures, and programs, and to review key findings arising from those results, and from any relevant research, studies and assessments that relate to or are relevant to the protection of human health.

4. To make recommendations to the Responsible Ministers and Regulator[s], namely the provincial Minister of Environment and Climate Change, [and the federal Minister of Fisheries and Oceans], and any other appropriate Responsible Ministers of both the provincial [and federal] governments, to be identified by the Oversight Committee, using the best available peer

reviewed science, Indigenous knowledge, and may consider other relevant research only in addition to and not instead of the above-mentioned peer reviewed science, on mitigation, monitoring and management measures to protect human health and the environment, that are aimed at protecting the health of the Indigenous and local population who harvest and consume country foods in the Churchill River and Lake Melville.

Structure:

Independent Chair

Selection & Criteria:

The Independent Chair will be selected, using a consensus based approach, by the Province Innu Nation, Nunatsiavut Government, and NunatuKavut Community Council. Each will recommend a maximum of two potential candidates for consideration and discussion.

Nominations for the Independent Chair should meet the following minimum requirements:

- experience or familiarity with Indigenous issues and with affected groups, including having confidence of the Indigenous groups and communities;
- knowledge of Labrador and regional issues;
- some expertise in or knowledge of relevant science and research;
- neutral with respect to the Lower Churchill Project/Muskrat Falls; and
- competency and experience in chairing these sorts of boards.

Responsibilities:

The Independent Chair will be responsible for:

- organizing and presiding over meetings of the Oversight Committee and the Independent Experts Committee;
- compiling list of experts that may sit as members, or may be needed to contribute research on an as needed basis from time to time, to the Independent Experts Committee;
- reviewing existing research, directing any new research to be completed and recommending to the Responsible Ministers any monitoring and mitigation measures deemed necessary as a result of that research.
- coordinating between the two Committees, Oversight and the Independent Experts, to finalize recommendations from the IEAC, and reporting IEAC recommendations directly to the Responsible Ministers or Regulators;
- coordinating regular reporting and communication to the Indigenous groups and affected communities, e.g. regular updates via a web site created for the public to report on progress, newsletters, public sessions;
- the Independent Chair may delegate any of the above-listed duties, as may be appropriate, to the Research Director and any additional support staff, and will be responsible for supervising said staff in carrying out these and other tasks as may be assigned.

Oversight Committee

The Oversight Committee (the “OC”) will be comprised of the Independent Chair, and seven (7) other members (the “OC Members”), including a representative appointed by each of the following:

- Nunatsiavut Government (1)
- Innu Nation (1)
- NunatuKavut (1)
- Affected Municipalities (1)

Provincial government (1, [non-voting])
Nalcor (1, non-voting)
[Federal government (1, non-voting)]

Representatives appointed by each party as an OC Member should have the authority, delegated or otherwise, to provide opinion/perspective or to vote on behalf of the party being represented to ensure that the OC can act in an efficient manner to meet its Mandate and achieve the Objectives.

Each party may appoint an alternate or additional representative, but that shall not vary or amend the voting structure. Any additional representative appointed by a party shall be considered an ex-officio member.

Quorum:

Three (3) of the voting OC Members, and the Independent Chair shall constitute quorum.

Term:

Each OC Member shall serve a term of two (2) years and may be reappointed at the discretion of their representative organization.

Subcommittee:

The OC will also include a subcommittee for the representatives of NunatuKavut, Innu Nation and Nunatsiavut, that can meet from time to time as may be necessary.

Recommendation Making of the OC:

The OC shall operate by consensus of all members, including non-voting members, as may be possible. Where no consensus can be reached, dissenting opinions of all members, including the non-voting members, shall be attached to the majority vote. The Chair shall vote only in order to break a tie.

Frequency of Meetings:

The OC will meet at least on a quarterly basis. The Independent Chair may convene additional meetings on an as needed basis, upon providing reasonable notice to all OC Members.

Vacancies:

Any vacancy of the IEC shall be filled in the same manner as the original appointment.

Independent Experts Committee

Structure and Appointment of Members:

The Independent Experts Committee (“IEC”) will be made up of nine (9) members (the “IEC Members”), as follows:

Six (6) Scientific Experts

- After the establishment of the Oversight Committee, the OC Members shall consider individuals nominated by the Members and the Independent Chair for appointment to the IEC that have relevant scientific expertise, including in methylmercury;
- Scientific Experts will be selected by the OC, based on their consensus based and voting provisions, based on consideration of their scientific expertise, experience and

qualifications, [and with due consideration to the presence of any conflicts of interest];

- [Individuals who have worked for or are employed by Nalcor in any capacity shall not be eligible for appointment as one of the six (6) Scientific Experts.] **OR** [Individuals who have been or are directly employed by Nalcor shall not be eligible for appointment as one of the six (6) Scientific Experts. For clarity, “directly employed” does not include individuals associated with work (consulting services or general contracting), past or present, contracted out by Nalcor.]
- The OC and/or the Independent Chair may direct that additional scientific experts (with expertise in different or additional subject matters than those that are appointed as IEC Members) are needed to contribute research to, work with and/or sit on the IEC on an ad hoc basis. [For that purpose, previous engagement with Nalcor shall not be a disqualifying factor.]

Three (3) Indigenous Knowledge Experts

- Each of Innu Nation, Nunatsiavut and NunatuKavut shall appoint an individual as Indigenous Knowledge Expert to serve as an IEC Member.
- Other individuals with expertise in Indigenous Knowledge in different or additional subject matters or areas than those that are appointed as IEC Members, e.g. additional Elders, may be engaged by the IEC from time to time.

Recommendation Making of the IEC:

The members of the IEC will discuss matters and provide recommendations to the Oversight Committee by consensus. Where no consensus can be reached, dissenting opinions shall be attached to the recommendations made by a majority vote.

Frequency of Meetings:

The IEC will meet on an as needed basis, to be determined by the OC and/or the Independent Chair.

Vacancies:

Any vacancy of the IEC shall be filled in the same manner as the original appointment.

Support Staff and Office Location

Support staff shall be hired/appointed to provide assistance and administrative support to the Independent Chair and each Committee, e.g. recording and distribution of minutes, providing administrative assistance and support for the Members and the Committees. Paid staff must include:

- Independent Chair
- Research Director
- Senior administrative support (e.g. with accounting experience, ability to coordinate with groups)

An office shall be established [at 15 Cherrywood Drive, Happy Valley-Goose Bay, in the building where the Department of Environment and Climate Change currently have Wildlife Staff, and vacant office space. Distinct and separate space, with appropriate signage to identify it as an independent office, will be provided.]

Budget

With the exception of travel costs for the provincial and federal government representative, which shall be the responsibility of their respective departments, funding of the activities of the IEAC will be provided by Nalcor, in accordance with the following annual budget outlined below.

Travel costs and related expenses for staff of the IEAC and the remaining members of the Oversight Committee, and Independent Experts Committee shall be reimbursed in accordance with provincial government rates, as established by Treasury Board.

<p>Salaries – Support Staff Independent Chair* \$125,000 Research Director \$100,000 Senior Admin support \$50,000</p>		
<p>Travel</p>	<p>[\$100,000] Note: GNL is exploring potential increase to 120k to provide contingency in the event the Chair calls additional meetings, or experts are appointed from farther parts of Canada/elsewhere</p>	<p>Support Staff Chair all meetings of OC and IEC 8 meetings in HV-GB = \$41,000 Oversight Committee (OC) OC will meet on a quarterly basis in HV-GB. 9 members meeting 4 times/year for 2 days/meeting. 2 provincial reps – airfare, accommodations and meals = \$3500/ meeting x 4 meetings = \$14,000 3 Indigenous reps and municipal member – meals = \$1600. Independent Expert Committee (IEC) IEC will meet on as needed basis however expect 3 meetings prior to July 2017 and as needed thereafter. Meetings to be held in HV-GB. 9 members in total – 6 members travelling to HV-BG. 4 meetings = \$41,000 3 Indigenous members – meals for 4 meetings = \$1200.</p>
<p>Supplies</p>	<p>\$30,000</p>	<p>Office supplies to establish office in HV-GB for Support staff including office supplies, computers, printers, copiers, stationary supplies.</p>
<p>[Honoraria]</p>	<p>[TBD]</p>	<p>[Honoraria, at rates established by Treasury Board (provincial) for Tier 2 Boards, will be provided to the members of the IEC, for attendance at meetings. Members of the OC would only receive honoraria if the representative is not a salaried employee of the party who has appointed them. Those rates, if needed, would be in accordance with Treasury Board’s rates for Tier 1 Boards. Current rates can be found at http://www.exec-abc.gov.nl.ca/guidelines_remuneration_rates.pdf]</p>
<p>Professional Services**</p>	<p>\$200,000</p>	<p>Funds to conduct research or engage in contractual work recommended by the IEC and as authorized by the OC</p>
<p>Property Furnishings and Equipment</p>	<p>\$20,000</p>	<p>Computer desks and chairs, bookshelves, boardroom table and chairs, phones, etc.</p>
<p>Miscellaneous</p>	<p>\$3500</p>	
<p>Total</p>	<p>\$628,500</p>	

*To ensure optimal conditions exist for the selection of an Independent Chair, flexibility in terms

of having the ability to have such a position either on salary and located in HVGB or contracted via a professional services contract and working remotely from elsewhere, is important. While in either case the costs would be budgeted at \$125,000 the funding may need to be placed in the professional services line, vs salaries line, based on the chosen Independent Chair's preference.

** Any amount in excess of the budget deemed necessary for the conduct of further research or contractual work will require a recommendation to, and decision by, the Responsible Minister[s] or Regulator[s]

BN-2017

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Action Being Taken:

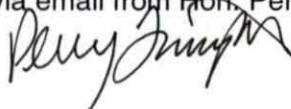
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Prepared/Approved by:

Ministerial Approval:

February 15, 2017

C. Janes; in consultation with A. Gover, LAA; W. Parsons, NR
Received via email from Hon. Perry Trimper



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Draft Terms of Reference****Mission:**

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Mandate:

The protection of the health of the Indigenous and local populations will guide the work of the IEAC. With this in mind the IEAC mandate is:

- to use the best available peer reviewed science and Indigenous knowledge, and may consider other relevant research only in addition to and not instead of the above-mentioned peer reviewed science, to assess and recommend options for mitigation of methylmercury impacts, including but not limited to discussing the feasibility, necessity and potential impacts of further clearing of the Muskrat reservoir;
- to review the plans for monitoring, monitoring results and key findings arising from research and monitoring, about or relevant for mitigation of methylmercury impacts; and
- to direct the research activities and recommend the design of new monitoring and mitigation measures for the protection of the health of Indigenous and local populations.

Objectives:

1. To review existing and direct new scientific research and Indigenous knowledge research, as necessary, so as to develop evidence-based recommendations on the protection of health of the Indigenous and local populations who harvest and consume country foods in the Churchill River near Muskrat Falls and downstream, all along the river and including Lake Melville.

2. To review existing plans for monitoring impacts on human health, and recommend, as necessary, the design of additional plans and protocols necessary for a robust, integrated monitoring plan to protect human health, associated with methylmercury in the environment and its effects on human health.

3. To review the results from any monitoring plans, measures, and programs, and to review key findings arising from those results, and from any relevant research, studies and assessments that relate to or are relevant to the protection of human health.

4. To make recommendations to the Responsible Ministers and Regulator[s], namely the provincial Minister of Environment and Climate Change, [and the federal Minister of Fisheries and Oceans], and any other appropriate Responsible Ministers of both the provincial [and

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Structure:

Independent Chair

Selection & Criteria:

The Independent Chair will be selected, using a consensus based approach, by the Province Innu Nation, Nunatsiavut Government, and NunatuKavut Community Council. Each will recommend a maximum of two potential candidates for consideration and discussion.

Nominations for the Independent Chair should meet the following minimum requirements:

- experience or familiarity with Indigenous issues and with affected groups, including having confidence of the Indigenous groups and communities;
- knowledge of Labrador and regional issues;
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- neutral with respect to the Lower Churchill Project/Muskrat Falls; and
- competency and experience in chairing these sorts of boards.

Responsibilities:

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- compiling list of experts that may sit as members, or may be needed to contribute research on an as needed basis from time to time, to the Independent Experts Committee;
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Oversight Committee

The Oversight Committee (the "OC") will be comprised of the Independent Chair, and seven (7) other members (the "OC Members"), including a representative appointed by each of the following:

Nunatsiavut Government (1)

Innu Nation (1)

NunatuKavut (1)
 Affected Municipalities (1)
 Provincial government (1, [non-voting])
 Nalcor (1, non-voting)
 [Federal government (1, non-voting)]

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Each party may appoint an alternate or additional representative, but that shall not vary or amend the voting structure. Any additional representative appointed by a party shall be considered an ex-officio member.

Quorum:

Three (3) of the voting OC Members, and the Independent Chair shall constitute quorum.

Term:

Each OC Member shall serve a term of two (2) years and may be reappointed at the discretion of their representative organization.

Subcommittee:

The OC will also include a subcommittee for the representatives of NunatuKavut, Innu Nation and Nunatsiavut, that can meet from time to time as may be necessary.

Recommendation Making of the OC:

The OC shall operate by consensus of all members, including non-voting members, as may be possible. Where no consensus can be reached, dissenting opinions of all members, including the non-voting members, shall be attached to the majority vote. The Chair shall vote only in order to break a tie.

Frequency of Meetings:

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Vacancies:

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Independent Experts Committee

Structure and Appointment of Members:

The Independent Experts Committee ("IEC") will be made up of nine (9) members (the "IEC Members"), as follows:

Six (6) Scientific Experts

- After the establishment of the Oversight Committee, the OC Members shall consider individuals nominated by the Members and the Independent Chair for appointment to the IEC that have relevant scientific expertise, including in methylmercury;

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- Research Director
- Senior administrative support (e.g. with accounting experience, ability to coordinate with groups)

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vacant office space. Distinct and separate space, with appropriate signage to identify it as an independent office, will be provided.]

Budget

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Travel costs and related expenses for staff of the IEAC and the remaining members of the Oversight Committee, and Independent Experts Committee shall be reimbursed in accordance with provincial government rates, as established by Treasury Board.

<p>Salaries – Support Staff Independent Chair* Research Director Senior Admin support</p>	<p>\$125,000 \$100,000 \$50,000</p>	
<p>Travel</p>	<p>[\$100,000] Note: GNL is exploring potential increase to 120k to provide contingency in the event the Chair calls additional meetings, or experts are appointed from farther parts of Canada/elsewhere</p>	<p>Support Staff Chair all meetings of OC and IEC 8 meetings in HV-GB = \$41,000 Oversight Committee (OC) OC will meet on a quarterly basis in HV-GB. 9 members meeting 4 times/year for 2 days /meeting. 2 provincial reps – airfare, accommodations and meals = \$3500/ meeting x 4 meetings = \$14,000 3 Indigenous reps and municipal member – meals = \$1600. Independent Expert Committee (IEC) IEC will meet on as needed basis however expect 3 meetings prior to July 2017 and as needed thereafter. Meetings to be held in HV-GB. 9 members in total – 6 members travelling to HV-BG. 4 meetings = \$41,000 3 Indigenous members – meals for 4 meetings = \$1200.</p>
<p>Supplies</p>	<p>\$30,000</p>	<p>Office supplies to establish office in HV-GB for Support staff including office supplies, computers, printers, copiers, stationary supplies.</p>
<p>[Honoraria]</p>	<p>[TBD]</p>	<p>[Honoraria, at rates established by Treasury Board (provincial) for Tier 2 Boards, will be provided to the members of the IEC, for attendance at meetings. Members of the OC would only receive honoraria if the representative is not a salaried employee of the party who has appointed them. Those rates, if needed, would be in accordance with Treasury Board's rates for Tier 1 Boards. Current rates can be found at http://www.exec-abc.gov.nl.ca/guidelines_remuneration_rates.pdf]</p>
<p>Professional Services**</p>	<p>\$200,000</p>	<p>Funds to conduct research or engage in contractual work recommended by the IEC and as authorized by the OC</p>
<p>Property Furnishings and Equipment</p>	<p>\$20,000</p>	<p>Computer desks and chairs, bookshelves, boardroom table and chairs, phones, etc</p>
<p>Miscellaneous</p>	<p>\$3500</p>	
<p>Total</p>	<p>\$628,500</p>	

*To ensure optimal conditions exist for the selection of an Independent Chair, flexibility in terms of having the ability to have such a position either on salary and located in HVGB or contracted via a professional services contract and working remotely from elsewhere, is important. While in either case the costs would be budgeted at \$125,000 the funding may need to be placed in the professional services line, vs salaries line, based on the chosen Independent Chair's preference.

** Any amount in excess of the budget deemed necessary for the conduct of further research or contractual work will require a recommendation to, and decision by, the Responsible Minister[s] or Regulator[s]