



Commission of Inquiry
Respecting the
Muskrat Falls
Project

Muskrat Falls: A Misguided Project



Volume 1: Executive Summary, Key Findings and
Recommendations

Volume 2: Pre-Sanction Events

Volume 3: Post-Sanction Events

Volume 4: Looking Forward

Volume 5: Appendices

Volume 6: Exhibit Listing

The Honourable Richard D. LeBlanc
Commissioner

March 5, 2020

**COMMISSION OF INQUIRY RESPECTING
THE MUSKRAT FALLS PROJECT**

MUSKRAT FALLS: A MISGUIDED PROJECT

VOLUME 5:

APPENDICES

The Honourable Richard D. LeBlanc, Commissioner

Submitted to:

**The Honourable Siobhan Coady
Minister of Natural Resources
for the Province of Newfoundland and Labrador**

March 5, 2020

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SNL2006 CHAPTER P-38.1

PUBLIC INQUIRIES ACT, 2006

Amended:

2008 c47 s15; 2017 cP-3.01 s31; 2018 c6 s1

CHAPTER P-38.1

AN ACT TO REVISE THE LAW RESPECTING THE CONDUCT OF PUBLIC INQUIRIES

(Assented to December 12, 2006)

Analysis

1. Short title	PART II
2. Definitions	OTHER INQUIRIES
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rant	23. Staff
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exclusion	25. Protection of employees
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15. Request for direction	27. Joint inquiries
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29. Policies respecting remuneration and expenses

30. Other Acts giving powers of commissioner
31. RSNL1990 cP-38 Rep.

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Public Inquiries Act, 2006*.

2006 cP-38.1 s1

Definitions

2. In this Act

(a) "commission" means a commission of inquiry established under Part I;

(b) "court" means the Trial Division;

(c) "inquiry" means an inquiry conducted under Part II; and

(d) "minister" means the minister appointed under the *Executive Council Act* to administer this Act.

2006 cP-38.1 s2

PART I COMMISSIONS OF INQUIRY

Commissions of inquiry

3. (1) The Lieutenant-Governor in Council may by order establish a commission of inquiry to inquire and report on a matter that the Lieutenant-Governor in Council considers to be of public concern.

(2) Where a commission is established under subsection (1), the Lieutenant-Governor in Council shall, in the order,

(a) appoint the members of the commission in accordance with section 21;

(b) establish the jurisdiction of the commission by setting terms of reference for the inquiry;

(c) designate the minister responsible for the inquiry; and

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*Public Inquiries Act, 2006**Chapter P-38.1*

- (d) fix a date for the termination of the inquiry and for the delivery of the commission's report.

(3) Where it is in the public interest, the Lieutenant-Governor in Council may by order revise the terms of reference for the inquiry and revise the dates set for the termination of the inquiry and delivery of the commission's report.

2006 cP-38.1 s3

Reporting

4. (1) A commission shall deliver its report in writing to the minister designated by the Lieutenant-Governor in Council by the date fixed for delivery of the report under section 3.

(2) The minister referred to in subsection (1) shall release the report to the public.

2006 cP-38.1 s4

Participation at inquiry

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.

(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

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Public Inquiries Act, 2006

Chapter P-38.1

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.

2006 cP-38.1 s5

Public hearings

6. (1) A commission may decide whether evidence presented to the inquiry or a representation to the inquiry is to be oral or in writing.

(2) Where a commission holds an oral hearing it shall be conducted in public, but a commission may exclude the public from a hearing, or from part of it, where it decides that the public interest in holding the hearing, or a part of it, in public is outweighed by another consideration, including the consequences of possible disclosure of personal matters, public security or the right of a person to a fair trial.

2006 cP-38.1 s6

Media coverage

7. (1) A commission may arrange for the publishing or broadcast of its proceedings.

(2) A commission may by order restrict or prohibit the public reporting of its proceedings and the publishing of evidence at the inquiry where the commission decides that the public interest in reporting or publication is outweighed by another consideration, including the consequences of possible disclosure of personal matters, public security or the right of a person to a fair trial.

2006 cP-38.1 s7

Witnesses

8. (1) A person who appears before a commission to give testimony has the same immunities as a witness who appears before the court.

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Public Inquiries Act, 2006

Chapter P-38.1

(2) A person who is summoned to appear before a commission shall be paid for his or her appearance and any travel and other expenses reasonably incurred in relation to that appearance out of the Consolidated Revenue Fund in accordance with policies established by the Lieutenant-Governor in Council under section 29.

2006 cP-38.1 s8

Power to compel
evidence

9. A commission may, by summons,

- (a) require a person to attend as a witness and give evidence, orally or in writing, on oath or by affirmation; and
- (b) require a person to produce to the commission or a person designated by the commission all documents, records, including documents or records maintained in electronic form, and things in his or her custody or control that may relate in any way to the subject of the inquiry.

2006 cP-38.1 s9

Power to inspect

10. (1) Where a commission believes it is reasonably necessary to the conduct of an inquiry, the commission, or a person whom the commission may authorize for the purpose, may

- (a) at reasonable times enter a premises to view or inspect the premises;
- (b) require the production of records, documents, including documents or records maintained in electronic form, or other things relating to the subject of the inquiry and may examine those records, documents or other things or remove them for the purpose of making copies of them; and
- (c) make inquiries of a person on the premises into all matters relating to the subject of the inquiry.

(2) Where a commission or a person authorized by the commission removes records, documents or other things under paragraph (1)(b), the commission or person shall give to the person from whom they were taken a receipt for them and shall immediately make copies of them where possible and return the originals to the person who was given the receipt.

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Public Inquiries Act, 2006

Chapter P-38.1

2006 cP-38.1 s10

Power to search
with warrant

11. (1) Where a commission, or another person whom the commission may authorize for the purpose, is refused or denied entry onto a premises or the commission is of the opinion that entry without notice is necessary, and the commission has reasonable grounds to believe that entering and searching the premises will assist in the conduct of its inquiry, the commission may apply to the court, without giving notice to another person, for a warrant permitting the commission or a person named in the warrant to do those things referred to in section 10.

(2) A judge of the court, who is satisfied on oath or affirmation that there are reasonable grounds for believing that entering and searching the premises will assist in the conduct of an inquiry, may issue a warrant authorizing a commission or a person named in the warrant to enter the premises and search for and inspect anything that will assist in the conduct of an inquiry and to do all those things referred to in section 10.

2006 cP-38.1 s11

Evidentiary privileges

12. (1) A person has the same privileges in relation to the disclosure of information and the production of records, documents or other things under this Act as the person would have in relation to the same disclosure and production in a court of law.

(2) Notwithstanding subsection (1) but subject to subsection (4), a rule of law that authorizes or requires the withholding of records, documents or other things or a refusal to disclose information, on the grounds that the disclosure would be injurious to the public interest or would violate Crown privilege, does not apply in respect of an inquiry under this Act.

(3) Notwithstanding subsection (1) but subject to subsection (4), a person shall not refuse to disclose information to a commission or a person authorized by a commission on the grounds that the disclosure is prohibited or restricted by another Act or regulation.

(4) Notwithstanding another provision of this section, subsections (2) and (3) do not apply to quality assurance information as defined in the *Patient Safety Act* in a proceeding in which evidence is or may be given before a committee of a governing body of a regulated health profession.

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Public Inquiries Act, 2006

Chapter P-38.1

2006 cP-38.1 s12; 2017 cP-3.01 s31

Application to court
for exclusion

13. (1) A person may apply to the court for an order excluding a person or a record, document or thing from the operation of subsections 12(2) and (3), and the court may, after considering the application and the submission of the commission and other interested parties, order that

- (a) the person may refuse to disclose information;
- (b) a record, document or thing may be withheld from the commission; or
- (c) the information shall be disclosed or the record, document or thing produced on conditions that the court may provide.

(2) There is no right of appeal from a decision of a judge made under this section.

2006 cP-38.1 s13

Contempt of com-
mission

14. Where a person without lawful excuse,

- (a) does not attend on being summoned under section 9 as a witness at an inquiry;
- (b) while in attendance as a witness at an inquiry, refuses to take an oath or to make an affirmation lawfully required by the commission to be taken or made, or to produce a document, record or thing in his or her custody or control lawfully required by the commission to be produced to it, or to answer a question to which the commission may lawfully require an answer;
- (c) contravenes an order of the commission under section 7 with respect to public reporting of its proceedings or the publishing of evidence; or
- (d) does any other thing that would, if the commission had been a court of law having power to commit for contempt, have been contempt of that court,

the commission may state a case to the court setting out the facts and the court may, on the application of the commission, inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing a statement that may be offered in defense, punish or take steps for the punishment of that person in the same manner as if he or she had been guilty of contempt of the court.

2006 cP-38.1 s14

Request for direction

15. (1) A commission may apply to the court for direction on a question of law or on the jurisdiction of the commission.

(2) There is no right of appeal from a decision of a judge made under this section.

2006 cP-38.1 s15

PART II OTHER INQUIRIES

Order directing inquiry

16. (1) The Lieutenant-Governor in Council may order that there be an inquiry under this Part into a matter that the Lieutenant-Governor in Council considers to be of public concern.

(2) In an order made under subsection (1), the Lieutenant-Governor in Council shall direct how the inquiry is to be conducted, including

- (a) appointing one or more persons in accordance with section 21 to carry out the inquiry and submit a report;
- (b) specifying the mechanisms by which the inquiry is to be conducted, which may include
 - (i) interviews and surveys,
 - (ii) research studies,
 - (iii) inspections and investigations,
 - (iv) calling for written submissions, and

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*Public Inquiries Act, 2006**Chapter P-38.1*

- (v) informal or formal hearings;
- (c) designating the minister responsible for the inquiry; and
- (d) specifying the nature and scope of the report to be submitted by the person or persons appointed to conduct the inquiry.

2006 cP-38.1 s16

Reporting

17. (1) The person or persons appointed to conduct an inquiry under this Part shall deliver a report in writing to the minister designated by the Lieutenant-Governor in Council under paragraph 16(2)(c).

- (2) The minister shall release the report to the public.

2006 cP-38.1 s17

Designation of powers

18. (1) Where an inquiry is directed under section 16, the Lieutenant-Governor in Council may, by order,

- (a) direct that persons who believe they have an interest in the subject of the inquiry have a right to participate in the inquiry, and where it is so directed the person or persons appointed to conduct the inquiry have the powers of a commission under section 5 and that section applies to the inquiry, with the necessary changes;
- (b) direct whether the person or persons appointed under section 16 are to receive evidence and representations in writing or orally, and where oral hearings are held, whether subsection 6(2) applies;
- (c) direct that the person or persons appointed under section 16 may arrange for the publishing or broadcast of proceedings held by him or her or them and, where so directed, subsection 7(2) applies to the inquiry as if it was a commission of inquiry;
- (d) direct that the person or persons appointed under section 16 have the powers of a commission under section 9 to compel the production of testimony and evidence;

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Public Inquiries Act, 2006

Chapter P-38.1

- (e) direct that the person or persons appointed under section 16 have the powers of a commission under section 10 to conduct inspections and, where so directed, subsection 10(2) applies as if the person or persons were commissioners;
- (f) direct that the person or persons appointed under section 16 have the power of a commission to apply for a warrant to search under section 11 and where so directed, subsection 11(2) applies as if the person or persons were commissioners; and
- (g) direct that the person or persons appointed under section 16 may apply to the court for direction under section 15 as if he or she or they were commissioners.

(2) An order made under this section shall be published in the *Gazette* and in a newspaper of general circulation in the province.

2006 cP-38.1 s18

Oral hearings

19. Where a person or persons appointed under section 16 hold oral hearings, sections 8 and 14 apply to the inquiry as if the person or persons were commissioners.

2006 cP-38.1 s19

Evidentiary privileges

20. Sections 12 and 13 apply to an inquiry held under this Part as if it was a commission of inquiry.

2006 cP-38.1 s20

PART III OTHER MATTERS

Appointment

21. (1) Members of a commission appointed under Part I or a person or persons appointed to conduct an inquiry under Part II shall be appointed on the terms and with the remuneration set by the Lieutenant-Governor in Council in the order of appointment.

(2) The Lieutenant-Governor in Council may terminate the appointment of a person under this Act if the person becomes mentally or physically incapable of performing his or her role.

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Public Inquiries Act, 2006

Chapter P-38.1

(3) A person appointed under this Act may resign by giving written notice to the Lieutenant-Governor in Council.

(4) The Lieutenant-Governor in Council may by order replace a person appointed under this Act who has resigned or whose appointment has been terminated because of incapacity.

(5) Where more than one person is appointed as a commissioner or to conduct an inquiry, the Lieutenant-Governor in Council may by order appoint one of them as chairperson.

2006 cP-38.1 s21

Commission fund-
ing

22. (1) Where a commission is established, the minister shall prepare an estimate of the expenditures required for the conduct of the inquiry in consultation with the commission.

(2) Where an amount is appropriated to defray the costs of an inquiry, the expenditures incurred by the commission in the conduct of the inquiry shall be paid out of the Consolidated Revenue Fund without further approval, except that the commission shall comply with the provisions of the *Financial Administration Act* relating to expenditures by departments and agencies of the government of the province and policies established by the Lieutenant-Governor in Council in respect of the inquiry under section 29.

(3) Where the terms of reference for the inquiry or the dates set for termination of the inquiry or delivery of the commission's report have been revised, the minister may prepare a revised estimate of expenditures and submit it for approval in the manner described in subsection (1), and subsection (2) applies to the further expenditures where the estimate is approved.

2006 cP-38.1 s22; 2008 c47 s15

Staff

23. (1) A commission or inquiry may engage the services of

- (a) counsel, clerks, reporters and assistants; and
- (b) other persons having special, technical or other expertise or knowledge.

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Public Inquiries Act, 2006

Chapter P-38.1

(2) A commission or inquiry may authorize a person referred to in subsection (1) to inquire into a matter that is within the scope of the inquiry being conducted by the commission.

(3) A person authorized under subsection (2) has the same powers and immunities as the commission under section 24.

2006 cP-38.1 s23

Immunity

24. (1) A commission, commissioners, persons appointed to conduct an inquiry and legal counsel to a commission or inquiry engaged under section 23 have the same privileges and immunities as a judge of the court for a decision or action, or failure to act, in carrying out an inquiry under this Act.

(2) A person authorized by a commission or an inquiry to conduct an inspection or search under section 10 or 11 has the same privileges and immunity in relation to that inspection or search as the commission or inquiry.

2006 cP-38.1 s24

Disclosure

24.1 (1) Where the Crown or a person designated under subsection (3) discloses to a commission or inquiry, either voluntarily or in response to a request or summons, any information over which immunity or privilege, including solicitor-client privilege, is asserted, the immunity or privilege is not waived or defeated for any purpose by the disclosure.

(2) Where a commission or inquiry determines that it is necessary to disclose information over which the Crown or a person designated under subsection (3) asserts immunity or privilege, including solicitor-client privilege, the immunity or privilege is not waived or defeated for any purpose by the disclosure.

(3) The Lieutenant-Governor in Council may designate persons to whom subsections (1) and (2) apply.

2018 c6 s1

Protection of employees

25. An employer shall not take a discriminatory action against an employee by dismissing the employee, by deducting wages, salary or other benefits or by taking other disciplinary action against him or her

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*Public Inquiries Act, 2006**Chapter P-38.1*

because the employee has in good faith made representations as a party or has disclosed information, in oral testimony or otherwise, to a commission, to a person or persons appointed under section 16 or to staff or agents of either of them.

2006 cP-38.1 s25

Review of actions

26. A decision or action taken by a commission or by persons appointed under section 16 is final and conclusive for all purposes and

- (a) shall not be challenged, reviewed, prohibited, restrained or quashed in a court; and
- (b) is not subject to proceedings or process of a court, including prohibition, mandamus, injunction, declaration or certiorari.

2006 cP-38.1 s26

Joint inquiries

27. Where the scope of an inquiry conducted under this Act includes matters within the jurisdiction of the government of another province, or a territory or of Canada, the minister may enter into an agreement or arrangement with that government about the joint establishment of a commission or inquiry and the manner in which the inquiry is to be conducted by the joint commission or inquiry.

2006 cP-38.1 s27

Preservation of records

28. The Lieutenant-Governor in Council shall adopt policies and procedures for the preservation of the records of a commission or inquiry and shall ensure that confidentiality is preserved for information that is confidential or privileged.

2006 cP-38.1 s28

Policies respecting remuneration and expenses

29. The Lieutenant Governor in Council may, either generally for all commissions established and inquiries held under this Act, or for a particular commission or inquiry, establish policies respecting

- (a) remuneration of commissioners;
- (b) remuneration of witnesses;

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Public Inquiries Act, 2006

Chapter P-38.1

- (c) allowances to witnesses for travel and out of pocket expenses;
- (d) other expenditures for services and facilities; and
- (e) other administrative matters.

2006 cP-38.1 s29

Other Acts giving
powers of commis-
sioner

30. Where another Act confers upon a person or body the powers of a commission under this Act, the powers conferred on the person or body are those powers given under sections 9 and 10 unless otherwise ordered by the Lieutenant-Governor in Council.

2006 cP-38.1 s30

RSNL1990 cP-38
Rep.

31. The *Public Inquiries Act* is repealed.

2006 cP-38.1 s31

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RSNL1990 CHAPTER P-39

PUBLIC INVESTIGATIONS EVIDENCE ACT

Amended:

CHAPTER P-39

AN ACT TO ENFORCE THE POWERS OF PUBLIC INVESTIGATING AND QUASI-JUDICIAL BODIES

Analysis

1. Short title

2. Definition

3. Failure to answer questions
etc.; penalty
4. Procedure

5. Form of subpoena

6. Saving clause
- Schedule

Short title

1. This Act may be cited as the *Public Investigations Evidence Act*.

RSN1970 c117 s1

Definition

2. In this Act "investigating body" includes a royal commission, commission of public inquiry, trade dispute board, public arbitration board, or similar body lawfully constituted by public authority and for public purposes which has the duty of reporting upon, deciding, settling or judging a matter of public concern and has power to take evidence on oath or affirmation and to compel attendance of witnesses and the production of documents.

RSN1970 c117 s2

Failure to answer
questions etc.;
penalty

3. (1) Where a person from whom an investigating body is authorized to require answers to questions or inquiries, or an account or

statement, or whose attendance an investigating body is authorized to require, refuses or wilfully neglects to answer those questions or inquiries or to give an account or statement or attend a meeting in obedience to an order or subpoena of that body or to give evidence before it, or wilfully alters, destroys, withholds or refuses to produce a deed, paper, writing, instrument, map, plan, book, or other document which may be lawfully required to be produced before that body or scandalizes that body at its sittings, that person is guilty of a contempt of the Supreme Court.

(2) A person guilty of contempt under subsection (1) shall be liable to be attached and committed or otherwise punished by that court on summary application by or on behalf of the investigating body to that court, and shall pay the costs of and attending that contempt as that court directs.

RSN1970 c117 s3

Procedure

4. In a case referred to in section 3 the investigating body may by itself or by a person authorized by it for the purpose issue an originating summons out of the Supreme Court entitled in the matter of the investigation in which the investigating body is concerned, and between the chairperson of the investigating body and the offender.

RSN1970 c117 s4

Form of subpoena

5. (1) A subpoena issued by an investigating body to an intended witness may be in the form set out in the Schedule.

(2) Notwithstanding subsection (1), a form of the same general effect shall be valid.

RSN1970 c117 s5

Saving clause

6. It is not an objection to a subpoena that it was not issued under a resolution or minute passed at a meeting of the investigating body, but a subpoena purporting to have been issued by the investigating body or by an officer of the investigating body on its behalf and signed by that officer is sufficient.

RSN1970 c117 s6

1990

*Public Investigations Evidence Act**Chapter P-39***Schedule**

(Here insert name of investigating body issuing)

Appointed (here insert date of appointment)

SUBPOENA

To _____

You are required to attend before the (here describe body) at (here describe place) on the _____ day of _____, 19 __ at _____ o'clock __.m. to give evidence as may be required of you. And bring with you (here describe documents, if any, to be brought by witness).

Dated the _____ day of _____, 19 __

(Name) _____
Chairperson (or Secretary)

Note: - By virtue of the *Public Investigations Evidence Act*, a person refusing or wilfully neglecting to attend, give evidence and produce documents, if lawfully required to do so by a public investigating body, is liable to be dealt with by the Supreme Court as a contempt of that court.

RSN1970 c117 Sch

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SNL2007 CHAPTER E-11.01

ENERGY CORPORATION ACT

Amended:

2008 c31; 2010 c31 s7; 2012 c47 ss4 to 10; 2015 cA-1.2 s125;
2016 cP-41.001 s30; 2018 c22 ss1 & 2; 2019 c8 s7

CHAPTER E-11.01

AN ACT TO ESTABLISH AN ENERGY CORPORATION FOR THE PROVINCE

(Assented to June 14, 2007)

Analysis

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*Be it enacted by the Lieutenant-Governor and House of Assembly
in Legislative Session convened, as follows:*

Short title

1. This Act may be cited as the *Energy Corporation Act*.

2007 cE-11.01 s1

Definitions

2. In this Act

- (a) "board" means the board of directors of the corporation;
- (b) "chairperson" means the chairperson of the board;
- (b.1) "commercially sensitive information" means information relating to the business affairs or activities of the corporation or a subsidiary, or of a third party provided to the corporation or the subsidiary by the third party, and includes
 - (i) scientific or technical information, including trade secrets, industrial secrets, technological processes, technical solutions, manufacturing processes, operating processes and logistics methods,
 - (ii) strategic business planning information,
 - (iii) financial or commercial information, including financial statements, details respecting revenues, costs and commercial agreements and arrangements respecting individual business activities, investments, operations or projects and from which such information may reasonably be derived,
 - (iv) information respecting positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the cor-

poration, a subsidiary or a third party, or considerations that relate to those negotiations, whether the negotiations are continuing or have been concluded or terminated,

- (v) financial, commercial, scientific or technical information of a third party provided to the corporation or a subsidiary in confidence,
 - (vi) information respecting legal arrangements or agreements, including copies of the agreement or arrangements, which relate to the nature or structure of partnerships, joint ventures, or other joint business investments or activities,
 - (vii) economic and financial models used for strategic decision making, including the information used as inputs into those models, and
 - (viii) commercial information of a kind similar to that referred to in subparagraphs (i) to (vii),
- but does not include information relating to an independent contractor's
- (ix) name,
 - (x) position or function with the corporation,
 - (xi) remuneration, and
 - (xii) payments received from the corporation;
- (c) "corporation" means the energy corporation established by this Act;
 - (d) "director" means a director of the board;
 - (d.1) "independent contractor" means a person retained under a contract to perform services for the corporation;
 - (e) "land" means real property of every kind, and includes tenements, hereditaments, and appurtenances, leaseholds,

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and an estate, term, easement, right or interest in, to, over, under or affecting land, including rights-of-way, and waters, water rights, water powers and water privileges;

- (f.1) "Muskrat Falls Project" means the Muskrat Falls Project as described in section 2.1;
- (g) "person" includes a natural person, a corporation, another entity recognized by law, and the heirs, executors, administrators or other legal representatives of a person;
- (h) "power" includes electrical power, however generated and electrical energy;
- (h.1) "public body" means a public body as defined in the *Access to Information and Protection of Privacy Act, 2015*;
- (h.2) "record" means a record as defined in the *Access to Information and Protection of Privacy Act, 2015*;
- (h.3) "subsidiary" means a subsidiary of the corporation except Newfoundland and Labrador Hydro; and
- (i) "works" means all land, property, buildings, plants, machinery, installations, materials, dams, canals, devices, fittings, apparatus, appliances, and equipment made, established or acquired or utilized, or useful for the exercise of the powers of the corporation and the attainment of its objects.

2007 cE-11.01 s2; 2008 c31 s1; 2012 c47 s4; 2015
cA-1.2 s125; 2018 c22 s1

Muskrat Falls
Project

2.1 (1) For the purpose of this Act, "Muskrat Falls Project" means a project by the corporation, a subsidiary of the corporation, Newfoundland and Labrador Hydro and Emera Inc., whether individually or by any combination of them, for

- (a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of equipment and facilities, to be comprised of
 - (i) the new hydroelectric plant to be constructed at Muskrat Falls on the Churchill River, and all associated facilities,

- including the intake structures, penstock, powerhouse, dams and spillways,
- (ii) a new HVdc transmission line and all related components to be constructed between the Muskrat Falls hydroelectric plant on the Churchill River and Soldier's Pond, including
 - (A) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent,
 - (B) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to the transmission line, and
 - (C) all mechanical, electrical and other systems and other technology installed under or upon anything referred to in clause (A) or (B),
 - (iii) new transmission facilities to be constructed between the Muskrat Falls hydroelectric plant on the Churchill River and the generating plant located at Churchill Falls,
 - (iv) new transmission facilities to be constructed by Emera Inc. between the island portion of Newfoundland and Labrador and Cape Breton, Nova Scotia including
 - (A) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent,
 - (B) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to them, and
 - (C) all mechanical, electrical and other systems and other technology installed under or upon anything referred to in clause (A) or (B), and

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- (v) any associated upgrades to the bulk electrical system or related control facilities on the island portion of the province required as a result of subparagraphs (i) to (iv);
- (b) the production, generation, storage, transmission, delivery or provision of electrical power and energy from the facilities in paragraph (a);
- (c) the negotiation, conclusion, execution and performance of agreements for activities referred to in paragraphs (a) and (b), and in particular agreements respecting the
 - (i) construction, operations, maintenance and administration,
 - (ii) acquisition of easements, rights-of-way, permits, licences, certificates, consents and other authorizations,
 - (iii) engineering and procurement,
 - (iv) arrangements with aboriginal peoples,
 - (v) demobilization and decommissioning, and
- (vi) any agreements, contracts or instruments necessary or incidental to any activity described in this paragraph; and
- (d) raising and securing equity or debt financing and any related derivative contracts necessary to construct the facilities and otherwise engage in the activities referred to in paragraphs (a) to (c), including without limitation the negotiation, conclusion and execution of agreements and security documentation with a lender providing that financing or refinancing to the projects.

(2) The Lieutenant-Governor in Council may designate any activities, agreements and amendments in connection with or in respect of subsection (1) entered into by the corporation, a subsidiary of the corporation, Newfoundland and Labrador Hydro, and Emera Inc., whether individually or by any combination of them

(a) to be included as part of the Muskrat Falls Project where that activity, agreement or amendment may not otherwise qualify under this section; and

(b) to be excluded from the Muskrat Falls Project, notwithstanding another provision of this section.

(3) For the purpose of this section, "Emera Inc." includes all affiliates, subsidiaries, successors and assigns of that corporation.

2012 c47 s5

Corporation established

3. (1) There is established an energy corporation for the province.

(2) The name of the corporation shall be determined by the Lieutenant-Governor in Council.

(3) The corporation is considered to have issued and outstanding shares which are vested in the Crown.

(4) The head office of the corporation shall be at St. John's.

(5) The corporation is an agent of the Crown.

(6) Notwithstanding that the corporation is an agent of the Crown, the corporation may, for the purpose of this Act and subject to conditions it considers necessary,

(a) acquire from the Crown in right of Canada, of the province or of the other provinces of Canada or from an agency of the Crown in right of Canada or of this or another of the provinces of Canada, real and personal property and rights of all kinds;

(b) enter into contracts with the Crown in right of Canada, the province or another province of Canada, or an agency of the Crown in right of Canada or of this or another province;

(c) enter into a partnership, joint venture, equity arrangement or other arrangement with the Crown, an agent of the Crown or another person; and

(d) appoint agents to act on its behalf.

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(7) Property of the corporation is the property of the Crown, but title to it is vested in the name of the corporation.

(8) A director or a person employed by the corporation does not become, by reason of that office or employment only, an officer or employee of the Crown.

2007 cE-11.01 s3

Crown agency
status

3.1 (1) Notwithstanding subsections 3(5), (6) and (7), where the corporation enters into contracts and ancillary arrangements relating to the Muskrat Falls Project, the corporation shall be considered to have entered into those contracts and ancillary arrangements in its own capacity and not as an agent of the Crown, and the Crown shall not be liable as principal in contract, tort or otherwise at law or equity for the liabilities of the corporation created directly or indirectly by those contracts or arrangements.

(2) Notwithstanding subsection (1), the corporation may execute contracts relating to the Muskrat Falls Project as an agent of the Crown where

- (a) the Lieutenant-Governor in Council has approved the contract; and
- (b) the contract explicitly states that the corporation signs the contract as an agent of the Crown.

2012 c47 s6

Application of the
Corporations Act

4. (1) The *Corporations Act*, except for section 27, paragraphs 31(a) to (e), sections 32, 76, 81, 167, 169, 172, 173, 177 and 178, subsections 184(3) and (4), section 188, subsections 189(1) and (2), paragraphs 189(3)(a), (d), (h) and (j), sections 200, 201, 203 to 209, subsections 245(1), (2) and (8), sections 273 and 275, subsections 276(1), (3), (4) and (5) and section 277, does not apply to the corporation.

(2) A requirement in a section referred to in subsection (1) to register or to provide information to the registrar does not apply to the corporation.

(3) Where there is a conflict between a provision referred to in subsection (1) and this Act, this Act prevails.

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(4) The provisions of this Act constitute the articles of the corporation.

2007 cE-11.01 s4; 2010 c31 s7

Objects of the corporation

5. (1) The objects of the corporation are to invest in, engage in, and carry out activities in all areas of the energy sector in the province and elsewhere, including,

- (a) the development, generation, production, transmission, distribution, delivery, supply, sale, export, purchase and use of power from wind, water, steam, gas, coal, oil, hydrogen or other products used or useful in the production of power;
- (b) the exploration for, development, production, refining, marketing and transportation of hydrocarbons and products from hydrocarbons;
- (c) the manufacture, production, distribution and sale of energy related products and services; and
- (d) research and development.

(2) Notwithstanding subsection (1), the corporation may engage in those other activities that the Lieutenant-Governor in Council may approve.

2007 cE-11.01 s5

Annual meeting

5.1 The corporation shall hold an annual meeting in the province, which shall be open to the general public, within 60 days of the publication by the minister of the annual report under subsection 5.2(3).

2008 c31 s2

Annual report

5.2 (1) The corporation shall, each year, no later than April 30, prepare and submit to the minister a report on the activities of the corporation and its subsidiaries, including Newfoundland and Labrador Hydro, in the previous fiscal year containing

- (a) an audited consolidated financial statement of the corporation setting out the assets and liabilities of the corporation as

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of the end of the immediately preceding financial year and the results of its operations for the financial year;

- (b) a report by the board giving an account of the activities of the corporation during the immediately preceding financial year and setting out other matters that may appear to it to be of a public interest in relation to the affairs or the activities of the corporation; and
- (c) a report of each subsidiary giving an account of its activities during the immediately preceding financial year and including information that it believes may be of public interest relating to its activities, but the report shall not be required to include commercially sensitive information.

(2) The minister may, on receipt of a report required under subsection (1), direct the corporation to provide additional information on its activities or the activities of one or more of its subsidiaries and the corporation shall provide the information in the form and detail and at the time the minister may direct.

(3) The report required under subsection (1) shall be made public by the minister by

- (a) presenting the report to the House of Assembly; and
- (b) other effective means, including electronically.

(4) Section 19.1 of the *House of Assembly Act* applies to a report required under subsection (1) as if the report were a report of an officer of the House of Assembly.

2008 c31 s2

Form and content of reports

5.3 The report required under section 5.2 shall be consistent in form and content with annual reports prepared by publicly traded companies.

2008 c31 s2

Records of commercially sensitive information

5.4 (1) Notwithstanding section 7 of the *Access to Information and Protection of Privacy Act, 2015*, in addition to the information that shall or may be refused under Part II, Division 2 of that Act, the chief

executive officer of the corporation or a subsidiary, or the head of another public body,

- (a) may refuse to disclose to an applicant under that Act commercially sensitive information of the corporation or the subsidiary; and
- (b) shall refuse to disclose to an applicant under that Act commercially sensitive information of a third party

where the chief executive officer of the corporation or the subsidiary to which the requested information relates, taking into account sound and fair business practices, reasonably believes

- (c) that the disclosure of the information may
 - (i) harm the competitive position of,
 - (ii) interfere with the negotiating position of, or
 - (iii) result in financial loss or harm tothe corporation, the subsidiary or the third party; or
- (d) that information similar to the information requested to be disclosed
 - (i) is treated consistently in a confidential manner by the third party, or
 - (ii) is customarily not provided to competitors by the corporation, the subsidiary or the third party.

(2) Where an applicant is denied access to information under subsection (1) and a request to review that decision is made to the commissioner under section 42 of the *Access to Information and Protection of Privacy Act, 2015*, the commissioner shall, where he or she determines that the information is commercially sensitive information,

- (a) on receipt of the chief executive officer's certification that he or she has refused to disclose the information for the reasons set out in subsection (1); and

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- (b) confirmation of the chief executive officer's decision by the board of directors of the corporation or subsidiary,

uphold the decision of the chief executive officer or head of another public body not to disclose the information.

- (3) Where a person appeals,

- (a) under subsections 52(1) and (2), subsections 53(1) and (2) or section 54 of the *Access to Information and Protection of Privacy Act, 2015*, from a decision under subsection (1); or

- (b) under subsections 52(1) and (2), subsections 53(1) and (2) or section 54 of the *Access to Information and Protection of Privacy Act, 2015*, from a refusal by a chief executive officer under subsection (1) to disclose information,

paragraph 59(3)(a) and section 60 of that Act apply to that appeal as if Part II, Division 2 included the grounds for the refusal to disclose the information set out in subsection (1) of this Act.

- (4) Paragraph 102(3)(a) of the *Access to Information and Protection of Privacy Act, 2015* applies to information referred to in subsection (1) of this section as if the information was information that a head of a public body is authorized or required to refuse to disclose under Part II, Division 2.

- (5) Notwithstanding section 21 of the *Auditor General Act*, a person to whom that section applies shall not disclose, directly or indirectly, commercially sensitive information that comes to his or her knowledge in the course of his or her employment or duties under that Act and shall not communicate those matters to another person, including in a report required under that Act or another Act, without the prior written consent of the chief executive officer of the corporation or subsidiary from which the information was obtained.

- (6) Where the auditor general prepares a report which contains information respecting the corporation or a subsidiary, or respecting a third party that was provided to the corporation or subsidiary by the third party, a draft of the report shall be provided to the chief executive officer of the corporation or subsidiary, and he or she shall have reasonable time to inform the auditor general whether or not in his or her opinion the draft contains commercially sensitive information.

(7) In the case of a disagreement between the auditor general and a chief executive officer respecting whether information in a draft report is commercially sensitive information, the auditor general shall remove the information from the report and include that information in a separate report which shall be provided to the Lieutenant-Governor in Council in confidence as if it were a report to which section 5.5 applied.

(8) Notwithstanding the *Citizens' Representative Act*, the corporation, a subsidiary, another public body, or an officer, member or employee of one of them is not required to provide commercially sensitive information, in any form, to the citizens' representative in the context of an investigation of a complaint under that Act.

2008 c31 s2; 2015 cA-1.2 s125

Report of auditor
general

5.5 (1) Where,

- (a) during the course of an audit;
- (b) as a result of a review of an audit report prepared by another auditor; or
- (c) as a result of an internal audit procedure,

the auditor general becomes aware of an improper retention or misappropriation of funds by a director, officer, employee or agent of the corporation or a subsidiary, or of another activity that may constitute an offence under the *Criminal Code* or an Act of the province or of Canada, the auditor general shall, where the report includes commercially sensitive information, notwithstanding the *Auditor General Act*, provide the report to the Lieutenant-Governor in Council in confidence.

(2) In addition to the report required under subsection (1), the auditor general shall immediately provide a report to the House of Assembly that includes a general description, excluding commercially sensitive information, of the activity that is the subject of the report under subsection (1) and the dates on which those activities were reported to the Lieutenant-Governor in Council.

(3) Section 19.1 of the *House of Assembly Act* applies to a report under subsection (2) as if it were a report of an officer of the House of Assembly.

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2008 c31 s2

Board of directors

6. (1) For the exercise and discharge of the powers and duties of the corporation, there shall be a board of directors comprised of not less than 5 and not more than 14 persons.

(2) The directors shall be appointed by the Lieutenant-Governor in Council, shall hold office during pleasure only and are eligible for reappointment.

(3) Except where otherwise prescribed under this Act, the corporation may exercise its powers by a resolution of the board.

(4) The directors shall be paid the salary or other remuneration that the Lieutenant-Governor in Council may determine, and the salary or remuneration together with all reimbursable expenses shall be paid by the corporation out of its funds.

(5) Where a vacancy occurs on the board because of the death, illness, resignation, removal of a member, or for another reason, the Lieutenant-Governor in Council may appoint a person to fill the vacancy.

(6) Exercise of the powers of the corporation is not impaired because of a vacancy on the board.

(7) Until the board makes other provision under section 10, a majority of the directors who then hold office constitutes a quorum of the board.

(8) Notwithstanding that it is afterward discovered that there was some defect in the appointment or qualification of a person purporting to be a director, all acts done by the corporation and the board shall be as valid as if that defect had not existed.

2007 cE-11.01 s6

Chairperson and
CEO

7. (1) There shall be a chairperson of the board to be appointed by the Lieutenant-Governor in Council from among the directors.

(2) The chairperson holds office for the period and under the terms and conditions that may be prescribed by the Lieutenant-

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Governor in Council or in an agreement made under section 9, and shall vacate office in accordance with those terms and conditions.

(3) There shall be a chief executive officer of the corporation, to be appointed by the Lieutenant-Governor in Council, who shall, subject to the terms of appointment that may be established by the Lieutenant-Governor in Council, or in an agreement made under section 9 and, subject to the directions of the board, be charged with the general direction, supervision and control of the business of the board and the corporation.

(4) The same person may not hold the offices of chairperson and chief executive officer simultaneously.

(5) During the incapacity or absence of the chairperson, one of the other directors, other than the chief executive officer, where the chief executive officer is a director, elected by the board for the purpose shall act as chairperson of the board.

(6) During the absence or incapacity of the chief executive officer, the board may appoint an acting chief executive officer who shall perform the duties of the chief executive officer until his or her return or resumption of duties or until a new chief executive officer is appointed.

2007 cE-11.01 s7

Minutes

8. The chairperson shall ensure that regular minutes are kept of the meetings of the board.

2007 cE-11.01 s8

Service contract

9. (1) With the approval of the Lieutenant-Governor in Council the corporation may enter into an agreement with a person that provides for his or her appointment to the office of chairperson or chief executive officer of the corporation.

(2) An agreement under this section may prescribe the terms and conditions of appointment to the office and the term, tenure and remuneration, including the salary, pension and other rights and benefits that the appointee is to receive and the terms and conditions under which the appointment may be terminated and by whom before the expiration of the term of the appointment.

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(3) A person with whom an agreement is made under this section in relation to an office

- (a) holds that office in accordance with the agreement and shall vacate it or them accordingly; and
- (b) does not, by reason only of the appointment to that office, become an employee of the province.

2007 cE-11.01 s9

By-laws

10. The board may make by-laws

- (a) respecting the calling of meetings of the board;
- (b) establishing a quorum of the board;
- (c) respecting the conduct of business at meetings of the board and the establishment of committees of the board and the delegation of duties to those committees;
- (d) respecting the duties and conduct of the directors and of the officers and employees of the corporation;
- (e) respecting the common seal of the corporation and the use of it;
- (f) respecting the execution of a contract or instrument on behalf of the corporation;
- (g) respecting the lithographing or mechanical reproduction of signatures on bonds, debentures, securities, or other evidence of indebtedness of the corporation or upon coupons and the mechanical reproduction of the common seal of the corporation on the bonds, debentures, securities, other evidence of indebtedness or coupons;
- (h) respecting the management and use of any or all of its property by employees, invitees, licensees or permittees of the corporation and by another person; and
- (i) generally, for the conduct and management of the affairs of the corporation.

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2007 cE-11.01 s10

Affixing seal

11. Until the board makes other provision under section 10, the affixing of the common seal of the corporation shall be witnessed by at least 2 directors.

2007 cE-11.01 s11

Appointment of staff

12. (1) The board may appoint those officers, managers, other staff and employees and retain consultants, advisors and other professional persons that it considers necessary and may fix their remuneration and terms of service.

(2) A person who is appointed under this section does not, by reason only of the appointment, become an employee of the province.

2007 cE-11.01 s12

Subsidiaries of corporation

13. (1) A company is considered to be a subsidiary of the corporation if

(a) it is controlled by

(i) the corporation,

(ii) the corporation and one or more companies, each of which is controlled by the corporation, or

(iii) one or more companies, each of which is controlled by the corporation; or

(b) it is a subsidiary of a company which is a subsidiary of the corporation.

(2) For the purposes of this section, a company shall be considered to be controlled by the corporation or one or more companies if

(a) shares of the first-mentioned company carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, for the benefit of the corporation or other companies; and

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- (b) the votes carried by the shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

2007 cE-11.01 s13

General powers

14. (1) The corporation may

- (a) where it is an agent of the Crown, on behalf of the Crown, or where it is not an agent of the Crown, in its own capacity, enter into contracts or other agreements and acquire and dispose of and otherwise deal with real and personal property and all rights of all kinds in the name of the corporation;
- (b) acquire, lease, establish, construct, maintain and operate works in a part of the province or elsewhere in connection with the attainment of its objectives as set out in section 5;
- (c) purchase power from a person and transmit, make available for use, distribute, deliver, sell, supply and generally use the power for the purposes of the corporation;
- (d) contract with a person for the purchase of petroleum products, notwithstanding another Act;
- (e) acquire by purchase, lease or otherwise, property, both real and personal, and water privileges, water powers, rights, easements, privileges, proprietary rights, interests, and works of every description which the corporation considers necessary, convenient or advisable to acquire for or incidental to the exercise of the powers and duties of the corporation and the attainment of its objects;
- (f) sell or otherwise dispose of its property, real or personal, of every nature and kind or an interest in it which is found by the corporation to be unnecessary for the purposes of the corporation, and grant an estate, term, easement, right or interest in, over or respecting the property;
- (g) contract with a person for
 - (i) the supply, transmission and distribution of power to that person, and

- (ii) the construction, maintenance and operation of works for or incidental to the generation, transmission and distribution of power on behalf of that person, to be done by the corporation or a person designated by the corporation to do the things referred to in this paragraph,

for the consideration that the corporation may prescribe;

- (h) deposit money or securities with a bank, trustee, trust company, or other depositary in Canada or outside of Canada;
 - (i) lend money to or invest in a subsidiary of the corporation;
 - (j) guarantee the repayment by a subsidiary of the corporation of money advanced to that subsidiary by a lender, together with the payment of interest on it and of all charges incurred in connection with it;
 - (k) guarantee the performance by a subsidiary of the corporation of an obligation of that subsidiary contracted by it with a person to perform, fulfil or observe a covenant, obligation or provision of an agreement, deed, bond, promissory note or other document or instrument;
 - (l) exercise and enjoy all of the privileges and immunities conferred on it by this Act and do all acts necessary or incidental to the attainment of the objects of the corporation referred to in section 5;
 - (m) carry on business incidental and subsidiary to the carrying out of the objects referred to in section 5 and necessary to enable the company profitably to carry out those objects; and
 - (n) generally, do all things which the corporation considers necessary, convenient or advisable for or incidental to the exercise of the powers and the discharge of the obligations of the corporation.
- (2) The powers of the corporation include
- (a) the power to acquire, lease, construct, maintain, operate and use in the province and elsewhere land, works, plants, buildings, structures, machinery, equipment, devices, pole lines,

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conduits, pipe lines, tunnels and other property used or useful for carrying out the objects of the corporation;

- (b) the powers conferred on the corporation under this Act; and
 - (c) all other powers that are incidental or conducive to the attainment of the objects of the corporation.
- (3) [Rep. by 2008 c31 s3]

2007 cE-11.01 s14; 2008 c31 s3; 2012 c47 s7

Subsidiaries

14.1 (1) Except with the prior approval of the Lieutenant-Governor in Council, the corporation shall not organize or maintain a subsidiary of the corporation or purchase, sell, otherwise dispose of or deal in shares of a subsidiary of the corporation or of another company, and, where the approval is given, the corporation may do the things referred to in this subsection only where it is expressly mentioned in and to the extent provided by the approval.

(2) The objects of a subsidiary shall be some or all of the objects of the corporation under section 5.

(3) A subsidiary shall not engage in an activity that, were it to be undertaken by the corporation, would require the prior approval of the Lieutenant-Governor in Council, including the creation of a subsidiary, without the prior approval of the corporation.

(4) The provisions of this Act, with the necessary changes, shall be considered to form the articles of incorporation, or a part of them, of a subsidiary.

(5) A subsidiary is not an agent of the Crown unless it is designated as an agent by the Lieutenant-Governor in Council when the Lieutenant-Governor in Council gives its approval of the incorporation of the subsidiary under subsection (1).

(6) Where a subsidiary is not designated as an agent of the Crown under subsection (5),

- (a) the property of the subsidiary is not the property of the Crown or an agent of the Crown;

- (b) the debts and obligations of the subsidiary are not the debts and obligations of the Crown or an agent of the Crown;
- (c) the subsidiary shall be incorporated under the *Corporations Act* unless the approval provided under subsection (1) permits incorporation under the laws of another jurisdiction;
- (d) the board of directors of the subsidiary shall be composed of not less than 5 and not more than 10 members;
- (e) the board of directors of the subsidiary shall be composed of at least the following number of independent directors:
 - (i) where the board has 5 or 6 members, 2 independent directors,
 - (ii) where the board has 7 or 8 members, 3 independent directors, and
 - (iii) where the board has 9 or 10 members, 4 independent directors; and
- (f) the chief executive officer of the subsidiary shall be appointed by the board of directors of the subsidiary.

(7) In paragraph (6)(e), "independent director" means a person who is not a member of the board of directors of the corporation or another subsidiary or an employee or officer of the corporation, another subsidiary or the Crown.

(8) Subsection (6) does not apply to

- (a) Churchill Falls (Labrador) Corporation Limited;
- (b) Lower Churchill Development Corporation Limited;
- (c) Gull Island Power Corporation; or
- (d) Twin Falls Power Corporation.

2008 c31 s4

Acts applicable

15. (1) The *Labour Relations Act* applies to the corporation.

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(2) All collective bargaining agreements and other agreements of the corporation with a trade union, council of trade unions, employee bargaining agent or affiliated bargaining agent shall continue in force as if made under the *Labour Relations Act*.

(3) A trade union, council of trade unions, employee bargaining agent or affiliated bargaining agent that is party to a collective bargaining agreement with the corporation under subsection (2) shall be considered to be certified for the purpose of the *Labour Relations Act*.

(4) Section 11.1 of the *Public Sector Restraint Act, 1992* applies to the corporation and its employees.

2007 cE-11.01 s15

Application of Acts

16. Whether or not the corporation is an agent of the Crown

(a) the *Mechanics' Lien Act* applies in respect of the corporation and all property to which title is vested in the name of the corporation; and

(b) the *Workplace Health, Safety and Compensation Act* applies in respect of the corporation and its employees.

2012 c47 s8

Application of Acts

17. (1) The corporation is subject to the *Water Resources Act*.

(2) The corporation is not a utility as defined by the *Public Utilities Act* and that Act does not apply to the corporation.

2007 cE-11.01 s17

Application of
Public Procurement
Act

17.1 (1) The corporation or a subsidiary is exempt from the *Public Procurement Act* with respect to procurement in the following areas:

(a) energy and energy products;

(b) where the corporation or a subsidiary is acting in a strategic partnership, joint venture, or equity investment with other public bodies or private sector entities; or

(c) for the purpose of meeting the requirements of a benefit arrangement.

(2) With respect to procurement activities that are exempt under paragraph (1)(b) or (c), the corporation and a subsidiary shall, every 6 months, report to the minister responsible for the administration of this Act on their procurement activities and shall include a summary of contracts entered into and the identities of suppliers to whom the contracts have been awarded.

(3) The minister responsible for the administration of this Act shall, upon receipt of a report under subsection (2), send a copy of the report to the chief procurement officer appointed under the *Public Procurement Act*, who shall post a copy of it on the electronic notification system.

2008 c31 s5; 2016 cP-41.001 s30; 2019 c8 s7

Intergovernmental
agreements

17.2 (1) An agreement between the corporation or a subsidiary, including Newfoundland and Labrador Hydro, and an agent of the Crown in right of Canada, or of the Crown in right of another province or of another sovereign government is not an intergovernmental agreement.

(2) In this section, the terms

(a) "intergovernmental agreement"; and

(b) "sovereign government"

have the meaning given them in the *Intergovernmental Affairs Act*.

(3) An intergovernmental agreement entered into by the corporation or a subsidiary, including Newfoundland and Labrador Hydro, before the coming into force of this section is considered binding on the corporation or a subsidiary notwithstanding the agreement may not have been signed by the minister responsible for intergovernmental affairs or his or her designate as required by section 7 of the *Intergovernmental Affairs Act*.

2008 c31 s5

Borrowing power

18. (1) Subject to the prior approval of the Lieutenant-Governor in Council, the corporation may

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- (a) borrow money for purposes related to the attainment of its objects as set out in section 5; and
- (b) to secure the repayment of money borrowed
 - (i) issue bonds, debentures, or other securities of the corporation,
 - (ii) execute and deliver mortgages, assignments, conveyances, charges or other encumbrances of and over property of every nature and kind, both present and future, title to which is vested in the corporation, and
 - (iii) enter into, execute and deliver a trust deed, trust indenture or an agreement with a lender, a trustee acting for the holders of bonds and debentures or other person,

and the money may be borrowed at the rate of interest and upon the terms and conditions, and the instruments and documents may be issued or executed and delivered in the form, that the Lieutenant-Governor in Council, or, where the authority to do so is delegated to the Minister of Finance by the Lieutenant-Governor in Council, the Minister of Finance, approves.

(2) The securities of the corporation may be made payable in a currency approved by the Lieutenant-Governor in Council and expressed in the security.

2007 cE-11.01 s18

Guarantee of loans

19. Subject to the prior approval of the Lieutenant-Governor in Council, the Minister of Finance acting for and on behalf of the Crown may unconditionally guarantee both as to principal and interest, including interest on overdue interest, premium and sinking fund payments, loans authorized under section 18 to be raised by the corporation or a subsidiary, and the loan may be raised by bonds, debentures, or other securities to be issued by the corporation or a subsidiary

- (a) in a principal amount not exceeding the amount;
- (b) at a rate of interest;
- (c) on the terms and conditions; and

(d) with provision for redemption at the time,

that may be approved by the Lieutenant-Governor in Council, or, where the authority to do so is delegated to the Minister of Finance by the Lieutenant-Governor in Council, the Minister of Finance, and the bonds, debentures or other securities may be issued or sold in the numbers and amounts, at the times, at the prices, and upon the terms that the Lieutenant-Governor in Council or that minister may approve.

2007 cE-11.01 s19; 2008 c31 s6

Manner and form of
guarantee

20. Notwithstanding the *Financial Administration Act* or another Act or law, when a guarantee is given under section 19 of this Act, it shall be given in the manner and form that the Lieutenant-Governor in Council approves, and the form of guarantee shall be signed on behalf of the province by the Minister of Finance, his or her deputy minister or another minister whom the Lieutenant-Governor in Council may designate, and that signature may be engraved, lithographed or otherwise mechanically reproduced on the bonds, debentures or other securities in respect of which the guarantee is given.

2007 cE-11.01 s20

Guarantee of
payment

21. Where the payment of interest or a premium or a sinking fund payment has been guaranteed under this Act, the Crown may incur liability in excess of the principal amount of the loan to be raised by way of bonds, debentures, or other securities, to the extent of the guarantee of the interest, premium and sinking fund payment.

2007 cE-11.01 s21

Guarantee of
repayment

22. The power conferred by section 19 to guarantee the repayment of bonds, debentures or other securities includes the power to guarantee the repayment of part of the bonds, debentures or other securities.

2007 cE-11.01 s22

Short-term loans

23. (1) The corporation may, for its purposes, raise short-term loans

(a) in the manner and form;

(b) in the amounts;

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- (c) in the currencies;
- (d) for the period, not exceeding 2 years;
- (e) at the rates of interest, including interest on overdue interest;
and
- (f) on the conditions, including conditions relating to discounts,
premiums, charges and commissions,

that the corporation may determine.

(2) The total of the short-term loans raised under subsection (1) and outstanding at any time shall not exceed a limit to be fixed by the Lieutenant-Governor in Council, and it is the duty of the Minister of Finance to see that this total is not exceeded.

(3) The Minister of Finance acting on behalf of the Crown may unconditionally guarantee the repayment of a sum raised under subsection (1), the payment of interest, including interest on overdue interest and the payment of a premium.

(4) The total of the guarantees made under subsection (3) and outstanding at any time shall not exceed a limit to be fixed by the Lieutenant-Governor in Council, and it is the duty of the Minister of Finance to see that this total is not exceeded.

(5) A guarantee given under this section shall be in the form that the Minister of Finance approves, and the form of guarantee shall be signed on behalf of the province by that minister whose signature may be engraved, lithographed or otherwise mechanically reproduced on the bonds, debentures or other securities in respect of which the guarantee is given.

2007 cE-11.01 s23

Agreements

24. The Minister of Finance, acting on behalf of the Crown, may enter into, execute and deliver a trust deed, trust indenture or an agreement with the corporation, a lender, a trustee acting for the holders of bonds, debentures or other securities of the corporation or other person or company setting out the terms and conditions of a guarantee of a loan to be made under this Act.

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2007 cE-11.01 s24

Performance
guarantee

25. Subject to the prior approval of the Lieutenant-Governor in Council, the Minister of Finance acting on behalf of the Crown may guarantee the performance by the corporation or a subsidiary of an obligation of the corporation or a subsidiary contracted by it with a person

(a) to pay money or an instalment; or

(b) to perform, fulfil or observe a covenant, obligation or provision of an agreement, deed, bond, promissory note or other document or instrument.

2007 cE-11.01 s25; 2008 c31 s7

Loans by govern-
ment

26. Notwithstanding the *Financial Administration Act* or another Act or law, the Lieutenant-Governor in Council may advance to the corporation a sum to enable the corporation to reach its objects or to carry on its business, and the advance may be made in the amount, for the term, at the rate of interest and on the terms and conditions that may be approved by the Lieutenant-Governor in Council.

2007 cE-11.01 s26

Performance under
guarantee

27. (1) A payment or advance that the Crown may approve in the exercise of a power conferred by this Act or be required to make under this Act shall be paid by the Minister of Finance out of the Consolidated Revenue Fund or, where the payment is to be made in performance of a guarantee, it may be paid out of funds provided in the manner prescribed in section 55 of the *Financial Administration Act*.

(2) Notwithstanding subsection (1), in respect of the Muskrat Falls Project, a payment or advance that the Crown may approve in the exercise of a power conferred by this Act or be required to make under this Act shall be paid by the Minister of Finance out of the Consolidated Revenue Fund.

2007 cE-11.01 s27; 2012 c47 s9

Total amount of
loan

28. (1) The total amount of money to be raised by the corporation and its subsidiaries in the aggregate by loans shall not exceed \$600

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million in Canadian currency or its equivalent in the currency of another country.

(2) The total of all loans to the corporation and its subsidiaries in the aggregate to be guaranteed by or on behalf of the Crown shall not exceed \$600 million in Canadian currency or its equivalent in the currency of another country.

(3) In calculating the maximum amount of money raised by way of loans by the corporation and its subsidiaries and of guarantees given under this Act, no account shall be taken of amounts raised by way of loan

(a) that have been repaid or a part of the proceeds of a loan to be raised for, or that has been spent on, the repayment, refinancing, refunding, redemption, retirement or purchase of the whole or a part of loans or securities of the corporation; or

(b) by the corporation or its subsidiaries in respect of the Muskrat Falls Project.

2012 c47 s10

Financial year

29. The financial year of the corporation shall be the calendar year.

2007 cE-11.01 s29

Capital and operating expenses

30. The corporation shall, not later than November 30 in each year, provide to the minister a budget containing the estimated capital and operating expenses of the corporation for its next succeeding financial year.

2007 cE-11.01 s30

Audit and financial statement

31. (1) The board shall annually appoint an auditor who shall annually audit the financial statement of the corporation.

(2) The financial statement referred to in subsection (1) shall be signed by 2 directors and shall have attached to it the auditor's report.

(3) The remuneration of the auditors referred to in subsection (1) shall be fixed annually by the board and shall be paid by the corporation out of its funds.

(4) The report of the auditors shall state whether the financial statements present fairly the financial position of the corporation and the results of its operations for the period under review and whether the financial statements were prepared in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

(5) The Lieutenant-Governor in Council may, by order, designate or appoint other auditors for carrying out the specific audit of the corporation's accounts and business that the Lieutenant-Governor in Council may specify in the order, and the auditor general may conduct the additional examination and investigation of the records and operations of the corporation that he or she considers necessary.

(6) For the purposes of an audit, examination or investigation conducted under subsection (5), the person designated or appointed by the Lieutenant-Governor in Council, or the auditor general, may request and shall be supplied by the board with all books, vouchers, records, schedules, working papers and other documentation which he or she considers necessary.

(7) This section applies, with the necessary changes, to a subsidiary.

(8) Subsection 5.4(5) and section 5.5 apply to an audit conducted under this section by an auditor who is not the auditor general as if he or she were the auditor general.

2008 c31 s8

Fund established

32. (1) The corporation shall establish a fund in the name of the corporation to be determined under subsection 3(2) which shall be separate and distinct from the Consolidated Revenue Fund.

(2) All money and revenues of the corporation, including the proceeds of loans raised by the corporation, when they come into the hands of the corporation, shall be deposited to the credit of the fund referred to in subsection (1) and the corporation shall have full author-

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ity to administer the money so deposited for the purposes and objects of this Act.

2007 cE-11.01 s32

Financial provisions
to have full effect

33. Notwithstanding the *Financial Administration Act* or another Act or law, paragraph 14(1)(h) and section 32 of this Act shall have full effect.

2007 cE-11.01 s33

Actions

34. (1) Actions, suits or other legal proceedings in respect of a right or obligation acquired or incurred by the corporation may be brought by or against the corporation in the name of the corporation in a court and a judgment shall be carried into effect by the corporation, and where the judgment is for the payment of money, it may be enforced by execution against the money, lands and effects of the corporation as in ordinary cases between party and party.

(2) The corporation is liable in tort for damages for which, if it were a private person of full age and capacity, it would be liable in respect of

(a) torts committed by its employees or agents; or

(b) a breach of duty attaching to the ownership, occupation, possession or control of property.

(3) This section has effect, notwithstanding anything to the contrary contained in the *Proceedings Against the Crown Act* or another Act or law.

2007 cE-11.01 s34

No liability re:
disclosure of
information

34.1 An action or proceeding does not lie or shall not be instituted or continued against the corporation, an officer, employee or agent of the corporation, the Crown or a minister, employee or agent of the Crown based on a cause of action arising from, resulting from or incidental to the disclosure of information in accordance with this Act.

2018 c22 s2

Offences

35. (1) A person who

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- (a) contravenes this Act; or
- (b) interferes with or obstructs an inspector or other person in the discharge of his or her duties under this Act

is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 and in default of payment of the fine to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

(2) The conviction of a person under paragraph (1)(a) or (b) does not operate as a bar to further prosecution under this Act for a continuance of the offence.

2007 cE-11.01 s35

Transitional

36. (1) Until the board of directors is appointed under section 6, the directors of Newfoundland and Labrador Hydro on the day this Act comes into force are the directors of the corporation.

(2) Until a chief executive officer is appointed under section 7, the chief executive officer of Newfoundland and Labrador Hydro on the day this Act comes into force is the chief executive officer of the corporation.

2007 cE-11.01 s36

Commencement

37. This Act shall come into force on a day to be proclaimed by the Lieutenant-Governor in Council. (In force - Oct. 11/07)

2007 cE-11.01 s37

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SNL2005 CHAPTER M-1.01

MANAGEMENT OF INFORMATION ACT

Amended:

2008 c54;
2016 cR-15.2 s33 (not in force-not included)

CHAPTER M-1.01

AN ACT RESPECTING THE MANAGEMENT OF GOVERNMENT INFORMATION FOR THE PROVINCE

(Assented to May 19, 2005)

Analysis

- | | |
|-------------------------------------|---|
| 1. Short title | 5.2 Removal and destruction of records |
| 2. Definitions | 5.3 Dispute |
| 3. Application | 5.4 Exceptions |
| 4. Crown property | 6. System for management of information |
| 4.1 Electronic information | 7. Application |
| 5. Management of government records | 7.1 Regulations |
| 5.1 Government Records Committee | 8. Offence |
| | 9. RSNL1990 cA-16 Rep. |

*Be it enacted by the Lieutenant-Governor and House of Assembly
in Legislative Session convened, as follows:*

Short title

1. This Act may be cited as the *Management of Information Act*.

2005 cM-1.01 s1

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Management of Information Act

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Definitions

2. In this Act

- (a) "abandoned record" means a government record to which ownership cannot be established and which has been determined to be an abandoned record by the chief information officer;
- (a.1) "archives" means The Rooms Provincial Archives referred to in section 21 of the *Rooms Act*;
- (a.2) "cabinet record" means a record that
 - (i) is a memorandum, the purpose of which is to present proposals or recommendations to Cabinet,
 - (ii) is a discussion paper, policy analysis, proposal, advice or briefing material, including all factual and background material prepared for Cabinet,
 - (iii) is an agenda, minute or other record of Cabinet recording deliberations or decisions of Cabinet,
 - (iv) is used for or reflects communications or discussions among ministers on matters relating to the making of government decisions or the formulation of government policy,
 - (v) is created for or by a minister for the purpose of briefing that minister on a matter for Cabinet,
 - (vi) is created during the process of developing or preparing a submission for Cabinet,
 - (vii) is draft legislation or a draft regulation, or
 - (viii) contains information about the contents of a record within a class of information referred to in subparagraphs (i) to (vii);
- (a.3) "chief information officer" means the Chief Information Officer of the Office of the Chief Information Officer;

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- (a.4) "committee" means the committee established under section 5.1;
- (b) "department", unless the context indicates otherwise, means the department presided over by the minister;
- (b.1) "government record" means a record created by or received by a public body in the conduct of its affairs and includes a cabinet record, transitory record and an abandoned record;
- (c) "minister", unless the context indicates otherwise, means the minister appointed under the *Executive Council Act* to be responsible for this Act;
- (d) "public body" means
 - (i) a department created under the *Executive Council Act* or a branch of the executive government of the province,
 - (ii) a corporation, the ownership of which, or a majority of shares of which, is vested in the Crown,
 - (iii) a corporation, commission, board or other body, the majority of the members of which, or the majority of members of the board of directors of which, are appointed under an Act of the province, the Lieutenant-Governor in Council or a minister of the Crown,
 - (iv) a court established under an Act of the province, and
 - (v) the House of Assembly and committees of the House of Assembly;
- (e) [Rep. by 2008 c54 s2]
- (f) "record" means a correspondence, memorandum, form, paper, parchment, manuscript, map, plan, drawing, painting, print, photograph, magnetic tape, computer disc, microform, electronically produced document and other documentary material regardless of physical form or characteristic;
- (g) "record management" means a program of record and information management instituted to provide an economical and

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efficient system for the creation, maintenance, retrieval and disposal of government records; and

- (h) "transitory record" means a government record of temporary usefulness in any format or medium having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record.

2005 cM-1.01 s2; 2008 c54 ss1&2

Application

3. This Act applies to all public bodies in the province.

2005 cM-1.01 s3

Crown property

4. (1) All records created by or received by a public body in the conduct of its affairs are the property of the Crown.

(2) Records referred to in subsection (1) shall not be destroyed or removed from the ownership or control of the Crown unless the destruction or removal is authorized under this Act.

2008 c54 s3

Electronic information

4.1 (1) A requirement under this Act to retain a record is satisfied by the retention of electronic information where

- (a) the electronic information is retained in the format in which it was made, sent or received or in a format that does not materially change the electronic information that was originally created, sent or received; and
- (b) the electronic information will be accessible, and capable of being retained for subsequent reference, if required, by a person who is entitled to have access to the information or who is authorized to require its production.

(2) Where the electronic information was sent or received, the requirement in subsection (1) is only met where information that identifies the origin and destination of the electronic information and the date and time when it was sent or received is also retained.

(3) Nothing in this section prevents the disposal of electronic records according to a process or schedule approved under this Act.

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2008 c54 s4

Management of
government records**5. (1)** The minister shall

- (a) be responsible for the development and implementation of a management program for government records in the province;
- (b) provide advice to and assist public bodies with the development, implementation and maintenance of record management systems and provide direction on that material as it relates to the preservation of potential archival material; and
- (c) recommend standards, principles or procedures to the Treasury Board for adoption.

(2) The minister may, in the manner permissible by law, appoint and employ those persons necessary to carry out the purposes of this Act.

(3) A person appointed or employed under subsection (2) to be responsible for information and record management shall consult with the Director of The Rooms Provincial Archives appointed under section 22 of the *Rooms Act* to ensure the efficient implementation of information management policies and procedures for the preservation of archival government records.

2005 cM-1.01 s5; 2008 c54 ss1&5

Government Re-
cords Committee**5.1 (1)** There shall be a committee to be known as the Government Records Committee consisting of

- (a) the Director of The Rooms Provincial Archives appointed under section 22 of the *Rooms Act*;
- (b) the Deputy Minister of Justice or a person designated by him or her to act on his or her behalf;
- (c) the Deputy Minister of Finance or a person designated by him or her to act on his or her behalf;
- (d) the Chief Information Officer or a person designated by him or her to act on his or her behalf; and

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(e) those other persons whom the minister may appoint.

(2) The person appointed under subsection (1)(d) or a person designated by him or her to act on his or her behalf shall be the chairperson of the committee.

(3) The committee shall designate from among its members a person who shall be the secretary for the committee.

(4) The Office of the Chief Information Officer shall provide administrative support for the committee in order to assist the committee in executing its powers and duties.

(5) The committee may

(a) establish and revise schedules for the retention, disposal, destruction or transfer of records;

(b) make recommendations to the minister respecting government records to be forwarded to the archives;

(c) establish disposal and destruction standards and guidelines for the lawful disposal and destruction of government records; and

(d) make recommendations to the minister regarding the removal, disposal and destruction of records.

(6) A decision of a majority of the members of the committee shall be the decision of the committee.

2008 c54 s6

Removal and destruction of records

5.2 The minister may, after considering recommendations of the committee under subsection 5.1(5), direct the removal, disposal or destruction of records.

2008 c54 s6

Dispute

5.3 Where a dispute arises between a public body and the committee with respect to the

(a) adoption or operation of a disposal schedule; or

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(b) destruction or disposal of government records,

the committee may submit the matter to the minister who may issue directions with respect to the dispute.

2008 c54 s6

Exceptions

5.4 (1) Cabinet records shall be managed in the manner determined by Cabinet Secretariat.

(2) The chief information officer may determine that records are abandoned records and shall transfer the custody of those records to the Director of The Rooms Provincial Archives appointed under section 22 of the *Rooms Act* who shall dispose of the records in accordance with this Act.

(3) Transitory records may be disposed of when they are no longer of value, and shall only be disposed of through means which render them unreadable, including secure shredding or in the case of electronic records, secure electronic erasure.

(4) Records that may present a health or biohazard may be disposed of in a manner determined by the committee.

2008 c54 s6

System for management of information

6. (1) A permanent head of a public body shall develop, implement and maintain a record management system for the creation, classification, retention, storage, maintenance, retrieval, preservation, protection, disposal and transfer of government records.

(2) A system required under subsection (1) shall provide for retention periods and disposition by

(a) destruction, or

(b) transfer to the archives,

in accordance with the guidelines and schedules established by the Government Records Committee established under section 5.1.

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(3) A permanent head of a public body shall ensure that the retention, disposal and removal of government records is carried out in accordance with this Act.

2005 cM-1.01 s6; 2008 c54 ss1&7

Application

7. The minister may apply for an order under rule 27 of the *Rules of the Supreme Court, 1986* for the recovery of government records to which a public body is entitled.

2005 cM-1.01 s7; 2008 c54 s1

Regulations

7.1 The Lieutenant-Governor in Council may make regulations

(a) respecting the procedures and duties of the committee established under section 5.1; and

(b) generally to give effect to the purpose of this Act.

2008 c54 s8

Offence

8. (1) A person who unlawfully damages, mutilates or destroys a government record or removes or withholds a government record from the possession of a public body or otherwise violates this Act is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than \$50,000 and in default of payment to imprisonment for a term of not less than 3 months and not more than 18 months or to both a fine and imprisonment.

(2) In addition to a penalty imposed under subsection (1) a judge may make an order that the record that is the subject of an offence be returned to the possession of the public body.

2005 cM-1.01 s8; 2008 c54 s1

RSNL1990 cA-16
Rep.

9. The *Archives Act* is repealed.

2005 cM-1.01 s9

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SNL2015 CHAPTER A-1.2

ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT, 2015

Amended:

2016 c6 s2; 2016 cR-15.2 s30 (not in force-not included); 2017 c10 s3;
10/18 s2; 2018 c1 s1; 2018 cI-7.1 s24
2018 cC-12.3 s112

CHAPTER A-1.2

AN ACT TO PROVIDE THE PUBLIC WITH ACCESS TO INFORMATION AND PROTECTION OF PRIVACY

(Assented to June 1, 2015)

Analysis

- | | |
|--|---|
| 1. Short title | DIVISION 1 |
| PART I | THE REQUEST |
| INTERPRETATION | |
| 2. Definitions | 8. Right of access |
| 3. Purpose | 9. Public interest |
| 4. Schedule of excluded public bodies | 10. Right to request correction of personal information |
| 5. Application | 11. Making a request |
| 6. Relationship to Personal Health Information Act | 12. Anonymity |
| 7. Conflict with other Acts | 13. Duty to assist applicant |
| PART II | 14. Transferring a request |
| ACCESS AND | 15. Advisory response |
| CORRECTION | 16. Time limit for final response |
| | 17. Content of final response for access |

2015

Access to Information and Protection
of Privacy Act, 2015

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- | | |
|---|---|
| 18. Content of final response for correction of personal information | 45. Authority of commissioner not to investigate a complaint |
| 19. Third party notification | 46. Time limit for formal investigation |
| 20. Provision of information | 47. Recommendations |
| 21. Disregarding a request | 48. Report |
| 22. Published material | 49. Response of public body |
| 23. Extension of time limit | 50. Head of public body seeks declaration in court |
| 24. Extraordinary circumstances | 51. Filing an order with the Trial Division |
| 25. Costs | |
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| DIVISION 2 | |
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| 27. Cabinet confidences | DIVISION 4 |
| 28. Local public body confidences | APPEAL TO THE TRIAL DIVISION |
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*Be it enacted by the Lieutenant-Governor and House of Assembly
in Legislative Session convened, as follows:*

Short title

1. This Act may be cited as the *Access to Information and Protection of Privacy Act, 2015*.

2015 cA-1.2 s1

**PART I
INTERPRETATION**

Definitions

2. In this Act

- (a) "applicant" means a person who makes a request under section 11 for access to a record, including a record containing personal information about the person, or for correction of personal information;
- (b) "business day" means a day that is not a Saturday, Sunday or a holiday;
- (c) "Cabinet" means the executive council appointed under the *Executive Council Act*, and includes a committee of the executive council;
- (d) "commissioner" means the Information and Privacy Commissioner appointed under section 85;
- (e) "complaint" means a complaint filed under section 42;
- (f) "coordinator" means the person designated by the head of the public body as coordinator under subsection 110(1);
- (g) "dataset" means information comprising a collection of information held in electronic form where all or most of the information in the collection

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- (i) has been obtained or recorded for the purpose of providing a public body with information in connection with the provision of a service by the public body or the carrying out of another function of the public body,
 - (ii) is factual information
 - (A) which is not the product of analysis or interpretation other than calculation, and
 - (B) to which section 13 of the *Statistics Agency Act* does not apply, and
 - (iii) remains presented in a way that, except for the purpose of forming part of the collection, has not been organized, adapted or otherwise materially altered since it was obtained or recorded;
- (h) "educational body" means
- (i) Memorial University of Newfoundland,
 - (ii) College of the North Atlantic,
 - (iii) Centre for Nursing Studies,
 - (iv) Western Regional School of Nursing,
 - (v) a school board, school district constituted or established under the *Schools Act, 1997*, including the conseil scolaire francophone, and
 - (vi) a body designated as an educational body in the regulations made under section 116;
- (i) "employee", in relation to a public body, includes a person retained under a contract to perform services for the public body;
- (j) "head", in relation to a public body, means
- (i) in the case of a department, the minister who presides over it,

- (ii) in the case of a corporation, its chief executive officer,
 - (iii) in the case of an unincorporated body, the minister appointed under the *Executive Council Act* to administer the Act under which the body is established, or the minister who is otherwise responsible for the body,
 - (iv) in the case of the House of Assembly the Speaker and in the case of the statutory offices as defined in the *House of Assembly Accountability, Integrity and Administration Act*, the applicable officer of each statutory office, or
 - (v) in another case, the person or group of persons designated under section 109 or in the regulations as the head of the public body;
- (k) "health care body" means
- (i) an authority as defined in the *Regional Health Authorities Act*,
 - (ii) the Mental Health Care and Treatment Review Board,
 - (iii) the Newfoundland and Labrador Centre for Health Information, and
 - (iv) a body designated as a health care body in the regulations made under section 116;
- (l) "House of Assembly Management Commission" means the commission continued under section 18 of the *House of Assembly Accountability, Integrity and Administration Act*;
- (m) "judicial administration record" means a record containing information relating to a judge, master or justice of the peace, including information respecting
- (i) the scheduling of judges, hearings and trials,
 - (ii) the content of judicial training programs,
 - (iii) statistics of judicial activity prepared by or for a judge,

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- (iv) a judicial directive, and
- (v) a record of the Complaints Review Committee or an adjudication tribunal established under the *Provincial Court Act, 1991*;
- (n) "law enforcement" means
 - (i) policing, including criminal intelligence operations, or
 - (ii) investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment;
- (o) "local government body" means
 - (i) the City of Corner Brook,
 - (ii) the City of Mount Pearl,
 - (iii) the City of St. John's,
 - (iv) a municipality as defined in the *Municipalities Act, 1999*, and
 - (v) a body designated as a local government body in the regulations made under section 116;
- (p) "local public body" means
 - (i) an educational body,
 - (ii) a health care body, and
 - (iii) a local government body;
- (q) "minister" means a member of the executive council appointed under the *Executive Council Act*;
- (r) "minister responsible for this Act" means the minister appointed under the *Executive Council Act* to administer this Act;

- (s) "officer of the House of Assembly" means the Speaker of the House of Assembly, the Clerk of the House of Assembly, the Chief Electoral Officer, the Auditor General of Newfoundland and Labrador, the Commissioner for Legislative Standards, the Citizens' Representative, the Child and Youth Advocate, the Seniors' Advocate and the Information and Privacy Commissioner, and a position designated to be an officer of the House of Assembly by the Act creating the position;
- (t) "person" includes an individual, corporation, partnership, association, organization or other entity;
- (u) "personal information" means recorded information about an identifiable individual, including
 - (i) the individual's name, address or telephone number,
 - (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
 - (iii) the individual's age, sex, sexual orientation, marital status or family status,
 - (iv) an identifying number, symbol or other particular assigned to the individual,
 - (v) the individual's fingerprints, blood type or inheritable characteristics,
 - (vi) information about the individual's health care status or history, including a physical or mental disability,
 - (vii) information about the individual's educational, financial, criminal or employment status or history,
 - (viii) the opinions of a person about the individual, and
 - (ix) the individual's personal views or opinions, except where they are about someone else;

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- (v) "privacy complaint" means a privacy complaint filed under subsection 73(1) or (2) or an investigation initiated on the commissioner's own motion under subsection 73(3);
- (w) "privacy impact assessment" means an assessment that is conducted by a public body as defined under subparagraph (x)(i) to determine if a current or proposed program or service meets or will meet the requirements of Part III of this Act;
- (x) "public body" means
 - (i) a department created under the *Executive Council Act*, or a branch of the executive government of the province,
 - (ii) a corporation, the ownership of which, or a majority of the shares of which is vested in the Crown,
 - (iii) a corporation, commission or body, the majority of the members of which, or the majority of members of the board of directors of which are appointed by an Act, the Lieutenant-Governor in Council or a minister,
 - (iv) a local public body,
 - (v) the House of Assembly and statutory offices, as defined in the *House of Assembly Accountability, Integrity and Administration Act*, and
 - (vi) a corporation or other entity owned by or created by or for a local government body or group of local government bodies, which has as its primary purpose the management of a local government asset or the discharge of a local government responsibility,

and includes a body designated for this purpose in the regulations made under section 116, but does not include

- (vii) the constituency office of a member of the House of Assembly wherever located,

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- (viii) the Court of Appeal, the Trial Division, or the Provincial Court, or
- (ix) a body listed in Schedule B;
- (y) "record" means a record of information in any form, and includes a dataset, information that is machine readable, written, photographed, recorded or stored in any manner, but does not include a computer program or a mechanism that produced records on any storage medium;
- (z) "remuneration" includes salary, wages, overtime pay, bonuses, allowances, honorariums, severance pay, and the aggregate of the contributions of a public body to pension, insurance, health and other benefit plans;
- (aa) "request" means a request made under section 11 for access to a record, including a record containing personal information about the applicant, or correction of personal information, unless the context indicates otherwise;
- (bb) "Schedule B" means the schedule of bodies excluded from the definition of public body; and
- (cc) "third party", in relation to a request for access to a record or for correction of personal information, means a person or group of persons other than
 - (i) the person who made the request, or
 - (ii) a public body.

2015 cA-1.2 s2; 2017 c10 s3

Purpose

3. (1) The purpose of this Act is to facilitate democracy through
- (a) ensuring that citizens have the information required to participate meaningfully in the democratic process;
 - (b) increasing transparency in government and public bodies so that elected officials, officers and employees of public bodies remain accountable; and

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- (c) protecting the privacy of individuals with respect to personal information about themselves held and used by public bodies.
- (2) The purpose is to be achieved by
 - (a) giving the public a right of access to records;
 - (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves;
 - (c) specifying the limited exceptions to the rights of access and correction that are necessary to
 - (i) preserve the ability of government to function efficiently as a cabinet government in a parliamentary democracy,
 - (ii) accommodate established and accepted rights and privileges of others, and
 - (iii) protect from harm the confidential proprietary and other rights of third parties;
 - (d) providing that some discretionary exceptions will not apply where it is clearly demonstrated that the public interest in disclosure outweighs the reason for the exception;
 - (e) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
 - (f) providing for an oversight agency that
 - (i) is an advocate for access to information and protection of privacy,
 - (ii) facilitates timely and user friendly application of this Act,
 - (iii) provides independent review of decisions made by public bodies under this Act,

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- (iv) provides independent investigation of privacy complaints,
- (v) makes recommendations to government and to public bodies as to actions they might take to better achieve the objectives of this Act, and
- (vi) educates the public and public bodies on all aspects of this Act.

(3) This Act does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.

2015 cA-1.2 s3

Schedule of ex-
cluded public
bodies

4. When the House of Assembly is not in session, the Lieutenant-Governor in Council, on the recommendation of the House of Assembly Management Commission, may by order amend Schedule B, but the order shall not continue in force beyond the end of the next sitting of the House of Assembly.

2015 cA-1.2 s4

Application

5. (1) This Act applies to all records in the custody of or under the control of a public body but does not apply to

- (a) a record in a court file, a record of a judge of the Court of Appeal, Trial Division, or Provincial Court, a judicial administration record or a record relating to support services provided to the judges of those courts;
- (b) a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity;
- (c) a personal or constituency record of a member of the House of Assembly, that is in the possession or control of the member;
- (d) records of a registered political party or caucus as defined in the *House of Assembly Accountability, Integrity and Administration Act*;

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- (e) a personal or constituency record of a minister;
 - (f) a record of a question that is to be used on an examination or test;
 - (g) a record containing teaching materials or research information of an employee of a post-secondary educational institution;
 - (h) material placed in the custody of the Provincial Archives of Newfoundland and Labrador by or for a person other than a public body;
 - (i) material placed in the archives of a public body by or for a person other than the public body;
 - (j) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;
 - (k) a record relating to an investigation by the Royal Newfoundland Constabulary if all matters in respect of the investigation have not been completed;
 - (l) a record relating to an investigation by the Royal Newfoundland Constabulary that would reveal the identity of a confidential source of information or reveal information provided by that source with respect to a law enforcement matter; or
 - (m) a record relating to an investigation by the Royal Newfoundland Constabulary in which suspicion of guilt of an identified person is expressed but no charge was ever laid, or relating to prosecutorial consideration of that investigation.
- (2) This Act
- (a) is in addition to existing procedures for access to records or information normally available to the public, including a requirement to pay fees;
 - (b) does not prohibit the transfer, storage or destruction of a record in accordance with an Act of the province or Canada or a by-law or resolution of a local public body;

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- (c) does not limit the information otherwise available by law to a party in a legal proceeding; and
- (d) does not affect the power of a court or tribunal to compel a witness to testify or to compel the production of a document.

2015 cA-1.2 s5

Relationship to
Personal Health
Information Act

6. (1) Notwithstanding section 5, but except as provided in sections 92 to 94, this Act and the regulations shall not apply and the *Personal Health Information Act* and regulations under that Act shall apply where

- (a) a public body is a custodian; and
- (b) the information or record that is in the custody or control of a public body that is a custodian is personal health information.

(2) For the purpose of this section, "custodian" and "personal health information" have the meanings ascribed to them in the *Personal Health Information Act*.

2015 cA-1.2 s6

Conflict with other
Acts

7. (1) Where there is a conflict between this Act or a regulation made under this Act and another Act or regulation enacted before or after the coming into force of this Act, this Act or the regulation made under it shall prevail.

(2) Notwithstanding subsection (1), where access to a record is prohibited or restricted by, or the right to access a record is provided in a provision designated in Schedule A, that provision shall prevail over this Act or a regulation made under it.

(3) When the House of Assembly is not in session, the Lieutenant-Governor in Council may by order amend Schedule A, but the order shall not continue in force beyond the end of the next sitting of the House of Assembly.

2015 cA-1.2 s7

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PART II ACCESS AND CORRECTION

DIVISION 1 THE REQUEST

Right of access

8. (1) A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record may be subject to the payment, under section 25, of the costs of reproduction, shipping and locating a record.

2015 cA-1.2 s8

Public interest

9. (1) Where the head of a public body may refuse to disclose information to an applicant under a provision listed in subsection (2), that discretionary exception shall not apply where it is clearly demonstrated that the public interest in disclosure of the information outweighs the reason for the exception.

(2) Subsection (1) applies to the following sections:

- (a) section 28 (local public body confidences);
- (b) section 29 (policy advice or recommendations);
- (c) subsection 30(1) (legal advice);
- (d) section 32 (confidential evaluations);
- (e) section 34 (disclosure harmful to intergovernmental relations or negotiations);
- (f) section 35 (disclosure harmful to the financial or economic interests of a public body);

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(g) section 36 (disclosure harmful to conservation); and

(h) section 38 (disclosure harmful to labour relations interests of public body as employer).

(3) Whether or not a request for access is made, the head of a public body shall, without delay, disclose to the public, to an affected group of people or to an applicant, information about a risk of significant harm to the environment or to the health or safety of the public or a group of people, the disclosure of which is clearly in the public interest.

(4) Subsection (3) applies notwithstanding a provision of this Act.

(5) Before disclosing information under subsection (3), the head of a public body shall, where practicable, give notice of disclosure in the form appropriate in the circumstances to a third party to whom the information relates.

2015 cA-1.2 s9

Right to request
correction of personal information

10. (1) An individual who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

(2) A cost shall not be charged for a request for correction of personal information or for a service in response to that request.

2015 cA-1.2 s10

Making a request

11. (1) A person may access a record or seek a correction of personal information by making a request to the public body that the person believes has custody or control of the record or personal information.

(2) A request shall

(a) be in the form set by the minister responsible for this Act;

(b) provide sufficient details about the information requested so that an employee familiar with the records of the public

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body can identify and locate the record containing the information with reasonable efforts; and

(c) indicate how and in what form the applicant would prefer to access the record.

(3) An applicant may make an oral request for access to a record or correction of personal information where the applicant

(a) has a limited ability to read or write English; or

(b) has a disability or condition that impairs his or her ability to make a request.

(4) A request under subsection (2) may be transmitted by electronic means.

2015 cA-1.2 s11

Anonymity

12. (1) The head of a public body shall ensure that the name and type of the applicant is disclosed only to the individual who receives the request on behalf of the public body, the coordinator, the coordinator's assistant and, where necessary, the commissioner.

(2) Subsection (1) does not apply to a request

(a) respecting personal information about the applicant; or

(b) where the name of the applicant is necessary to respond to the request and the applicant has consented to its disclosure.

(3) The disclosure of an applicant's name in a request referred to in subsection (2) shall be limited to the extent necessary to respond to the request.

(4) The limitation on disclosure under subsection (1) applies until the final response to the request is sent to the applicant.

2015 cA-1.2 s12

Duty to assist
applicant

13. (1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

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(2) The applicant and the head of the public body shall communicate with one another under this Part through the coordinator.

2015 cA-1.2 s13

Transferring a
request

14. (1) The head of a public body may, upon notifying the applicant in writing, transfer a request to another public body not later than 5 business days after receiving it, where it appears that

- (a) the record was produced by or for the other public body; or
- (b) the record or personal information is in the custody of or under the control of the other public body.

(2) The head of the public body to which a request is transferred shall respond to the request, and the provisions of this Act shall apply, as if the applicant had originally made the request to and it was received by that public body on the date it was transferred to that public body.

2015 cA-1.2 s14

Advisory response

15. (1) The head of a public body shall, not more than 10 business days after receiving a request, provide an advisory response in writing to

- (a) advise the applicant as to what will be the final response where
 - (i) the record is available and the public body is neither authorized nor required to refuse access to the record under this Act, or
 - (ii) the request for correction of personal information is justified and can be readily made; or
- (b) in other circumstances, advise the applicant of the status of the request.

(2) An advisory response under paragraph (1)(b) shall inform the applicant about one or more of the following matters, then known:

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- (a) a circumstance that may result in the request being refused in full or in part;
- (b) a cause or other factor that may result in a delay beyond the time period of 20 business days and an estimated length of that delay, for which the head of the public body may seek approval from the commissioner under section 23 to extend the time limit for responding;
- (c) costs that may be estimated under section 26 to respond to the request;
- (d) a third party interest in the request; and
- (e) possible revisions to the request that may facilitate its earlier and less costly response.

(3) The head of the public body shall, where it is reasonable to do so, provide an applicant with a further advisory response at a later time where an additional circumstance, cause or other factor, costs or a third party interest that may delay receipt of a final response, becomes known.

2015 cA-1.2 s15

Time limit for final
response

16. (1) The head of a public body shall respond to a request in accordance with section 17 or 18, without delay and in any event not more than 20 business days after receiving it, unless the time limit for responding is extended under section 23.

(2) Where the head of a public body fails to respond within the period of 20 business days or an extended period, the head is considered to have refused access to the record or refused the request for correction of personal information.

2015 cA-1.2 s16

Content of final
response for access

17. (1) In a final response to a request for access to a record, the head of a public body shall inform the applicant in writing

- (a) whether access to the record or part of the record is granted or refused;

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- (b) if access to the record or part of the record is granted, where, when and how access will be given; and
 - (c) if access to the record or part of the record is refused,
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based, and
 - (ii) that the applicant may file a complaint with the commissioner under section 42 or appeal directly to the Trial Division under section 52, and advise the applicant of the applicable time limits and how to file a complaint or pursue an appeal.
- (2) Notwithstanding paragraph (1)(c), the head of a public body may in a final response refuse to confirm or deny the existence of
- (a) a record containing information described in section 31;
 - (b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of a third party's personal privacy under section 40; or
 - (c) a record that could threaten the health and safety of an individual.

2015 cA-1.2 s17

Content of final
response for correc-
tion of personal
information

18. (1) In a final response to a request for correction of personal information, the head of a public body shall inform the applicant in writing

- (a) whether the requested correction has been made; and
- (b) if the request is refused,
 - (i) the reasons for the refusal,
 - (ii) that the record has been annotated, and
 - (iii) that the applicant may file a complaint with the commissioner under section 42 or appeal directly to the

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Trial Division under section 52, and advise the applicant of the applicable time limits and how to file a complaint or pursue an appeal.

(2) Where no correction is made in response to a request, the head of the public body shall annotate the information with the correction that was requested but not made.

(3) Where personal information is corrected or annotated under this section, the head of the public body shall notify a public body or a third party to whom that information has been disclosed during the one year period before the correction was requested.

(4) Where a public body is notified under subsection (3) of a correction or annotation of personal information, the public body shall make the correction or annotation on a record of that information in its custody or under its control.

2015 cA-1.2 s18

Third party notification

19. (1) Where the head of a public body intends to grant access to a record or part of a record that the head has reason to believe contains information that might be excepted from disclosure under section 39 or 40, the head shall make every reasonable effort to notify the third party.

(2) The time to notify a third party does not suspend the period of time referred to in subsection 16(1).

(3) The head of the public body may provide or describe to the third party the content of the record or part of the record for which access is requested.

(4) The third party may consent to the disclosure of the record or part of the record.

(5) Where the head of a public body decides to grant access to a record or part of a record and the third party does not consent to the disclosure, the head shall inform the third party in writing

(a) of the reasons for the decision and the provision of this Act on which the decision is based;

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- (b) of the content of the record or part of the record for which access is to be given;
- (c) that the applicant will be given access to the record or part of the record unless the third party, not later than 15 business days after the head of the public body informs the third party of this decision, files a complaint with the commissioner under section 42 or appeals directly to the Trial Division under section 53; and
- (d) how to file a complaint or pursue an appeal.

(6) Where the head of a public body decides to grant access and the third party does not consent to the disclosure, the head shall, in a final response to an applicant, state that the applicant will be given access to the record or part of the record on the completion of the period of 15 business days referred to in subsection (5), unless a third party files a complaint with the commissioner under section 42 or appeals directly to the Trial Division under section 53.

(7) The head of the public body shall not give access to the record or part of the record until

- (a) he or she receives confirmation from the third party or the commissioner that the third party has exhausted any recourse under this Act or has decided not to file a complaint or commence an appeal; or
- (b) a court order has been issued confirming the decision of the public body.

(8) The head of the public body shall advise the applicant as to the status of a complaint filed or an appeal commenced by the third party.

(9) The third party and the head of the public body shall communicate with one another under this Part through the coordinator.

2015 cA-1.2 s19

Provision of infor-
mation

20. (1) Where the head of a public body informs an applicant under section 17 that access to a record or part of a record is granted, he or she shall

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- (a) give the applicant a copy of the record or part of it, where the applicant requested a copy and the record can reasonably be reproduced; or
- (b) permit the applicant to examine the record or part of it, where the applicant requested to examine a record or where the record cannot be reasonably reproduced.

(2) Where the requested information is in electronic form in the custody or under the control of a public body, the head of the public body shall produce a record for the applicant where

- (a) it can be produced using the normal computer hardware and software and technical expertise of the public body; and
- (b) producing it would not interfere unreasonably with the operations of the public body.

(3) Where the requested information is information in electronic form that is, or forms part of, a dataset in the custody or under the control of a public body, the head of the public body shall produce the information for the applicant in an electronic form that is capable of re-use where

- (a) it can be produced using the normal computer hardware and software and technical expertise of the public body;
- (b) producing it would not interfere unreasonably with the operations of the public body; and
- (c) it is reasonably practicable to do so.

(4) Where information that is, or forms part of, a dataset is produced, the head of the public body shall make it available for re-use in accordance with the terms of a licence that may be applicable to the dataset.

(5) Where a record exists, but not in the form requested by the applicant, the head of the public body may, in consultation with the applicant, create a record in the form requested where the head is of the opinion that it would be simpler or less costly for the public body to do so.

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2015 cA-1.2 s20

Disregarding a
request

21. (1) The head of a public body may, not later than 5 business days after receiving a request, apply to the commissioner for approval to disregard the request where the head is of the opinion that

- (a) the request would unreasonably interfere with the operations of the public body;
- (b) the request is for information already provided to the applicant; or
- (c) the request would amount to an abuse of the right to make a request because it is
 - (i) trivial, frivolous or vexatious,
 - (ii) unduly repetitive or systematic,
 - (iii) excessively broad or incomprehensible, or
 - (iv) otherwise made in bad faith.

(2) The commissioner shall, without delay and in any event not later than 3 business days after receiving an application, decide to approve or disapprove the application.

(3) The time to make an application and receive a decision from the commissioner does not suspend the period of time referred to in subsection 16(1).

(4) Where the commissioner does not approve the application, the head of the public body shall respond to the request in the manner required by this Act.

(5) Where the commissioner approves the application, the head of a public body who refuses to give access to a record or correct personal information under this section shall notify the person who made the request.

(6) The notice shall contain the following information:

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- (a) that the request is refused because the head of the public body is of the opinion that the request falls under subsection (1) and of the reasons for the refusal;
- (b) that the commissioner has approved the decision of the head of a public body to disregard the request; and
- (c) that the person who made the request may appeal the decision of the head of the public body to the Trial Division under subsection 52(1).

2015 cA-1.2 s21

Published material

22. (1) The head of a public body may refuse to disclose a record or part of a record that

- (a) is published and is available to the public whether without cost or for purchase; or
- (b) is to be published or released to the public within 30 business days after the applicant's request is received.

(2) The head of a public body shall notify an applicant of the publication or release of information that the head has refused to give access to under paragraph (1)(b).

(3) Where the information is not published or released within 30 business days after the applicant's request is received, the head of the public body shall reconsider the request as if it were a new request received on the last day of that period, and access may not be refused under paragraph (1)(b).

2015 cA-1.2 s22Extension of time
limit

23. (1) The head of a public body may, not later than 15 business days after receiving a request, apply to the commissioner to extend the time for responding to the request.

(2) The commissioner may approve an application for an extension of time where the commissioner considers that it is necessary and reasonable to do so in the circumstances, for the number of business days the commissioner considers appropriate.

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(3) The commissioner shall, without delay and not later than 3 business days after receiving an application, decide to approve or disapprove the application.

(4) The time to make an application and receive a decision from the commissioner does not suspend the period of time referred to in subsection 16(1).

(5) Where the commissioner does not approve the application, the head of the public body shall respond to the request under subsection 16(1) without delay and in any event not later than 20 business days after receiving the request.

(6) Where the commissioner approves the application and the time limit for responding is extended, the head of the public body shall, without delay, notify the applicant in writing

(a) of the reason for the extension;

(b) that the commissioner has authorized the extension; and

(c) when a response can be expected.

2015 cA-1.2 s23

Extraordinary
circumstances

24. (1) The head of a public body, an applicant or a third party may, in extraordinary circumstances, apply to the commissioner to vary a procedure, including a time limit imposed under a procedure, in this Part.

(2) Where the commissioner considers that extraordinary circumstances exist and it is necessary and reasonable to do so, the commissioner may vary the procedure as requested or in another manner that the commissioner considers appropriate.

(3) The commissioner shall, without delay and not later than 3 business days after receiving an application, make a decision to vary or not vary the procedure.

(4) The time to make an application and receive a decision from the commissioner does not suspend the period of time referred to in subsection 16(1).

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(5) Where the commissioner decides to vary a procedure upon an application of a head of a public body or a third party, the head shall notify the applicant in writing

- (a) of the reason for the procedure being varied; and
- (b) that the commissioner has authorized the variance.

(6) Where the commissioner decides to vary a procedure upon an application of an applicant to a request, the commissioner shall notify the head of the public body of the variance.

(7) An application cannot be made to vary a procedure for which the commissioner is responsible under this Part.

2015 cA-1.2 s24

Costs

25. (1) The head of a public body shall not charge an applicant for making an application for access to a record or for the services of identifying, retrieving, reviewing, severing or redacting a record.

(2) The head of a public body may charge an applicant a modest cost for locating a record only, after

- (a) the first 10 hours of locating the record, where the request is made to a local government body; or
 - (b) the first 15 hours of locating the record, where the request is made to another public body.
- (3) The head of a public body may require an applicant to pay
- (a) a modest cost for copying or printing a record, where the record is to be provided in hard copy form;
 - (b) the actual cost of reproducing or providing a record that cannot be reproduced or printed on conventional equipment then in use by the public body; and
 - (c) the actual cost of shipping a record using the method chosen by the applicant.

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(4) Notwithstanding subsections (2) and (3), the head of the public body shall not charge an applicant a cost for a service in response to a request for access to the personal information of the applicant.

(5) The cost charged for services under this section shall not exceed either

(a) the estimate given to the applicant under section 26; or

(b) the actual cost of the services.

(6) The minister responsible for the administration of this Act may set the amount of a cost that may be charged under this section.

2015 cA-1.2 s25

Estimate and waiver
of costs

26. (1) Where an applicant is to be charged a cost under section 25, the head of the public body shall give the applicant an estimate of the total cost before providing the services.

(2) The applicant has 20 business days from the day the estimate is sent to accept the estimate or modify the request in order to change the amount of the cost, after which time the applicant is considered to have abandoned the request, unless the applicant applies for a waiver of all or part of the costs or applies to the commissioner to revise the estimate.

(3) The head of a public body may, on receipt of an application from an applicant, waive the payment of all or part of the costs payable under section 25 where the head is satisfied that

(a) payment would impose an unreasonable financial hardship on the applicant; or

(b) it would be in the public interest to disclose the record.

(4) Within the time period of 20 business days referred to in subsection (2), the head of the public body shall inform the applicant in writing as to the head's decision about waiving all or part of the costs and the applicant shall either accept the decision or apply to the commissioner to review the decision.

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(5) Where an applicant applies to the commissioner to revise an estimate of costs or to review a decision of the head of the public body not to waive all or part of the costs, the time period of 20 business days referred to in subsection (2) is suspended until the application has been considered by the commissioner.

(6) Where an estimate is given to an applicant under this section, the time within which the head of the public body is required to respond to the request is suspended until the applicant notifies the head to proceed with the request.

(7) On an application to revise an estimate, the commissioner may

(a) where the commissioner considers that it is necessary and reasonable to do so in the circumstances, revise the estimate and set the appropriate amount to be charged and a refund, if any; or

(b) confirm the decision of the head of the public body.

(8) On an application to review the decision of the head of the public body not to waive the payment of all or part of the costs, the commissioner may

(a) where the commissioner is satisfied that paragraph (3)(a) or (b) is applicable, waive the payment of the costs or part of the costs in the manner and in the amount that the commissioner considers appropriate; or

(b) confirm the decision of the head of the public body.

(9) The head of the public body shall comply with a decision of the commissioner under this section.

(10) Where an estimate of costs has been provided to an applicant, the head of a public body may require the applicant to pay 50% of the cost before commencing the services, with the remainder to be paid upon completion of the services.

2015 cA-1.2 s26

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DIVISION 2 EXCEPTIONS TO ACCESS

Cabinet confidences

- 27.** (1) In this section, "cabinet record" means
- (a) advice, recommendations or policy considerations submitted or prepared for submission to the Cabinet;
 - (b) draft legislation or regulations submitted or prepared for submission to the Cabinet;
 - (c) a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet;
 - (d) a discussion paper, policy analysis, proposal, advice or briefing material prepared for Cabinet, excluding the sections of these records that are factual or background material;
 - (e) an agenda, minute or other record of Cabinet recording deliberations or decisions of the Cabinet;
 - (f) a record used for or which reflects communications or discussions among ministers on matters relating to the making of government decisions or the formulation of government policy;
 - (g) a record created for or by a minister for the purpose of briefing that minister on a matter for the Cabinet;
 - (h) a record created during the process of developing or preparing a submission for the Cabinet; and
 - (i) that portion of a record which contains information about the contents of a record within a class of information referred to in paragraphs (a) to (h).
- (2) The head of a public body shall refuse to disclose to an applicant
- (a) a cabinet record; or
 - (b) information in a record other than a cabinet record that would reveal the substance of deliberations of Cabinet.

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(3) Notwithstanding subsection (2), the Clerk of the Executive Council may disclose a cabinet record or information that would reveal the substance of deliberations of Cabinet where the Clerk is satisfied that the public interest in the disclosure of the information outweighs the reason for the exception.

(4) Subsections (1) and (2) do not apply to

- (a) information in a record that has been in existence for 20 years or more; or
- (b) information in a record of a decision made by the Cabinet on an appeal under an Act.

2015 cA-1.2 s27

Local public body
confidences

28. (1) The head of a local public body may refuse to disclose to an applicant information that would reveal

- (a) a draft of a resolution, by-law or other legal instrument by which the local public body acts;
- (b) a draft of a private Bill; or
- (c) the substance of deliberations of a meeting of its elected officials or governing body or a committee of its elected officials or governing body, where an Act authorizes the holding of a meeting in the absence of the public.

(2) Subsection (1) does not apply where

- (a) the draft of a resolution, by-law or other legal instrument, a private Bill or the subject matter of deliberations has been considered, other than incidentally, in a meeting open to the public; or
- (b) the information referred to in subsection (1) is in a record that has been in existence for 15 years or more.

2015 cA-1.2 s28

Policy advice or
recommendations

29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

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- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;
 - (b) the contents of a formal research report or audit report that in the opinion of the head of the public body is incomplete and in respect of which a request or order for completion has been made by the head within 65 business days of delivery of the report; or
 - (c) draft legislation or regulations.
- (2) The head of a public body shall not refuse to disclose under subsection (1)
- (a) factual material;
 - (b) a public opinion poll;
 - (c) a statistical survey;
 - (d) an appraisal;
 - (e) an environmental impact statement or similar information;
 - (f) a final report or final audit on the performance or efficiency of a public body or on any of its programs or policies;
 - (g) a consumer test report or a report of a test carried out on a product to test equipment of the public body;
 - (h) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body;
 - (i) a report on the results of field research undertaken before a policy proposal is formulated;
 - (j) a report of an external task force, committee, council or similar body that has been established to consider a matter and make a report or recommendations to a public body;
 - (k) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body;

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(l) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy; or

(m) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

(3) Subsection (1) does not apply to information in a record that has been in existence for 15 years or more.

2015 cA-1.2 s29

Legal advice

30. (1) The head of a public body may refuse to disclose to an applicant information

(a) that is subject to solicitor and client privilege or litigation privilege of a public body; or

(b) that would disclose legal opinions provided to a public body by a law officer of the Crown.

(2) The head of a public body shall refuse to disclose to an applicant information that is subject to solicitor and client privilege or litigation privilege of a person other than a public body.

2015 cA-1.2 s30

Disclosure harmful
to law enforcement

31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

(a) interfere with or harm a law enforcement matter;

(b) prejudice the defence of Canada or of a foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;

(c) reveal investigative techniques and procedures currently used, or likely to be used, in law enforcement;

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- (d) reveal the identity of a confidential source of law enforcement information or reveal information provided by that source with respect to a law enforcement matter;
 - (e) reveal law enforcement intelligence information;
 - (f) endanger the life or physical safety of a law enforcement officer or another person;
 - (g) reveal information relating to or used in the exercise of prosecutorial discretion;
 - (h) deprive a person of the right to a fair trial or impartial adjudication;
 - (i) reveal a record that has been confiscated from a person by a peace officer in accordance with an Act or regulation;
 - (j) facilitate the escape from custody of a person who is under lawful detention;
 - (k) facilitate the commission or tend to impede the detection of an offence under an Act or regulation of the province or Canada;
 - (l) reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system;
 - (m) reveal technical information about weapons used or that may be used in law enforcement;
 - (n) adversely affect the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention;
 - (o) reveal information in a correctional record supplied, implicitly or explicitly, in confidence; or
 - (p) harm the conduct of existing or imminent legal proceedings.
- (2) The head of a public body may refuse to disclose information to an applicant if the information

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- (a) is in a law enforcement record and the disclosure would be an offence under an Act of Parliament;
 - (b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record; or
 - (c) is about the history, supervision or release of a person who is in custody or under supervision and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.
- (3) The head of a public body shall not refuse to disclose under this section
- (a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act; or
 - (b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program unless disclosure of the report could reasonably be expected to interfere with or harm the matters referred to in subsection (1) or (2); or
 - (c) statistical information on decisions to approve or not to approve prosecutions.

2015 cA-1.2 s31

Confidential evaluations

32. The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material, provided explicitly or implicitly in confidence, and compiled for the purpose of

- (a) determining suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body;
- (b) determining suitability, eligibility or qualifications for admission to an academic program of an educational body;

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- (c) determining suitability, eligibility or qualifications for the granting of tenure at a post-secondary educational body;
- (d) determining suitability, eligibility or qualifications for an honour or award to recognize outstanding achievement or distinguished service; or
- (e) assessing the teaching materials or research of an employee of a post-secondary educational body or of a person associated with an educational body.

2015 cA-1.2 s32

Information from a
workplace investi-
gation

33. (1) For the purpose of this section

- (a) "harassment" means comments or conduct which are abusive, offensive, demeaning or vexatious that are known, or ought reasonably to be known, to be unwelcome and which may be intended or unintended;
- (b) "party" means a complainant, respondent or a witness who provided a statement to an investigator conducting a workplace investigation; and
- (c) "workplace investigation" means an investigation related to
 - (i) the conduct of an employee in the workplace,
 - (ii) harassment, or
 - (iii) events related to the interaction of an employee in the public body's workplace with another employee or a member of the public

which may give rise to progressive discipline or corrective action by the public body employer.

(2) The head of a public body shall refuse to disclose to an applicant all relevant information created or gathered for the purpose of a workplace investigation.

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(3) The head of a public body shall disclose to an applicant who is a party to a workplace investigation the information referred to in subsection (2).

(4) Notwithstanding subsection (3), where a party referred to in that subsection is a witness in a workplace investigation, the head of a public body shall disclose only the information referred to in subsection (2) which relates to the witness' statements provided in the course of the investigation.

2015 cA-1.2 s33

Disclosure harmful
to intergovernmental
relations or
negotiations

34. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm the conduct by the government of the province of relations between that government and the following or their agencies:

(i) the government of Canada or a province,

(ii) the council of a local government body,

(iii) the government of a foreign state,

(iv) an international organization of states, or

(v) the Nunatsiavut Government; or

(b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies.

(2) The head of a public body shall not disclose information referred to in subsection (1) without the consent of

(a) the Attorney General, for law enforcement information; or

(b) the Lieutenant-Governor in Council, for any other type of information.

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(3) Subsection (1) does not apply to information that is in a record that has been in existence for 15 years or more unless the information is law enforcement information.

2015 cA-1.2 s34

Disclosure harmful
to the financial or
economic interests
of a public body

35. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

- (a) trade secrets of a public body or the government of the province;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of the province and that has, or is reasonably likely to have, monetary value;
- (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
- (d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;
- (e) scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee of priority of publication;
- (f) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;
- (g) information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body; or
- (h) information, the disclosure of which could reasonably be expected to be injurious to the ability of the government of the province to manage the economy of the province.

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(2) The head of a public body shall not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for that public body, unless the testing was done

(a) for a fee as a service to a person or a group of persons other than the public body; or

(b) for the purpose of developing methods of testing.

2015 cA-1.2 s35

Disclosure harmful
to conservation

36. The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to result in damage to, or interfere with the conservation of

(a) fossil sites, natural sites or sites that have an anthropological or heritage value;

(b) an endangered, threatened or vulnerable species, sub-species or a population of a species; or

(c) a rare or endangered living resource.

2015 cA-1.2 s36

Disclosure harmful
to individual or
public safety

37. (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, where the disclosure could reasonably be expected to

(a) threaten the safety or mental or physical health of a person other than the applicant; or

(b) interfere with public safety.

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

2015 cA-1.2 s37

Disclosure harmful
to labour relations
interests of public
body as employer

38. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

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- (a) labour relations information of the public body as an employer that is prepared or supplied, implicitly or explicitly, in confidence, and is treated consistently as confidential information by the public body as an employer; or
- (b) labour relations information the disclosure of which could reasonably be expected to
 - (i) harm the competitive position of the public body as an employer or interfere with the negotiating position of the public body as an employer,
 - (ii) result in significant financial loss or gain to the public body as an employer, or
 - (iii) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer, staff relations specialist or other person or body appointed to resolve or inquire into a labour relations dispute, including information or records prepared by or for the public body in contemplation of litigation or arbitration or in contemplation of a settlement offer.

(2) Subsection (1) does not apply where the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.

2015 cA-1.2 s38

Disclosure harmful
to business interests
of a third party

39. (1) The head of a public body shall refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
- (b) that is supplied, implicitly or explicitly, in confidence; and
- (c) the disclosure of which could reasonably be expected to

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- (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
- (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
- (iii) result in undue financial loss or gain to any person, or
- (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return, gathered for the purpose of determining tax liability or collecting a tax, or royalty information submitted on royalty returns, except where that information is non-identifying aggregate royalty information.

(3) Subsections (1) and (2) do not apply where

- (a) the third party consents to the disclosure; or
- (b) the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.

2015 cA-1.2 s39

Disclosure harmful
to personal privacy

40. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where

- (a) the applicant is the individual to whom the information relates;

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- (b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;
- (c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is given in the form appropriate in the circumstances to the third party to whom the information relates;
- (d) an Act or regulation of the province or of Canada authorizes the disclosure;
- (e) the disclosure is for a research or statistical purpose and is in accordance with section 70;
- (f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;
- (g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;
- (h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;
- (i) public access to the information is provided under the *Financial Administration Act*;
- (j) the information is about expenses incurred by a third party while travelling at the expense of a public body;
- (k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;
- (l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including
 - (i) personal information that is supplied in support of the application for the benefit, or

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- (ii) personal information that relates to eligibility for income and employment support under the *Income and Employment Support Act* or to the determination of income or employment support levels; or
- (m) the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:
 - (i) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or
 - (ii) receipt of an honour or award granted by or through a public body.
- (3) The disclosure of personal information under paragraph (2)(m) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.
- (4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where
 - (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
 - (b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;
 - (c) the personal information relates to employment or educational history;
 - (d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;
 - (e) the personal information consists of an individual's bank account information or credit card information;

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- (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;
- (g) the personal information consists of the third party's name where
 - (i) it appears with other personal information about the third party, or
 - (ii) the disclosure of the name itself would reveal personal information about the third party; or
- (h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;
- (b) the disclosure is likely to promote public health and safety or the protection of the environment;
- (c) the personal information is relevant to a fair determination of the applicant's rights;
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;
- (e) the third party will be exposed unfairly to financial or other harm;
- (f) the personal information has been supplied in confidence;
- (g) the personal information is likely to be inaccurate or unreliable;
- (h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;

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- (i) the personal information was originally provided to the applicant; and
- (j) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

2015 cA-1.2 s40

Disclosure of House
of Assembly service
and statutory office
records

41. The Speaker of the House of Assembly, the officer responsible for a statutory office, or the head of a public body shall refuse to disclose to an applicant information

- (a) where its non-disclosure is required for the purpose of avoiding an infringement of the privileges of the House of Assembly or a member of the House of Assembly;
- (b) that is advice or a recommendation given to the Speaker or the Clerk of the House of Assembly or the House of Assembly Management Commission that is not required by law to be disclosed or placed in the minutes of the House of Assembly Management Commission; or
- (c) in the case of a statutory office as defined in the *House of Assembly Accountability, Integrity and Administration Act*, records connected with the investigatory functions of the statutory office.

2015 cA-1.2 s41

DIVISION 3 COMPLAINT

Access or correction
complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

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- (a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or
 - (b) after the date the head of the public body is considered to have refused the request under subsection 16(2).
- (3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.
- (4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.
- (5) The commissioner may allow a longer time period for the filing of a complaint under this section.
- (6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.
- (7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.
- (8) A complaint shall not be filed under this section with respect to
- (a) a request that is disregarded under section 21;
 - (b) a decision respecting an extension of time under section 23;
 - (c) a variation of a procedure under section 24; or
 - (d) an estimate of costs or a decision not to waive a cost under section 26.
- (9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

2015 cA-1.2 s42

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Burden of proof

43. (1) On an investigation of a complaint from a decision to refuse access to a record or part of a record, the burden is on the head of a public body to prove that the applicant has no right of access to the record or part of the record.

(2) On an investigation of a complaint from a decision to give an applicant access to a record or part of a record containing personal information that relates to a third party, the burden is on the head of a public body to prove that the disclosure of the information would not be contrary to this Act or the regulations.

(3) On an investigation of a complaint from a decision to give an applicant access to a record or part of a record containing information, other than personal information, that relates to a third party, the burden is on the third party to prove that the applicant has no right of access to the record or part of the record.

2015 cA-1.2 s43

Investigation

44. (1) The commissioner shall notify the parties to the complaint and advise them that they have 10 business days from the date of notification to make representations to the commissioner.

(2) The parties to the complaint may, not later than 10 business days after notification of the complaint, make a representation to the commissioner in accordance with section 96.

(3) The commissioner may take additional steps that he or she considers appropriate to resolve the complaint informally to the satisfaction of the parties and in a manner consistent with this Act.

(4) Where the commissioner is unable to informally resolve the complaint within 30 business days of receipt of the complaint, the commissioner shall conduct a formal investigation of the subject matter of the complaint where he or she is satisfied that there are reasonable grounds to do so.

(5) Notwithstanding subsection (4), the commissioner may extend the informal resolution process for a maximum of 20 business days where a written request is received from each party to continue the informal resolution process.

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(6) The commissioner shall not extend the informal resolution process beyond the date that is 50 business days after receipt of the complaint.

(7) Where the commissioner has 5 active complaints from the same applicant that deal with similar or related records, the commissioner may hold an additional complaint in abeyance and not commence an investigation until one of the 5 active complaints is resolved.

2015 cA-1.2 s44

Authority of commissioner not to investigate a complaint

45. (1) The commissioner may, at any stage of an investigation, refuse to investigate a complaint where he or she is satisfied that

- (a) the head of a public body has responded adequately to the complaint;
- (b) the complaint has been or could be more appropriately dealt with by a procedure or proceeding other than a complaint under this Act;
- (c) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was filed is such that an investigation under this Part would be likely to result in undue prejudice to a person or that a report would not serve a useful purpose; or
- (d) the complaint is trivial, frivolous, vexatious or is made in bad faith.

(2) Where the commissioner refuses to investigate a complaint, he or she shall

- (a) give notice of that refusal, together with reasons, to the person who made the complaint;
- (b) advise the person of the right to appeal to the Trial Division under subsection 52(3) or 53(3) the decision of the head of the public body that relates to the request; and
- (c) advise the person of the applicable time limit and how to pursue an appeal.

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2015 cA-1.2 s45

Time limit for
formal investigation

46. (1) The commissioner shall complete a formal investigation and make a report under section 48 within 65 business days of receiving the complaint, whether or not the time for the informal resolution process has been extended.

(2) The commissioner may, in extraordinary circumstances, apply to a judge of the Trial Division for an order to extend the period of time under subsection (1).

2015 cA-1.2 s46

Recommendations

47. On completing an investigation, the commissioner may recommend that

- (a) the head of the public body grant or refuse access to the record or part of the record;
- (b) the head of the public body reconsider its decision to refuse access to the record or part of the record;
- (c) the head of the public body either make or not make the requested correction to personal information; and
- (d) other improvements for access to information be made within the public body.

2015 cA-1.2 s47

Report

48. (1) On completing an investigation, the commissioner shall

- (a) prepare a report containing the commissioner's findings and, where appropriate, his or her recommendations and the reasons for those recommendations; and
- (b) send a copy of the report to the person who filed the complaint, the head of the public body concerned and a third party who was notified under section 44.

(2) The report shall include information respecting the obligation of the head of the public body to notify the parties of the head's

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response to the recommendation of the commissioner within 10 business days of receipt of the recommendation.

2015 cA-1.2 s48

Response of public
body

49. (1) The head of a public body shall, not later than 10 business days after receiving a recommendation of the commissioner,

- (a) decide whether or not to comply with the recommendation in whole or in part; and
- (b) give written notice of his or her decision to the commissioner and a person who was sent a copy of the report.

(2) Where the head of the public body does not give written notice within the time required by subsection (1), the head of the public body is considered to have agreed to comply with the recommendation of the commissioner.

(3) The written notice shall include notice of the right

- (a) of an applicant or third party to appeal under section 54 to the Trial Division and of the time limit for an appeal; or
- (b) of the commissioner to file an order with the Trial Division in one of the circumstances referred to in subsection 51(1).

2015 cA-1.2 s49

Head of public body
seeks declaration in
court

50. (1) This section applies to a recommendation of the commissioner under section 47 that the head of the public body

- (a) grant the applicant access to the record or part of the record;
or
- (b) make the requested correction to personal information.

(2) Where the head of the public body decides not to comply with a recommendation of the commissioner referred to in subsection (1) in whole or in part, the head shall, not later than 10 business days after receipt of that recommendation, apply to the Trial Division for a declaration that the public body is not required to comply with that recommendation because

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- (a) the head of the public body is authorized under this Part to refuse access to the record or part of the record, and, where applicable, it has not been clearly demonstrated that the public interest in disclosure of the information outweighs the reason for the exception;
- (b) the head of the public body is required under this Part to refuse access to the record or part of the record; or
- (c) the decision of the head of the public body not to make the requested correction to personal information is in accordance with this Act or the regulations.

(3) The head shall, within the time frame referred to in subsection (2), serve a copy of the application for a declaration on the commissioner, the minister responsible for the administration of this Act, and a person who was sent a copy of the commissioner's report.

(4) The commissioner, the minister responsible for this Act, or a person who was sent a copy of the commissioner's report may intervene in an application for a declaration by filing a notice to that effect with the Trial Division.

(5) Sections 57 to 60 apply, with the necessary modifications, to an application by the head of a public body to the Trial Division for a declaration.

2015 cA-1.2 s50

Filing an order with
the Trial Division

51. (1) The commissioner may prepare and file an order with the Trial Division where

- (a) the head of the public body agrees or is considered to have agreed under section 49 to comply with a recommendation of the commissioner referred to in subsection 50(1) in whole or in part but fails to do so within 15 business days after receipt of the commissioner's recommendation; or
- (b) the head of the public body fails to apply under section 50 to the Trial Division for a declaration.

(2) The order shall be limited to a direction to the head of the public body either

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(a) to grant the applicant access to the record or part of the record; or

(b) to make the requested correction to personal information.

(3) An order shall not be filed with the Trial Division until the later of the time periods referred to in paragraph (1)(a) and section 54 has passed.

(4) An order shall not be filed with the Trial Division under this section if the applicant or third party has commenced an appeal in the Trial Division under section 54.

(5) Where an order is filed with the Trial Division, it is enforceable against the public body as if it were a judgment or order made by the court.

2015 cA-1.2 s51

DIVISION 4 APPEAL TO THE TRIAL DIVISION

Direct appeal to
Trial Division by an
applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

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(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

2015 cA-1.2 s52

Direct appeal to
Trial Division by a
third party

53. (1) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may appeal the decision directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days after the third party is informed of the decision of the head of the public body.

(3) Where a third party has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the third party may commence an appeal in the Trial Division of the decision of the head of the public body to grant access in response to a request.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the third party is notified of the commissioner's refusal under subsection 45(2).

2015 cA-1.2 s53

Appeal of public
body decision after
receipt of commis-
sioner's recommen-
dation

54. An applicant or a third party may, not later than 10 business days after receipt of a decision of the head of the public body under section 49, commence an appeal in the Trial Division of the head's decision to

- (a) grant or refuse access to the record or part of the record; or
- (b) not make the requested correction to personal information.

2015 cA-1.2 s54

No right of appeal

55. An appeal does not lie against

- (a) a decision respecting an extension of time under section 23;
- (b) a variation of a procedure under section 24; or

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- (c) an estimate of costs or a decision not to waive a cost under section 26.

2015 cA-1.2 s55

Procedure on appeal

56. (1) Where a person appeals a decision of the head of a public body, the notice of appeal shall name the head of the public body involved as the respondent.

(2) A copy of the notice of appeal shall be served by the appellant on the commissioner and the minister responsible for this Act.

(3) The minister responsible for this Act, the commissioner, the applicant or a third party may intervene as a party to an appeal under this Division by filing a notice to that effect with the Trial Division.

(4) Notwithstanding subsection (3), the commissioner shall not intervene as a party to an appeal of

- (a) a decision of the head of the public body under section 21 to disregard a request; or

- (b) a decision, act or failure to act of the head of a public body in respect of which the commissioner has refused under section 45 to investigate a complaint.

(5) The head of a public body who has refused access to a record or part of it shall, on receipt of a notice of appeal by an applicant, make reasonable efforts to give written notice of the appeal to a third party who

- (a) was notified of the request for access under section 19; or

- (b) would have been notified under section 19 if the head had intended to give access to the record or part of the record.

(6) Where an appeal is brought by a third party, the head of the public body shall give written notice of the appeal to the applicant.

(7) The record for the appeal shall be prepared by the head of the public body named as the respondent in the appeal.

2015 cA-1.2 s56

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Practice and procedure

57. The practice and procedure under the *Rules of the Supreme Court, 1986* providing for an expedited trial, or such adaption of those rules as the court or judge considers appropriate in the circumstances, shall apply to the appeal.

2015 cA-1.2 s57

Solicitor and client privilege

58. The solicitor and client privilege or litigation privilege of a record in dispute shall not be affected by disclosure to the Trial Division.

2015 cA-1.2 s58

Conduct of appeal

59. (1) The Trial Division shall review the decision, act or failure to act of the head of a public body that relates to a request for access to a record or correction of personal information under this Act as a new matter and may receive evidence by affidavit.

(2) The burden of proof in section 43 applies, with the necessary modifications, to an appeal.

(3) In exercising its powers to order production of documents for examination, the Trial Division shall take reasonable precautions, including where appropriate, receiving representations without notice to another person, conducting hearings in private and examining records in private, to avoid disclosure of

(a) any information or other material if the nature of the information or material could justify a refusal by a head of a public body to give access to a record or part of a record; or

(b) the existence of information, where the head of a public body is authorized to refuse to confirm or deny that the information exists under subsection 17(2).

2015 cA-1.2 s59

Disposition of appeal

60. (1) On hearing an appeal the Trial Division may

(a) where it determines that the head of the public body is authorized to refuse access to a record under this Part and, where applicable, it has not been clearly demonstrated that the public interest in disclosure of the information outweighs the reason for the exception, dismiss the appeal;

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- (b) where it determines that the head of the public body is required to refuse access to a record under this Part, dismiss the appeal; or
- (c) where it determines that the head is not authorized or required to refuse access to all or part of a record under this Part,
 - (i) order the head of the public body to give the applicant access to all or part of the record, and
 - (ii) make an order that the court considers appropriate.

(2) Where the Trial Division finds that a record or part of a record falls within an exception to access under this Act and, where applicable, it has not been clearly demonstrated that the public interest in disclosure of the information outweighs the reason for the exception, the court shall not order the head to give the applicant access to that record or part of it, regardless of whether the exception requires or merely authorizes the head to refuse access.

(3) Where the Trial Division finds that to do so would be in accordance with this Act or the regulations, it may order that personal information be corrected and the manner in which it is to be corrected.

2015 cA-1.2 s60

PART III PROTECTION OF PERSONAL INFORMATION

DIVISION 1 COLLECTION, USE AND DISCLOSURE

Purpose for which
personal informa-
tion may be col-
lected

61. No personal information may be collected by or for a public body unless

- (a) the collection of that information is expressly authorized by or under an Act;
- (b) that information is collected for the purposes of law enforcement; or

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- (c) that information relates directly to and is necessary for an operating program or activity of the public body.

2015 cA-1.2 s61

How personal
information is to be
collected

62. (1) A public body shall collect personal information directly from the individual the information is about unless

- (a) another method of collection is authorized by
 - (i) that individual,
 - (ii) the commissioner under paragraph 95(1)(c), or
 - (iii) an Act or regulation;
- (b) the information may be disclosed to the public body under sections 68 to 71;
- (c) the information is collected for the purpose of
 - (i) determining suitability for an honour or award including an honorary degree, scholarship, prize or bursary,
 - (ii) an existing or anticipated proceeding before a court or a judicial or quasi-judicial tribunal,
 - (iii) collecting a debt or fine or making a payment, or
 - (iv) law enforcement; or
- (d) collection of the information is in the interest of the individual and time or circumstances do not permit collection directly from the individual.

(2) A public body shall tell an individual from whom it collects personal information

- (a) the purpose for collecting it;
- (b) the legal authority for collecting it; and

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(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

(3) Subsection (2) does not apply where

(a) the information is about law enforcement or anything referred to in subsection 31(1) or (2); or

(b) in the opinion of the head of the public body, complying with it would

(i) result in the collection of inaccurate information, or

(ii) defeat the purpose or prejudice the use for which the information is collected.

2015 cA-1.2 s62

Accuracy of personal information

63. Where an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body shall make every reasonable effort to ensure that the information is accurate and complete.

2015 cA-1.2 s63

Protection of personal information

64. (1) The head of a public body shall take steps that are reasonable in the circumstances to ensure that

(a) personal information in its custody or control is protected against theft, loss and unauthorized collection, access, use or disclosure;

(b) records containing personal information in its custody or control are protected against unauthorized copying or modification; and

(c) records containing personal information in its custody or control are retained, transferred and disposed of in a secure manner.

(2) For the purpose of paragraph (1)(c), "disposed of in a secure manner" in relation to the disposition of a record of personal information

tion does not include the destruction of a record unless the record is destroyed in such a manner that the reconstruction of the record is not reasonably foreseeable in the circumstances.

(3) Except as otherwise provided in subsections (6) and (7), the head of a public body that has custody or control of personal information shall notify the individual who is the subject of the information at the first reasonable opportunity where the information is

- (a) stolen;
- (b) lost;
- (c) disposed of, except as permitted by law; or
- (d) disclosed to or accessed by an unauthorized person.

(4) Where the head of a public body reasonably believes that there has been a breach involving the unauthorized collection, use or disclosure of personal information, the head shall inform the commissioner of the breach.

(5) Notwithstanding a circumstance where, under subsection (7), notification of an individual by the head of a public body is not required, the commissioner may recommend that the head of the public body, at the first reasonable opportunity, notify the individual who is the subject of the information.

(6) Where a public body has received personal information from another public body for the purpose of research, the researcher may not notify an individual who is the subject of the information that the information has been stolen, lost, disposed of in an unauthorized manner or disclosed to or accessed by an unauthorized person unless the public body that provided the information to the researcher first obtains that individual's consent to contact by the researcher and informs the researcher that the individual has given consent.

(7) Subsection (3) does not apply where the head of the public body reasonably believes that the theft, loss, unauthorized disposition, or improper disclosure or access of personal information does not create a risk of significant harm to the individual who is the subject of the information.

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(8) For the purpose of this section, "significant harm" includes bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property.

(9) The factors that are relevant to determining under subsection (7) whether a breach creates a risk of significant harm to an individual include

- (a) the sensitivity of the personal information; and
- (b) the probability that the personal information has been, is being, or will be misused.

2015 cA-1.2 s64

Retention of per-
sonal information

65. (1) Where a public body uses an individual's personal information to make a decision that directly affects the individual, the public body shall retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.

(2) A public body that has custody or control of personal information that is the subject of a request for access to a record or correction of personal information under Part II shall retain that information for as long as necessary to allow the individual to exhaust any recourse under this Act that he or she may have with respect to the request.

2015 cA-1.2 s65

Use of personal
information

66. (1) A public body may use personal information only

- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose as described in section 69;
- (b) where the individual the information is about has identified the information and has consented to the use, in the manner set by the minister responsible for this Act; or
- (c) for a purpose for which that information may be disclosed to that public body under sections 68 to 71.

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(2) The use of personal information by a public body shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is used.

2015 cA-1.2 s66

Use of personal
information by post-
secondary educa-
tional bodies

67. (1) Notwithstanding section 66, a post-secondary educational body may, in accordance this section, use personal information in its alumni records for the purpose of its own fundraising activities where that personal information is reasonably necessary for the fundraising activities.

(2) In order to use personal information in its alumni records for the purpose of its own fundraising activities, a post-secondary educational body shall

- (a) give notice to the individual to whom the personal information relates when the individual is first contacted for the purpose of soliciting funds for fundraising of his or her right to request that the information cease to be used for fundraising purposes;
- (b) periodically and in the course of soliciting funds for fundraising, give notice to the individual to whom the personal information relates of his or her right to request that the information cease to be used for fundraising purposes; and
- (c) periodically and in a manner that is likely to come to the attention of individuals who may be solicited for fundraising, publish in an alumni magazine or other publication, a notice of the individual's right to request that the individual's personal information cease to be used for fundraising purposes.

(3) A post-secondary educational body shall, where requested to do so by an individual, cease to use the individual's personal information under subsection (1).

(4) The use of personal information by a post-secondary educational body under this section shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is used.

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2015 cA-1.2 s67

Disclosure of per-
sonal information

- 68.** (1) A public body may disclose personal information only
- (a) in accordance with Part II;
 - (b) where the individual the information is about has identified the information and consented to the disclosure in the manner set by the minister responsible for this Act;
 - (c) for the purpose for which it was obtained or compiled or for a use consistent with that purpose as described in section 69;
 - (d) for the purpose of complying with an Act or regulation of, or with a treaty, arrangement or agreement made under an Act or regulation of the province or Canada;
 - (e) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information;
 - (f) to an officer or employee of the public body or to a minister, where the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer, employee or minister;
 - (g) to the Attorney General for use in civil proceedings involving the government;
 - (h) for the purpose of enforcing a legal right the government of the province or a public body has against a person;
 - (i) for the purpose of
 - (i) collecting a debt or fine owing by the individual the information is about to the government of the province or to a public body, or
 - (ii) making a payment owing by the government of the province or by a public body to the individual the information is about;

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- (j) to the Auditor General or another person or body prescribed in the regulations for audit purposes;
- (k) to a member of the House of Assembly who has been requested by the individual the information is about to assist in resolving a problem;
- (l) to a representative of a bargaining agent who has been authorized in writing by the employee, whom the information is about, to make an inquiry;
- (m) to the Provincial Archives of Newfoundland and Labrador, or the archives of a public body, for archival purposes;
- (n) to a public body or a law enforcement agency in Canada to assist in an investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;
- (o) where the public body is a law enforcement agency and the information is disclosed
 - (i) to another law enforcement agency in Canada, or
 - (ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority;
- (p) where the head of the public body determines that compelling circumstances exist that affect a person's health or safety and where notice of disclosure is given in the form appropriate in the circumstances to the individual the information is about;
- (q) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted;
- (r) in accordance with an Act of the province or Canada that authorizes or requires the disclosure;

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- (s) in accordance with sections 70 and 71;
- (t) where the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 40;
- (u) to an officer or employee of a public body or to a minister, where the information is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or minister to whom the information is disclosed; or
- (v) to the surviving spouse or relative of a deceased individual where, in the opinion of the head of the public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy.

(2) The disclosure of personal information by a public body shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.

2015 cA-1.2 s68

Definition of con-
sistent purposes

69. A use of personal information is consistent under section 66 or 68 with the purposes for which the information was obtained or compiled where the use

- (a) has a reasonable and direct connection to that purpose; and
- (b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

2015 cA-1.2 s69

Disclosure for
research or statisti-
cal purposes

70. A public body may disclose personal information for a research purpose, including statistical research, only where

- (a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form;

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- (b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest;
- (c) the head of the public body concerned has approved conditions relating to the following:
 - (i) security and confidentiality,
 - (ii) the removal or destruction of individual identifiers at the earliest reasonable time, and
 - (iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body; and
- (d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Act and the public body's policies and procedures relating to the confidentiality of personal information.

2015 cA-1.2 s70

Disclosure for
archival or historical
purposes

71. The Provincial Archives of Newfoundland and Labrador, or the archives of a public body, may disclose personal information for archival or historical purposes where

- (a) the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 40;
- (b) the disclosure is for historical research and is in accordance with section 70;
- (c) the information is about an individual who has been dead for 20 years or more; or
- (d) the information is in a record that has been in existence for 50 years or more.

2015 cA-1.2 s71

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Privacy impact
assessment

72. (1) A minister shall, during the development of a program or service by a department or branch of the executive government of the province, submit to the minister responsible for this Act

- (a) a privacy impact assessment for that minister's review and comment; or
- (b) the results of a preliminary assessment showing that a privacy impact assessment of the program or service is not required.

(2) A minister shall conduct a preliminary assessment and, where required, a privacy impact assessment in accordance with the directions of the minister responsible for this Act.

(3) A minister shall notify the commissioner of a common or integrated program or service at an early stage of developing the program or service.

(4) Where the minister responsible for this Act receives a privacy impact assessment respecting a common or integrated program or service for which disclosure of personal information may be permitted under paragraph 68(1)(u), the minister shall, during the development of the program or service, submit the privacy impact assessment to the commissioner for the commissioner's review and comment.

2015 cA-1.2 s72

DIVISION 2 PRIVACY COMPLAINT

Privacy complaint

73. (1) Where an individual believes on reasonable grounds that his or her personal information has been collected, used or disclosed by a public body in contravention of this Act, he or she may file a privacy complaint with the commissioner.

(2) Where a person believes on reasonable grounds that personal information has been collected, used or disclosed by a public body in contravention of this Act, he or she may file a privacy complaint with the commissioner on behalf of an individual or group of individuals, where that individual or those individuals have given consent to the filing of the privacy complaint.

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(3) Where the commissioner believes that personal information has been collected, used or disclosed by a public body in contravention of this Act, the commissioner may on his or her own motion carry out an investigation.

(4) A privacy complaint under subsection (1) or (2) shall be filed in writing with the commissioner within

(a) one year after the subject matter of the privacy complaint first came to the attention of the complainant or should reasonably have come to the attention of the complainant; or

(b) a longer period of time as permitted by the commissioner.

(5) The commissioner shall provide a copy or summary of the privacy complaint, including an investigation initiated on the commissioner's own motion, to the head of the public body concerned.

2015 cA-1.2 s73

Investigation –
privacy complaint

74. (1) The commissioner may take the steps that he or she considers appropriate to resolve a privacy complaint informally to the satisfaction of the parties and in a manner consistent with this Act.

(2) Where the commissioner is unable to informally resolve a privacy complaint within a reasonable period of time, the commissioner shall conduct a formal investigation of the subject matter of the privacy complaint where he or she is satisfied that there are reasonable grounds to do so.

(3) The commissioner shall complete a formal investigation and make a report under section 77 within a time that is as expeditious as possible in the circumstances.

(4) Where the commissioner has 5 active privacy complaints from the same person that deal with similar or related records, the commissioner may hold an additional complaint in abeyance and not commence an investigation until one of the 5 active complaints is resolved.

2015 cA-1.2 s74

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Authority of commissioner not to investigate a privacy complaint

75. The commissioner may, at any stage of an investigation, refuse to investigate a privacy complaint where he or she is satisfied that

- (a) the head of a public body has responded adequately to the privacy complaint;
- (b) the privacy complaint has been or could be more appropriately dealt with by a procedure or proceeding other than a complaint under this Act;
- (c) the length of time that has elapsed between the date when the subject matter of the privacy complaint arose and the date when the privacy complaint was filed is such that an investigation under this Part would be likely to result in undue prejudice to a person or that a report would not serve a useful purpose; or
- (d) the privacy complaint is trivial, frivolous, vexatious or is made in bad faith.

2015 cA-1.2 s75

Recommendations –
privacy complaint

76. (1) On completing an investigation of a privacy complaint, the commissioner may recommend that the head of a public body

- (a) stop collecting, using or disclosing personal information in contravention of this Act; or
 - (b) destroy personal information collected in contravention of this Act.
- (2) The commissioner may also make
- (a) a recommendation that an information practice, policy or procedure be implemented, modified, stopped or not commenced; or
 - (b) a recommendation on the privacy aspect of the matter that is the subject of the privacy complaint.

2015 cA-1.2 s76

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Report – privacy
complaint

77. (1) On completing an investigation of a privacy complaint, the commissioner shall

- (a) prepare a report containing the commissioner's findings and, where appropriate, his or her recommendations and the reasons for those recommendations; and
- (b) send a copy of the report to the person who filed the privacy complaint and the head of the public body concerned.

(2) The report shall include information respecting the obligation of the head of the public body to notify the person who filed the privacy complaint of the head's response to the recommendation of the commissioner within 10 business days of receipt of the recommendation.

2015 cA-1.2 s77

Response of public
body – privacy
complaint

78. (1) The head of a public body shall, not later than 10 business days after receiving a recommendation of the commissioner,

- (a) decide whether or not to comply with the recommendation in whole or in part; and
- (b) give written notice of his or her decision to the commissioner and a person who was sent a copy of the report.

(2) Where the head of the public body does not give written notice within the time required by subsection (1), the head of the public body is considered to have agreed to comply with the recommendation of the commissioner.

2015 cA-1.2 s78

Head of public body
seeks declaration in
court

79. (1) Where the head of the public body decides under section 78 not to comply with a recommendation of the commissioner under subsection 76(1) in whole or in part, the head shall, not later than 10 business days after receipt of that recommendation,

- (a) apply to the Trial Division for a declaration that the public body is not required to comply with that recommendation because the collection, use or disclosure of the personal information is not in contravention of this Act, and

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- (b) serve a copy of the application for a declaration on the commissioner, the minister responsible for the administration of this Act, and a person who was sent a copy of the commissioner's report.

(2) The commissioner or the minister responsible for this Act may intervene in an application for a declaration by filing a notice to that effect with the Trial Division.

2015 cA-1.2 s79

Filing an order with
the Trial Division

80. (1) The commissioner may prepare and file an order with the Trial Division where

- (a) the head of the public body agrees or is considered to have agreed under section 78 to comply with a recommendation of the commissioner under subsection 76(1) in whole or in part but fails to do so within one year after receipt of the commissioner's recommendation; or
- (b) the head of the public body fails to apply under section 79 to the Trial Division for a declaration.

(2) The order shall be limited to a direction to the head of the public body to do one or more of the following:

- (a) stop collecting, using or disclosing personal information in contravention of this Act; or
- (b) destroy personal information collected in contravention of this Act.

(3) An order shall not be filed with the Trial Division until the time period referred to in paragraph (1)(a) has passed.

(4) Where an order is filed with the Trial Division, it is enforceable against the public body as if it were a judgment or order made by the court.

2015 cA-1.2 s80

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DIVISION 3
APPLICATION TO THE TRIAL DIVISION
FOR A DECLARATION

Practice and proce-
dure

81. The practice and procedure under the *Rules of the Supreme Court, 1986* providing for an expedited trial, or such adaption of those rules as the court or judge considers appropriate in the circumstances, shall apply to an application to the Trial Division for a declaration.

2015 cA-1.2 s81

Solicitor and client
privilege

82. The solicitor and client privilege or litigation privilege of a record which may contain personal information shall not be affected by disclosure to the Trial Division.

2015 cA-1.2 s82

Conduct

83. (1) The Trial Division shall review the act or failure to act of the head of a public body that relates to the collection, use or disclosure of personal information under this Act as a new matter and may receive evidence by affidavit.

(2) In exercising its powers to order production of documents for examination, the Trial Division shall take reasonable precautions, including where appropriate, receiving representations without notice to another person, conducting hearings in private and examining records in private, to avoid disclosure of

(a) any information or other material if the nature of the information or material could justify a refusal by a head of a public body to give access to a record or part of a record; or

(b) the existence of information, where the head of a public body is authorized to refuse to confirm or deny that the information exists under subsection 17(2).

2015 cA-1.2 s83

Disposition

84. On hearing an application for a declaration, the Trial Division may

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- (a) where it determines that the head of the public body is authorized under this Act to use, collect or disclose the personal information, dismiss the application;
- (b) where it determines that the head is not authorized under this Act to use, collect or disclose the personal information,
 - (i) order the head of the public body to stop using, collecting or disclosing the information, or
 - (ii) order the head of the public body to destroy the personal information that was collected in contravention of this Act; or
- (c) make an order that the court considers appropriate.

2015 cA-1.2 s84

**PART IV
OFFICE AND POWERS OF THE
INFORMATION AND PRIVACY
COMMISSIONER**

**DIVISION 1
OFFICE**

Appointment of the
Information and
Privacy Commis-
sioner

85. (1) The office of the Information and Privacy Commissioner is continued.

(2) The office shall be filled by the Lieutenant-Governor in Council on a resolution of the House of Assembly.

(3) Before an appointment is made, the Speaker shall establish a selection committee comprising

- (a) the Clerk of the Executive Council or his or her deputy;
- (b) the Clerk of the House of Assembly or, where the Clerk is unavailable, the Clerk Assistant of the House of Assembly;
- (c) the Chief Judge of the Provincial Court or another judge of that court designated by the Chief Judge; and

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(d) the President of Memorial University or a vice-president of Memorial University designated by the President.

(4) The selection committee shall develop a roster of qualified candidates and in doing so may publicly invite expressions of interest for the position of commissioner.

(5) The selection committee shall submit the roster to the Speaker of the House of Assembly.

(6) The Speaker shall

(a) consult with the Premier, the Leader of the Official Opposition and the leader or member of a registered political party that is represented on the House of Assembly Management Commission; and

(b) cause to be placed before the House of Assembly a resolution to appoint as commissioner one of the individuals named on the roster.

2015 cA-1.2 s85

Status of the commissioner

86. (1) The commissioner is an officer of the House of Assembly and is not eligible to be nominated for election, to be elected, or to sit as a member of the House of Assembly.

(2) The commissioner shall not hold another public office or carry on a trade, business or profession.

(3) In respect of his or her interactions with a public body, whether or not it is a public body to which this Act applies, the commissioner has the status of a deputy minister.

2015 cA-1.2 s86

Term of office

87. (1) Unless he or she sooner resigns, dies or is removed from office, the commissioner shall hold office for 6 years from the date of his or her appointment.

(2) The Lieutenant-Governor in Council may, with the approval of a majority of the members on the government side of the House of Assembly and separate approval of a majority of the members on the

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opposition side of the House of Assembly, re-appoint the commissioner for one further term of 6 years.

(3) The Speaker shall, in the event of a tie vote on either or both sides of the House of Assembly, cast the deciding vote.

(4) The commissioner may resign his or her office in writing addressed to the Speaker of the House of Assembly, or, where there is no Speaker or the Speaker is absent, to the Clerk of the House of Assembly.

2015 cA-1.2 s87

Removal or suspension

88. (1) The Lieutenant-Governor in Council, on a resolution of the House of Assembly passed by a majority vote of the members of the House of Assembly actually voting, may remove the commissioner from office or suspend him or her because of an incapacity to act, or for neglect of duty or for misconduct.

(2) When the House of Assembly is not in session, the Lieutenant-Governor in Council may suspend the commissioner because of an incapacity to act, or for neglect of duty or for misconduct, but the suspension shall not continue in force beyond the end of the next sitting of the House of Assembly.

2015 cA-1.2 s88

Acting commissioner

89. (1) The Lieutenant-Governor in Council may, on the recommendation of the House of Assembly Management Commission, appoint an acting commissioner if

- (a) the commissioner is temporarily unable to perform his or her duties;
- (b) the office of the commissioner becomes vacant or the commissioner is suspended when the House of Assembly is not in session; or
- (c) the office of the commissioner becomes vacant or the commissioner is suspended when the House of Assembly is in session, but the House of Assembly does not pass a resolution to fill the office of the commissioner before the end of the session.

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(2) Where the office of the commissioner becomes vacant and an acting commissioner is appointed under paragraph (1)(b) or (c), the term of the acting commissioner shall not extend beyond the end of the next sitting of the House of Assembly.

(3) An acting commissioner holds office until

- (a) the commissioner returns to his or her duties after a temporary inability to perform;
- (b) the suspension of the commissioner ends or is dealt with in the House of Assembly; or
- (c) a person is appointed as a commissioner under section 85.

2015 cA-1.2 s89

Salary, pension and
benefits

90. (1) The commissioner shall be paid a salary fixed by the Lieutenant-Governor in Council after consultation with the House of Assembly Management Commission.

(2) The salary of the commissioner shall not be reduced except on resolution of the House of Assembly.

(3) The commissioner is subject to the *Public Service Pensions Act, 1991* where he or she was subject to that Act prior to his or her appointment as commissioner.

(4) Where the commissioner is not subject to the *Public Service Pensions Act, 1991* prior to his or her appointment as commissioner, he or she shall be paid, for contribution to a registered retirement savings plan, an amount equivalent to the amount which he or she would have contributed to the Public Service Pension Plan were the circumstances in subsection (3) applicable.

(5) The commissioner is eligible to receive the same benefits as a deputy minister, with the exception of a pension where subsection (4) applies.

2015 cA-1.2 s90; 2016 c6 s2

Expenses

91. The commissioner shall be paid the travelling and other expenses, at the deputy minister level, incurred by him or her in the per-

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formance of his or her duties that may be approved by the House of Assembly Management Commission.

2015 cA-1.2 s91

Commissioner's
staff

92. (1) The commissioner may, subject to the approval of the House of Assembly Management Commission, and in the manner provided by law, appoint those assistants and employees that he or she considers necessary to enable him or her to carry out his or her functions under this Act and the *Personal Health Information Act*.

(2) Persons employed under subsection (1) are members of the public service of the province.

2015 cA-1.2 s92

Oath of office

93. Before beginning to perform his or her duties, the commissioner shall swear an oath, or affirm, before the Speaker of the House of Assembly or the Clerk of the House of Assembly that he or she shall faithfully and impartially perform the duties of his or her office and that he or she shall not, except as provided by this Act and the *Personal Health Information Act*, divulge information received by him or her under this Act and the *Personal Health Information Act*.

2015 cA-1.2 s93

Oath of staff

94. Every person employed under the commissioner shall, before he or she begins to perform his or her duties, swear an oath, or affirm, before the commissioner that he or she shall not, except as provided by this Act and the *Personal Health Information Act*, divulge information received by him or her under this Act and the *Personal Health Information Act*.

2015 cA-1.2 s94

DIVISION 2 POWERS OF THE COMMISSIONER

General powers and
duties of commis-
sioner

95. (1) In addition to the commissioner's powers and duties under Parts II and III, the commissioner may

(a) conduct investigations to ensure compliance with this Act and the regulations;

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- (b) monitor and audit the practices and procedures employed by public bodies in carrying out their responsibilities and duties under this Act;
- (c) review and authorize the collection of personal information from sources other than the individual the information is about;
- (d) consult with any person with experience or expertise in any matter related to the purpose of this Act; and
- (e) engage in or commission research into anything relating to the purpose of this Act.

(2) In addition to the commissioner's powers and duties under Parts II and III, the commissioner shall exercise and perform the following powers and duties:

- (a) inform the public about this Act;
- (b) develop and deliver an educational program to inform people of their rights and the reasonable limits on those rights under this Act and to inform public bodies of their responsibilities and duties, including the duty to assist, under this Act;
- (c) provide reasonable assistance, upon request, to a person;
- (d) receive comments from the public about the administration of this Act and about matters concerning access to information and the confidentiality, protection and correction of personal information;
- (e) comment on the implications for access to information or for protection of privacy of proposed legislative schemes, programs or practices of public bodies;
- (f) comment on the implications for protection of privacy of
 - (i) using or disclosing personal information for record linkage, or

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- (ii) using information technology in the collection, storage, use or transfer of personal information;
- (g) take actions necessary to identify, promote, and where possible cause to be made adjustments to practices and procedures that will improve public access to information and protection of personal information;
- (h) bring to the attention of the head of a public body a failure to fulfil the duty to assist applicants;
- (i) make recommendations to the head of a public body or the minister responsible for this Act about the administration of this Act;
- (j) inform the public from time to time of apparent deficiencies in the system, including the office of the commissioner; and
- (k) establish and implement practices and procedures in the office of the commissioner to ensure efficient and timely compliance with this Act.

(3) The commissioner's investigation powers and duties provided in this Part are not limited to an investigation under paragraph (1)(a) but apply also to an investigation in respect of a complaint, privacy complaint, audit, decision or other action that the commissioner is authorized to take under this Act.

2015 cA-1.2 s95

Representation
during an investigation

96. (1) During an investigation, the commissioner may give a person an opportunity to make a representation.

(2) An investigation may be conducted by the commissioner in private and a person who makes representations during an investigation is not, except to the extent invited by the commissioner to do so, entitled to be present during an investigation or to comment on representations made to the commissioner by another person.

(3) The commissioner may decide whether representations are to be made orally or in writing.

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(4) Representations may be made to the commissioner through counsel or an agent.

2015 cA-1.2 s96

Production of
documents

97. (1) This section and section 98 apply to a record notwithstanding

- (a) paragraph 5(1)(c), (d), (e), (f), (g), (h) or (i);
- (b) subsection 7(2);
- (c) another Act or regulation; or
- (d) a privilege under the law of evidence.

(2) The commissioner has the powers, privileges and immunities that are or may be conferred on a commissioner under the *Public Inquiries Act, 2006*.

(3) The commissioner may require any record in the custody or under the control of a public body that the commissioner considers relevant to an investigation to be produced to the commissioner and may examine information in a record, including personal information.

(4) As soon as possible and in any event not later than 10 business days after a request is made by the commissioner, the head of a public body shall produce to the commissioner a record or a copy of a record required under this section.

(5) The head of a public body may require the commissioner to examine the original record at a site determined by the head where

- (a) the head of the public body has a reasonable basis for concern about the security of a record that is subject to solicitor and client privilege or litigation privilege;
- (b) the head of the public body has a reasonable basis for concern about the security of another record and the Commissioner agrees there is a reasonable basis for concern; or
- (c) it is not practicable to make a copy of the record.

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(6) The head of a public body shall not place a condition on the ability of the commissioner to access or examine a record required under this section, other than that provided in subsection (5).

2015 cA-1.2 s97

Right of entry

98. The commissioner has the right

- (a) to enter an office of a public body and examine and make copies of a record in the custody of the public body; and
- (b) to converse in private with an officer or employee of the public body.

2015 cA-1.2 s98

Admissibility of
evidence

99. (1) A statement made, or answer or evidence given by a person in the course of an investigation by or proceeding before the commissioner under this Act is not admissible in evidence against a person in a court or at an inquiry or in another proceeding, and no evidence respecting a proceeding under this Act shall be given against a person except

- (a) in a prosecution for perjury;
- (b) in a prosecution for an offence under this Act; or
- (c) in an appeal to, or an application for a declaration from, the Trial Division under this Act, or in an appeal to the Court of Appeal respecting a matter under this Act.

(2) The commissioner, and a person acting for or under the direction of the commissioner, shall not be required to give evidence in a court or in a proceeding about information that comes to the knowledge of the commissioner in performing duties or exercising powers under this Act.

2015 cA-1.2 s99

Privilege

100. (1) Where a person speaks to, supplies information to or produces a record during an investigation by the commissioner under this Act, what he or she says, the information supplied and the record pro-

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duced are privileged in the same manner as if they were said, supplied or produced in a proceeding in a court.

(2) The solicitor and client privilege or litigation privilege of the records shall not be affected by production to the commissioner.

2015 cA-1.2 s100

Section 8.1 of the
Evidence Act

101. Section 8.1 of the *Evidence Act* does not apply to an investigation conducted by the commissioner under this Act.

2015 cA-1.2 s101

Disclosure of in-
formation

102. (1) The commissioner and a person acting for or under the direction of the commissioner, shall not disclose information obtained in performing duties or exercising powers under this Act, except as provided in subsections (2) to (5).

(2) The commissioner may disclose, or may authorize a person acting for or under his or her direction to disclose, information that is necessary to

- (a) perform a duty or exercise a power of the commissioner under this Act; or
- (b) establish the grounds for findings and recommendations contained in a report under this Act.

(3) In conducting an investigation and in performing a duty or exercising a power under this Act, the commissioner and a person acting for or under his or her direction, shall take reasonable precautions to avoid disclosing and shall not disclose

- (a) any information or other material if the nature of the information or material could justify a refusal by a head of a public body to give access to a record or part of a record;
- (b) the existence of information, where the head of a public body is authorized to refuse to confirm or deny that the information exists under subsection 17(2);
- (c) any information contained in a report or notice made under section 4 or 7 of the *Patient Safety Act*; or

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(d) any information, including a record, that is prepared for the use of, or collected, compiled or prepared by, a committee referred to in subsection 8.1(1) of the *Evidence Act* for the purpose of carrying out its duties.

(4) The commissioner may disclose to the Attorney General information relating to the commission of an offence under this or another Act of the province or Canada, where the commissioner has reason to believe an offence has been committed.

(5) The commissioner may disclose, or may authorize a person acting for or under his or her direction to disclose, information in the course of a prosecution or another matter before a court referred to in subsection 99(1).

2015 cA-1.2 s102; 2017 cP-3.01 s28

Delegation

103. The commissioner may delegate to a person on his or her staff a duty or power under this Act.

2015 cA-1.2 s103

Protection from
liability

104. An action does not lie against the commissioner or against a person employed under him or her for anything he or she may do or report or say in the course of the exercise or performance, or intended exercise or performance, of his or her functions and duties under this Act, unless it is shown he or she acted in bad faith.

2015 cA-1.2 s104

Annual report

105. The commissioner shall report annually to the House of Assembly through the Speaker on

- (a) the exercise and performance of his or her duties and functions under this Act;
- (b) a time analysis of the functions and procedures in matters involving the commissioner in a complaint, from the date of receipt of the request for access or correction by the public body to the date of informal resolution, the issuing of the commissioner's report, or the withdrawal or abandonment of the complaint, as applicable;

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- (c) persistent failures of public bodies to fulfil the duty to assist applicants, including persistent failures to respond to requests in a timely manner;
- (d) the commissioner's recommendations and whether public bodies have complied with the recommendations;
- (e) the administration of this Act by public bodies and the minister responsible for this Act; and
- (f) other matters about access to information and protection of privacy that the commissioner considers appropriate.

2015 cA-1.2 s105

Special report

106. The commissioner may at any time make a special report to the House of Assembly through the Speaker relating to

- (a) the resources of the office of the commissioner;
- (b) another matter affecting the operations of this Act; or
- (c) a matter within the scope of the powers and duties of the commissioner under this Act.

2015 cA-1.2 s106

Report – investigation or audit

107. On completing an investigation under paragraph 95(1)(a) or an audit under paragraph 95(1)(b), the commissioner

- (a) shall prepare a report containing the commissioner's findings and, where appropriate, his or her recommendations and the reasons for those recommendations;
- (b) shall send a copy of the report to the head of the public body concerned; and
- (c) may make the report public.

2015 cA-1.2 s107

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**PART V
GENERAL**

Exercising rights of
another person

108. A right or power of an individual given in this Act may be exercised

- (a) by a person with written authorization from the individual to act on the individual's behalf;
- (b) by a court appointed guardian of a mentally disabled person, where the exercise of the right or power relates to the powers and duties of the guardian;
- (c) by an attorney acting under a power of attorney, where the exercise of the right or power relates to the powers and duties conferred by the power of attorney;
- (d) by the parent or guardian of a minor where, in the opinion of the head of the public body concerned, the exercise of the right or power by the parent or guardian would not constitute an unreasonable invasion of the minor's privacy; or
- (e) where the individual is deceased, by the individual's personal representative, where the exercise of the right or power relates to the administration of the individual's estate.

2015 cA-1.2 s108

Designation of head
by local public body

109. (1) A local public body shall, by by-law, resolution or other instrument, designate a person or group of persons as the head of the local public body for the purpose of this Act, and once designated, the local public body shall advise the minister responsible for this Act of the designation.

(2) A local government body or group of local government bodies shall

- (a) by by-law, resolution or other instrument, designate a person or group of persons, for the purpose of this Act, as the head of an unincorporated entity owned by or created for the local government body or group of local government bodies; and

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*Access to Information and Protection
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- (b) advise the minister responsible for this Act of the designation.

2015 cA-1.2 s109

Designation and
delegation by the
head of a public
body

110. (1) The head of a public body shall designate a person on the staff of the public body as the coordinator to

- (a) receive and process requests made under this Act;
- (b) co-ordinate responses to requests for approval by the head of the public body;
- (c) communicate, on behalf of the public body, with applicants and third parties to requests throughout the process including the final response;
- (d) educate staff of the public body about the applicable provisions of this Act;
- (e) track requests made under this Act and the outcome of the request;
- (f) prepare statistical reports on requests for the head of the public body; and
- (g) carry out other duties as may be assigned.

(2) The head of a public body may delegate to a person on the staff of the public body a duty or power of the head under this Act.

2015 cA-1.2 s110

Publication scheme

111. (1) The commissioner shall create a standard template for the publication of information by public bodies to assist in identifying and locating records in the custody or under the control of public bodies.

(2) The head of a public body shall adapt the standard template to its functions and publish its own information according to that adapted template.

- (3) The published information shall include

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- (a) a description of the mandate and functions of the public body and its components;
 - (b) a description and list of the records in the custody or under the control of the public body, including personal information banks;
 - (c) the name, title, business address and business telephone number of the head and coordinator of the public body; and
 - (d) a description of the manuals used by employees of the public body in administering or carrying out the programs and activities of the public body.
- (4) The published information shall include for each personal information bank maintained by a public body
- (a) its name and location;
 - (b) a description of the kind of personal information and the categories of individuals whose personal information is included;
 - (c) the authority and purposes for collecting the personal information;
 - (d) the purposes for which the personal information is used or disclosed; and
 - (e) the categories of persons who use the personal information or to whom it is disclosed.
- (5) Where personal information is used or disclosed by a public body for a purpose that is not included in the information published under subsection (2), the head of the public body shall
- (a) keep a record of the purpose and either attach or link the record to the personal information; and
 - (b) update the published information to include that purpose.
- (6) This section or a subsection of this section shall apply to those public bodies listed in the regulations.

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2015 cA-1.2 s111

Amendments to
statutes and regula-
tions

112. (1) A minister shall consult with the commissioner on a proposed Bill that could have implications for access to information or protection of privacy, as soon as possible before, and not later than, the date on which notice to introduce the Bill in the House of Assembly is given.

(2) The commissioner shall advise the minister as to whether the proposed Bill has implications for access to information or protection of privacy.

(3) The commissioner may comment publicly on a draft Bill any time after that draft Bill has been made public.

2015 cA-1.2 s112

Report of minister
responsible

113. The minister responsible for this Act shall report annually to the House of Assembly on the administration of this Act and shall include information about

- (a) the number of requests for access and whether they were granted or denied;
- (b) the specific provisions of this Act used to refuse access;
- (c) the number of requests for correction of personal information;
- (d) the costs charged for access to records; and
- (e) systemic and other issues raised by the commissioner in the annual reports of the commissioner.

2015 cA-1.2 s113

Limitation of liabil-
ity

114. (1) An action does not lie against the government of the province, a public body, the head of a public body, an elected or appointed official of a local public body or a person acting for or under the direction of the head of a public body for damages resulting from

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- (a) the disclosure of or a failure to disclose, in good faith, a record or part of a record or information under this Act or a consequence of that disclosure or failure to disclose; or
- (b) the failure to give a notice required by this Act where reasonable care is taken to ensure that notices are given.

(2) An action does not lie against a Member of the House of Assembly for disclosing information obtained from a public body in accordance with paragraph 68(1)(k) while acting in good faith on behalf of an individual.

2015 cA-1.2 s114

Offence

115. (1) A person who wilfully collects, uses or discloses personal information in contravention of this Act or the regulations is guilty of an offence and liable, on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term not exceeding 6 months, or to both.

(2) A person who wilfully

- (a) attempts to gain or gains access to personal information in contravention of this Act or the regulations;
- (b) makes a false statement to, or misleads or attempts to mislead the commissioner or another person performing duties or exercising powers under this Act;
- (c) obstructs the commissioner or another person performing duties or exercising powers under this Act;
- (d) destroys a record or erases information in a record that is subject to this Act, or directs another person to do so, with the intent to evade a request for access to records; or
- (e) alters, falsifies or conceals a record that is subject to this Act, or directs another person to do so, with the intent to evade a request for access to records,

is guilty of an offence and liable, on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term not exceeding 6 months, or to both.

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(3) A prosecution for an offence under this Act shall be commenced within 2 years of the date of the discovery of the offence.

2015 cA-1.2 s115

Regulations

116. The Lieutenant-Governor in Council may make regulations

- (a) designating a body as a public body, educational body, health care body or local government body under this Act;
- (b) designating a person or group of persons as the head of a public body;
- (c) prescribing procedures to be followed in making, transferring and responding to requests under this Act;
- (d) permitting prescribed categories of applicants to make requests under this Act orally instead of in writing;
- (e) limiting the costs that different categories of persons may be charged under this Act;
- (f) authorizing, for the purposes of section 28, a local public body to hold meetings of its elected officials, or of its governing body or a committee of the governing body, to consider specified matters in the absence of the public unless another Act
 - (i) expressly authorizes the local public body to hold meetings in the absence of the public, and
 - (ii) specifies the matters that may be discussed at those meetings;
- (g) prescribing for the purposes of section 36 the categories of sites that are considered to have heritage or anthropological value;
- (h) authorizing the disclosure of information relating to the mental or physical health of individuals to medical or other experts to determine, for the purposes of section 37, if disclosure of that information could reasonably be expected to

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- result in grave and immediate harm to the safety of or the mental or physical health of those individuals;
- (i) prescribing procedures to be followed or restrictions considered necessary with respect to the disclosure and examination of information referred to in paragraph (h);
 - (j) prescribing special procedures for giving individuals access to personal information about their mental or physical health;
 - (k) prescribing, for the purposes of section 68, a body to whom personal information may be disclosed for audit purposes;
 - (l) prescribing the public bodies that are required to comply with all or part of section 111;
 - (m) requiring public bodies to provide to the minister responsible for this Act information that relates to its administration or is required for preparing the minister's annual report;
 - (n) providing for the retention and disposal of records by a public body if the *Management of Information Act* does not apply to the public body;
 - (o) exempting any class of public body from a regulation made under this section; and
 - (p) generally to give effect to this Act.

2015 cA-1.2 s116

Review

117. (1) After the expiration of not more than 5 years after the coming into force of this Act or part of it and every 5 years thereafter, the minister responsible for this Act shall refer it to a committee for the purpose of undertaking a comprehensive review of the provisions and operation of this Act or part of it.

(2) The committee shall review the list of provisions in Schedule A to determine the necessity for their continued inclusion in Schedule A.

2015 cA-1.2 s117

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Transitional

118. (1) This Act applies to

- (a) a request for access to a record that is made on or after the day section 8 comes into force;
- (b) a request for correction of personal information that is made on or after the day section 10 comes into force; and
- (c) a privacy complaint that is filed by an individual or commenced by the commissioner on or after the day section 73 comes into force.

(2) Part IV, Division 1 applies to and upon the appointment of the next commissioner.

2015 cA-1.2 s118

SNL2013 cA-3.1
Amdt.

119. (1) Subsection 61(2) of the *Adoption Act, 2013* is amended by deleting the reference "*Access to Information and Protection of Privacy Act*" and substituting the reference "*Access to Information and Protection of Privacy Act, 2015*".

(2) Section 64 of the Act is repealed and the following substituted:

Acts do not apply

64. Notwithstanding the *Access to Information and Protection of Privacy Act, 2015* and the *Privacy Act* (Canada), the use of, disclosure of and access to information in records pertaining to adoptions, regardless of where the information or records are located, shall be governed by this Act.

(3) Subsection 67(1) of the Act is amended by deleting the reference "*Access to Information and Protection of Privacy Act*" and substituting the reference "*Access to Information and Protection of Privacy Act, 2015*".

2015 cA-1.2 s119

SNL1991 c22
Amdt.

120. Section 19 of the *Auditor General Act* is repealed and the following substituted:

Prohibition

19. Notwithstanding sections 17 and 18, the auditor general shall not be permitted access to information the disclosure of which may be

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Access to Information and Protection
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refused under section 31 of the *Access to Information and Protection of Privacy Act, 2015* or the disclosure of which shall be refused under section 27 of that Act.

2015 cA-1.2 s120

RSNL1990 cC-2
Amdt.

121. Subsection 201.83(2) of the *Canada-Newfoundland And Labrador Atlantic Accord Implementation Newfoundland And Labrador Act* is amended by deleting the reference "*Access to Information and Protection of Privacy Act*" and substituting the reference "*Access to Information and Protection of Privacy Act, 2015*".

2015 cA-1.2 s121

SNL2004 cC-5.1
Amdt.

122. Paragraph 2(e) of the *Centre for Health Information Act* is repealed and the following substituted:

(e) "personal information" means personal information as defined in the *Access to Information and Protection of Privacy Act, 2015*, other than information described in subparagraph 2(u)(vi) of that Act.

2015 cA-1.2 s122

SNL2010 cC-12.2
Amdt.

123. (1) Section 69 of the *Children and Youth Care and Protection Act* is repealed and the following substituted:

Access to Information and Protection
of Privacy Act,
2015 does not apply

69. Notwithstanding the *Access to Information and Protection of Privacy Act, 2015*, the use of, disclosure of and access to information in records pertaining to the care and protection of children and youth obtained under this Act, regardless of where the information or records are located, shall be governed by this Act.

(2) Subsection 74(1) of the Act is amended by deleting the reference "*Access to Information and Protection of Privacy Act*" and substituting the reference "*Access to Information and Protection of Privacy Act, 2015*".

2015 cA-1.2 s123

SNL2001 cC-14.1
Amdt.

124. Paragraph 19(e) of the *Citizens' Representative Act* is amended by deleting the reference "*Access to Information and Pro-*

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tection of Privacy Act" and substituting the reference "Access to Information and Protection of Privacy Act, 2015".

2015 cA-1.2 s124

SNL2007 cE-11.01
Amdt.

125. (1) Paragraphs 2(h.1) and (h.2) of the *Energy Corporation Act* are amended by deleting the reference "*Access to Information and Protection of Privacy Act*" wherever it occurs and substituting the reference "*Access to Information and Protection of Privacy Act, 2015*".

(2) Subsections 5.4(1) to (4) are repealed and the following substituted:

Records of com-
mercially sensitive
information

5.4 (1) Notwithstanding section 7 of the *Access to Information and Protection of Privacy Act, 2015*, in addition to the information that shall or may be refused under Part II, Division 2 of that Act, the chief executive officer of the corporation or a subsidiary, or the head of another public body,

- (a) may refuse to disclose to an applicant under that Act commercially sensitive information of the corporation or the subsidiary; and
- (b) shall refuse to disclose to an applicant under that Act commercially sensitive information of a third party

where the chief executive officer of the corporation or the subsidiary to which the requested information relates, taking into account sound and fair business practices, reasonably believes

- (c) that the disclosure of the information may
 - (i) harm the competitive position of,
 - (ii) interfere with the negotiating position of, or
 - (iii) result in financial loss or harm to
 the corporation, the subsidiary or the third party; or
- (d) that information similar to the information requested to be disclosed

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Access to Information and Protection
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(i) is treated consistently in a confidential manner by the third party, or

(ii) is customarily not provided to competitors by the corporation, the subsidiary or the third party.

(2) Where an applicant is denied access to information under subsection (1) and a request to review that decision is made to the commissioner under section 42 of the *Access to Information and Protection of Privacy Act, 2015*, the commissioner shall, where he or she determines that the information is commercially sensitive information,

(a) on receipt of the chief executive officer's certification that he or she has refused to disclose the information for the reasons set out in subsection (1); and

(b) confirmation of the chief executive officer's decision by the board of directors of the corporation or subsidiary,

uphold the decision of the chief executive officer or head of another public body not to disclose the information.

(3) Where a person appeals,

(a) under subsections 52(1) and (2), subsections 53(1) and (2) or section 54 of the *Access to Information and Protection of Privacy Act, 2015*, from a decision under subsection (1); or

(b) under subsections 52(1) and (2), subsections 53(1) and (2) or section 54 of the *Access to Information and Protection of Privacy Act, 2015*, from a refusal by a chief executive officer under subsection (1) to disclose information,

paragraph 59(3)(a) and section 60 of that Act apply to that appeal as if Part II, Division 2 included the grounds for the refusal to disclose the information set out in subsection (1) of this Act.

(4) Paragraph 102(3)(a) of the *Access to Information and Protection of Privacy Act, 2015* applies to information referred to in subsection (1) of this section as if the information was information that a head of a public body is authorized or required to refuse to disclose under Part II, Division 2.

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2015 cA-1.2 s125

SNL1995 cP-37.1
Amdt.

126. Section 4.01 of the *Health and Community Services Act* is amended by deleting the reference "*Access to Information and Protection of Privacy Act*" and substituting the reference "*Access to Information and Protection of Privacy Act, 2015*".

2015 cA-1.2 s126

RSNL1990 cH-10
Amdt.

127. Section 50 of the *House of Assembly Act* is repealed and the following substituted:

Information exempt

50. Information disclosed by a member or the member's family to the commissioner under this Part or a regulation made under this Part or in the course of the administration of this Part shall not be disclosed under the *Access to Information and Protection of Privacy Act, 2015* or otherwise than in accordance with this Part.

2015 cA-1.2 s127

SNL2007cH-10.1
Amdt.

128. (1) Paragraph 32(2)(c) of the *House of Assembly Accountability, Integrity and Administration Act* is repealed and the following substituted:

(c) subsection 92(1) of the *Access to Information and Protection of Privacy Act, 2015*;

(2) Subsection 49(1) of the Act is amended by deleting the reference "*Access to Information and Protection of Privacy Act*" and substituting the reference "*Access to Information and Protection of Privacy Act, 2015*".

2015 cA-1.2 s128

SNL1999 cM-5.1
Amdt.

129. Paragraph 3(1)(e.1) of the *Medical Care Insurance Act, 1999* is amended by deleting the reference "*Access to Information and Protection of Privacy Act*" and substituting the reference "*Access to Information and Protection of Privacy Act, 2015*".

2015 cA-1.2 s129

SNL2014 cM-16.2
Amdt.

130. Paragraph 2(g) of the *Missing Persons Act* is amended by deleting the reference "*Access to Information and Protection of Pri-*

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Access to Information and Protection
of Privacy Act, 2015

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vacy Act" and substituting the reference "Access to Information and Protection of Privacy Act, 2015".

2015 cA-1.2 s130

SNL2008 cP-7.01
Amdt.

131. (1) Paragraphs 2(1)(e) and (r) of the *Personal Health Information Act* are amended by deleting the reference "Access to Information and Protection of Privacy Act" wherever it occurs and substituting the reference "Access to Information and Protection of Privacy Act, 2015".

(2) Section 12 of the Act is repealed and the following substituted:

Access to informa-
tion legislation

12. (1) The *Access to Information and Protection of Privacy Act, 2015* does not apply to

- (a) the use, collection, disclosure, storage, disposition or any other dealing with personal health information by or in the custody or control of a custodian;
- (b) a request for access to or correction of a record of personal health information in the custody or control of a custodian;
- (c) a complaint to the commissioner respecting
 - (i) a denial of access to or correction of a record of personal health information by a custodian,
 - (ii) a request for review or appeal of a denial of access to or correction of a record of personal health information by a custodian, or
 - (iii) a contravention or alleged contravention of this Act or the regulations; or
- (d) the determination or prosecution of an offence or the imposition of a penalty in respect of a breach of this Act or the regulations.

(2) Notwithstanding subsection (1), this Act does not limit a person's right of access under section 8 of the *Access to Information and Protection of Privacy Act, 2015*

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- (a) to personal information contained in a record, other than a record referred to in subsection 5(4), in the custody or control of a custodian who is a public body, that contains both personal health information as described in section 5 and personal information but only where the personal information can be reasonably severed from the record;
- (b) to a record of personal health information which is in the custody or control of a public body who is not a custodian within the meaning of subsection 4(1); or
- (c) to both personal health information and personal information contained in a record referred to in subsection 5(4) where the record is in the custody or control of a custodian that is a public body.

(3) For the purpose of subsection (2), "personal information" means personal information as defined in paragraph 2(u) of the *Access to Information and Protection of Privacy Act, 2015*, other than information referred to in subparagraph 2(u)(vi) of that Act.

2015 cA-1.2 s131

SNL2008 cR-13.1
Amdt.

132. Subsections 21(1) to (4) of the *Research and Development Council Act* are repealed and the following substituted:

Records of com-
mercially sensitive
information

21. (1) Notwithstanding section 7 of the *Access to Information and Protection of Privacy Act, 2015*, in addition to the information that shall or may be refused under Part II, Division 2 of that Act, the chief executive officer, or the head of another public body,

- (a) may refuse to disclose to an applicant under that Act commercially sensitive information of the council; and
- (b) shall refuse to disclose to an applicant under that Act commercially sensitive information of a third party

where the chief executive officer, taking into account sound and fair business practices, reasonably believes

- (c) that the disclosure of the information may
 - (i) harm the competitive position of,

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- (ii) interfere with the negotiating position of, or
- (iii) result in financial loss or harm to
the council or the third party; or
- (d) that information similar to the information requested to be disclosed
 - (i) is treated consistently in a confidential manner by the third party, or
 - (ii) is customarily not provided to competitors by the council or the third party.

(2) Where an applicant is denied access to information under subsection (1) and a request to review that decision is made to the commissioner under section 42 of the *Access to Information and Protection of Privacy Act, 2015*, the commissioner shall, where he or she determines that the information is commercially sensitive information,

- (a) on receipt of the chief executive officer's certification that he or she has refused to disclose the information for the reasons set out in subsection (1); and
- (b) on confirmation of the chief executive officer's decision by the board of directors of the council,

uphold the decision of the chief executive officer or head of another public body not to disclose the information.

- (3) Where a person appeals,
 - (a) under subsections 52(1) and (2), subsections 53(1) and (2) or section 54 of the *Access to Information and Protection of Privacy Act, 2015*, from a decision under subsection (1); or
 - (b) under subsections 52(1) and (2), subsections 53(1) and (2) or section 54 of the *Access to Information and Protection of Privacy Act, 2015*, from a refusal by a chief executive officer under subsection (1) to disclose information,

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paragraph 59(3)(a) and section 60 of that Act apply to that appeal as if Part II, Division 2 of that Act included the grounds for the refusal to disclose the information set out in subsection (1) of this Act.

(4) Paragraph 102(3)(a) of the *Access to Information and Protection of Privacy Act, 2015* applies to information referred to in subsection (1) of this section as if the information was information that a head of a public body is authorized or required to refuse to disclose under Part II, Division 2 of that Act.

2015 cA-1.2 s132

SNL2014 c23
Amdt.

133. Section 2 of *An Act to Amend the Revenue Administration Act No. 3* is repealed.

2015 cA-1.2 s133

SNL2005 cR-15.1
Amdt.

134. Subsection 24(1) of the *Rooms Act* is repealed and the following substituted:

Restriction

24. (1) A public body that wishes to respond to a request under section 11 of the *Access to Information and Protection of Privacy Act, 2015* with respect to a government record that it intends to transfer to the archives shall transfer that record to the archives with instructions, in writing, that all requests for access to that record be transferred to it in accordance with section 14 of the *Access to Information and Protection of Privacy Act, 2015*, and the *Access to Information and Protection of Privacy Act, 2015* shall apply to that record as if it was still under the care and control of that public body.

2015 cA-1.2 s134

SNL2009 cV-6.01
Amdt.

135. Paragraph 41(4)(a) of the *Vital Statistics Act, 2009* is amended by deleting the reference "*Access to Information and Protection of Privacy Act*" and substituting the reference "*Access to Information and Protection of Privacy Act, 2015*".

2015 cA-1.2 s135

Repeal

136. (1) The *Access to Information and Protection of Privacy Act* is repealed.

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*Access to Information and Protection
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**(2) Sections 4 and 5 of the *Access to Information Regulations*,
Newfoundland and Labrador Regulation 11/07, are repealed.**

2015 cA-1.2 s136

Commencement

**137. Subparagraph 2(x)(vi) of this Act comes into force on Au-
gust 1, 2015.**

2015 cA-1.2 s137

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*Access to Information and Protection
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Schedule A

- (a) sections 64 to 68 of the *Adoption Act, 2013*;
- (b) section 29 of the *Adult Protection Act*;
- (c) section 115 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*;
- (d) sections 90 to 96 of the *Children, Youth and Families Act*;
- (e) section 5.4 of the *Energy Corporation Act*;
- (f) section 8.1 of the *Evidence Act*;
- (g) subsection 24(1) of the *Fatalities Investigations Act*;
- (h) subsection 5(1) of the *Fish Inspection Act*;
- (i) section 4 of the *Fisheries Act*;
- (j) sections 173, 174 and 174.1 of the *Highway Traffic Act*;
- (j.1) section 21 of the *Innovation and Business Investment Corporation Act*;
- (k) section 15 of the *Mineral Act*;
- (l) section 16 of the *Mineral Holdings Impost Act*;
- (m) subsection 13(3) of the *Order of Newfoundland and Labrador Act*;
- (m.1) sections 10 and 15 of the *Patient Safety Act*;
- (n) sections 153, 154 and 155 of the *Petroleum Drilling Regulations*;
- (o) sections 53 and 56 of the *Petroleum Regulations*;
- (p) [Rep. by 2018 cI-7.1 s24]

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- (q) section 12 and subsection 62(2) of the *Schools Act, 1997*;
 - (r) sections 19 and 20 of the *Securities Act*;
 - (s) section 13 of the *Statistics Agency Act*; and
 - (t) section 18 of the *Workplace Health, Safety and Compensation Act*.
- 2015 cA-1.2 Sch; 2017 cP-3.01 s28; 2018 cI-7.1 s24;
2018 cC-12.3 s112

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Schedule B

Commission of Inquiry Respecting the Muskrat Falls Project

10/18 s2; 2018 c4 s1

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2008/12/11

OC2008-340

MC2008- XX2008-

P
NR/DM
E. Martin
AG
Deputy Clerk
File

Under the authority of section 3 of the Energy Corporation Act, the Lieutenant Governor in Council is pleased to name the Energy Corporation of Newfoundland and Labrador "Nalcor Energy".

Clerk of the Executive Council

(Forwarded December 18, 2008 – To replace OC2008-340 previously forwarded)



**NEWFOUNDLAND AND LABRADOR
REGULATION 101/17**

Commission of Inquiry Respecting the Muskrat Falls Project Order
under the
Public Inquiries Act, 2006
(O.C. 2017 - 339)

(Filed November 20, 2017)

Under the authority of section 3 of the *Public Inquiries Act, 2006*,
the Lieutenant-Governor in Council makes the following Order.

Dated at St. John's, November 20, 2017.

Ann Marie Hann
Clerk of the Executive Council

ORDER

Analysis

- | | |
|--------------------------------------|--|
| 1. Short title | 6. Findings and recommendations |
| 2. Definitions | 7. Conclusion or recommendations limited |
| 3. Commission of inquiry established | 8. Special expertise services |
| 4. Terms of reference | 9. Final report |
| 5. Commission's considerations | |

Short title

1. This Order may be cited as the *Commission of Inquiry Respecting the Muskrat Falls Project Order*.

Commission of Inquiry Respecting the Muskrat Falls Project

101/17

Definitions

2. In this Order

- (a) "government" means the government of the province;
- (b) "Isolated Island Option" means the isolated island option as defined in the June 17, 2011 reference question to the Board of Commissioners of Public Utilities;
- (c) "Muskrat Falls Project" means the Muskrat Falls Project, as defined in subsection 2.1(1) of the *Energy Corporation Act*; and
- (d) "Nalcor" means Nalcor Energy and its subsidiaries;

Commission of inquiry established

3. There is established a commission of inquiry respecting the Muskrat Falls Project and the Honourable Richard D. LeBlanc is appointed as the sole member of the commission.

Terms of reference

4. The commission of inquiry shall inquire into

- (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 Newfoundland and Labrador Island interconnected system over the period 2011-2067 was reasonable with the knowledge available at that time;
- (b) why there are significant differences between the estimated costs of the Muskrat Falls Project at the time of sanction and the costs by Nalcor during project execution, to the time of

*Commission of Inquiry Respecting the Muskrat Falls
Project*

101/17

this inquiry together with reliable estimates of the costs to the conclusion of the project including whether

- (i) Nalcor's conduct in retaining and subsequently dealing with contractors and suppliers of every kind was in accordance with best practice, and, if not, whether Nalcor's supervisory oversight and conduct contributed to project cost increases and project delays,
- (ii) the terms of the contractual arrangements between Nalcor and the various contractors retained in relation to the Muskrat Falls Project contributed to delays and cost overruns, and whether or not these terms provided sufficient risk transfer from Nalcor to the contractors,
- (iii) the overall project management structure Nalcor developed and followed was in accordance with best practice, and whether it contributed to cost increases and project delays,
- (iv) the overall procurement strategy developed by Nalcor for the project to subdivide the Muskrat Falls Project into multiple construction packages followed industry best practices, and whether or not there was fair and competent consideration of risk transfer and retention in this strategy relative to other procurement models,
- (v) any risk assessments, financial or otherwise, were conducted in respect of the Muskrat Falls Project, including any assessments prepared externally and whether
 - (A) the assessments were conducted in accordance with best practice,
 - (B) Nalcor took possession of the reports, including the method by which Nalcor took possession,
 - (C) Nalcor took appropriate measures to mitigate the risks identified, and
 - (D) Nalcor made the government aware of the reports and assessments, and

Commission of Inquiry Respecting the Muskrat Falls Project

101/17

- (vi) the commercial arrangements Nalcor negotiated were reasonable and competently negotiated;
- (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
- (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 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.

Commission's
considerations

5. The commission of inquiry, in carrying out the terms of reference referred to in section 4 shall consider

- (a) participation in the inquiry by the established leadership of Indigenous people, whose settled or asserted Aboriginal or treaty rights to areas in Labrador may have been adversely affected by the Muskrat Falls Project;
- (b) the need to provide consumers in the province with electricity at the lowest possible cost consistent with reliable service;
- (c) the powers, duties and responsibilities of a Crown Corporation;
- (d) the need to balance commercial considerations and public accountability and transparency in carrying out a large-scale publicly-funded project; and
- (e) the need to balance the interests of ratepayers and the interests of taxpayers in carrying out a large-scale publicly-funded project.

*Commission of Inquiry Respecting the Muskrat Falls
Project*

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Findings and
recommendations

6. The commission of inquiry shall make findings and recommendations that it considers necessary and advisable related to section 4.

Conclusion or
recommendations
limited

7. The commission of inquiry shall not express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization.

Special expertise
services

8. The commission of inquiry may engage the services of persons having special expertise or knowledge including those with financial, engineering and construction expertise.

Final report

9. The commission of inquiry shall terminate its work and deliver the final report to the Minister of Natural Resources, who shall be the minister responsible for the commission of inquiry, on or before December 31, 2019.

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**NEWFOUNDLAND AND LABRADOR
REGULATION 10/18**

Access to Information and Protection of Privacy Act, 2015
Schedule B Amendment Order
under the
Access to Information and Protection of Privacy Act, 2015
(O.C. 2018-020)

(Filed February 8, 2018)

Under the authority of section 4 of the *Access to Information and Protection of Privacy Act, 2015*, the Lieutenant-Governor in Council makes the following Order.

Dated at St. John's, February 8, 2018.

Elizabeth Day
Deputy Clerk of the Executive Council

ORDER

Analysis

- | | |
|------------------------------|------------------|
| 1. Short title | 3. Sunset clause |
| 2. SNL2015 cA-1.2 Sch. Amdt. | |

Short title

1. This Order may be cited as the *Access to Information and Protection of Privacy Act, 2015 Schedule B Amendment Order*.

SNL2015 cA-1.2
Sch. Amdt.

2. Schedule B of the *Access to Information and Protection of Privacy Act, 2015* is amended by adding the entity reference "Commission of Inquiry Respecting the Muskrat Falls Project".

*Access to Information and Protection of Privacy Act,
2015 Schedule B Amendment Order*

10/18

Sunset clause

3. This Order shall cease to have effect beyond the end of the next sitting of the House of Assembly.

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NEWFOUNDLAND AND LABRADOR REGULATION 88/19

*Commission of Inquiry Respecting the Muskrat Falls Project Order
(Amendment)*
under the
Public Inquiries Act, 2006
(O.C. 2019-289)

(Filed December 6, 2019)

Under the authority of section 3 of the *Public Inquiries Act, 2006*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, December 6, 2019.

Elizabeth Day
Clerk of the Executive Council

REGULATIONS

Analysis

1. S.9 R&S
Final report

NLR 101/17

1. Section 9 of the *Commission of Inquiry Respecting the Muskrat Falls Project Order* is repealed and the following substituted:

Final report

9. The commission of inquiry shall terminate its work and deliver the final report to the Minister of Natural Resources, who shall be the minister responsible for the commission of inquiry, on or before March 31, 2020.

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The Newfoundland and Labrador Gazette

527

December 6, 2019

Executive Council
Natural Resources
Justice and Public Safety
November 20, 2017

Premier Ball Announces Muskrat Falls Public Inquiry

The Government of Newfoundland and Labrador today announced that it will be proceeding with a public inquiry into the Muskrat Falls Project.

The Honourable Dwight Ball, Premier of Newfoundland and Labrador, announced the appointment of Justice Richard D. LeBlanc as the sole Commissioner of Inquiry, in accordance with Part I of the Public Inquiries Act, 2006.

Justice LeBlanc will begin his work as Commissioner in January 2018. A biography of Justice LeBlanc can be found in the backgrounder below.

The inquiry will provide a greater understanding of:

- Whether all options were considered at the time of sanctioning the project;
- Why there are significant differences between the actual cost of the project and the estimated cost at the time of sanction; and
- Whether it was justified and reasonable for the project to be excluded from oversight by the Public Utilities Board.

The Muskrat Falls Inquiry responds to concerns to have the project reviewed as soon as possible and represents the best option to independently review the Muskrat Falls Project. In addition, the public inquiry maximizes transparency and provides for an independent assessment of the issues raised in the terms of reference.

The terms of reference for the inquiry, also announced today, can be found online at www.releases.gov.nl.ca/releases/2017/exec/NLG171120.pdf

The inquiry is expected to take approximately two years for completion with the final report due December 31, 2019.

Quotes

“Through this public inquiry, we will learn if the project today, is the project the people of the province were sold in 2012. While we cannot undo the past, we can learn from it and make more informed decisions as we take actions to minimize the impact of this project on ratepayers. I thank Justice LeBlanc for his commitment and dedication to this inquiry.”

Honourable Dwight Ball
Premier of Newfoundland and Labrador

“The inquiry will address project sanctioning and execution, previous exemption of the project from PUB oversight and project cost and schedule. We will continue to move the project forward as effectively as possible despite the challenges we inherited.”

Honourable Siobhan Coady
Minister of Natural Resources

“The magnitude of this inquiry is significant. It will provide a thorough and detailed review of the facts and circumstances, in their entirety. I am extremely confident in Justice LeBlanc’s ability to achieve thoroughness and accuracy in addressing this enormous task.”

Honourable Andrew Parsons
Minister of Justice and Public Safety

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Learn more

Terms of Reference for Muskrat Falls Public Inquiry:

www.releases.gov.nl.ca/releases/2017/exec/NLG171120.pdf

EY Reviews: www.gov.nl.ca/mfoversight/EY/

Muskrat Falls Oversight Committee: www.gov.nl.ca/MFOversight

Follow us on Twitter: @GovNL, @NR_GovNL and @JPS_GovNL

Media contacts

Michelle Cannizzaro
Office of the Premier
709-729-3960
Michellecannizzaro@gov.nl.ca

Chrysta Collins
Natural Resources
709-729-5777, 690-4436
chrystacollins@gov.nl.ca

Lesley Clarke
Justice and Public Safety
709-729-6985, 699-2910
LesleyClarke@gov.nl.ca

BACKGROUNDER

Biography of Justice Richard LeBlanc

The Honourable Justice Richard D. LeBlanc of the Supreme Court of Newfoundland and Labrador is appointed as the sole Commissioner and will conduct the inquiry, which is expected to take approximately two years.

Justice LeBlanc started his career as a provincial court judge in Wabush, Labrador. For the last six years, Justice LeBlanc has been serving as the senior administrative judge with the Family Trial division of the Supreme Court of Newfoundland and Labrador. In his years in private practice, Justice LeBlanc focused mainly on Aboriginal, criminal, civil and property law.

2017 11 20

12:15 p.m.

**Natural Resources
Justice and Public Safety**
November 24, 2017

The following is being distributed at the request of the Commission of Inquiry
Respecting the Muskrat Falls Project Order:

**Commission of Inquiry Respecting the Muskrat Falls Project Order
Commences Work**

The Honourable Justice Richard D. LeBlanc has commenced work as Commissioner for the Inquiry Respecting the Muskrat Falls Project Order. Over the coming weeks, the inquiry will be establishing itself and planning for the work ahead. The public will be kept updated on the progress of the inquiry, but for now, it would be premature for Justice LeBlanc to give media interviews.

The Terms of Reference for the inquiry can be found online at:
www.gov.nl.ca/releases/2017/exec/NLG171120.pdf

One of the first tasks of the inquiry is to obtain suitable premises and engage necessary counsel and staff members. It is hoped that the foregoing can be accomplished by the end of 2017.

As of now, Justice LeBlanc has appointed Kate O'Brien as co-counsel to the inquiry with other counsel to be appointed. Ms. O'Brien was admitted to the Bar of Ontario in 2003 and the Bar of Newfoundland and Labrador in 2004 having obtained her LL.B. from the University of British Columbia. She completed a Bachelors of Engineering from Memorial University in 1996. Ms. O'Brien was legal counsel to the 2015 Newfoundland and Labrador Electoral Districts Boundaries Commission and co-counsel to the Commission of Inquiry Respecting the Death of Donald Dunphy.

The CVs of counsel and other major staff appointments will be published on a website to be developed.

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Media contact
Kate O'Brien
709-722-0637 (c/o O'Brien White, temporarily)

2017 11 24

11:10 a.m.

Justice and Public Safety

December 18, 2017

The following is being distributed at the request of the Commission of Inquiry
Respecting the Muskrat Falls Project Order:

**Commission of Inquiry Respecting the Muskrat Falls Project Order -
Update on Inquiry Organization**

The Honourable Justice Richard D. LeBlanc, Commissioner for the Inquiry Respecting the Muskrat Falls Project Order, has been actively laying the foundation for the operation of the Commission. He is working to establish a suitable organization and to hire staff and others to support the work of the inquiry. To date, a Chief Administrative Officer and other administrative staff have been appointed. By way of a news release dated November 24, 2017, it was announced that Kate O'Brien had been appointed co-counsel for the inquiry.

Today, Justice LeBlanc is pleased to announce the appointment of Barry Learmonth, Q.C., as co-counsel to the inquiry. Mr. Learmonth was admitted to the Bar of Newfoundland and Labrador in 1977 having obtained his LL.B. from Dalhousie University in 1976. Mr. Learmonth was appointed Queen's Counsel in August, 2001. He is a partner in the firm of Learmonth, Dunne and Boulos. The primary focus of his legal practice has been in the area of civil litigation, including professional liability and construction law.

The curricula vitae of all major staff and counsel for the inquiry will be published on a website being developed by the commission.

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Media contact

Kate O'Brien

709-722-0637 (c/o O'Brien White, temporarily)

2017 12 18

2:25 p.m.



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

APPOINTMENT OF NEW CO-COUNSEL

Justice Richard LeBlanc, Commissioner ("Commissioner") of the Commission of Inquiry Respecting the Muskrat Falls Project ("Commission") wishes to advise that Irene Muzychka, Q.C. has been appointed to replace Justice Katherine O'Brien as Commission co-counsel. Ms. Muzychka joins a team committed to respond to the Commission's Terms of Reference, including Barry Learmonth, Q.C., who acts as Commission co-counsel.

Ms. Muzychka is an experienced litigator in our Province's courts and has been a partner of the law firm, Curtis Dawe since 1994. She holds a Bachelor of Commerce degree from Memorial University of Newfoundland and Labrador and an LL.B. from the University of New Brunswick.

Ms. Muzychka will immediately join the Commission's staff on a full time basis. Arrangements are in place for her transition into her new role and it is expected that she will be engaged in the Commission's hearings in the near future.

As Ms. Muzychka's law firm represents Newfoundland Power Inc., which had been granted special standing at the Commission's hearings, she will not have any involvement in any matters that impacts or could impact the interests of Newfoundland Power Inc.

As is to be expected, Justice O'Brien's appointment to the Supreme Court of Newfoundland and Labrador means that the Commission is losing a key and important member of its team. She has made an enormous contribution to this Commission of Inquiry since its inception and the Commission's loss will certainly be the gain of our system of justice in this Province. The Commissioner, on behalf of all of the Commission staff, wishes to thank Justice O'Brien for her tireless work and effort in assisting this Commission to carry out its mandate up to now and I wish Justice O'Brien well in her judicial career.

The Commission is extremely appreciative and fortunate to have Ms. Muzychka become an integral member of the Commission's legal team.

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Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

5th Floor, Suite 502, Beothuck Building

20 Crosbie Place

St. John's, NL A1B 3Y8

Telephone: 709-729-6076, Toll Free: 1-833-235-7702

Fax: 709-729-6070

Email: admin@musktratfallsinquiry.ca

Website: www.musktratfallsinquiry.ca

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Media contact:

Diane Blackmore, Manager of Operations

(709) 729-6265

dianeblackmore@musktratfallsinquiry.ca

2019 03 27



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

The Honourable Justice Richard D. LeBlanc, Commissioner for the Inquiry Respecting the Muskrat Falls Project, is pleased to advise that the Inquiry is continuing to progress its work with the establishment of Inquiry hearing space and administrative offices, the development of an Inquiry website and the finalization of the Inquiry's Rules of Procedure.

Inquiry Hearing Space and Administrative Office

The Inquiry has established its St. John's hearing space and its administrative office in the Beothuck Building, 20 Crosbie Place, St. John's, NL. The hearing room is wheelchair-accessible. There is public parking available around the building, as well as ready accessibility to public transit.

Website

The Inquiry's website (www.muskratfallsinquiry.ca) has gone live.

At present, this website contains information on the Inquiry's Terms of Reference, biographical information on the Commissioner and Co-Counsel, Inquiry Rules of Procedure, governing legislation, current new releases, frequently asked questions, contacting the Inquiry and sharing your comments.

In future, the website will include information on parties with standing; witnesses to the Inquiry, submissions to the Inquiry, schedule of standing hearings and public hearings, Inquiry hearing transcripts and webcasts of Inquiry hearings.

Interested parties are invited to visit the Inquiry's website regularly, as it will be updated on a frequent basis.

Rules of Procedure

Commissioner LeBlanc has finalized the Rules of Procedure for the Inquiry. These Rules of Procedure address matters such as standing, disclosure, evidence, witness interviews, submissions and public hearings. The complete Rules of Procedure can be found on the Inquiry's website.

Contacting the Inquiry

Any enquiry concerning the Muskrat Falls Inquiry can be directed to the following address, phone numbers, facsimile number, email address or via the Share Your Comments form available on our website:

5th Floor, Suite 502, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8

Website: www.muskratfallsinquiry.ca

Telephone Number: (709) 729-6076

Toll-free Number: 1-833-235-7702

Facsimile Number: (709) 729-6070

Email: admin@muskratfallsinquiry.ca

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Media contact:

Gerry Beresford
Chief Administrative Officer
(709) 729-6016
gerryberesford@muskratfallsinquiry.ca

2018 01 22



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

The Honourable Justice Richard D. LeBlanc, Commissioner for the Inquiry Respecting the Muskrat Falls Project, has decided that an investigative and forensic audit is required in order for the Commission to properly respond to its Terms of Reference.

Following a competitive process in response to a Request for Proposals issued by the Commission, Grant Thornton LLP has been selected by the Commissioner to conduct the audit. Grant Thornton LLP was selected based upon its thorough proposal, the expertise of the international team proposed to conduct the audit and the cost to complete the work required.

Grant Thornton LLP will complete its audit in two phases. The first phase will involve an investigation into the sanctioning of the Muskrat Falls Project, including the options considered by Nalcor to address the future electricity needs of the Province of Newfoundland and Labrador, as well as the financial analysis conducted by Nalcor for the Muskrat Falls Project and for the Isolated Island option. The second phase will involve an investigation of the costs incurred by Nalcor since commencement of Project construction to the present time, as well as current estimates of the costs to Project completion. The actual costs and current estimates to completion of the Project will be compared to the costs estimated by Nalcor at the time of its sanctioning.

Both phases of the audit will be completed in accordance with strict time limits. While Grant Thornton LLP will conduct the audit independently of the Commission, in order to reduce the time and cost for the audit and to ensure the least possible disruption to the Project construction, the Commission will use its legal powers to compel documents and other evidence to assist in collecting and producing documentation to Grant Thornton LLP.

The audit reports shall be entered into evidence during the public hearings and form part of the Commission's public record. The Commissioner may accept all, some or none of the findings and conclusions of Grant Thornton LLP. In order to fully respond to its Terms of Reference, the Commission may engage other experts, as required.

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Commission of Inquiry Respecting the Muskrat Falls Project
5th Floor, Suite 502, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8

Website: www.muskratfallsinquiry.ca

Telephone Number: (709) 729-6076
Toll-free Number: 1-833-235-7702
Facsimile Number: (709) 729-6070

Email: admin@muskratfallsinquiry.ca

- 30 -

Media contact:

Kate O'Brien, Commission Co-Counsel
(709) 729-6064
kateobrien@muskratfallsinquiry.ca

2018 02 05



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

INQUIRY'S FORENSIC AND INVESTIGATIVE AUDITOR ESTABLISHES CONFIDENTIAL ANONYMOUS REPORTING PROCESS

Grant Thornton has requested that the Commission of Inquiry Respecting the Muskrat Falls Project communicate the following:

As part of its investigative audit work steps, Grant Thornton has established its Confidential Anonymous Reporting for Employees ("**CARE**") accessible to Nalcor employees (past and present), Government of Newfoundland and Labrador employees (past and present), vendors and consultants that are either actively or have been historically involved in the Muskrat Falls project.

CARE has been established to promote open communication while maintaining your anonymity.

About **CARE**:

- Managed by Grant Thornton's forensic accounting and investigative services professionals
- Submissions may be made anonymously
- Enable two way communication while maintaining anonymity

Reports can be made 24/7 in any of four ways:

- Secure website (www.grantthorntoncare.ca)
- Confidential, toll free number 1-855-484 CARE (2273)
- Anonymous email access: UseCare@ca.gt.com
- Secure postal box: CARE FAIS,
11th Floor, 200 King St. West,
Toronto, ON, M5H 3T4

Who receives submissions:

- All submissions will be received directly by Grant Thornton.

Reports to **CARE** will be accepted until August 31, 2018.

Media contact:

Vicky Rivers
Manager, Media Relations
Grant Thornton LLP
(416) 366 4240
Victoria.Rivers@ca.gt.com

2018 04 26



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

COMMISSION SEEKS TO INTERVIEW MUSKRAT FALLS WORKERS

The Commission of Inquiry Respecting the Muskrat Falls Project is asking to interview people who have worked on the Muskrat Falls Project and believe they have information about the reasons for cost overruns.

The Commission has completed hearings on why the Muskrat Falls Project was sanctioned in December 2012. It is now investigating why the project has experienced cost overruns.

“We’d like to interview people who worked on the Muskrat Falls Generating Station, the Labrador–Island Link, or the Labrador Transmission Assets”, said Commission Co-Counsel Barry Learmonth Q.C. “If you have insight into why this cost so much more than expected, we’d like to hear it.”

Hearings on cost overruns will begin on February 18, 2019. The first two weeks will be in Happy Valley–Goose Bay, after which hearings will continue in St. John’s.

“We are reviewing millions of primary documents, commissioning expert reports, and interviewing most senior managers and political leaders,” said Commission Co-Counsel Kate O’Brien, “but people who worked on site may have a different perspective again.”

Because of the Commission’s tight schedule, anyone volunteering for an interview is encouraged to contact the Commission before January 21, 2019. The Commission can be reached by phone at 709-729-6076, toll-free at 1-833-235-7702, or by email at admin@muskratfallsinquiry.ca.

Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

5th Floor, Suite 502, Beothuck Building

20 Crosbie Place

St. John's, NL A1B 3Y8

Telephone: 709-729-6076, Toll Free: 1-833-235-7702

Fax: 709-729-6070

Email: admin@musktratfallsinquiry.ca

Website: www.musktratfallsinquiry.ca

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Media contact:

Kate O'Brien

Commission Co-Counsel

(709) 729-6064

kateobrien@musktratfallsinquiry.ca

2019 01 10

Commission of Inquiry Respecting the Muskrat Falls Project
Rules of Procedure
The Honourable Richard D. LeBlanc, Commissioner

GENERAL

1. The Commission of Inquiry Respecting the Muskrat Falls Project is an independent commission set up by the Government of Newfoundland and Labrador by way of an Order-in-Council (O.C. 2017-339) pursuant to the *Public Inquiries Act, 2006*, SNL 2006 c P-38.1, as amended, to inquire into: the decision to sanction the Muskrat Falls Project (“Project”); the construction and oversight of the Project’s progress and costs; whether exemption from oversight by the Commissioner of Public Utilities was justified and what impact, if any, such lack of oversight has had on the Project; and whether the Government of Newfoundland and Labrador was fully informed in relation to this Project at the time that it sanctioned the Project, and whether it kept appropriate oversight as regards the progress and costs of construction for the Project.
2. Following the conclusion of the hearings, the Commissioner will make any findings and recommendations he deems appropriate and in the public interest. The findings and recommendations of the Commissioner in this Inquiry will be contained in a report filed upon completion of the Inquiry’s work.
3. Throughout these Rules, the words “Commission” and “Inquiry” are used interchangeably and both refer to the Muskrat Falls Inquiry.
4. Public hearings in St. John’s will be held at the Third Floor, Beothuck Building, 20 Crosbie Place, St. John’s, Newfoundland and Labrador, A1B 3Y8. Public hearings in Happy Valley-Goose Bay will be held at a location to be announced. The Commissioner will set the dates and locations for hearings. Hearings will generally take place between 10:00 a.m. and 4:30 p.m., Monday through Thursday each week.
5. The Commission is committed to a process of fairness, including public hearings and public access to evidence and documents used at the hearings.
6. The Commission will be conscious of the need to act efficiently so as to ensure that any costs incurred by the Inquiry are only those that are reasonable and necessary to address

the Inquiry's Terms of Reference. The Commissioner will have the ability to do such things as are necessary in this regard, including, but not limited to, determining the witnesses needed to be heard; setting time limits for the presentation of evidence, reports, etc.; and specifying how and when disclosure of documents is to be provided. As well, the Commission will be mindful that the final report from the Inquiry is expected to be filed by December 31, 2019.

7. The Commissioner encourages anyone who may have information that may be helpful to the Inquiry, including documents and the names of witnesses, to provide this information to the Commission as soon as possible.

STANDING

8. Persons, groups of persons, organizations or corporations ("persons", collectively or "person", individually) who wish to participate may seek standing before the Inquiry. A person who has been granted standing is referred to herein as a "party".
9. Persons who apply for standing will first be required to provide written submissions explaining why they wish standing. The Commissioner will announce when he is accepting written submissions for standing. All written submissions for standing will be made public.
10. Pursuant to section 5(2) of the *Public Inquiries Act, 2006*, a person may be granted standing by the Commissioner, after considering:
 - a) whether the person's interest 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.
11. The Commissioner may grant standing based on written submissions. Persons applying for standing for whom the Commissioner does not grant standing based on a written submission alone will also be given an opportunity to appear before the Commissioner to

explain their reasons for requesting standing. They will be given twenty (20) minutes to do so, subject to the Commissioner permitting further time as he sees fit.

12. In order to avoid duplication and to promote time and cost efficiencies, persons of similar interest are encouraged to seek joint standing.
13. Parties are deemed to undertake to follow the Rules of Procedure.
14. The Commissioner will determine the extent to which a party may participate. For example, a party may be granted standing for limited issues or portions of the hearings.

FUNDING

15. It is presumed that counsel will be retained at the expense of the witnesses and parties. However, the Commission may make recommendations to the Government of Newfoundland and Labrador regarding funding for counsel and other expenses of parties who have been granted standing.
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;
 - 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;
 - c) a statement of the extent to which the applicant will contribute its own funds and personnel to participate in the Inquiry; and
 - 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

- 4 -

would be put in place to ensure that any funding provided is disbursed for the purposes of the Inquiry.

17. Applications for funding will be made public, however, personal information, financial or otherwise, contained in any application for funding will be redacted by the Commission upon release or publication.

COMMISSION COUNSEL

18. The Commissioner will appoint Commission counsel to assist him and to represent the public interest. Commission counsel will ensure that all matters which bear on the public interest are brought to the attention of the Commissioner. Commission counsel will have standing throughout the Inquiry.

DISCLOSURE AND PRODUCTION OF EVIDENCE

19. Any person served with a summons to produce shall provide all requested information within that person's possession, control or power in the time indicated in the summons to produce or, if no time is indicated, in a timely manner, and in such a form as directed by the Commission. Regardless of whether a party has been served with a summons to produce, all relevant information shall be disclosed and all relevant documents or other things within the possession, control or power of the party shall be produced to the Commission within fourteen (14) days of that party having been granted standing. The obligation to produce shall be ongoing and continuing throughout the course of the Inquiry.
20. a) Where a person or party objects to the disclosure of information or the production of any document or thing, it shall, in any event, be produced in its original, unedited form to Commission counsel who will review it and who will provide an opinion as to the validity of the objection. Should the basis of the objection of the person or party to disclosure be accepted by Commission counsel, the document or thing shall be returned by Commission counsel in the form it was received, without duplication in any manner, to the person or party and the document or thing shall not be used in any manner by Commission counsel.

- b) Where, as a result of the process set out in (a) above, the person or party and Commission counsel are unable to agree regarding the disclosure and production sought, Commission counsel (or both Commission counsel and the person or party jointly) shall make an application to the Supreme Court of Newfoundland and Labrador. That application shall be directed to the attention of the Chief Justice, or his designate, who shall then proceed with the matter in as expeditious a manner as he/she determines is appropriate.
 - c) Any other applications within the jurisdiction of the Supreme Court of Newfoundland and Labrador shall be made to that court. The application shall be directed to the Chief Justice, or his designate, who shall then proceed to deal with the matter in as expeditious a manner as he/she determines is appropriate.
- 21. The term “relevant” is intended to have a broad meaning and includes anything that touches or concerns the subject matter of the Inquiry or that may directly or indirectly lead to other information that touches or concerns the subject matter of the Inquiry.
 - 22. The terms “document” or “documents” are intended to have a broad meaning and include, without limitation, the following mediums: written, electronic, text, cellular or social media messaging, audiotape, videotape, digital reproductions, photographs, films, slides, maps, graphs, microfiche, metadata, and any data and information recorded or stored by means of any device.
 - 23. The originals of relevant documents or other things are to be provided to the Commission counsel upon request.
 - 24. Counsel to parties, parties and witnesses will be provided with documents and information, including statements or transcripts of anticipated evidence, only upon giving an undertaking that all such documents or information will be used solely for the purpose of the Inquiry and, where the Commission considers it appropriate, an undertaking that its disclosure will be further restricted. The Commission may require that documents provided, and all copies made, be returned to the Commission if not tendered in evidence. Counsel are entitled to provide such documents, records or information to their respective clients only on terms consistent with the undertakings given and upon the clients entering into written undertakings to the same effect. These undertakings will be of no force

regarding any document or information once it has become part of the public record. The Commission may, upon application, exempt from the provisions of the undertaking any document or information in whole or in part.

25. Documents or other things received from a party, or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude the Commission from producing a document or other thing to parties, their counsel, or a proposed witness prior to the witness giving his or her testimony or as part of the investigation being conducted. Nor does it preclude the Commission from providing a document or other thing to experts or consultants retained by the Commission.
26. Commission counsel will endeavour to provide in advance to both the witness and to the parties, those documents or other things that will likely be referred to during the course of the testimony of that witness. Given the volume of documents that the Commission is expected to receive and review as part of its investigation, neither the parties nor their counsel will receive all documents. Commission counsel will provide documents to parties and their counsel based on the principles of relevance, fairness and proportionality. Documents may be redacted by Commission counsel prior to circulation to remove information that is privileged or of a sensitive or confidential nature.
27. A party who believes that Commission counsel has not provided copies of relevant documents must bring this to the attention of Commission counsel at the earliest opportunity. The object of this rule is to prevent witnesses from being surprised with a relevant document that they have not had an opportunity to examine prior to their testimony. If Commission counsel decides the document is not relevant, it shall not be produced. This does not preclude the document from being used in cross-examination by any of the parties. Before such a document may be used for the purposes of cross-examination, a copy must be served by the party or party's counsel intending to use it on Commission counsel and all parties not later than 48 hours prior to the testimony of that witness, subject to the discretion of the Commissioner.

WITNESS INTERVIEWS

28. Commission counsel will interview, under oath or upon affirmation, persons who have information or documents which have any bearing upon the subject matter of the Inquiry and may be helpful in fulfilling the Commission's mandate. Persons who are interviewed are welcome, but not required, to have legal counsel present. Persons may be interviewed more than once.
29. Witnesses are advised that section 25 of the *Public Inquiries Act, 2006* provides that no adverse employment action shall be taken against any employee who, acting in good faith, has given information to an Inquiry.
30. Following the interview, the Commission will prepare a transcript or a summary of a witness's anticipated evidence and before that witness testifies before the Commission, will provide a copy of the transcript or summary to the witness for his or her review.
31. The witness interview transcript or summary, after being provided to the witness, will be shared with parties. Before being given a copy of the witness interview transcript or summary, parties will be required to sign an undertaking that they will use the witness interview transcript or summary only for the purposes of the Inquiry.
- 31.1
 - a) If a witness refuses to be interviewed by Commission Counsel or by another person or persons conducting an investigation in connection with the Inquiry (an investigator) or if a witness refuses to answer a question or questions, where the Commissioner expects the witness's evidence to advance the thoroughness or fairness of the Inquiry, the Commissioner may summon that witness to give evidence at a hearing.
 - b) Rules 32, 33, 34, 35, 36 and 44 apply to such a hearing.
 - c) A hearing under this section will be closed to the public.
 - d) The persons entitled to be present at a hearing under this section are the Commissioner, Commission Counsel, an investigator where necessary, the witness and the witness's counsel.
 - e) A witness at a hearing under this section shall be examined by Commission Counsel or by an investigator.

- f) A hearing under this section will be recorded and transcribed. The recording and transcript of the hearing, after being provided to the witness, will be provided to the parties. Before given a copy, parties will be required to sign an undertaking that they will use the transcript and recording only for the purposes of the Inquiry.
- g) Parties may:
 - i) within two weeks of receiving the transcript or recording, apply to object to any evidence given in the hearing under this section on any ground that would be available at a public hearing, and
 - ii) if Commission Counsel do not call the witness at a public hearing, apply to have the witness called at a public hearing for cross-examination.
- h) The transcript and recording of a hearing held under this section will be treated as a confidential exhibit unless the Commissioner orders otherwise.

EVIDENCE

- 32. The Commissioner may receive any evidence he considers to be helpful in fulfilling the Terms of Reference and mandate of the Inquiry. The strict rules of evidence used in a court of law to determine admissibility of evidence will not apply.
- 33. Witnesses who testify will give their evidence under oath or upon affirmation. However, the Commission is entitled to receive relevant evidence at the Inquiry even where no oath or affirmation has been given where such is permitted by the Commissioner.
- 34. It will be the practice of Commission counsel to issue and serve a subpoena (summons to witness) upon every witness before he or she testifies.
- 35. Witnesses are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purposes of that witness's testimony.
- 36. Witnesses may be called to testify more than once.
- 37. In the ordinary course, Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a witness may apply to the Commissioner to lead a particular witness's evidence-in-chief. If counsel is granted the right to do so, examination shall be

confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner.

38. In the ordinary course, the order of examination will be as follows:
- a) Commission counsel will lead the evidence from each witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to ask both leading and non-leading questions;
 - b) Parties will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination of each witness will be determined by the parties and, if they are unable to reach agreement, by the Commissioner;
 - c) Counsel for a witness will examine last, unless he or she has questioned the witness as examination-in-chief, in which case there will be a right to re-examine the witness; and
 - d) Commission counsel will have the right to re-examine the witness last.
39. a) If Commission counsel elect not to call a witness or to file a document as an exhibit, a party may apply to the Commissioner to do so or to have the Commissioner direct Commission counsel to do so where the Commissioner is satisfied that the document or the evidence of the witness is necessary.
- b) As this Commission of Inquiry has a finite time to complete its work, the Commissioner may limit the number of witnesses to be called, permit evidence to be tendered by means other than through calling a witness and may place limits on the time for examination and cross-examination of witnesses. In doing so, the Commissioner will be mindful of the mandate of the Inquiry as well as ensuring fairness to all of the parties.
40. All hearings are open to the public; however, the Commissioner may exclude the public from a hearing, or from part of it, where he decides that the public interest in holding the hearing, or a part of it, in public is outweighed by another consideration, including the consequences of possible disclosure of personal matters, public security or the right of a person to a fair trial.

41. Applications from witnesses or parties to hold any part of the hearing in the absence of the public should be made in writing to the Commission at the earliest possible opportunity.
42. Exhibits may be entered as confidential exhibits. Confidential exhibits will not be viewable by the public during the hearings and will not be made public. Public exhibits may be redacted to remove information that is privileged or of a sensitive or confidential nature. The transcripts and public exhibits from the hearings will be made available as soon as reasonably possible for public viewing and shall be placed on the Commission's website (www.musktratfallsinquiry.ca). If any part of the hearings is held in the absence of the public, the transcripts and exhibits from that part of the hearing will only be made available for public viewing at the Commissioner's discretion and then on such terms as he may direct.
43. The use of television cameras or other electronic or photographic equipment in the hearing room will be permitted at the discretion of the Commissioner.

RIGHT TO COUNSEL

44. Witnesses and parties are entitled, but not required, to have counsel present while Commission counsel interviews them and also when they testify.

NOTICES REGARDING ALLEGED MISCONDUCT

45. The Commissioner will not make a finding of misconduct on the part of any person unless that person has had reasonable notice under section 5(4) of the *Public Inquiries Act, 2006* of the substance of the alleged misconduct and was allowed full opportunity during the Inquiry to be heard in person or by counsel.
46. If any person or party believes that it is necessary to adduce documentary evidence or to call evidence to respond to allegations of possible misconduct for which a section 5(4) notice has been received, then that person or party may apply for leave to call that evidence or may request that Commission counsel call such evidence. If relevant and responsive to issues raised in the section 5(4) notice, leave will be given by the Commissioner. Cross-examination in respect of such evidence shall be limited to matters

adduced in evidence during the examination-in-chief of the witness, except with leave of the Commissioner.

47. Any section 5(4) notices will be served on a confidential basis to the person to whom the allegations of misconduct refer.

RESEARCH, SUBMISSIONS AND PUBLIC MEETINGS

48. The Commission may utilize a range of research and other processes to ensure that parties and the public have a meaningful and ongoing opportunity to participate where such research or processes are deemed by the Commissioner to be necessary. Amongst the various initiatives which may be adopted, the Commission may:
- a) Commission research papers from recognized experts on a broad range of relevant topics. The structure and format of the research papers will vary but will generally include an analysis of relevant issues, potential options (if applicable) and a bibliography;
 - b) invite and consider written and/or oral submissions from parties and the public about any matter, including any research papers;
 - c) convene meetings or forums (the format of which may vary but which shall be recorded) to discuss issues raised by the Inquiry; and
 - d) post the research papers and other relevant research materials and submissions on its website.
49. In the ordinary course, persons or parties will attend any public meetings in person unless the Commissioner orders otherwise.

AMENDMENT TO RULES OF PROCEDURE

50. These Rules may be amended and new Rules may be added if the Commissioner finds it necessary to do so to fulfill the Commission's mandate and to ensure that the process is thorough and fair.
51. The Commissioner may extend or abridge any time prescribed by these Rules.

BREACHES OF RULES OF PROCEDURE

52. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a party or imposing restriction on the further participation in or attendance at the hearings by any party, counsel, individual, organization or member of the media.

SERVICE

53. Documents may be served on a party by:
- a) Email or facsimile to the party's legal counsel with acknowledgement of receipt;
 - b) Personal service or an alternative to personal service in accordance with the Rules of the Supreme Court, 1986, SNL 1986 c 42, Sch D.;
 - c) Any other such method as mutually agreed between Commission counsel and the party or the party's legal counsel;
 - d) Or as otherwise directed by the Commissioner.

Commission of Inquiry Respecting the Muskrat Falls Project

Address: 5th Floor, Suite 502, Beothuck Building, 20 Crosbie Place,
St. John's, NL A1B 3Y8

Telephone Number: 709.729.6076

Toll Free: 1-833.235.7702

Fax: 709.729.6070

Website: www.muskratfallsinquiry.ca

E-mail: admin@muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

MEDIA PROTOCOL

1. General Information

In his opening statement at the April 6, 2018 Standing Hearing, The Honourable Justice Richard LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project (“Commission”) outlined transparency and openness as among the guiding principles for the conduct of the Commission. The Commission recognizes the important role that the media plays in the process of fulfilling the need for transparency and openness.

The Commission will make every reasonable effort to accommodate the media in its work. In this regard, the Commission has established a Media Room adjacent to the main Hearing Room in St. John's on the 3rd Floor of the Beothuck Building. This Media Room will be equipped with a monitor providing a live display of the hearings. In addition a high definition video and audio output of the webcast, as well as an analog audio output, will be available via a media distribution box. In the Media Room, the media distribution box will accommodate HD-SDI and XLR connections. While the Commission will be unable to provide a media room for the hearings to be held in Happy Valley-Goose Bay, we will work with the media to support their efforts there.

Media inquiries regarding administrative matters, should be made through the Commission's Chief Administrative Officer (“CAO”), Gerry Beresford. His contact information is:

Telephone: 709-729-6259

Cell/Text: 709-725-5693

Email: gerryberesford@muskratfallsinquiry.ca

2. Media Request for Information (Non-administrative)

Should the media require any information regarding witnesses, exhibits or other general information regarding the Commission of Inquiry, requests can be made to either of the Commission co-counsel, Kate O'Brien and Barry Learmonth, Q.C. Their contact information is kateobrien@muskratfallsinquiry.ca and barrylearmonth@muskratfallsinquiry.ca, respectively. The Commissioner will not be communicating directly with the media during the conduct of the Inquiry.

3. Media Interviews, Recordings and Photography

In St. John's, the media may conduct interviews in a designated media interview space located in the Media Room. In Happy Valley-Goose Bay, the media may conduct interviews in a designated media interview space located in the lobby of the Lawrence O'Brien Arts Centre. If further accommodation is needed for interviews, the media is asked to contact the Commission's CAO or designate.

In general, interviews will not be conducted in the Hearing Room. If the media wishes to conduct interviews in the Hearing Room, arrangements should be made with the Commission's CAO. In assessing the request, the Commission must ensure that such activity does not interfere with the hearing schedule.

The media is asked to not conduct interviews or operate recording devices in the main entrance or hallways of the Beothuck Building, or in any other place where the Commission is conducting hearings, as this may disrupt the public's use of these areas.

While the Hearing Room will be open during breaks, the media should not approach the Commissioner's desk, the Commission Co-Counsel desk, the standing counsel desks, the witness stand or the hearing clerk's desk.

Subject to the prohibitions with respect to Confidential Matters outlined below, the media will be allowed to audio record in the Hearing Room during hearings, as long as such activity does not disrupt proceedings. Video recording is prohibited. If the Commissioner requests that recording be stopped because of disruption, or for any other reason, it must stop immediately. As well, photographs cannot be taken during the hearings.

4. Public Exhibits

Each morning, the media will be provided with a book of public exhibits anticipated to be entered into evidence that day. The media may not broadcast or publish the public exhibits until after they have been entered into evidence during the hearings.

5. Confidential Matters

Commission Co-Counsel, other counsel or a witness may make a request that could result in either an *in-camera* hearing or a ban on broadcast and publication. Whenever possible, notice of such a request will be provided to the media (along with other individuals in the Hearing Room) on the morning of the hearing in question. The notice will provide details of the request being made, as well as of the procedures to be followed with respect to that request.

In-Camera Hearings

The media will not be allowed to report or publish any information (evidence, name of witness, etc.) given *in-camera*.

There will be no photographs or sketching allowed before, during or after an *in-camera* hearing.

Because the broadcast audio and video will be turned off during *in-camera* sessions, the media will be permitted to sit in the audience section of the Hearing Room and will be prohibited from using any recording devices or cellphones. Cellphones must be muted or put on silent mode. Where the Commissioner decides to exclude members of the public from the hearing room, the media will also be excluded.

The transcript available to the media for viewing will be the public version, and will not include the *in-camera* portion of the hearings.

All exhibits entered during *in-camera* portions of the hearing will be categorized as Confidential Exhibits as described in the following section.

Confidential Exhibits

Commission Co-Counsel, other counsel or a witness may request that an exhibit be entered as a confidential exhibit, regardless of whether or not the exhibit is entered in an *in-camera* portion of the hearing.

The media will not be allowed to report on or publish any confidential exhibit.

There will be no photographs or sketching allowed of any confidential exhibit.

Confidential exhibits will be those of a privileged, commercially sensitive or confidential nature.

Confidential exhibits will be marked as 'C' exhibits and will not be published on the website nor made available to the media.

Non-publication of a Name and/or Testimony

In circumstances where a ruling is made that the name and/or testimony of an individual is not to be published, the media is prohibited from publishing or broadcasting same.

Until such time as the Commissioner issues his ruling on the status of "Confidentiality", photographing or sketching of the witness will be prohibited.

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If the broadcast audio and video is turned off, the media will be permitted to sit in the audience section of the Hearing Room and will be prohibited from using all recording devices or cellphones. Cellphones must be muted or put on silent mode.

6. Wi-Fi Access

The media will be provided Wi-Fi access and should contact the CAO to register for Wi-Fi access.

7. Hearing Hours and Schedule

The hearings will generally be conducted on weekdays and will start at 9:30 a.m. On Mondays through Thursdays, the hearings are tentatively scheduled to conclude by 4:30 p.m. On Fridays, the hearings are tentatively scheduled to conclude at 1:00 p.m.

On Mondays through Thursdays, lunch breaks will generally be scheduled from 12:30 to 1:30 p.m.

The hearing and witness schedule will be tentative and may change due to witness availability, duration of hearing, etc. Media is advised to check the Commission website, www.musktratfallsinquiry.ca for changes to the hearing and witness schedule.

8. Commission Website

The Commission website will be uploaded daily with the video and exhibits entered into evidence. Transcripts, when available, will be uploaded to the Commission's website.

9. Further Information

Please see the Commission's Rules of Procedure for further information. These Rules of Procedure have been uploaded to the Commission's website.



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

At the request of the Commissioner, Justice Richard LeBlanc, the deadline for the filing of the Commission's Report has been extended for a period of up to three months to March 31, 2020. The reasons for the request are identified in the attached letter.

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Media contact:

Irene Muzychka
Commission Co-Counsel
(709) 729-6064
irenemuzychka@muskratfallsinquiry.ca

Barry Learmonth
Commission Co-Counsel
(709) 729-6030
barrylearmonth@muskratfallsinquiry.ca

2019-12-06



Commission of Inquiry Respecting the Muskrat Falls Project

November 27, 2019

Hon. Siobhan Coady
Minister of Natural Resources
Natural Resources Building
50 Elizabeth Avenue
P.O. Box 8700
St. John's, NL
A1B 4J6

Dear Minister Coady:

I write at this time on behalf of the Commission of Inquiry Respecting the Muskrat Falls Project to request additional time to complete my Report. It is with great regret that I must make this request at this time but, despite the diligent efforts of myself and Commission staff, it has become apparent to me that the Report cannot be completed by the deadline provided of December 31, 2019.

As you are aware, this Inquiry has had to deal with a very complex project and complex subject matter, numerous witnesses and parties, as well as a review of literally over four thousand exhibits. A very tight schedule was set by me so that hearings would be completed by mid-August 2019 to permit enough time to complete the Report. Despite the effort and commitment of myself and Commission staff, unfortunately, we are not in a position to complete the Report by December 31, 2019.

I can assure you at this stage that the bulk of my Report has been written and I expect to complete it shortly. However, the time given to me does not allow me sufficient opportunity to fully complete my Report as well as to conclude its compilation, editing and printing. As well, we need this time to wind down the Commission's operations. It is apparent to me that I will need up to an additional three months to complete my work and I am therefore asking for an extension to March 31, 2020.

In making this request, I want to assure you that keeping expenditures for this Inquiry as low as possible has been, and will continue to be, a priority for me. I am pleased to report at this time that direct spending by this Commission of Inquiry, including for legal counsel for parties with standing as well as Commission counsel and staff, is well below the amount budgeted by

5th Floor, Beothuck Building, 20 Crosbie Place, St. John's, NL A1B 3Y8

Tel: 709-729-6076
Toll Free: 1-833-235-7702
Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca
Website: www.muskratfallsinquiry.ca

- 2 -

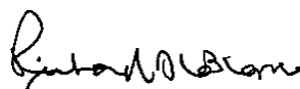
Government. I plan to reduce the Commission staff to five people, not including myself, by December 31, 2019 and therefore see no further significant additional expenditure of public funds being necessary as a result of the delay in the filing of my Report.

As stated above, it is with great regret and significant personal disappointment for me that I must make this request. I and my staff have been totally committed to this Inquiry for the past two years intending to complete the Commission's work on time. However, in order to prepare a full Report worthy of the efforts of everyone that has been involved, I now realize that unfortunately further time is needed.

I would now appreciate your Government's consideration of my request. As stated, I am requesting an extension until March 31, 2020 and certainly expect that the Report will be provided to you by then, if not earlier. Should you wish to discuss this request with me, please feel free to contact me.

Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard D. LeBlanc".

Richard D. LeBlanc
Commissioner

RDL/mm



**NEWFOUNDLAND AND LABRADOR
REGULATION 88/19**

*Commission of Inquiry Respecting the Muskrat Falls Project Order
(Amendment)
under the
Public Inquiries Act, 2006
(O.C. 2019-289)*

(Filed December 6, 2019)

Under the authority of section 3 of the *Public Inquiries Act, 2006*,
the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, December 6, 2019.

Elizabeth Day
Clerk of the Executive Council

REGULATIONS

Analysis

1. S.9 R&S
Final report

NLR 101/17

1. Section 9 of the *Commission of Inquiry Respecting the Muskrat Falls Project Order* is repealed and the following substituted:

Final report

9. The commission of inquiry shall terminate its work and deliver the final report to the Minister of Natural Resources, who shall be the minister responsible for the commission of inquiry, on or before March 31, 2020.

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The Newfoundland and Labrador Gazette

527

December 6, 2019



Commission of Inquiry Respecting the Muskrat Falls Project

PUBLIC NOTICE

Commissioner Richard LeBlanc is calling for submissions with respect to the interpretation of the Terms of Reference for the Commission of Inquiry Respecting the Muskrat Falls Project. The Terms of Reference can be found at:

<http://www.releases.gov.nl.ca/releases/2017/exec/NLG171120.pdf>

As the Commissioner cannot amend or expand upon the Commission's Terms of Reference, submissions should only address the interpretation of the Terms of Reference as they currently exist.

Submissions must be in writing and should not exceed 20 pages of minimum 11-point font, double-spaced. Submissions can be made by email to admin@muskratfallsinquiry.ca or delivered by hand or mail to the Commission's offices at:

5th Floor, Suite 502, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8

Submissions must be received by no later than **February 15, 2018 at 5:00 pm.**

Persons or organizations of similar interest are encouraged to make joint submissions.

All submissions will be reviewed and considered by the Commissioner. Following his consideration he will issue a public decision with respect to the interpretation he will give to the Terms of Reference in carrying out the Inquiry. His decision will only be an interpretation of the wording concerned and will not be an explanation of the work to be undertaken by the Commission relevant to each Term of Reference or a determination of any matter to be inquired into.

The Commissioner's decision as to the interpretation of the Terms of Reference will be made public prior to applications being made for standing and/or funding.

Commission of Inquiry Respecting the Muskrat Falls Project
5th Floor, Suite 502, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8

Website: www.muskratfallsinquiry.ca

Telephone Number: (709) 729-6076
Toll-free Number: 1-833-235-7702
Facsimile Number: (709) 729-6070

Email: admin@muskratfallsinquiry.ca

**Commission of Inquiry Respecting the Muskrat Falls Project
Submissions Regarding Terms of Reference**

Name of Person Making Submission
Alex Aylward
Andrew May *
Astaldi
Ben Turpin *
Brain Duffett
Cabot Martin
Centre Helios
Ches Crosbie
Conseil des Innus de Ekuanitshit
David Vardy, Ron Penney and Des Sullivan
Dawson Milley
Derm Bennett, Lew Fizzard, Don Keats, Ed Stratton and Bob Williams
Dr. Stephen Bruneau
Ed Hollett
Edmund Martin
Engineering Specialities *
Frank Davis
Gabe Gregory
Gene Long
George Power
Grand RiverKeeper/Labrador Land Protectors
Heather Young
Innu Nation
James Learning *
Jason Muise
Les Sweetapple *
Llewelyn Pritchard
Marcus Leja
Marie Vardy
Maurice Adams
Mercy Centre for Ecology and Justice
New Democratic Party Caucus
Nunatsiavut Government
Office of the Leader of the Official Opposition
Ontario-Muskrat Falls Solidarity Coalition
Penelope Allderdice
Peter Austin
Sister Elizabeth Davis
Walter Thomas Beckett
Winston Adams *
Winston Fiander *
* Permission not granted for inclusion of submission on website.

Note: Submissions available on website at www.muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

INTERPRETATION OF THE TERMS OF REFERENCE FOR THE MUSKRAT FALLS INQUIRY

MARCH 14, 2018

LEBLANC, J.:

INTRODUCTION

[1] On November 20, 2017, the Government of Newfoundland and Labrador established a Commission of Inquiry respecting the Muskrat Falls Project (O.C. 2017-339) pursuant to section 3 of the *Public Inquiries Act*, 2006, S.N.L. 2006 c. P-38.1. I was appointed the Commissioner for the Inquiry.

[2] Muskrat Falls Project is a major hydroelectric project with dam infrastructure in Labrador, transmission facilities and towers throughout the Province and an underwater link between Labrador and the island portion of the Province. The Project also includes underwater transmission infrastructure between the island portion of the Province and Nova Scotia, known as the Maritime Link. Nalcor, a Crown corporation established to oversee power generation projects and other energy projects for this Province, and Emera Inc., a publicly-traded utility company that operates in Nova Scotia, are both involved as regards some aspects of the Muskrat Falls Project.

[3] The physical components of the Muskrat Falls Project are referred to as part of the definition of the Project in the *Energy Corporation Act*, S.N.L. 2007, c.E-11.01 which states as follows:

2.1(1) For the purpose of this Act, “Muskrat Falls Project” means a project by the corporation [Nalcor], a subsidiary of the corporation [Nalcor], Newfoundland and Labrador Hydro and Emera Inc., whether individually or by any combination of them, for

- (a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of equipment and facilities, to be comprised of
 - (i) the new hydroelectric plant to be constructed at Muskrat Falls on the Churchill River, and all associated facilities, including the intake structures, penstock, powerhouse, dams and spillways,
 - (ii) a new HVdc transmission line and all related components to be constructed between the Muskrat Falls hydroelectric plant on the Churchill River and Soldier’s Pond, including
 - (A) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent,
 - (B) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to the transmission line, and
 - (C) all mechanical, electrical and other systems and other technology installed under or upon anything referred to in clause (A) or (B),
 - (iii) new transmission facilities to be constructed between the Muskrat Falls hydroelectric plant on the Churchill River and the generating plant located at Churchill Falls,
 - (iv) new transmission facilities to be constructed by Emera Inc between the island portion of Newfoundland and Labrador and Cape Breton, Nova Scotia including
 - (A) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent,
 - (B) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to them, and

- (C) all mechanical, electrical and other systems and other technology installed under or upon anything referred to in clause (A) or (B), and
- (v) any associated upgrades to the bulk electrical system or related control facilities on the island portion of the province required as a result of subparagraphs (i) to (iv);

[4] The Terms of Reference for this Inquiry as they relate to the investigation to be conducted are primarily set out in section 4 of the Order in Council establishing the Inquiry. That section states that I must inquire into:

- (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 Newfoundland and Labrador Island interconnected system over the period 2011 – 2067 was reasonable with the knowledge available at that time;
- (b) why there are significant differences between the estimated costs of the Muskrat Falls Project at the time of sanction and the costs by Nalcor during project execution, to the time of this inquiry together with reliable estimates of the costs to the conclusion of the project including whether
 - (i) Nalcor's conduct in retaining and subsequently dealing with contractors and suppliers of every kind was in accordance with best practice, and, if not, whether Nalcor's supervisory oversight and conduct contributed to project cost increases and project delays,
 - (ii) the terms of the contractual arrangements between Nalcor and the various contractors retained in relation the Muskrat Falls Project contributed to delays and cost overruns, and whether or not these terms provided sufficient risk transfer from Nalcor to the contractors,

- (iii) the overall project management structure of Nalcor developed and followed was in accordance with best practice, and whether it contributed to cost increases in project delays,
- (iv) the overall procurement strategy developed by Nalcor for the project to subdivide the Muskrat Falls Project into multiple construction packages followed industry best practices, and whether or not there was fair and competent consideration of risk transfer and retention in this strategy relative to other procurement models,
- (v) any risk assessments, financial or otherwise, were conducted in respect of the Muskrat Falls Project, including any assessments prepared externally and whether
 - (A) the assessments were conducted in accordance with best practice,
 - (B) Nalcor took possession of the reports, including the method by which Nalcor took possession,
 - (C) Nalcor took appropriate measures to mitigate the risks identified, and
 - (D) Nalcor made the government aware of the reports and assessments, and
- (vi) the commercial arrangements Nalcor negotiated were reasonable and competently negotiated;
- (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
- (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 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.

[5] In carrying out my investigation into the Muskrat Falls Project in accordance with section 4 of the Order in Council, I am directed to consider the following matters as set out in section 5 of the Order in Council:

- (a) participation in the inquiry by the established leadership of Indigenous people, whose settled or asserted Aboriginal or treaty rights to areas in Labrador may have been adversely affected by the Muskrat Falls Project;
- (b) the need to provide consumers in the province with electricity at the lowest possible cost consistent with reliable service;
- (c) the powers, duties and responsibilities of a Crown Corporation;
- (d) the need to balance commercial considerations and public accountability and transparency in carrying out a large-scale publicly-funded project; and
- (e) the need to balance the interests of ratepayers and the interests of taxpayers in carrying out a large-scale publicly-funded project.

[6] While I have only specifically referred to sections 4 and 5 of the Order in Council, I am mindful of the other requirements for this Inquiry set out by the Lieutenant-Governor in Council. For instance, section 6 states that I must make findings and recommendations considered necessary and advisable related to those matters referred to in section 4 of the Order in Council. In doing its work, the Inquiry, as is usually the case, cannot express any conclusion or recommendation regarding civil or criminal responsibility of any person or organization. The Commission of Inquiry is authorized to engage the services of people having special expertise or knowledge in order to meet its mandate.

[7] Finally, it is important to consider that the work of the Inquiry including its reporting obligation must be completed by December 31, 2019, less than two years away. The circumstances surrounding the sanction and construction of a major project like the Muskrat Falls Project are extensive. The December 31, 2019 deadline is a matter of practical importance as I interpret the breadth of the Inquiry's mandate. I am also mindful of the financial position of the Province and, as a result, will not incur public expense unless such is necessary to complete the mandate given.

[8] As has been done for other public inquiries, I was consulted by the Government of Newfoundland and Labrador on the Terms of Reference prior to the Order in Council being approved. The consultation consisted of my meeting with government officials, not politicians, in order to satisfy myself that the Terms of

Reference were sufficiently clear as to what was to be investigated and to discuss the time required to do the work necessary. This allowed me an opportunity to discuss the wording of the Terms of Reference and to make suggestions in order to better clarify what the Government wanted the Commission of Inquiry to investigate. My purpose was not to change the Terms of Reference but only to clarify them where needed and to give input into the timeframe I felt would be necessary in order to complete the work required.

[9] Since this Inquiry was announced, there has been significant public discussion about the scope of the investigation to be conducted as well as the questions to be answered. In order to have the benefit of the public's contribution at an early stage and so that I could provide some clarity around the Commission's work, I decided to seek public input regarding the interpretation to be given to the Order in Council and the Terms of Reference as they are written. There have been 32 submissions received¹. My intention now is to provide my interpretation of the Terms of Reference, in part considering the submissions received, so that the focus of the Inquiry and any persons applying for standing will be informed.

[10] As to the submissions provided, I found most quite helpful in identifying issues and matters for investigation. Many of the submissions filed express significant concern related to the approval or sanction process for the Project as well as the construction of the Project to date. One submission made suggested that the Project sanctioning must be investigated not only based upon future electricity costs but also longer term benefits regarding the impact on greenhouse gas emissions, reliability of power supply and other "strategic benefits" over the lifetime of the Project. As well, many of the submissions asked that I look forward as regards the Project and its impact on the citizens of the Province. I have also been asked in some of the submissions to ensure that the public has a meaningful opportunity to provide input into the investigation.

[11] There have been submissions filed that state that the Terms of Reference, as they are, are not appropriate and should be "reset" or reconsidered. It is not within

¹ While most submissions were in the form requested in the Request for Submissions and were filed in the timeframe required, some of the submissions proved to be longer and not in full compliance with the requirements of the Request for Submissions. As well, one of the submissions was received one day subsequent to the date that submissions were required to be filed. In any event, notwithstanding these issues, I decided to review and consider all of the submissions filed.

my authority to do this. In the notice issued calling for submissions with respect to the interpretation of the Terms of Reference, I requested that submissions made should only address the interpretation of the Terms of Reference as they currently exist. As a result, I will interpret the existing Terms of Reference, which is really the only mandate that I have as regards the conduct of this Inquiry.

[12] Finally, as regards to submissions received, there are matters referred to that I see as being clearly within the scope of the Terms of Reference. However, some of the submissions refer to matters that are not included in the Terms of Reference as they exist.

[13] I would add that I am providing my explanation of how the Terms of Reference will be interpreted at a very early stage in this Inquiry. While document disclosure and interviews are being undertaken, the Inquiry has much work to do to meet its mandate. Notwithstanding this, I feel it is important to provide some indication as to the focus of the Inquiry to inform the public, assist parties in deciding whether they wish to apply for standing and also to attempt to resolve uncertainty related to the breadth of the Terms of Reference. As the Inquiry proceeds, I reserve the right to alter this interpretation of the Terms of Reference as is necessary based upon information that emerges.

INTERPRETATION PRINCIPLES

1. Guiding Principles

[14] In past Commissions of Inquiry held in Canada, it has been the practice to articulate principles to guide the conduct of an Inquiry². I see substantial merit in doing so for this Inquiry. The principles which I will set out here will guide how this Inquiry will be conducted and its extensiveness. Here, I adopt the following principles for this Inquiry:

² See, for example, *The Walkerton Inquiry* and *The Inquiry into Pediatric Forensic Pathology in Ontario*.

1. **Independence** – That the Inquiry be an independent one with no pre-conceived or pre-formed bias towards any specific outcome.
2. **Cooperation** – That the Inquiry proceed on the basis of encouraging a cooperative approach as between all parties so as to promote the full canvassing of all relevant issues in the least adversarial manner as well as efficient use of time, effort and cost.
3. **Thoroughness** – That the Inquiry examine all relevant issues within its mandate proportionate to their level of importance or significance to the ultimate findings and recommendations to be made. Thoroughness does not mean the investigation must be totally exhaustive in all respects. To be borne in mind here is the amount of evidence surrounding the whole of the Project to be reviewed and considered as well as the amount of time available to conclude this Inquiry.
4. **Expedition**: That the Inquiry be completed in the time mandated by the Government and that it be cost efficient but effective.
5. **Openness to the Public**: That the Inquiry be conducted in a transparent and an open manner subject to the need to respect any applicable legal privilege claims as well as to ensure that commercially sensitive material not be made public where such could negatively impact the overall construction and costs of the Project.
6. **Fairness**: That the Inquiry balance the interests of the public in learning what happened with the rights of those involved who are to be treated fairly. In an investigative Inquiry, it is important to be reminded that implicit in being fair is the need to guard against inappropriate reliance on hindsight. Any evaluation of past conduct must be done in the context of the knowledge that was available at the time, not what we know today.

[15] Aside from these principles, it is also important that I acknowledge that the Government of Newfoundland and Labrador has decided that the Project will continue to its completion. As such, it is in the public interest that the Inquiry, in fulfilling its mandate, cause the least possible disruption to the continued construction of the Project as well as the least possible impact on the ultimate costs for the Project.

[16] These principles are similar to those adopted for other investigative Inquiries and are meant to guide the Commission's work as it moves forward in all respects. Adherence to these principles, to as great a degree possible, will best ensure that the Commission is able to meet its mandate.

2. Generally

[17] It is important to emphasize that the language used in the Order in Council establishing the Commission of Inquiry dictates the mandate that I have here.

[18] As stated by Ed Ratushny in *The Conduct of Public Inquiries: Law, Policy and Practice* [Toronto: Irwin Law Inc., 2009], at page 130:

The terms of reference are crucial because the mere appointment of a commissioner tells us little. The entire life of a commission is dictated by its terms of reference, which are legally binding. They establish the jurisdiction of the commission. The boundaries of that jurisdiction dictate what the commission must do and what it cannot do. And they are legally enforceable by the Courts ...

[19] The Order in Council contains no preamble but sets out the direction I must take in conducting the Inquiry by way of the Terms of Reference set out in section 4 along with the considerations set out in section 5 earlier referred to.

[20] In interpreting the Order in Council and specifically the Terms of Reference, I must obviously look at the words used. However, as pointed out by Barry, J.A. in *Allen v. Workplace Health, Safety and Compensation Review Division*, 2014 NLCA 42, when engaging in legal interpretation the following must be borne in mind:

- 47 The modern approach is to accept that all language may prove ambiguous, words must be read in their entire context and in their grammatical and ordinary sense, harmoniously with the purpose of the legislation. A reference to "plain language" or "plain meaning" is not helpful. The only proper approach is to maintain a focus

upon the language of the text in the context of the various factors emphasized by the modern principle.

[21] I am satisfied here that while the words used must be considered based upon their meaning, I must take a contextual and purposive approach to the interpretation of the Terms of Reference and their breadth.

[22] It is also important to point out that it would amount to a jurisdictional error on my part if I were to interpret these Terms of Reference too widely and proceed to hear evidence that has no bearing on the issues to be resolved pursuant to those Terms. By doing this I would be going outside of the subject matter of the Inquiry. (See: *Re: Bortolotti et al and the Ministry of Housing, et al* (1977), 15 O.R. (2nd) 617 (ONCA) and *Ontario (Provincial Police) v. Cornwall (Public Inquiry)*, [2008] O. J. No. 153 (ONCA)).

[23] Many of the submissions filed suggest that I should approach the Terms of Reference as broadly as is possible to ensure that all the appropriate issues raised in the Terms of Reference, particularly section 4, are dealt with by the Inquiry. I find that approaching the interpretation of the Terms of Reference broadly is appropriate here.

[24] Supporting a broad approach to interpreting the Terms of Reference are the use of the words “including whether” related to matters to be considered in assessing the sanctioning recommendation by Nalcor in section 4(a) and the cost escalation of the Project in section 4(b). Having said this, there is a limit to how broadly the Terms of Reference for this Inquiry can be interpreted.

[25] As a result, while considering the submissions made, it is ultimately for me to interpret what the Terms of Reference entail. I will now proceed with my interpretation of the mandate of the Commission as set out in the Order in Council. I intend to do this by referring generally to sections 4 and 5 of the Order in Council. I will also address certain matters referred to in the submissions received that I find do not reasonably fall within the direction given in the Order in Council.

MY INTREPRETATION

1. Generally

[26] Interpreting the Commission's Terms of Reference is best done in these circumstances by focusing on what public interest is engaged and then considering what specific issues arise that will inform that public interest³.

[27] The actual wording, focus and context of the Terms of Reference seem reasonably clear and specific. In its subparagraphs, section 4 of the Terms of Reference speaks to four matters:

- (a) the considerations of Nalcor in determining to recommend government sanction of the Muskrat Falls Project and whether these considerations were appropriately determined by Nalcor,
- (b) the significant differences between the estimated costs of the Muskrat Falls Project at the time of sanction to the time of the Inquiry, together with reliable estimates of the costs to the conclusion of the Project,
- (c) whether the decision to exempt Muskrat Falls Project from oversight by the Board of Commissioners of Public Utilities (PUB) was justified and reasonable, as well as looking at the effect, if any, on the Project development, costs and operations as a result, and
- (d) whether the Government of this Province was fully informed and made aware of the risks and anticipated problems with the Muskrat Falls Project so as to enable it to have accurate and sufficient information to appropriately decide to sanction the Project and, thereafter, whether the Government exercised appropriate oversight of the Project's costs,

³ Such an approach to interpretation is referred to by Ed Ratushny in *The Conduct of Public Inquiries: Law, Policy and Practice* at pages 132-133 based upon the approach taken in the *Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Mr. Karlheinz Schreiber and the Right Honourable Brian Mulroney*, First Report, Schedule 2.

risks, governance, arrangements and decision-making processes associated with the Project.

[28] To me, the public interest engaged or to be served by the Terms of Reference is a need to review the overall integrity of the process leading to sanction of the Muskrat Falls Project as well as that followed in its construction, including the parts played in the process by Nalcor and the Government of Newfoundland and Labrador.

[29] Generally speaking, it is clear to me that the Order in Council, and specifically section 4, is geared to focus the Commission's work and mandate, primarily at the least, on the business case put forward by Nalcor leading to the official sanction of the Muskrat Falls Project by Government in December 2012 as well as the reasons why the costs of construction of the Project have escalated from the initial estimates made. By business case, I mean specifically the case advanced by Nalcor, and accepted by the Government, for the need, financial viability, costs and benefits of the Muskrat Falls Project. Really what is primarily being asked of the Commission is to explain what was done by Nalcor and the Government of Newfoundland and Labrador to cause the Muskrat Falls Project to be sanctioned, whether the analysis done by Nalcor and the Government was reasonable considering best industry practice and why the Project cost has escalated so significantly.

[30] Also to be considered is why the Project was exempted from PUB scrutiny, notwithstanding that ultimately a reference was made to the PUB to compare two potential options for supplying power to the island part of the Province. Once that assessment by the PUB was commenced, the Government decided it would not give the PUB the extension of time that it requested to complete its work. To assess the possible impact of the PUB exemption or lack of scrutiny of the development, costs and operation of the Project, the Commission will be investigating the full circumstances surrounding the PUB's degree of involvement.

[31] Based upon section 4(d), it will also be necessary for the Commission to investigate the involvement of the Government in the Project prior to sanction and whether it was fully informed and was made aware of any risks or problems anticipated with the Project so as to assess whether it had "sufficient and accurate

information upon which to appropriately decide to permit the Project to proceed”. Once sanction was given, the Commission of Inquiry must consider what measures the Government has taken to oversee the Project. In doing so, the Commission is directed to focus on governance arrangements and decision-making processes as related to the Project. Such an examination will be a broad one and will have to include both the prior governments as well as the present government for the Province.

[32] All of what I have stated above leads me to conclude that the Government’s focus in drafting and approving the Terms of Reference found in the Order in Council is very much based upon the Project’s viability, risks, costs and benefits and the consideration of these by Nalcor and the Government at the time of sanction and thereafter.

[33] I will now consider each of the four Terms of Reference set out in section 4 of the Order in Council as well as some other matters in more detail as to specific areas to be addressed.

2. Section 4(a) Project Sanction

[34] In regard to the matter of sanction, I am satisfied that the Order in Council requires that the Commission investigate and consider what Nalcor knew, or was reasonably expected to know, at the time it proposed the Project for sanction, whether the information was accurate and further, what information and, by extension, whether all necessary information, was provided to the Government at the time.

[35] Based upon some of the submissions filed, I agree that as regards Project sanction, it will be important for the Commission of Inquiry to obtain historical information concerning the development of the Churchill River and the events leading up to the eventual proposal to proceed with the Muskrat Falls Project. Consideration will also have to be given with regards to the assumptions and forecasts made by Nalcor, including projected annual supply requirements and whether they were reasonable based upon accepted industry practice. Importantly

as well, will be a determination of what options, if any, other than the Muskrat Falls Project and the Isolated Island Option as referred to in the Terms of Reference, were considered by Nalcor and when were they in fact considered, if at all. Furthermore, the Decision Gate process and the reasonableness of capital cost estimates used fall within the mandate of the Commission.

[36] I am also satisfied that, in considering the issue of recommending the sanction of the Muskrat Falls Project, consideration should be given to Nalcor's involvement and reaction to the Joint Environmental Review Panel Report, particularly as regards the adequacy of Nalcor's consideration of other options for power supply, environmental monitoring and the issue of water management rights based upon existing Churchill Falls contractual obligations.

[37] As regards section 4(a), it will be necessary for me to consider whether appropriate costing and accounting processes were utilized in determining costs for the options considered and ultimately was the Muskrat Falls Project the least cost option for the Province.

[38] Notwithstanding there is no specific reference in the Order in Council to Nalcor's actions in its dealings with Emera Inc., I am satisfied that the contracts negotiated and agreed upon with Emera Inc. can be reasonably linked to the development and sanctioning of the Project and, perhaps, to the Federal Loan Guarantee being provided. Certainly the impact of the decision by the Nova Scotia equivalent to our PUB respecting their failure to approve the initial agreement negotiated, what notice of that decision was taken by Nalcor and the Government at the time as regards continuing to move the Project forward and how this impacted negotiations between Nalcor and Emera Inc. will be relevant considerations for the Commission. As a result, I am satisfied that consideration must be given to the negotiations leading up to the contracts with Emera Inc. and the ultimate costs and benefits for the Project as a result of those contracts with Emera Inc. In considering this, I must also consider whether or not the negotiations conducted by Nalcor were in fact appropriate and reasonable based upon the information available at the time and matters such as best industry practices.

[39] As a result of these findings, the areas discussed above will be within the focus of the Inquiry's investigation. By considering these matters, and others, that may arise as information flows, I hope to be able to make an appropriate determination as to what happened with regards to how this Project was proposed as the least cost option for the purposes of sanction by Nalcor and whether Government was aware of and appropriately considered all relevant matters prior to its sanction of the Project.

3. Section 4(b) Project Execution and Cost Escalation

[40] As regards the matter of the construction cost escalation as dealt with in 4(b) of the Order in Council (with some overlap with section (d) as regards government oversight), I will be considering those matters referred to in sections 4(b)(i) to (vi) as well as other relevant matters related to why construction costs escalated from those projected by Nalcor at the time of the sanction of the Project to the eventual and anticipated conclusion of the construction of the Project.

[41] While there is some overlap between the issues to be considered under terms 4(a) and 4(b), matters for consideration under 4(b) will include such things as Nalcor's ability to oversee and manage a project of the magnitude of the Muskrat Falls Project, whether construction scheduling for the Project was reasonable, whether the contractual arrangements with contractors, subcontractors, consultants and others, including embedded contractors, were appropriately entered into in accordance with industry best practice, whether any reports or risk assessments were obtained by Nalcor, who they were shared with and how they were responded to by Nalcor. One such report will be the SNC Lavalin Report dated April 23, 2013 which will merit particular attention by the Commission. As well, I must consider whether appropriate or proper consideration was given and actions taken regarding potential risk to the environment, human safety and property related to the stability of the North Spur and methylmercury contamination. How these reports or assessments were received by Nalcor and whether they were made available to the Board of Nalcor as well as the Government will also be a part of the investigation to be conducted.

4. Sanction 4(c) PUB Exemption

[42] As regards section 4(c) and the exemption from PUB scrutiny of the Muskrat Falls Project, the Commission will have to look into why any development in the Lower Churchill River was initially exempted in 2000, why, notwithstanding that exemption, the Government decided to make a “supplemental” but limited reference for a review of the options for development to the PUB in 2011 and whether Nalcor provided appropriate and timely information to the PUB to allow the review as mandated. Also to be considered is the impact of the decision by the PUB on March 30, 2012 wherein it requested an extension of time to conduct its review and the response by Nalcor and the Government to this. To be determined as well is whether there was any interference on the part of Nalcor or the Government with respect to the PUB’s consideration of the Project. Ultimately, I will have to consider whether what occurred related to the PUB was in the public interest and whether the failure of the PUB to review the Project impacted the development, costing or operation of the Project.

5. Section 4(d) Government Oversight

[43] As regards section 4(d) of the Terms of Reference, as stated earlier, the question that ultimately arises is whether or not the Government was appropriately informed and in a position to determine that the Muskrat Falls Project was the least cost option for the supply of power to the island portion of the Province. In that regard, for the purposes of sanction, the actions of Government and its officials prior to the sanction of the Project will have to be fully scrutinized. This will include a consideration of the legislative and regulatory regime, and any changes made to this as the Project progressed, as well as decisions made to facilitate financing of the Project.

[44] Section 4(d) also requires me to investigate the measures taken by Government to oversee the Project’s execution. As there were different government administrations in place at various times, my review will involve both the past and present administrations. I am satisfied that I will need to examine the reporting structures between Nalcor and the various government administrators, the governance models 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 as it has progressed. Implicit in such an investigation will be a consideration of the decisions made by Government to continue to proceed with the Project.

6. Role of Indigenous People

[45] A number of submissions received concerns the impact of the Project on Indigenous people and the Labrador environment, including methylmercury contamination and the alleged instability of the North Spur. While environmental issues do not only affect Indigenous people, Indigenous groups have raised them as important concerns for their communities.

[46] There is no direct reference in section 4 of the Order in Council to environmental considerations or the impact on Indigenous people. Section 5(a), however, requires that I consider participation in the Inquiry “by the established leadership of Indigenous people, whose settled or asserted Aboriginal or treaty rights to areas in Labrador may have been adversely affected by the Muskrat Falls Project”. This does not mean necessarily that participation must occur nor does it dictate what that participation should be. It might be argued that this particular provision does not in any way influence the Commission’s mandate as it merely provides for consideration as to participation in the Inquiry by the established leadership of the Indigenous people.

[47] Having said this, it is obvious to me that the Lieutenant Governor-in-Council intended that the established leadership of the Indigenous people would have a part to play in this Inquiry. If that is so, the part that they should play would be in areas of concern or of interest to those Indigenous people. I note that paragraph 4(b)(v)(a) refers, as regards the issue of the cost escalation of the construction of the Project, to any risk assessments, financial or otherwise, conducted in respect to the Muskrat Falls Project. At present, while I do not have full information, I am aware that certain assessments likely were conducted, specifically risk assessments concerning environmental issues prior to, as well as subsequent to, sanction. I have decided here that a contextual and purposive review of the Order in Council permits me to

investigate into what consultation occurred between the established leadership of the Indigenous people and Nalcor as well as the Government prior to sanction, what risk assessments and reports were done as regards the concerns of the Indigenous people, whether these assessments were appropriately and reasonably considered by Nalcor and the Government and whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of the Indigenous people both at the time of and post sanction. In investigating these matters, I will not be determining any claims or treaty rights for any of the Indigenous people as this clearly does not fall within the Commission's mandate.

7. Looking Forward

[48] One further matter raised in some of the submissions is a purported "democratic deficit" apparent in the whole of the Muskrat Falls Project process. Pursuant to section 6 of the Order in Council which requires me to make recommendations related to the matters raised in sections 4 and 5 of the Order in Council, I am satisfied that the Commission's mandate permits me to look to the future. As such, it is apparent to me that some of the Commission's effort will need to focus on such things as the future role of Crown Corporations in large-scale projects and, specifically, governance and transparency issues related to public accountability. Any systemic issues impacting the appropriate sanctioning and execution of large-scale projects will need to be considered as well. Public involvement and processes to permit input can also be addressed. As such, the Commission will need to consider how these and other matters related to the future can be part of the Commission's considerations. Having said this, it is not within the Commission's mandate to somehow reconsider the whole of the democratic process in this Province as seems to be suggested in some of the submissions received.

[49] Section 5(e) requires that the Commission, in carrying out its Terms of Reference, consider the need to balance the ratepayers' interests with those of taxpayers in carrying out a large-scale publicly-funded project. At this stage of the Inquiry, I take this to mean that the Commission must look to how to balance or apportion the financial costs of an electrical generation project like Muskrat Falls as between power consumers and all of the Provinces' taxpayers. This is not a simple

task to undertake but the Commission will have to bear this in mind as it moves forward.

8. Matters Not to be Considered

[50] Having concluded as I have regards the Commission's mandate, I want to go on to address certain matters raised in some of the submissions that I have determined are not within the scope of the Inquiry.

[51] First of all, some of the submissions suggested that I should inquire into the Federal Government's dealings in approving the Federal Loan Guarantee as well as its responsibility to the citizens of this Province in this regard. Pursuant to the authority provided in the *Public Inquiries Act, 2006*, I do not have the jurisdiction, and nor does the Order in Council provide me with any authority, to consider the Federal Government's dealings with the Federal Loan Guarantee.

[52] In cases such as *Canada (Attorney General) v. Saskatchewan (Commissioner of Milgaard Inquiry)*, 2006 SKQB 385, it has been held that a province is not authorized to establish a Commission of Inquiry to investigate the substantive operations of a federal government institution or investigate into the administration or management of such an institution beyond what is authorized in any Terms of Reference which are accepted or found constitutionally valid based upon there being a valid exercise of a provincial constitutional power. As well, generally speaking, a provincially established Commission of Inquiry cannot inquire into the conduct of a federal employer with respect to the employee's activities on behalf of his or her employer. (See paragraphs 24 and 25 of the *Milgaard* decision.) The provisions in our Constitution setting out the division of legislative powers for both the federal and provincial levels of government (sections 91 and 92 of the *Constitution Act, 1867*) prevent a provincially established Inquiry from trespassing on federal jurisdiction and *vice versa*.

[53] I will hear evidence related to the obtaining of the Federal Loan Guarantee, which ultimately impacted the Project's financing costs, and also I will review the terms of that Guarantee and the impact of those terms on the Province. However,

what the Federal Government did as regards its due diligence, and otherwise, prior to providing this is a matter that I am unable to investigate. Nor is this within the mandate provided in the Terms of Reference.

[54] I will also investigate what analyses, risk assessments, etc., were done as regards environmental concerns and whether these were appropriate and reasonable in the circumstances based upon accepted industry standards and the knowledge that the parties had at the various times when the analyses or risk assessments were completed. Included in this will be a review of the measures taken, if any, to address any legitimate environmental concerns. I will not, however, assess the correctness of the positions taken by the various parties. As well, I am satisfied that the Terms of Reference do not permit me to conduct any further environmental assessment and nor does the time I have to conclude this Inquiry permit this.

[55] Some submissions suggest that I have the authority, or should exercise my authority, to order the shut down of the Project based upon environmental concerns. I have no such right or authority based upon the terms set out in the Order in Council.

[56] Also raised in one of the submissions is Nalcor's adherence to environmental permits. In my view, this is not a matter for consideration by the Commission pursuant to the Order in Council. Nalcor's adherence to environmental permits is only relevant if failure to comply with those permits contributed to any escalation of construction costs or delay. As a result, the general topic of adherence to environmental permits is not a matter that I find is relevant to the Terms of Reference.

[57] As regards the issue of water management rights, I am satisfied that this is relevant as regards, particularly, the matter of the sanction of the Project. However, having said that and while evidence will obviously be received as to what consideration was given with regards to water management rights as a result of the Upper Churchill hydro development, it would not be appropriate for a Commission of Inquiry to look into or to speak to matters that are presently in litigation before the Courts. Therefore, it is my intention here to investigate what analysis or assessment, if any, was made by Nalcor and by Government with regards to any concerns about water management rights for the Project. I do not intend to opine in

any way as to whether any such assessment was correct or incorrect and I will, of necessity, be cautious so as to ensure that the work of the Commission does not negatively impact the interests of this Province as well as the positions taken by Nalcor and/or Government before the Courts respecting ongoing litigation.

[58] Finally, the issue of protests and the police and Department of Justice reaction to those protests has also been raised as being relevant to the mandate set out in the Order in Council. I am satisfied that there is no connection or relevance of these protests to the Terms of Reference, other than potentially as to whether or not the protests that occurred impacted the costs or scheduling of the Project. Other than that, I do not intend to consider what transpired as a result of the protests or demonstrations that occurred and the subsequent reaction by the police and/or the justice system. Such is clearly not within the mandate given to me.

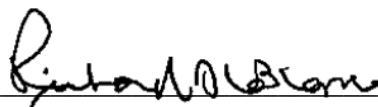
CONCLUSION

[59] In interpreting the Terms of References, I have borne in mind on a contextual and purposive basis what it is that the Lieutenant Governor-in-Council is seeking this Inquiry to determine. As alluded to earlier, I have also borne in mind that I have a limited timeframe, namely until December 31, 2019, to conclude my work.

[60] As a result, I have interpreted the mandate of the Commission in what I consider to be an appropriately broad manner. As stated earlier, upon further information being provided and considering the relevance of that information to the mandate and scope of the Inquiry, I reserve the right to expand or restrict my interpretation of the Terms of Reference as deemed appropriate.

[61] It is my hope that this interpretation of the Order in Council will help focus the Inquiry and also assist parties in determining whether or not it is appropriate for them to seek standing at the Inquiry.

[62] Finally, I wish to acknowledge the effort that went into and the thoughtfulness of the submissions that were provided to me to assist in my interpretation of the Commission's Terms of Reference. Each submission has been carefully considered by myself. I now direct that each of the persons or groups making submissions be provided with a copy of this interpretation. As well, this interpretation is to be published on the Inquiry's website and copies can be provided upon request.

A handwritten signature in black ink, appearing to read "Richard D. LeBlanc", is positioned above a horizontal line.

JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

**ADDENDUM TO MY DECISION ON INTERPRETATION
OF THE TERMS OF REFERENCE FOR
THE MUSKRAT FALLS INQUIRY**

DECISION

FEBRUARY 7, 2019

LEBLANC, J.:

INTRODUCTION

[1] On March 14, 2018, I released a decision providing my interpretation of the Terms of Reference for the Muskrat Falls Inquiry to better define the scope of the Commission’s investigation. As indicated on paragraph 13 of that decision, my review and interpretation at that time was at an early stage in the Commission’s work and, as a result, I reserved the right to alter my interpretation of the Terms of Reference “as is necessary based upon information that emerges”.

[2] It has now become obvious to me that I need to clarify part of my decision based upon information that the Commission has received.

[3] Paragraph 53 of my decision states as follows:

I will hear evidence related to the obtaining of the Federal Loan Guarantee, which ultimately impacted the Project’s financing costs, and also I will review the terms of that Guarantee and the impact of those terms on the Province. However, what

the Federal Government did as regards its due diligence, and otherwise, prior to providing this is a matter that I am unable to investigate. Nor is this within the mandate provided in the Terms of Reference.

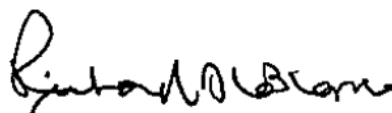
[4] It has now become apparent to me that in order to properly respond to the Commission's Terms of Reference it is necessary to investigate the work done by the Independent Engineer who was put in place as part of the Federal Loan Guarantee process and agreement. During the Phase One hearings, some of the witnesses testifying who were involved with the consideration, approval and oversight of the Muskrat Falls Project on behalf of the Government of Newfoundland and Labrador and Nalcor referred to their reliance on work done by and on behalf of the Independent Engineer. As such, it is clearly within the mandate of this Commission to investigate that work and what was actually being disclosed to the Government of Newfoundland and Labrador and Nalcor as part of that process.

[5] For instance, I will need to review and consider certain reports, emails and other communications provided to or between the Independent Engineer and the Government of Newfoundland and Labrador as well as with Nalcor Energy and its subsidiaries. There are other communications that Commission counsel are aware of from Alison Manzer, a lawyer and agent of the Government of Canada, that were provided to the Government of Newfoundland and Labrador and Nalcor and its subsidiaries that are considered to be relevant to the Commission's mandate.

[6] Therefore, I am satisfied that the investigation referred to above will involve a review of what occurred prior to the sanction decision for the Project in December 2012 prior to financial close in late 2013 and up to the present.

[7] I would add that, based upon what Commission counsel have advise me, the Independent Engineer, while acting in a consulting role to the Government of Canada and others, was not acting contractually as an agent of the Federal Crown. They have also indicated their understanding that the agreement in place called for the Independent Engineer to be paid by Nalcor Energy and its subsidiaries.

[8] In reaching this conclusion, I am well aware of the Terms of Reference for this Commission of Inquiry as well as the jurisdictional limitations involving provincially called Inquiries. Recognizing this, I will reiterate that I have no intention of investigating the level or extent of due diligence that took place on behalf of the Government of Canada or any internal decision making by the Government of Canada. My investigation into the communications referred to above is limited to understanding how these communications affected the work of the Independent Engineer, which was relied on by the Government of Newfoundland and Labrador and possibly Nalcor.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

Further to the Commission's News Release of January 25, 2018, the Honourable Justice Richard LeBlanc, Commissioner, has provided his interpretation of the Terms of Reference for the Commission of Inquiry Respecting the Muskrat Falls Project. His decision can be found on our website at www.muskratfallsinquiry.ca.

Commissioner LeBlanc would like to express his appreciation to those who took the time to make a submission.

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Media contact:

Kate O'Brien
Commission Co-Counsel
(709) 729-6064
kateobrien@muskratfallsinquiry.ca

2018 03 14



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

HEARINGS FOR STANDING AND FUNDING APPLICATIONS

The Commission of Inquiry Respecting the Muskrat Falls Project is accepting applications for standing and/or funding from individuals and organizations.

Standing and Funding Applications

The Honourable Justice Richard LeBlanc, Commissioner, shall determine which individuals and organizations have standing. The criteria for standing are set out in section 5 of the ***Public Inquiries Act, 2006*** and sections 8 to 14 of the Commission's Rules of Procedure. These documents may be found on the Commission's website or obtained by contacting the Commission.

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.

Applications for standing and/or funding are to be submitted to the Commission via mail, facsimile, or email no later than 5:00 p.m. Newfoundland Standard Time on **March 28, 2018**.

Hearing Dates

Individuals and organizations who have applied for standing and/or funding in relation to the Inquiry will be heard:

IN HAPPY VALLEY-GOOSE BAY:

Commencing at 9:30 a.m. local time on April 3, 2018 at the Lawrence O'Brien Arts Centre, Voisey Dr, Happy Valley-Goose Bay, Newfoundland and Labrador; and

IN ST. JOHN'S:

Commencing at 9:30 a.m. local time on April 6, 2018 at the Beothuck Building, 3rd Floor, 20 Crosbie Place, St. John's, Newfoundland and Labrador.

PLEASE INDICATE ON YOUR APPLICATION WHETHER YOU WOULD LIKE TO BE HEARD AT THE HAPPY VALLEY-GOOSE BAY SITTING OR AT THE ST. JOHN'S SITTING.

NO EVIDENCE WILL BE HEARD AT THESE TIMES.

The hearings are open to the public and will also be webcast via the Commission website.

Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

5th Floor, Suite 502, Beothuck Building

20 Crosbie Place

St. John's, NL A1B 3Y8

Telephone: 709-729-6076, Toll Free: 1-833-235-7702

Fax: 709-729-6070

Email: admin@musktratfallsinquiry.ca

Website: www.musktratfallsinquiry.ca

- 30 -

Media contact:

Kate O'Brien

Commission Co-Counsel

(709) 729-6064

kateobrien@musktratfallsinquiry.ca

2018 03 15



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

The Muskrat Falls Inquiry Hearing for Standing and Funding in Happy Valley-Goose Bay is Cancelled

The Honourable Justice Richard LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project ("Inquiry"), wishes to advise that, unfortunately, due to the Inquiry being advised today of an equipment breakdown by our third party service provider for broadcasting in Labrador, the hearing of Standing and Funding applications scheduled for Happy Valley-Goose Bay on April 3, 2018 is cancelled.

As all but one of the applicants for Standing and Funding have advised that they wish to be heard in St. John's, arrangements will be made to have all of the Standing and Funding applications heard on Friday, April 6, 2018 in St. John's at 20 Crosbie Place, 3rd Floor, St. John's, Newfoundland and Labrador, commencing at 9:30 am.

Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

5th Floor, Suite 502, Beothuck Building

20 Crosbie Place

St. John's, NL A1B 3Y8

Telephone: 709-729-6076, Toll Free: 1-833-235-7702

Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca

Website: www.muskratfallsinquiry.ca

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Media contact:

Kate O'Brien

Commission Co-Counsel

(709) 729-6064

kateobrien@muskratfallsinquiry.ca

2018 03 29



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

The Honourable Justice Richard LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project (“Inquiry”), wishes to advise that the webcast for tomorrow’s (Friday, April 6) Standing Hearing will commence at 9:15 AM. The link to the webcast can be found on the Inquiry’s website at the following address: <https://www.muskratfallsinquiry.ca/webcast/>.

The Hearing is also open to the public at the Inquiry’s Hearing Room on the 3rd Floor of the Beothuck Building, 20 Crosbie Place, St. John’s, NL.

Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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20 Crosbie Place

St. John’s, NL A1B 3Y8

Telephone: 709-729-6076, Toll Free: 1-833-235-7702

Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca

Website: www.muskratfallsinquiry.ca

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Media contact:

Kate O’Brien

Commission Co-Counsel

(709) 729-6064

kateobrien@muskratfallsinquiry.ca

2018 04 05

**Commission of Inquiry Respecting the Muskrat Falls Project
Applications for Standing and/or Funding**

Name of Party Making Submission
Andritz Hydro Canada Inc.
Astaldi Canada, Inc
Barnard Pennecon LP
Charles W. Bown
Concerned Citizens Coalition
Conseil des Innus de Ekuanitshit
Consumer Advocate
Democracy Alert/Council of Canadians (St. John's Chapter)/ Social Justice Cooperative of Newfoundland and Labrador
Dwight Ball and Siobhan Coady
Edmund Martin
Emera Inc.
Former Nalcor Board Members
Former Provincial Government Officials
Grand Riverkeeper Labrador/Labrador Land Protectors
Grand Riverkeeper Labrador/Labrador Land Protectors (Reconsideration of Full Standing)
Grid Solutions Canada ULC
Her Majesty in Right of Canada
Innu Nation
Julia Mullaley
Kathy Dunderdale
Kathy Dunderdale – Funding Application
Manitoba Hydro International
Mark Turpin
Mekap'sk Mi'kmaq Band
Nalcor Energy
Newfoundland and Labrador Building Trades Council/ Resource Development Trades Council of Newfoundland and Labrador
Newfoundland Power
Nunatsiavut Government
NunatuKavut Community Council Inc.
Phil Helwig
Province of Newfoundland and Labrador
Robert Thompson
Terry Paddon and Todd Stanley

Note: Applications available on website at www.muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR ANDRITZ HYDRO CANADA INC. FOR THE MUSKRAT FALLS INQUIRY

DECISION

FEBRUARY 5, 2019

LEBLANC, J.:

[1] Andritz Hydro Canada Inc. (“Andritz”) is a major contractor supplying and/or installing powerhouse and spillway hydro mechanical equipment as well as synchronous generators for the Muskrat Falls Project. Based upon Commission counsel having served Andritz with a summons to produce documents related to its work on the Project, as well as their intent to call an employee or employees of Andritz to testify at the Phase Two Inquiry hearings, Andritz requests standing before the Commission of Inquiry for Phase Two to the extent of its interests.

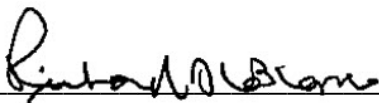
[2] Andritz indicates that it operates in a small and competitive market and, as such, is concerned that its interests and reputation may be adversely affected by the evidence tendered at the Inquiry hearings and possibly by the Commission’s findings.

[3] In preparing for Phase Two, it is evident that Nalcor’s dealings, through its subsidiary, with Andritz will be reviewed by the Commission. This could potentially lead to adverse findings with regards to their dealings and it is also important to have the involvement of Andritz in the Commission’s investigation. Based upon my

consideration of the full circumstances, I am satisfied that Andritz is a necessary party for Phase Two of the Commission's hearings in accordance with the criteria set out in section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006, c. P-38.1, as well as Rule 10 of the Commission's Rules of Procedure.

[4] Andritz's standing will be limited to the extent of its interests as regards the Inquiry's Terms of Reference. It will be the responsibility of counsel for Andritz to work with Commission co-counsel so that Andritz will be aware of and be present for testimony involving or impacting its interests.

[5] As with other parties granted standing, it is important that counsel for Andritz ensure that the Commission's requirements in Rule 19 of its Rules of Procedure are met. Being so close to the start of the hearings for Phase Two, I expect Andritz and its counsel to do all that is necessary to expedite the provision of disclosure so that it will be received by the Commission within five days of the release of this decision at the latest.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR ASTALDI CANADA INC. FOR THE MUSKRAT FALLS INQUIRY

**DECISION
APRIL 6, 2018**

LEBLANC, J.:

INTRODUCTION

[1] Astaldi Canada Inc. (“Astaldi”) has provided considerable construction services for the Muskrat Falls Project. Astaldi states that its services were affected by matters outside of its control that ultimately impacted the schedule and costing of this particular Project. Astaldi is concerned about its reputation as a publicly traded company as a result of this Inquiry’s mandate and its involvement in the Project. Therefore, it seeks standing at the Inquiry hearings. I take their application as one requesting full standing.

[2] Based upon the Commission’s work to date, I am satisfied that Astaldi is a necessary party to this Inquiry based upon its interests being possibly adversely affected by the Commission’s findings and on the basis that their participation, to the extent necessary, will further the conduct of the Inquiry. I am also satisfied that fairness dictates their participation in the hearings at least to some extent.

[3] I am not satisfied that Astaldi should be given full standing. Much of the hearings will deal with matters not in any way related to issues involving Astaldi. It is unnecessary then to grant them a right to full participation in the hearings in those circumstances.

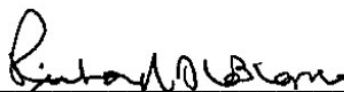
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[4] I am prepared to grant Astaldi limited standing in that they will be permitted to participate only in relation to those matters involving its interests. At this time I see this as being when the hearings will focus on the construction and cost escalation for this Project. I expect that these matters will be dealt with in Phase Two of the Inquiry which will likely commence in February 2019. During that phase of the Inquiry, counsel for Astaldi will be limited to questioning only those witnesses speaking to issues impacting the interests of Astaldi and its involvement in the Muskrat Falls Project. Documents and other disclosure normally provided to counsel for the parties with standing will be similarly restricted.

[5] To accommodate this, Commission co-counsel will be informing counsel for Astaldi where it is anticipated that evidence will be possibly impacting their interests.

[6] While limiting Astaldi standing as I have, should Commission co-counsel or Astaldi determine that Astaldi's interests may be impacted at other times during the Inquiry they will be required to notify counsel for Astaldi so that it can participate in that part of the hearings. I say this as, in its application, Astaldi has indicated that Nalcor had issued a request for proposals from pre-qualified bidders for work eventually performed by Astaldi. This was done prior to the official sanctioning of the Project. Should it be necessary for Astaldi to be heard on this, I leave it open to consider a further grant of standing to them on matters where its interests are engaged.

[7] Finally, the grant of standing means that Astaldi must comply with the Commission's Rules of Procedure. I would remind counsel for Astaldi of the requirements of Rule 19, in particular with regard to its obligations related to document disclosure not yet received by the Commission.


JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

DECISION ON AN APPLICATION FOR STANDING FOR BARNARD PENNECON LP FOR THE MUSKRAT FALLS INQUIRY

DECISION

FEBRUARY 25, 2019

LEBLANC, J.:

INTRODUCTION

[1] Barnard Pennecon LP (“BPLP”) seeks limited standing to have its counsel attend and participate on its behalf for the Phase Two public hearings for the Muskrat Falls Inquiry.

[2] BPLP is a limited partnership that has been awarded a contract for the construction of the North and South Dams for the Muskrat Falls Project (CH0009) as well as other work on the Project. As Commission Phase Two hearings will investigate the reasons for the differences between the Project estimates at sanction and the actual price on contract award, including for CH0009, BPLP requests standing based upon s. 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P-38.1 (the “Act”) in that its participation would further the conduct of the Inquiry, its interests may be adversely affected by the Commission’s findings and that its participation would contribute to the openness and fairness of the Inquiry.

ANALYSIS

[3] BPLP submits that standing should be granted as the Commission has served a Summons to Produce as well as requests to have two of its employees interviewed by Commission counsel. I see no reason to grant standing of any type to BPLP merely for this reason. Not every person or company served with a Summons, whether to produce documents or alternatively to have an employee appear and be questioned as a witness, should be granted standing.

[4] BPLP also seeks standing based upon an investigative report prepared by Grant Thornton and submitted to the Inquiry wherein the process of the award of CH0009 is raised as a possible concern, which may be the subject of some evidence during the Phase Two hearings. Again, based upon what I am aware of at this particular time, I see nothing to suggest that, for this reason alone, the participation of BPLP as a party would meet the criteria set out in s. 5(2) of the *Act*.

[5] However, I am prepared to grant standing to BPLP based upon evidence that I anticipate will be presented during the Phase Two hearings regarding the increase of costs for CH0009 over and above the original estimate prepared by Nalcor Energy for this contract. Allowing BPLP to participate in the Phase Two hearings on this issue will, in fact, likely further the conduct of the hearings and contribute to the openness and fairness of those hearings in that BPLP's interests could possibly be adversely affected by the Commission's findings.

[6] As a result, standing will be granted to BPLP to attend and participate during the Phase Two hearings through its counsel, limited however to the extent of its interests. Examining witnesses by counsel for BPLP will be permitted only where witnesses are speaking to, or can speak to, matters impacting the interests of BPLP and its involvement in the Muskrat Falls Project, including all work performed by BPLP and not limited to CH0009.

[7] It shall be the responsibility of counsel for BPLP to work with Commission counsel so that they will be aware of and present at those hearings where the evidence will involve or impact the interests of BPLP.

[8] As for all parties with standing, compliance with the Commission's Rules of Procedure, including Rule 19, is of utmost importance. Any outstanding disclosure must be provided to the Commission on or before March 1, 2019. This includes documents in the possession of BPLP that are not referred to in the Summons to Produce that has been issued by the Commission to BPLP but which documents relate to the Muskrat Falls Project.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR MUSKRAT FALLS CONCERNED CITIZENS COALITION (TBI) REPRESENTED BY RONALD G. PENNEY, DAVID VARDY AND DES SULLIVAN FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Ronald G. Penney, David Vardy and Des Sullivan together have applied for standing at this Inquiry on behalf of an entity to be incorporated to be known as the Muskrat Falls Concerned Citizens Coalition. Some 218 people have indicated that they wish to be members of this organization.

[2] All three of the individual applicants on behalf of the entity to be incorporated have been critics of the Muskrat Falls Project for some time. Mr. Penney is a retired public servant who has served in many high level capacities in the government's public service. He is trained as a lawyer. Mr. Vardy has served as Clerk of the Executive Council in the past as well as having senior positions in other government agencies. He is an economist. Mr. Sullivan is a former executive assistant to Premier Frank Moores and Premier Brian Peckford. He is President of the Sullivan Group of Companies and has been publishing the Uncle Gnarley Blog since 2012 dealing with public policy in this Province, including issues involving the Muskrat Falls Project. All three of these individuals have maintained a significant public

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presence regarding the Muskrat Falls Project and appear to represent the views of other people in the Province who have concerns emanating from the sanction and construction of this Project. I am satisfied that these three individuals have been writing and researching on this Project for some time and, as a result, could if permitted, assist in the conduct of the Inquiry as well as contributing to openness and fairness.

[3] I would note here that these three individuals have done as the Commission has requested as regards joining forces with others of similar interests in making their standing application. In this particular case, as well, it is to be noted that they have an arrangement made with the Grand RiverKeeper Labrador and Labrador Land Protectors groups to work cooperatively with them at the Inquiry should those other parties be granted standing.

[4] I have now considered this application and I am prepared to grant full standing to the Muskrat Falls Concerned Citizens Coalition once it is incorporated, as represented by Mr. Penney, Mr. Vardy and Mr. Sullivan. In doing so, it must be understood that standing is premised on the party being required to comply with the Rules of Procedure for this Commission of Inquiry together with limiting representations, questioning and submissions to those matters within the Commission's mandate as interpreted by me on March 14, 2018. I expect this party, and all other parties, to work cooperatively with Commission co-counsel. I also welcome the agreement to work with Grand Riverkeeper Labrador and the Labrador Land Protectors.

[5] I would also note here that there is another party seeking standing who I believe this group should also work cooperatively with, that being the Consumer Advocate if, in fact, he is ultimately granted standing. Such cooperation will assist in ensuring that the time available will be productive and will avoid unnecessary duplication and cost for the hearings.

[6] Funding has also been requested. While the Muskrat Falls Concerned Citizens Coalition has no revenue, although some funds may be available through memberships, without a recommendation for funding this group would not be able

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to participate in the Inquiry. As this group's participation will further the conduct of the Inquiry in my view, I will recommend funding for one counsel as well as reasonable expenses for one counsel and one representative for travel where the hearings are held outside of St. John's. I am not making any recommendation at this time for payment for consultants or other experts as I expect that Commission co-counsel will be marshalling the necessary witnesses and evidence for the hearings in consultation with all parties.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR CONSEIL DES INNU DE EKUANITSHIT FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] The Conseil des Innu de Ekuanitshit (“Conseil”) is an Innu band within the meaning of section 2 of the *Indian Act* and represents its members who reside on the Mingan reserve in Quebec. The Conseil is part of the Innu nation whose people reside both in Quebec and in this Province. As an Indigenous group, the Conseil has participated in consultations involving the Muskrat Falls Project, including making submissions to the Joint Review Panel for the Environmental Assessment conducted as well as other assessments. The Conseil has applied for full standing at the hearings set by the Commission of Inquiry Respecting the Muskrat Falls Project. It also requests that a recommendation be made for funding for its participation in the Inquiry including for legal counsel, travel expenses and translation services.

[2] In my March 14, 2018 interpretation of the Commission’s mandate as set out in the Order in Council establishing the Commission of Inquiry, I concluded that section 5(a) of the Order in Council required a consideration of participation of some type by the established leadership of Indigenous People with settled or asserted rights to areas in Labrador adversely affected by the Muskrat Falls Project.

PLB

[3] At paragraph 47 of my decision, I stated that such participation and involvement would be related to the following matters:

1. Consultation that occurred between the established leadership of the Indigenous people and Nalcor as well as the Government of this Province;
2. The risk assessments and reports done as regards the concerns of Indigenous people;
3. Whether these assessments and reports were appropriately and reasonably considered by Nalcor and the Government of this Province; and
4. Whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the subtle or asserted rights of the Indigenous people both at the time of and post sanction of the Muskrat Falls Project.

[4] I went on to state in that decision that while I would be considering these matters, I would not be determining any claims or treaty rights.

[5] Further, I stated in my decision that it is not within the mandate of this Inquiry to assess the correctness of the positions taken by Nalcor and the Government on environmental matters but, rather, only to investigate the analyses and risk assessments completed as regard those issues to determine whether Nalcor and the Government have acted in accordance with accepted standards and, as well, to review measures taken to address any legitimate environmental concerns to see if these were reasonable.

[6] It is with this in mind that I have determined that the Conseil should be permitted to participate in the Inquiry hearings but only to a limited extent. I see no reason or benefit in granting the Conseil full standing as they have requested. I am satisfied that they should be granted limited standing where the four areas referred to in paragraph 3 will be the subject of evidence. The interests and the concerns of the Conseil within the purview of the Inquiry as related to these matters can be fully and fairly addressed by this form of limited standing.

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[7] Commission co-counsel will be informing counsel for the Conseil when they expect those matters set out above to be raised at the Inquiry hearings so that counsel for the Conseil can prepare for and participate in these hearings.

[8] I would also encourage consultation and joint preparation with counsel for other Indigenous groups granted standing where there are similar or common interests and positions. This will avoid duplication of effort and time and ensure efficiencies at the hearings.

[9] As for the funding request of the Conseil, I am prepared to recommend funding pursuant to section 5(5) of the *Public Inquiries Act, 2006*, S.N.L. 2006, c. p-38.1, for the limited purposes identified above to allow the Conseil to participate in the Inquiry on a limited basis to the extent that their interests are engaged as referred to in paragraph 3 above. This will include their ability to retain legal counsel and to cover expenses both for counsel and one representative of the Conseil to attend at the hearings when necessary.

[10] Having been granted limited standing, the Conseil is bound by the Commission's Rules of Procedure, including Rule 19 regarding document disclosure to be provided to the Commission within 14 days. Counsel for the Conseil is encouraged to discuss this obligation with Commission co-counsel as soon as possible.


JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR CONSUMER ADVOCATE FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Dennis Browne, Q.C., in his capacity as Consumer Advocate pursuant to section 117 of the *Public Utilities Act*, R.S.N.L. 1990, c. P-47 and paragraph 9(2)(a) of the *Independent Appointments Commission Act* representing the interest of domestic and general service electricity and power consumers, has applied for full standing and funding so that he can participate in the hearings to be held for this Inquiry on behalf of the electricity consumers and ratepayers in this Province.

[2] While I would welcome the involvement of Mr. Browne in these hearings based upon his past experience representing consumers before the Public Utilities Board, I have a concern regarding his authority to act on their behalf at this Inquiry.

[3] The office of the Consumer Advocate is a statutory creature and any authority given to that office is provided by the statute creating it. There is no authority at present in any statute that would permit him being the Consumer Advocate for power consumers or on behalf of ratepayers before this Commission of Inquiry. I understand that the Department of Justice and Safety may well now be taking

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necessary steps to permit the appointment of Mr. Browne to appear on behalf of the Province's power ratepayers at this Inquiry as a Consumer Advocate. If that should happen, that would obviously address any concerns I have related to his authority to act as a Consumer Advocate before this Inquiry.

[4] To be frank, I would welcome the appearance of a Consumer Advocate to represent the interest of electricity consumers and ratepayers of this Province.

[5] As a result, I have decided to defer this request for standing pending the Government of Newfoundland and Labrador cloaking Mr. Browne with the necessary authority to appear on behalf of all electricity consumers in the Province before this Commission of Inquiry. I would welcome his involvement should and when this occurs.

[6] If given standing, I will be encouraging Mr. Browne to work collaboratively with other groups given standing who have similar or common interests. Working together will avoid duplication with regards to the questioning of witnesses in the presentation of evidence.

[7] Next, as to Mr. Browne's request for funding, I would refer to section 5(5) of the *Public Inquiries Act, 2006*, c. P-38.1 which states the following:

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.

[8] I will now obviously be deferring my consideration of this funding application pending Mr. Browne's appointment as a Consumer Advocate for the purposes of this Inquiry. Having said this, I feel it is necessary to make an initial comment about part of his application for funding, something that is my hope the Government of Newfoundland and Labrador will have to consider.

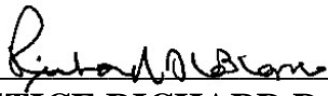
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[9] Mr. Browne is not only seeking a recommendation for funding for legal counsel but he is also seeking funding for himself. I recognize that Mr. Browne is a lawyer and, as I understand it, there is no compensation paid to him as a Consumer Advocate other than as provided for in those statutes that authorize his appointment. While I am prepared to consider a recommendation for funding for counsel for Mr. Browne should standing be granted, as well as necessary expenses, I do not have the authority to recommend to Government that Mr. Browne be paid for his participation as a Consumer Advocate in the Inquiry as a lawyer. It will be for the Government of Newfoundland and Labrador to negotiate and pay Mr. Browne if he is acting as the Consumer Advocate.

[10] Notwithstanding the request to do, I am not prepared to recommend to Government at this time that it pay expenses for expert reports and consultants if required. The marshalling of witnesses and evidence is to be done through Commission co-counsel. As such, it will be up to Mr. Browne, on his being given standing, to consult with and make suggestions and recommendations to Commission Co-counsel in this regard.

[11] I do wish to point out, notwithstanding Mr. Browne's indication there is to be, or has been, a discussion between the Commission and the Government of Newfoundland and Labrador regarding this application, that to my knowledge there are no such discussions ongoing and nor do I expect there will be.

[12] I would ask Mr. Browne to advise me of his appointment as a Consumer Advocate immediately so that I can then deal with his standing and funding application.


JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR CONSUMER ADVOCATE FOR THE MUSKRAT FALLS INQUIRY

DECISION

MAY 30, 2018

LEBLANC, J.:

INTRODUCTION

[1] By way of an application for standing dated May 28, 2018, Dennis Browne, Q.C., in his capacity as Consumer Advocate pursuant to section 117 of the *Public Utilities Act*, R.S.N.L. 1990, c. P-47 and paragraph 9(2)(a) of the *Independent Appointments Commission Act*, S.N.L. 2016, c. I-2.1, applied for full standing and a recommendation for funding before this Commission of Inquiry on behalf of electricity consumers and ratepayers in this Province.

[2] In my decision given on April 6, 2018, I indicated that, while I would welcome the involvement of a representative for electricity consumers and ratepayers at the Inquiry hearings, I was concerned that Mr. Browne did not have the necessary authority to act as Consumer Advocate before this Inquiry. As a result, I deferred consideration of Mr. Browne's application pending his designation or appointment by the Government of Newfoundland and Labrador as Consumer Advocate for the purposes of representing electricity consumers and ratepayers at the Inquiry hearings.

[3] On May 29, 2018, Mr. Browne forwarded a copy of an Order in Council whereby the Lieutenant-Governor-in-Council appointed him as Consumer Advocate to represent the interests of domestic and general service consumers in the Muskrat Falls Inquiry to the extent that the Consumer Advocate is granted standing. The Order in Council provided by Mr. Browne appears to have been an amended one so as to include authority for the Consumer Advocate to represent the interests of

domestic and general service consumers before this Inquiry. His appointment is in place now until October 7, 2018. Mr. Browne has advised Commission counsel that his appointment is always one that has a duration of one year and that he expects to be reappointed before October 7, 2018 and thereafter during the term of the Commission of Inquiry.

[4] With this authority to act on behalf of electricity consumers and ratepayers as Consumer Advocate for this Inquiry now being in place, and my expectation that he will be reappointed to continue to do so during the full term of this Inquiry, I am satisfied that providing full standing to Mr. Browne as Consumer Advocate on behalf of domestic and general service consumers of electricity in this Province is appropriate, particularly after my consideration of those matters set out in section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006, c. P-38.1. In saying this, the grant of standing will be subject to Mr. Browne providing Commission counsel, on a timely basis, with his further appointment subsequent to October 7, 2018 and thereafter for the duration of this Inquiry.

[5] As well, I am prepared to recommend that the Government of Newfoundland and Labrador provide funding and other expenses for counsel for the Consumer Advocate in order to participate in the Inquiry hearings. I am not prepared to recommend that funding be provided for consultants or other experts at this time. As I stated in my earlier decision, the marshalling of witnesses and evidence is to be done primarily by and through Commission counsel. Should the Consumer Advocate wish to make suggestions to Commission counsel in this regard, I would urge him to do so.

[6] Obviously the grant of full standing to Mr. Browne as Consumer Advocate requires that he be fully compliant with the Commission's Rules of Procedure. This includes a duty now upon his being granted standing to provide disclosure of any documents in his possession relevant to the mandate of this Commission of Inquiry within the next 14 days. That time period may well be extended but only upon agreement of Commission counsel.


JUSTICE RICHARD D. LEBLANC
COMMISSIONER



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.

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

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

p. 3

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



Commission of Inquiry Respecting the Muskrat Falls Project

DECISION ON APPLICATION FOR STANDING FOR DWIGHT BALL AND SIOBHAN COADY FOR THE MUSKRAT FALLS INQUIRY

DECISION

December 14, 2018

LEBLANC, J.:

INTRODUCTION

[1] Dwight Ball, the Premier of the Province of Newfoundland and Labrador and Siobhan Coady, the Minister of Natural Resources for the Province of Newfoundland and Labrador, as a group of two, have applied for standing for Phases 2 and 3 of the Commission of Inquiry Respecting the Muskrat Falls Project. Both individuals state that of the present governing party, they have had the most involvement with the “oversight, governance, and reporting structures” for the Muskrat Falls Project since the election on November 30, 2015.

[2] Of interest here is the position taken by the applicants regarding their desire to have what they have referred to as “partial” standing for Phase 2 of the hearings. I am not certain exactly what is meant by this. I would suggest that even if Phase 2 standing is granted, both applicants can participate to the extent of their interests. Thus, it seems to me to serve little purpose to categorize standing for any phase of the Inquiry in the matter referred to in the application before me. To date, most counsel with standing have tended to be present and participate only where their clients have an interest.

[3] The applicants seek standing as a group based upon their similar interests. They also seek a funding recommendation for one counsel to act on their behalf during Phase 2 and Phase 3 of the hearings.

ANALYSIS

[4] Phase 2 of the Inquiry hearings will generally review section 4 (b) and (d) of the Commission of Inquiry's Terms of Reference. To be dealt with are the reasons for the difference between the estimated costs for the project from sanction until the conclusion of the project and whether the government has put in place an appropriate oversight process during project execution and construction, focusing on government arrangements and decision making processes associated with the process. At paragraph 44 of my interpretation decision for the Terms of Reference for this Commission of Inquiry dated March 14, 2018, I stated the following, which is specifically related to Phase 2 of the hearings:

Section 4(d) also requires me to investigate the measures taken by government to oversee the project's execution. As there were different government administrations in place at various times, my review will involve both the past and present administrations. I am also satisfied that I will need to examine the reporting structures between Nalcor and the various government administrators, the governance models employed in 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 as it progressed. Implicit in such an investigation will be a consideration of the decisions made by government to continue to proceed with the project.

[5] As regards to Phase 3 of the Inquiry, the mandate that I have interpreted from the Commission's Terms of Reference is to investigate or focus on such things as the future role of Crown Corporations and large scale projects and specifically governance and transparency issues supporting public accountability. Any systemic issues impacting on the issue of sanction or the execution of large scale projects will be considered as well.

[6] Based upon the content of the application filed by both applicants, as a result of both individuals' roles in government and with this project after November 30, 2015, it is obvious that they meet the criteria for standing set out in Section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006, c.P-38.1. I am satisfied that both applicants have had, and continue to have, significant involvement in the project subsequent to their election. Their participation during the Phase 2 and Phase 3 hearings will further the conduct of the Inquiry and contribute to the openness and fairness of the Inquiry. As well, due to the positions they hold in government and their actions taken regarding the project, it is clear that their personal interests could possibly be adversely affected by the Commission's findings. With regard to Phase 3 of the inquiry hearings, as I have given full standing to former provincial government officials who were in place from 2003 to 2015, I am prepared to grant standing for Phase 3 as requested. As a result, both applicants, as a group, will be granted standing during Phase 2 and Phase 3 of the Inquiry to the extent of their interests.

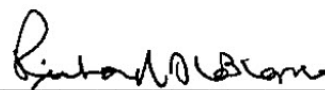
[7] In granting standing, I wish to repeat what I stated in my April 6, 2018 decision involving the Standing Application of Danny Williams Q.C., Thomas Marshall Q.C., Paul Davis, Shawn Skinner, Jerome Kennedy Q.C., and Derrick Dalley. In that decision at paragraph 9, I stated the following, which is also applicable obviously to the present applicants:

“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.”

[8] As regards to the issue of the funding request made by counsel, I have decided that it is appropriate to recommend to government that both Mr. Ball and Ms. Coady be funded for one counsel. As I indicated with regard to the application of the former elected government officials for standing, it is relevant here to consider the fact that both Mr. Ball and Ms. Coady are involved with the Muskrat Falls Project as elected representatives of the people of the province. It would be unfair in my mind to

expect them to personally pay for legal representation during Phase 2 and Phase 3 of this Inquiry. By acting as a group of two, they have requested funding for one counsel. That is also a factor that I have taken into account. Therefore, I will be recommending to Government that both applicants be provided with funding for one legal counsel, along with expenses for attending the inquiry where travel is necessary.

[9] As with all other groups currently with standing, I would remind Mr. Ball and Ms. Coady that 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 the Commission within 14 days of the grant of standing. Counsel for Mr. Ball and Ms. Coady is encouraged to discuss this obligation with Commission Co-Counsel as soon as is possible so that compliance for this rule, as well as all other rules, will not be an issue. An extension of this timeframe may be considered based upon the reasons given at the time.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

**STANDING APPLICATION FOR
EDMUND MARTIN
FOR THE MUSKRAT FALLS INQUIRY**

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Edmund Martin has applied for full standing at the hearings to be held by the Commission of Inquiry Respecting the Muskrat Falls Project. Mr. Martin was employed as President and Chief Executive Officer of Nalcor Energy and later became responsible for proposing and overseeing the construction of the Muskrat Falls Project. He was also employed prior to January 1, 2008 as President and CEO of Newfoundland Hydro Limited and other related companies. His employment ended with these companies in April of 2016.

[2] As a result of his employment, I am satisfied that he had considerable involvement in the Muskrat Falls Project both administratively and in a management role, and has significant knowledge as to all of the matters this Commission of Inquiry is investigating pursuant to its Terms of Reference. As such, his having standing will further the conduct of this Inquiry pursuant to section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P-38.1.

[3] Furthermore, I am satisfied that the interests of Mr. Martin may be adversely affected by the findings of this Commission and that he, therefore, should be given

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the opportunity to participate fully in the Inquiry hearings which will be conducted in accordance with this Inquiry's Terms of Reference as interpreted by me on March 14, 2018.

[4] I am also satisfied that the openness and fairness of this Inquiry requires the full participation by Mr. Martin.

[5] Therefore, it is appropriate here to grant full standing at the Inquiry hearings to Mr. Martin. This will enable his counsel to deal with Commission co-counsel directly in order to provide recommendations and suggestions as regards evidence and witnesses to be called at the hearings. Subject to the Rules of Procedure, in advance of a witness's testimony at the public hearing, Mr. Martin will be entitled to receive notice of the witnesses to be called, copies of documents relevant to that witness and a statement of the witness's expected evidence. Being granted full standing he will also be permitted, through his counsel, to examine witnesses to be called and to make final submissions.

ONE OTHER MATTER

[6] Mr. Martin has not applied for me to make a recommendation on funding and I do not need to deal with this specifically.

[7] However, I do raise a concern about a possible conflict of interest arising as I note that one other proposed party, Ms. Kathy Dunderdale, has also applied for standing with her counsel being a member of the same law firm as the proposed counsel for Mr. Martin. I have no doubt that this is a matter that Stewart McKelvey will give special consideration to prior to the commencement of the hearings.


JUSTICE RICHARD LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

**STANDING APPLICATION FOR
EMERA INC.
FOR THE MUSKRAT FALLS INQUIRY**

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Emera Inc. has applied for limited standing at the hearings to be held at the Commission of Inquiry Respecting the Muskrat Falls Project. Standing is requested only with respect to matters involving Emera Inc.'s interests.

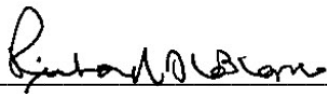
[2] In my decision in interpreting the Commission's Terms of Reference, particularly at paragraph 38, I decided that the mandate of this Inquiry includes a consideration of negotiations and contractual arrangements agreed upon involving Emera Inc. Such falls within section 4(a) of the Terms of Reference set out in the Order in Council establishing this Commission of Inquiry. It is anticipated that those matters, including any involvement of Emera Inc. will likely only arise at what will be Phase One of the Inquiry hearings which will begin in the fall of 2018.

[3] As a result of my interpretation of the Terms of Reference, I am satisfied that Emera Inc. is a necessary party to that part of the hearings where their interests are engaged. That involvement will further the conduct of the Inquiry and will contribute to its openness and fairness. Emera Inc., therefore, is granted limited

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standing to appear and participate in the Inquiry where its involvement in the Muskrat Falls Project and its interests are in issue. At this time, as stated above, I see this as only occurring in Phase One of the Inquiry. Obviously, if their interests are at stake during any other part of the hearings, they will have standing to appear and participate in that hearing. Commission co-counsel will be alert to any possibility that this could arise and will notify counsel for Emera Inc.

[4] The grant of standing includes a requirement to comply with the Commission's Rules of Procedure. Rule 19 is of particular significance and I would encourage counsel for Emera Inc. to be in touch with Commission co-counsel in the near future.



RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR KEN MARSHALL, LEO ABBASS, GERRY SHORTALL AND TOM CLIFT (FORMER NALCOR DIRECTORS) FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] Ken Marshall, Leo Abbass, Gerry Shortall and Tom Clift applied jointly for standing at the hearings for the Commission of Inquiry Respecting the Muskrat Falls Project. They also seek a recommendation for funding.

[2] Some of the applicants were Directors of Nalcor Energy when the Muskrat Falls Project was conceived, sanctioned and at the time of commencement of construction. Others were there for part of that time. As such, they state that they were extensively involved in examining information provided to the Board which included an “extensive review of the decisions, approaches and issues related to the sanction of this Project and all ongoing matters of a business, political, financial, regulatory and other nature”. They also state that, where necessary, they would have obtained and received financial, legal and technical reports prepared by experts.

[3] All of the applicants were Board members up to April 2016 at various times. It was at that time that they resigned following the termination of the then Chief Executive Officer of Nalcor Energy. The applicants indicate that as Directors of

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Nalcor's Board at the relevant times related to the Muskrat Falls Project, they should be permitted to participate in the Inquiry hearings as, unless or until they are subpoenaed to be interviewed or as a witness at the hearings, they would have no input into the information placed before the Commission. They also state that they have a substantial and direct interest in the outcome of the Inquiry particularly as related to their reputations which may be potentially impacted by the findings of this Commission. As such they wish to be granted standing to permit them an opportunity to cross-examine witnesses. They do not specify whether they are seeking full or limited standing.

[4] The applicants also seek a recommendation for funding for legal counsel. While Mr. Clift remains employed, Mr. Marshall, Mr. Abbass and Mr. Shortall indicate that they are retired and have no employment income. As well, they indicate that they received no remuneration as Nalcor Directors other than being reimbursed for expenses incurred by them as Directors of the Board and to attend Board meetings.

[5] Upon my request at the hearing of their application for standing on April 6, 2018 for clarification as to whether, as past Directors, they would expect indemnification for or the payment of their legal costs if standing were granted, further information was provided to the Commission by way of correspondence dated April 11, 2018. I will deal with the funding request later in this decision should standing be granted.

[6] The Inquiry's mandate is well known to the four applicants. Whether given standing or not, I am satisfied that the actions of Nalcor, and its Directors and employees at all times relevant as regards the Muskrat Falls Project will be investigated by this Commission. However, the fact that any or all of the individual Directors could be interviewed by Commission co-counsel or that they are required to testify at the hearings is not, of itself, a basis to grant standing.

[7] Section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006, c.P-38.1 sets out criteria to be considered in determining whether the standing application should be granted. These criteria are as follows:

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- (a) whether the persons 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.

[8] In assessing the criteria for these applicants, it is important to recognize that their actions as Directors, assuming no fraud or dishonesty on their part as regards Nalcor's interests, in effect form part of the actions of Nalcor at the time. Nalcor Energy has already been given standing allowing it to participate fully in the Inquiry hearings. It will no doubt be attempting to ensure that the interests of the entity as a whole, as well as its management, Directors, and employees are fairly presented. There is nothing before me at this time to suggest that Nalcor will not be acting in the interests of its past Directors. I say this being fully cognizant of the fact that a new Chief Executive Officer has been put into place and that these applicants resigned as Directors when the previous Chief Executive Officer was replaced. At this stage, I see no reasonable basis to conclude that their retirement or the change of management will somehow negatively impact the interests of the applicants as regards their actions as Directors. That being the situation, I find that it is very likely that Nalcor's and the applicants' interests are going to be similar and that the applicants' involvement as a party with full standing is unnecessary here. I obviously expect Nalcor and the applicants to cooperate with one another.

[9] I am unable to conclude that the applicants' participation as a party with full standing would further the conduct of this Inquiry. Again I reference the commonality of interests that these applicants have with Nalcor. As well, any information they might have can be obtained by the Commission without each of them, or as a group, being made a party. I also see no basis to grant full standing to ensure a contribution to the openness or fairness of the Inquiry in these circumstances.

[10] Having said this, should there be evidence led going to specific actions taken by the applicants or going directly to the reputation of the applicants as Directors,

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individually or collectively, notwithstanding the involvement of Nalcor as a party with standing, I am prepared to grant limited standing to the four applicants as a group to participate in hearings with regard to such evidence. It will only be where the evidence specifically involves one or all of these applicants and their reputations that the limited standing I have granted will be engaged.

[11] Commission co-counsel will be required to notify the applicants if and when their participation in the hearings is required based upon what I have said above.

[12] Having been granted the limited standing as set out above, I must now deal with their funding request. As noted earlier, the applicants have provided further information to the Commission which has now been considered.

[13] From what has been provided, I remain unsure whether funding for legal counsel for these four former Directors is available, either from Nalcor or through any available insurance policy. Nalcor's response as regards funding for legal counsel is not a definitive one. As the applicants have now been granted limited standing, Nalcor has indicated that they can apply to it for indemnification for legal fees but that this can only happen at the conclusion of the Inquiry.

[14] As I am not aware of any suggestion by anyone that any of these applicants as former Directors acted dishonestly or in bad faith as regards the interests of Nalcor, I have difficulty understanding why Nalcor should defer its decision on funding until the conclusion of this Inquiry. Such, in effect, means that Directors and others covered by sections 205 and 207 of the *Corporations Act* would be required to expend their personal funds to speak to their actions as Directors on behalf of Nalcor before they could, in fact, be compensated. I would now respectfully request that counsel for the four applicants provide Nalcor with a copy of these remarks. I would ask Nalcor officials to carefully consider these remarks and provide a more definitive response to the applicants on funding for their counsel.

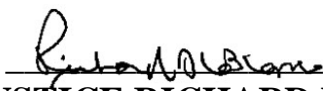
[15] As well, I do not feel that I should make a recommendation for funding as the insurance carrier for Nalcor has yet to advise of its position on funding the legal

costs for the applicants. That is a matter that should be further pursued before I should be asked to decide on a funding recommendation.

[16] Therefore, I have decided that it would not be appropriate to make a funding recommendation for the applicants as a group at this time. I will be prepared to deal with this request once the applicants and Nalcor have pursued what I have referenced above. I will await further clarification from the applicants on this.

[17] I do want to state that I have taken into account the proposal made by the applicants that a funding recommendation be made to government with a proviso that should the applicants be indemnified for their legal costs, they would then indemnify the government. While a possible solution, I am not at this stage prepared to accept it as the basis for a recommendation on funding.

[18] As limited standing as described has been granted, I would remind the applicants that they are bound by the Commission's Terms of Reference. I would bring specific attention to Rule 19 regarding their disclosure obligations on the grant of standing.


JUSTICE RICHARD D. LEBLANC
COMMISSIONER



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's hearings on the basis that they have a common or similar interest in the Inquiry's investigative mandate.

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[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.

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[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.

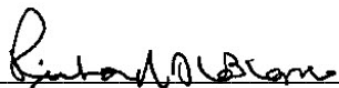
[11] I have decided to make the recommendation for funding as requested as I believe it is appropriate to do so in these circumstances. One of the reasons I am doing so is not as is suggested in the group's funding application. There they argue that this group should be funded in the same manner as the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

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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



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR THE GRAND RIVERKEEPER LABRADOR AND LABRADOR LAND PROTECTORS FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] The Grand Riverkeeper Labrador (“Riverkeeper”) and Labrador Land Protectors (“Land Protectors”) have jointly applied for full standing as a party before the Commission of Inquiry Respecting the Muskrat Falls Project. They also jointly request that a recommendation be made to Government for funding for legal counsel and for travel. They assume that the Commission will fund the costs of any expert witnesses that they may wish to call.

[2] Both groups are primarily composed of residents of Labrador. The Riverkeeper group was incorporated as a non-profit company that has since been dissolved but currently they advise that they are taking steps to renew their incorporation. Their Mission Statement provides that the primary purpose of the organization is to preserve and protect the water quality and ecological integrity of the Grand (Churchill) River and its estuaries for present and future users. They do this through public awareness activities, monitoring intervention and habitat restoration on the River. No information has been provided about the number of members for this group but it is stated, like the Land Protectors, that its members live in the watershed of the River, including flood zones identified by Nalcor in

Environmental Impact Statement Flood Maps done for the Muskrat Falls Project. One such area is the community of Mud Lake which experienced flooding last spring. The cause of the flooding is disputed by both the Riverkeeper and Land Protectors group as they do not agree with the position of others that the flood was the result of natural causes. They believe that the flooding resulted from the construction of the Muskrat Falls Project.

[3] The Land Protectors are a voluntary association formed in 2016 consisting of persons resident in Labrador who are both Indigenous and non-Indigenous people. At present, the Land Protectors are in the process of incorporating. This group states that they have brought public attention to risks to human life as a result of the construction and future operation of the Muskrat Falls Project, with specific concerns being methylmercury contamination and the stability of the North Spur, a part of the infrastructure of the plant upstream. Their stated goals are to ensure progress and accountability as regards an agreement signed in October 2016 on methylmercury by Labrador Indigenous leaders and the Government of Newfoundland and Labrador, to initiate an independent review of the North Spur, to ensure that this Commission of Inquiry includes a forensic audit of Nalcor and that it pays more attention to environmental, social and Indigenous factors notwithstanding their recognition that the Commission's Terms of Reference are narrow.

[4] The Riverkeeper state that they have been funded and have been actively involved in the environmental assessment for the Muskrat Falls Project including making presentations to the Joint Review Panel as well as being a participant in the Public Utilities Board review of the Project.

[5] Both co-applicants have called for an independent inquiry into Muskrat Falls Project as well as the North Spur stabilization issue. They also have met with Government officials, including the Premier, concerning issues related to the Project such as methylmercury contamination and the stability of the North Spur. Symposiums have also been organized and both groups have participated in these in Labrador.

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[6] As can be readily seen from the application of the co-applicants, both have a primary focus and interest on the environmental impacts from the construction of the Muskrat Falls Project on the Grand (Churchill) River. They also express an interest in ensuring that any social impacts of the Project are minimized.

[7] Applications for standing and funding are provided for in section 5 of the *Public Inquiries Act, 2006*, S.N.L. 2006, c.P-38.1, the relevant provisions of which state 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.
- ...
- (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.

[8] On standing applications, Commissions of Inquiry are required to allow persons who believe they have an interest in the subject matter of the Inquiry to apply to participate. In considering a participation request, whether the person's interests may be adversely affected by the Commission's findings, whether the

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person's participation would further the work of the Inquiry and whether the person's participation would contribute to the openness and fairness of the Inquiry, must be in focus.

[9] In considering these criteria, it is obvious that I must look to the subject matter of this Inquiry. As well, the fact that an applicant for standing might be a witness or that they have a genuine concern or even have expertise on the subject matter of the Inquiry does not satisfy the test for standing in my view.

[10] The subject matter for this Inquiry is as set out in the Order in Council establishing this Commission of Inquiry. After requesting and accepting submissions from the public on how that Order in Council should be interpreted, I prepared an interpretation on the subject matter or mandate for this Inquiry. In that decision dated March 14, 2018, after reviewing sections 4, 5 and 6 of the Order in Council as well as the law regarding interpretation of legal terms, I concluded that this Inquiry would investigate four matters:

1. the considerations of Nalcor in determining to recommend government sanction of the Muskrat Falls Project and whether these considerations were appropriately determined by Nalcor;
2. the significant differences between the estimated costs of the Muskrat Falls Project at the time of sanction to the time of the Inquiry, together with reliable estimates of the costs to the conclusion of the Project;
3. whether the decision to exempt the Muskrat Falls Project from oversight by the Board of Commissioners of the Public Utilities (PUB) was justified and reasonable, as well as looking at the effect, if any, on the Project development costs and operations as a result, and
4. whether the government of this Province was fully informed and made aware of the risks and anticipated problems with the Muskrat Falls Project so as to enable it to have accurate and sufficient information to appropriately decide to sanction the Project and, thereafter, whether the government exercised appropriate oversight of the Project's risks, governance arrangements and decision-making processes associated with the Project.

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[11] At paragraph 29 of my interpretation decision, I also concluded that the Commission's work and mandate is primarily to be focused on the business case advanced by Nalcor and accepted by Government for the need, financial viability, costs and benefits of the Muskrat Falls Project. As well, the Project's exemption from full PUB scrutiny and the oversight of the Project's construction by Nalcor and the Government form part of the subject matter of the Inquiry.

[12] This business case focus was expanded to some degree by me as a result of my consideration of section 5(a) of the Order in Council which spoke about considering participation in the Inquiry by the Indigenous people whose rights may be negatively impacted by the Project. In that regard, I agreed that the Commission would permit the participation by the appropriate Indigenous groups on four matters, these being the consultations that took place with the established leadership of the Indigenous people, assessments and reports done as regards their concerns, the appropriateness and reasonableness of Nalcor and the Government's consideration of those assessments and reports and finally, the appropriateness of mitigation measures taken to address reasonably potential adverse effects on Indigenous people who had asserted or settled claims or treaty rights.

[13] There is no reference in the Order in Council establishing this Commission of Inquiry to deal specifically with environmental matters as they relate to this Project. Notwithstanding this, I went on to interpret the Commission's mandate to include a consideration of any environmental analyses, risk assessments and the like for this Project on the basis that such would normally form part of any proposal for the sanction of a project like Muskrat Falls. I described the extent of the Commission's work and investigation as regards environmental matters at paragraphs 54 to 56 of my Interpretation. I will set that out in full as it is important that the co-applicants understand the extent to which this Commission will be considering environmental matters.

54. I will also investigate what analyses, risk assessments, etc., were done as regards environmental concerns and whether these were appropriate and reasonable in the circumstances based upon accepted industry standards and the knowledge that the parties had at the various times when the analyses or risk assessments were completed. Included in this will be a review of the measures taken, if any, to address any legitimate environmental concerns. I will not, however, assess the correctness of the positions taken by the

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various parties. As well, I am satisfied that the Terms of Reference do not permit me to conduct any further environmental assessment and nor does the time I have to conclude this Inquiry permit this.

55. Some submissions suggest that I have the authority, or should exercise my authority, to order the shutdown of the Project based upon environmental concerns. I have no such right or authority based upon the terms set out in the Order in Council.
56. Also raised in one of the submissions is Nalcor's adherence to environmental permits. In my view, this is not a matter for consideration by the Commission pursuant to the Order in Council. Nalcor's adherence to environmental permits is only relevant if failure to comply with those permits contributed to any escalation of construction costs or delay. As a result, the general topic of adherence to environmental permits is not a matter that I find is relevant to the Terms of Reference.

[14] The request of the co-applicants for standing here must be measured against the mandate or the subject matter of this Commission of Inquiry. It seems obvious to me from the application filed as well as the oral argument made before me on April 6, 2018 that the expectations of these two groups as to what the Inquiry can deal with, and the extent to which it will deal with, environmental concerns are not consistent with the mandate or the Terms of Reference in place.

[15] I can say clearly to the co-applicants that while the Commission will investigate and report on what analyses, risk assessments and mitigating actions were taken by Nalcor and the Government as regards environmental matters for the Muskrat Falls Project and assess whether these were reasonable and appropriate based upon accepted industry standards for a project like this, I have no mandate to assess the correctness of the positions taken as regards environmental matters by the various parties involved, including Nalcor, the Government and the co-applicants. I do not have authority here to request any form of independent assessment as regards methylmercury contamination or the issue of the stability of the North Spur as seems to be the desire of these two groups. What this Commission will do is that it will consider what analyses and risk assessments were done and what Nalcor and the Government did to respond to these in order to assess the reasonableness of the actions taken by them.

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[16] I recognize that these co-applicants represent the interests of some of the residents living downstream from the main construction for this Project and who are fearful of the possibility of flooding of their homes and, as well, contamination of the river system. Both Ms. Roberta Benefiel Frampton and Ms. Marjorie Flowers spoke well of these concerns when they appeared before me on April 6, 2018. I wish to make it clear at this time that I am not minimizing what was said as regards these concerns. The problem I have as regards the expectations of the co-applicants is that I do not have the authority pursuant to the Commission's Terms of Reference to do anything more than what I have described above.

[17] While this Commission appreciates the need for participation by both non-Indigenous and Indigenous people in Labrador, I am unable here to grant full standing on the basis of the application and arguments that have been put before me by the co-applicants. Clearly the extent of the interests of the co-applicants do not coincide with the subject matter of the Inquiry.

[18] Having so concluded, this Commission does welcome some participation of the co-applicants in this Inquiry. I recognize here that they are people residing in Labrador who have been affected by the construction of the Muskrat Falls Project.

[19] I am also of the view that participation of these two co-applicants, as Labradorians, could further the conduct of the Inquiry so long as their involvement is confined to the limits that exist regarding the Commission's work and mandate. I also believe that their participation in this regard would contribute to the openness and to the fairness of this Inquiry.

[20] As well, I am aware that, at least to some degree, both co-applicants will be working together with Muskrat Falls Concerned Citizen Coalition who have been granted full standing. Both that group and the co-applicants have similar positions and similar interests on many aspects of the Muskrat Falls Project. Working cooperatively with the Muskrat Falls Concerned Citizens Coalition will provide both co-applicants with an opportunity to participate in the Inquiry. My funding recommendation will recognize their involvement in this regard.

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[21] As a result, recognizing the agreement for cooperation of the co-applicants with the Muskrat Falls Concerned Citizens Coalition, I am prepared to grant the co-applicants separate but limited standing at the Inquiry hearings where the evidence will deal with environmental analyses, risk assessments and mitigation measures as I have discussed above. Obviously, on matters relevant to their being granted limited standing, their participation will include the right to cross-examine witnesses, to make suggestions to Commission co-counsel with regards to evidence to be led and/or witnesses to be called and also to make closing or final submissions.

[22] Commission co-counsel will advise counsel for the co-applicants when matters for which they have been jointly given limited standing will be raised in the hearings so that they can be present and participate.

[23] As regards environmental matters for which the co-applicants have been granted standing, I will be expecting them to work collaboratively and cooperatively with other parties granted standing where their interests are similar in order to avoid duplication in effort and questioning at the hearings.

[24] As for the co-applicants' request that I recommend the provision of funding to allow participation in this Inquiry, based upon the information the co-applicants have provided, I am satisfied that for financial reasons funding will be required for their joint participation. Neither group has the financial means to retain counsel to assist them or to pay for expenses to participate in the hearings.

[25] Based upon their willingness to work cooperatively with the Muskrat Falls Concerned Citizens Coalition as well as in accordance with the limited standing that I have granted the co-applicants, I will be recommending to Government that it provide funding to the co-applicants jointly for the retention of one counsel to assist them in working cooperatively with the Muskrat Falls Concerned Citizens Coalition and to represent the co-applicants on matters for which they have been granted limited standing. I will also recommend funding for reasonable expenses for that counsel as well as travel costs to attend the hearings in St. John's for one representative of each group. I recognize that the Land Protectors have requested that two representatives be permitted to attend but, as with other groups requesting

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funding, I will be limiting any travel reimbursement recommendations to one representative of each of the co-applicants.

[26] I would now remind the co-applicants of the Commission's Rules of Procedure and their need to comply with these. As well, Rule 19 requires any party given standing to submit any relevant documents or things in its possession related to the subject matter for this Inquiry to Commission co-counsel within 14 days of the grant of standing. Counsel for the co-applicants is encouraged to contact Commission co-counsel as regards this obligation as soon as is possible as it may be that an extension of time can be provided.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

May 16, 2018

Ms. Caitlin Urquhart
Smyth Woodland Del Rizzo Barrett
Old Queen's College
16 Forest Road, Suite 100
St. John's, NL A1C 2B9

Dear Ms. Urquhart:

Thank you for your written confirmation that you represent the Grand Riverkeeper, Labrador Inc. and the Labrador Land Protectors in the Commission of Inquiry Respecting the Muskrat Falls Project. In your correspondence of May 9, 2018, you also request that I revisit my decision on standing for these two groups. I have now reviewed the information that you have provided in your letter and wish to advise that I cannot see any basis for changing the scope of the standing granted to your clients on April 16, 2018.

In my earlier decision on standing for your clients, I carefully considered the material filed in support of their joint application dated March 28, 2018 as well as the oral submissions made on April 6, 2018. At paragraph six of my decision granting them limited joint standing, I found that the primary focus and interest of both groups was regarding environmental and social impact concerns related to the Muskrat Falls Project's sanction, construction and eventual operation. I went on to consider the grounds upon which standing can be ordered in a public inquiry as set out in section 5 of the *Public Inquiries Act, 2006*, S.N.L. 2006, c. P-38.1 and I also referred to the mandate given to this Commission of Inquiry as interpreted by me in my decision dated March 14, 2018.

Based upon my full assessment of the material provided and submissions before me at that time, I granted limited joint standing to both groups to those parts of the hearings where the evidence will deal with environmental analyses, risk assessments and mitigation measures. The risk assessments and mitigation measures referred to were confined to environmental matters for the Muskrat Falls Project as the Commission will be assessing whether the analyses, risk assessments and mitigation measures taken by Nalcor and the Government of Newfoundland and Labrador were reasonable and appropriate based upon accepted industry standards for similar projects. As I pointed out, I will not be assessing the correctness of the positions taken by the various parties on these environmental issues as this does not fall within the Commission's mandate.

I have determined that the Grand Riverkeeper, Labrador Inc. and the Labrador Land Protectors can most valuably assist the Commission in investigating what analyses and risk assessments were done as regards the environmental concerns related to the Project and

5th Floor, Beothuck Building, 20 Crosbie Place, St. John's, NL A1B 3Y8

Tel: 709-729-6076
Toll Free: 1-833-235-7702
Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca
Website: www.muskratfallsinquiry.ca

whether these were reasonable and appropriate in the circumstances based upon accepted industry standards and the knowledge of the parties at the various times when the risk assessments were completed. The standing I have granted to your clients will permit them to participate in the hearings in a meaningful and robust way. The limited nature of their standing does not reflect a lower value of importance – it simply reflects the issues where your clients' involvement will further the conduct of the Inquiry and where it will contribute to the openness and fairness of the Inquiry.

As well, in my decision granting limited standing to both groups, recognizing their agreement to work cooperatively with the Muskrat Falls Concerned Citizens Coalition, I recommended that the Government of Newfoundland and Labrador not only provide your clients with funding for legal counsel as regards the limited standing granted but also recommended that funding be provided for that counsel to assist both groups in working co-operatively with the Muskrat Falls Concerned Citizens Coalition. That group has significant similar interests to those of both the Grand Riverkeeper, Labrador Inc. and the Labrador Land Protectors. Indeed, both signatories to the initial written application for standing by both groups are also members of the Coalition.

In assessing whether or not to expand standing, I have had to consider whether or not I have the authority at this stage to change the standing of any party. I am satisfied that this can be done. However, this would have to be based upon new information being provided which would support a change in standing. Here, I have reviewed all of the contents of your letter as well as the attachments and find that no additional information is provided that would support a change in the standing granted to your clients.

In reviewing your letter and the basis you put forward to expand their standing, you set out what appears to be significant involvement of both groups, but more so the Grand Riverkeeper Labrador Inc., in the Project as it has been developed and as it has progressed. While such involvement may well give both groups "intimate knowledge and understanding of the Project" as you state, this does not mean that a grant of full standing is required pursuant to section 5(2) of the *Public Inquiries Act, 2006*. I remain fully satisfied that the interests of your clients in the subject matter of this Commission of Inquiry can well be met by the standing I have granted to them as well as with their involvement in and cooperation with the Muskrat Falls Concerned Citizens Coalition which has been given full standing. The ability of your clients to have funding for you to work with counsel for the Muskrat Falls Concerned Citizens Coalition buttresses my view in this regard.

The fact that both of your clients participated in the consultative process for this Project and were opposed to it does not, of itself, mean that they should be granted standing in this Inquiry. Here, a number of prospective persons or groups have sought full standing. In considering the basis for each application for standing, I have had to be mindful of the mandate given for this Inquiry, the work involved as well as the reality of the time given to conclude the Commission's work. Notwithstanding your clients' obvious interest and involvement in the Project as you have described in your letter, I have determined that standing should be limited to those matters set out in my earlier decision.

As to your comment in your letter that expanding the scope of standing for your clients would "go a long way to diminish the public perception that Labradorian voices are being ignored", I would repeat what I stated in my earlier decision about the Commission's appreciation for the need for participation in this Inquiry for both Indigenous and non-Indigenous people residing in Labrador. The standing granted to your clients, as well as other Indigenous groups in Labrador,

must be consistent with the subject matter to be dealt with in this Inquiry. I am fully satisfied that the participation granted to your clients will address the needs of your clients as well as those of this Commission of Inquiry.

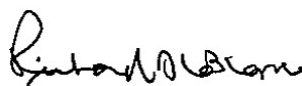
I would also add that parts of your letter suggest to me that the expectations of the Commission's mandate by both groups continues to go beyond the scope given to this Commission of Inquiry, at least to some degree. I commented on this in my earlier decision granting both parties limited joint standing. I would strongly encourage your clients to review my March 14, 2018 decision on the interpretation I am giving to what the Commission's focus will be.

I would add in response to your client's concerns about reputational risks to them, that the Commission will be cognizant of this not only for your clients but for all of the other parties to this Inquiry. As such, Commission counsel will be advising you if and when your clients' reputation is to be put in issue before the Commission so that your clients can participate as regards to this.

Finally, I would indicate that, as stated in my earlier decision on your clients' application for standing, I welcome the involvement of both groups in the Inquiry hearings to the extent provided for and to the extent of the mandate for this Commission of Inquiry.

Thank you.

Yours sincerely,



RICHARD D. LEBLANC
Commissioner

RDL/mm



Commission of Inquiry Respecting the Muskrat Falls Project

DECISION ON AN APPLICATION FOR STANDING FOR GRID SOLUTIONS CANADA ULC FOR THE MUSKRAT FALLS INQUIRY

DECISION

FEBRUARY 11, 2019

LEBLANC, J.:

INTRODUCTION

[1] Grid Solutions Canada ULC (“Grid Solutions”) seeks limited standing to participate in Phase Two of the public hearings for the Muskrat Falls Inquiry. Grid Solutions’ intent would be to participate in the hearings only where their interests are engaged and they also wish to make submissions at the conclusion of those hearings related to their interests.

[2] Phase Two of the Inquiry hearings will generally involve a review of why the costs of the Muskrat Falls Project have increased. Such will include evidence related to contractual arrangements made between Nalcor Energy or its subsidiaries (“Nalcor”) and contractors as well as performance, oversight and procurement issues related to the construction of the Project.

[3] Grid Solutions has entered into two contracts on the Muskrat Falls Project related to Converter Stations and Transition Compounds as well as AC Substations. The Applicant also states that it has also been involved as the Civil Works Engineer

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on two other contracts for HVDC specialties at Soldier's Pond, Muskrat Falls and Churchill Falls.

[4] The Phase Two hearings will be dealing with these contracts to some extent in its review of the section 4(b) Terms of Reference for this Commission of Inquiry.

ANALYSIS

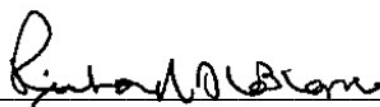
[5] In its application, counsel for Grid Solutions has submitted that standing should be granted as the participation of Grid Solutions would further the conduct of the Inquiry, would allow it to protect its interests as there is potential that those interests could be adversely affected by the Commission's findings and that by participating it would contribute to the openness and fairness of the Inquiry. (See section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 3006, c. P-38.1 and Rule 10 of the Commission's Rules of Procedure.)

[6] While not necessarily for the same reasons put forward in its application, I am satisfied that Grid Solutions is a necessary party for the Phase Two hearings and that its involvement in those hearings will assist this Commission of Inquiry in dealing with its mandate. I accept the position set out in its application that Grid Solutions' standing will be such as to be limited to participation only to the extent of its interests. Therefore, counsel for Grid Solutions will only be permitted to question witnesses speaking to matters impacting its interests and its involvement in the Muskrat Falls Project. Documents and other disclosure provided to counsel for parties with standing will be similarly restricted as much as Commission staff can do this.

[7] It will be the responsibility for counsel for Grid Solutions to work with Commission co-counsel so that Grid Solutions will be aware of and be represented at the hearings where the evidence will involve or impact its interests.

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[8] The Commission's requirements in Rule 19 of its Rules of Procedure are of utmost importance. This standing application comes late in that there are only days before the Phase Two hearings will begin. I note that Grid Solutions was served with a Summons for documents on January 25, 2019 and this was to be responded to on or before February 8, 2019. I would expect now that any other relevant documents not covered by that Summons but in the possession of Grid Solutions will be provided to the Commission on or before February 15, 2019.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR HER MAJESTY IN RIGHT OF CANADA FOR THE MUSKRAT FALLS INQUIRY

DECISION

MARCH 4, 2019

LEBLANC, J.:

[1] Her Majesty in Right of Canada (“Canada”) has applied for standing at the Phase Two hearings of the Muskrat Falls Inquiry only when testimony is being given by Nik Argirov, who acted as the Independent Engineer appointed pursuant to a loan guarantee provided by Canada related to the Muskrat Falls Project.

[2] My understanding of the Application filed is that Canada wishes to have its lawyer appear during Mr. Argirov’s testimony in order to raise any objections should questions for Mr. Argirov stray into areas outside of the jurisdiction of a provincial Commission of Inquiry or outside the Terms of Reference for this Inquiry.

[3] In its Application, the Applicant states the purpose of standing would be “solely to make objections, and to comment or make enquiry in relation to the testimony of Nik Argirov. The objections would be limited to questioning that involves Canada and its process of instruction to the Independent Engineer, diligence, ongoing advice, report contents and similar in relation to the Muskrat Falls Inquiry and its debt with related Financial Guarantee”. Canada also indicated that its counsel will not act as counsel for Mr. Argirov.

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ANALYSIS

[4] In my decision on the interpretation of the Commission's Terms of Reference dated March 14, 2018, I referred to the jurisdictional limitations related to a provincially called Commission of Inquiry and any investigation involving the actions of Canada. At paragraphs 51 – 53, I stated as follows:

[51] First of all, some of the submissions suggested that I should inquire into the Federal Government's dealings in approving the Federal Loan Guarantee as well as its responsibility to the citizens of this Province in this regard. Pursuant to the authority provided in the *Public Inquiries Act, 2006*, I do not have the jurisdiction, and nor does the Order in Council provide me with any authority, to consider the Federal Government's dealings with the Federal Loan Guarantee.

[52] In cases such as *Canada (Attorney General) v. Saskatchewan (Commissioner of Milgaard Inquiry)*, 2006 SKQB 385, it has been held that a province is not authorized to establish a Commission of Inquiry to investigate the substantive operations of a federal government institution or investigate into the administration or management of such an institution beyond what is authorized in any Terms of Reference which are accepted or found constitutionally valid based upon there being a valid exercise of a provincial constitutional power. As well, generally speaking, a provincially established Commission of Inquiry cannot inquire into the conduct of a federal employee with respect to the employee's activities on behalf of his or her employer. (See paragraphs 24 and 25 of the *Milgaard* decision.) The provisions in our Constitution setting out the division of legislative powers for both the federal and provincial levels of government (sections 91 and 92 of the *Constitution Act, 1867*) prevent a provincially established Inquiry from trespassing on federal jurisdiction and *vice versa*.

[53] I will hear evidence related to the obtaining of the Federal Loan Guarantee, which ultimately impacted the Project's financing costs, and also I will review the terms of that Guarantee and the impact of those terms on the Province. However, what the Federal Government did as regards its due diligence, and otherwise, prior to providing this is a matter that I am unable to investigate. Nor is this within the mandate provided in the Terms of Reference.

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[5] On February 7, 2019, I filed an Addendum to my March 14, 2018 decision regarding the involvement of the Independent Engineer in this Inquiry. This was based upon what is seen as appropriate and necessary based upon the investigation to date regarding the Commission's Terms of Reference and the involvement of the Independent Engineer in the Muskrat Falls Project. At paragraphs 4 and 5 of that Addendum I explained as follows:


- [4] It has now become apparent to me that in order to properly respond to the Commission's Terms of Reference it is necessary to investigate the work done by the Independent Engineer who was put in place as part of the Federal Loan Guarantee process and agreement. During the Phase One hearings, some of the witnesses testifying who were involved with the consideration, approval and oversight of the Muskrat Falls Project on behalf of the Government of Newfoundland and Labrador and Nalcor referred to their reliance on work done by and on behalf of the Independent Engineer. As such, it is clearly within the mandate of this Commission to investigate that work and what was actually being disclosed to the Government of Newfoundland and Labrador and Nalcor as part of that process.
- [5] For instance, I will need to review and consider certain reports, emails and other communications provided to or between the Independent Engineer and the Government of Newfoundland and Labrador as well as with Nalcor Energy and its subsidiaries. There are other communications that Commission counsel are aware of from Alison Manzer, a lawyer and agent of the Government of Canada, that were provided to the Government of Newfoundland and Labrador and Nalcor and its subsidiaries that are considered to be relevant to the Commission's mandate.

[6] Based upon my view of the ability of this Commission of Inquiry to investigate the work and activities of the Independent Engineer, I am satisfied that he is a necessary and appropriate witness during Phase Two of the Inquiry's hearings. Saying this, I recognize that there are some jurisdictional limitations regarding the activities of Canada that might potentially come into play during Mr. Argirov's testimony. As such, I am prepared to grant limited standing to Canada in order that through its counsel objection can be made, if needed, during the testimony regarding the Commission's jurisdiction.

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[7] Notwithstanding the grant of standing for that purpose, I wish to make it clear that I am not prepared to accept at this time that questions related to the “diligence, ongoing advice, report contents and similar” are areas that are necessarily outside this Inquiry’s Terms of Reference or jurisdiction. Similarly, I see no reason at this time to permit counsel for Canada to “comment or make enquiry” in relation to the testimony of Mr. Argirov.

[8] As a result, Canada will be granted limited standing only to make objections, if necessary, where questioning of the Independent Engineer goes potentially beyond the Commission’s Terms of Reference or its jurisdiction.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR THE INNU NATION FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] The Innu Nation has applied for full standing to participate in the hearings of the Commission of Inquiry Respecting the Muskrat Falls Project.

[2] The Innu Nation is an incorporated entity with some 2200 members. Its members have traditionally inhabited the area where the Muskrat Falls Project is being constructed and, along with ongoing land claims negotiations, Nalcor has entered into an Impact and Benefits Agreement with the Innu Nation as a part of this Project.

[3] The applicant is aware of my March 14, 2018 decision interpreting the Order in Council establishing the Commission. I have determined that the Indigenous people will participate in the Inquiry hearings regarding the following matters:

1. the consultation that occurred between the established leadership of the Indigenous people and Nalcor and the Government of the Province;
2. the risk assessments and reports done as regards the concerns of the Indigenous people;

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3. whether these assessments or reports were appropriately and reasonably considered by Nalcor and the Government of this Province; and
4. whether appropriate measures were taken to mitigate against reasonably potential adverse effects on settled or asserted rights of the Indigenous people both at the time of and post-sanction.

The Commission of Inquiry will not be determining any land claims or treaty rights.

[4] To the extent that the Innu Nation's interests as regard to these matters might relate to environmental issues, I have interpreted the Inquiry's mandate such that I have no authority to determine if the positions taken by Nalcor or the Government were correct on any specific environmental issue. However, I am able to investigate what analyses and risk assessments were completed regarding environmental concerns in order to consider whether these were conducted in accordance with accepted standards and to assess whether any measures taken to address legitimate environmental concerns were reasonable.

[5] It is with this in mind, and based upon the interests of the Innu Nation, I have decided to grant standing to the Innu Nation, such standing first and foremost being limited to those parts of the Inquiry hearings where the matters as set out above in paragraph 3 will be dealt with. This is consistent with the approach I will be taking regarding standing applications for other Indigenous people.

[6] The Innu Nation also requests standing for participation in other parts of the Inquiry on matters not specifically related to those discussed above. One area raised concerns the operations of the Independent Expert Advisory Committee ("IEAC") on issues potentially impacting human health. I see this as being an area falling squarely within the assessment I will be conducting as described above and it will be considered along with other mitigating measures taken by Nalcor and the Government pre and post sanction. No further extension of the limited standing I have granted is required on this issue.

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[7] The applicant also seeks standing on the issue of sanction of the Project on the basis that its members are consumers of electricity and there are concerns related to the supply of reliable power in Labrador. The position of the Innu Nation is that in considering available options prior to sanction for power generation, power needs not only for the island but also for Labrador should have been considered at the time of sanction. Having considered this aspect of the application, again I am not satisfied that there is a need to expand the limited standing I have granted.

[8] Similarly, I see no need or basis to grant standing to the Innu Nation on the issue of the exemption of the Muskrat Falls Project from scrutiny by the Public Utilities Board as set out in section 4(c) of the Commission's Terms of Reference. The same applies regarding matters involving the Government's actions in sanctioning and overseeing the Project's execution pursuant to section 4(d) of the Terms of Reference other than as described in paragraphs 3 and 4 above.

[9] However, I do accept that the Innu Nation and the people it represents have had involvement in the construction of the Project. To the extent that the Innu Nation and Innu workers are engaged in the Project construction and this is an area that arises at the hearings, I am prepared to grant the Innu Nation standing where their interests are engaged. This will likely arise in parts of Phase Two of the Inquiry.

[10] As a result of my reasons above, the Innu Nation shall have limited standing at the Inquiry hearings on those matters set out in paragraph 3 above as well, where the interest of the Innu Nation and Innu workers are engaged in Project construction.

[11] Commission co-counsel will coordinate with counsel for the Innu Nation when the matters referred to above will be the subject matter dealt with at the hearings so that the Innu Nation, as represented by its counsel, can participate in those hearings.

[12] On the matters involving the consultations with Indigenous people as well as review of assessments and reports done and mitigating efforts undertaken, I expect counsel for the Innu Nation to work with counsel for the other Indigenous groups

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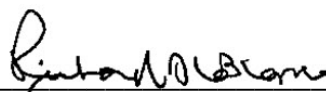
and other parties granted standing where they have a common or similar interest. Such will avoid duplication in preparation for the hearings and in examination of witnesses.

[13] The Innu Nation raises the issue of confidentiality with regards to its Impact and Benefits Agreement. To deal with any confidentiality questions, the provision of standing to the Innu Nation is not necessary. Concerns related to the issue of confidentiality and/or privilege will be dealt with under the Commission's Rules of Procedure and through Commission co-counsel.

[14] The Innu Nation has also requested a recommendation for funding so that it can retain counsel and pay expenses for travel to attend the hearings. I have reviewed the financial information provided by the Innu Nation and accept that while it has some revenue, much of those revenues are earmarked for important purposes related to its activities on behalf of the people it represents.

[15] I am prepared to recommend funding for the retention of one counsel on the basis of the limited standing I have granted. As well, I am prepared to recommend that the reasonable expenses, including those for travel for one counsel and one representative of the Innu Nation be funded where travel by plane is required. At this time, I am not prepared to recommend funding for experts or consultants.

[16] Finally, I would remind counsel for the Innu Nation of its obligation to comply with the Commission's Rules of Procedure. In that regard, I point out Rule 19 as regards disclosure of any documentation that would be relevant to the conduct of the Commission within a period of 14 days from the grant of standing. I would encourage counsel for the Innu Nation to speak as soon as is possible with Commission co-counsel in order to discuss how this disclosure can occur.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATIONS FOR JULIA MULLALEY CHARLES W. BOWN ROBERT THOMPSON (PUBLIC SERVANTS OF THE GOVERNMENT OF NEWFOUNDLAND AND LABRADOR TASKED FOR INVOLVEMENT IN THE MUSKRAT FALLS PROJECT) FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] I will deal with the standing applications of Julia Mullaley, Charles W. Bown and Robert Thompson together based upon the similarities of their interests in their applications.

[2] Julia Mullaley was the Deputy Clerk of the Executive Council in the Government of Newfoundland and Labrador from April 4, 2011 to August 22, 2012 and later was appointed as Clerk of the Executive Council beginning on August 1, 2013. In those roles, she was in a senior public service position in this Province at times that were very relevant to the sanction and/or construction of the Muskrat Falls Project. As Clerk of the Executive Council, Ms. Mullaley advises that she acted as Deputy Minister to the Premier as well as being the Secretary to Cabinet. As such, she advises that she was directly involved in discussions, reviews and analyses

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conducted at various points in time related to the Project. As well, Ms. Mullaley was appointed the chairperson of the Muskrat Falls Oversight Committee established by Government on March 13, 2014. She is presently the Auditor General of Newfoundland and Labrador having been so appointed on December 7, 2017.

[3] Robert Thompson acted as Clerk of the Executive Council from October 2003 to May 2007. He became the Deputy Minister of Natural Resources from December 2008 to December 2010 after which time he resumed the position of Clerk of the Executive Council until he left that position in August 2013. In all of these positions, Mr. Thompson was privy to and involved in discussions and activities related to the Muskrat Falls Project at a senior management level within the Government.

[4] Charles W. Bown was the Assistant Deputy Minister, Energy Policy with the Department of Natural Resources from June 2006 until September 2010. He was then appointed Associate Deputy Minister Energy until September 2012 at which time he was made the Deputy Minister of Natural Resources, a position which he held until December 2016. He states that he has participated in the conceptualization and drafting of this Province's energy plan, was involved as regards Nalcor's role in that project and in its sanction, construction and other negotiation. He was the Government's principal contact person with Nalcor on Project matters and issues and has been a member and is currently the chairperson of the Muskrat Falls Oversight Committee. He is also now acting as the Chief Executive, Major Projects and Initiatives with the Government of Newfoundland and Labrador.

[5] Upon hearing from each of these applicants, I am fully satisfied that they have had significant involvement at senior authoritative and management levels within the Government of Newfoundland and Labrador in both pre-sanctioning, sanction and construction of the Muskrat Falls Project. As such, it is appropriate that each of these parties be granted full standing at the Inquiry hearings. At the least their involvement will further the conduct of the Inquiry based upon their knowledge and involvement in the Muskrat Falls Project to date.

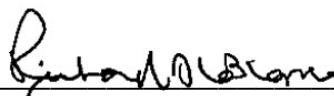
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[6] With regard to Mr. Thompson, I note that his involvement with the Muskrat Falls Project ended in 2013. As a result, his interests may not be engaged for those parts of the hearings dealing with the Project after that date.

[7] I would expect that his counsel, as well as counsel for Ms. Mullaley and Bown, will exercise his/her professional judgment so that any questioning will be related to issues relevant to these three parties.

[8] It is my understanding that Ms. Mullaley, Mr. Bown and Mr. Thompson are not seeking a recommendation for funding for legal counsel or otherwise as their legal costs will be paid for by the Government of Newfoundland and Labrador. I would add that as these parties each apparently have similar interests it would be most prudent and more efficient if all three were to have the same counsel. However, that is a matter that I will leave to the parties to consider.

[9] As a result of granting standing to these three parties, I would remind them of their obligation to comply with the Commission's Rules of Procedure, including their obligation to provide all documents or things in their possession or control relevant to the Inquiry's mandate to Commission co-counsel in the next 14 days.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR KATHY DUNDERDALE FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Kathy Dunderdale is seeking full standing and a recommendation for funding in order to participate in the hearings of the Muskrat Falls Inquiry. Ms. Dunderdale states that her participation in the Inquiry is necessary as she was “the lead, whether as Minister or Premier during the pre-sanction period” for the Project as well as being involved in other major files associated with the Project, including the New Dawn Land Claims Agreement with the Labrador Innu, negotiation with Emera Inc. and with the Federal Government as regards the Federal Loan Guarantee. She was also involved in the decision to exempt the Project from oversight by the Public Utilities Board.

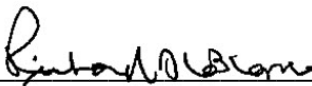
[2] I am satisfied that Ms. Dunderdale’s interests will be affected, possibly adversely, by the findings of this Commission and that her participation in the Inquiry hearings will further the conduct of the Inquiry as well as its openness and fairness. As such, she will be granted full standing on the understanding that her participation at the hearings will be only to the extent necessary based upon her involvement and her interests.

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[3] Ms. Dunderdale has also applied for funding based upon her financial inability to pay for legal counsel at this time. I have reviewed her financial documents as well as her affidavit in support of her funding request. Based upon that and the fact that her involvement in this Project was in her capacity as an elected member of the House of Assembly, I will recommend that she receive funding for one legal counsel as well as expenses including travel expenses for her and her counsel to attend hearings outside of St. John's. I am not at present recommending any other funding for expenses related to consultants and/or experts.

[4] Obviously the grant of full standing is subject to Ms. Dunderdale's compliance with the Commission's Rules of Procedure including her duty to now provide a disclosure of documents in her possession to Commission counsel within the next 14 days. That time period may well be able to be extended upon agreement by Commission co-counsel.

[5] One final matter that must be raised is a concern I have about the possibility of a conflict of interest arising in that another party given standing, Mr. Edmund Martin, has counsel representing him from the same law firm as the proposed counsel for Ms. Dunderdale. I have no doubt that this is a matter that Stewart McKelvey will give special consideration to prior to the commencement of the hearings.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

**STANDING APPLICATION FOR
MANITOBA HYDRO INTERNATIONAL
FOR THE MUSKRAT FALLS INQUIRY**

**DECISION
AUGUST 22, 2018**

LEBLANC, J.:

[1] Manitoba Hydro International (MHI) has applied for standing to represent its interest at the hearings to be held by the Commission of Inquiry Respecting the Muskrat Falls Project.

[2] While Applications for Standing were to be filed earlier this year, the Commission is willing to consider late applications, particularly where the party seeking standing has had late notice of its need to seek participation in the Inquiry hearings. I am satisfied that MHI's Application for Standing should now be considered by me based upon when notice was provided to MHI that the Commission was looking into work it had done regarding the decision to proceed with the Muskrat Falls Project.

[3] MHI prepared reports at the request of the Board of Commissioners of Public Utilities for Newfoundland and Labrador (PUB) as well as for the Government of Newfoundland and Labrador. These reports were utilized ultimately in the determination by the Government of Newfoundland and Labrador to proceed with the construction of the Muskrat Falls Project.

[4] The reports prepared by MHI referred to above have been of some interest to this Commission of Inquiry and have also been the subject of consideration by an

expert retained by the Commission. It is likely that these reports will be the subject of some consideration at the Inquiry hearings and, as such, MHI believes that it should be granted standing to protect its interests.

[5] I am satisfied here that MHI's assessments, findings and opinions were considered by the PUB which was asked to assess whether the Muskrat Falls Project represented the least cost option comparing it to another defined option then under consideration by Nalcor Energy. I am also satisfied that the report prepared for the Government of Newfoundland and Labrador subsequent to the decision of the PUB played a role in it ultimately sanctioning the construction of the Muskrat Falls Project. As such, I am satisfied that MHI's involvement in the Inquiry hearings would further the conduct of this Inquiry considering Section 4(a) of the Commission's Terms of Reference.

[6] I am also satisfied that MHI's participation in the Inquiry is appropriate considering Section 5 of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P-38.1, particularly subsection 5(2)(a), (b) and (c) in that its interests could be adversely affected by the Commission's findings and that its participation will likely further the work of the Inquiry and contribute to its openness and fairness.

[7] As MHI's interests here relate only to the work of the Commission in Phase One of the hearings, I will grant MHI limited standing so that it can participate in only that Phase of the Inquiry's hearings and for the purposes of making final submissions. It is to be understood by MHI that its standing is premised on it complying with the Commission's Rules of Procedure, including Rule 19 which requires any party given standing to submit any relevant documents and things in its possession related to the subject matter for this Inquiry to Commission co-counsel within fourteen (14) days of the grant of standing.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

**STANDING APPLICATION FOR
NORTHERN PENINSULA (MEKAP'SK) MI'KMAQ BAND
FOR THE MUSKRAT FALLS INQUIRY**

DECISION

AUGUST 27, 2018

LEBLANC, J.:

[1] On August 10, 2018, Chief Mildred Lavers, on behalf of the Northern Peninsula (Mekap'sk) Mi'Kmaq Band (Mekap'sk), wrote to the Commission of Inquiry Respecting the Muskrat Falls Inquiry (Commission) seeking to participate in the hearings of the Commission. I have accepted the correspondence as an Application for Standing before the Commission.

[2] Chief Lavers states in her correspondence to the Commission that the Mekap'sk are an indigenous group comprised of some 1200 members situate on the Northern Peninsula on the island portion of Newfoundland and Labrador. The Mekap'sk claim that they hold aboriginal title to certain lands and waters situate on the Northern Peninsula.

[3] The concern expressed in the Application for Standing of the Mekap'sk appears to have arisen from Nalcor Energy's (Nalcor) decision to remove bridges and gate roadways leading to transmission towers constructed as part of the Muskrat Falls Project. Chief Lavers states that by removing these egresses the Band members will be restricted from accessing areas which the Mekap'sk state are located on their claimed territory for such things as berry picking and moose hunting. The Mekap'sk

oppose the removal of bridges and gating of roadways by Nalcor along its construction line.

[4] The Mekap'sk claim that they are not being consulted by Nalcor and the Government of Newfoundland and Labrador (Government) on this issue and further claim that the only consultation occurring is with non-Indigenous groups such as the Newfoundland and Labrador Outfitters Association.

[5] No prior Application for Standing was made by the Mekap'sk notwithstanding that standing was a matter dealt with some four months ago by the Commission. Chief Lavers indicates that as other Indigenous groups have been granted standing by the Commission, the Mekap'sk now seek standing regarding "the lack of consultation" by Nalcor and Government as well as the lack of mitigation measures "against the adverse effects to our Aboriginal Rights and title". Chief Lavers suggests that one of the Commission's established principles in dealing with this inquiry is thoroughness and, as such, it is important that the Mekap'sk have an opportunity to participate in the Inquiry hearings. Chief Lavers also relies on section 5 of the Commission's Terms of Reference related to the role of Indigenous groups in the Inquiry.

ANALYSIS

[6] I wish to address the timing of this application initially. As stated in a recent decision I prepared regarding a late standing application by Manitoba Hydro International (MHI), this Commission is willing to consider late applications regarding standing, particularly where the party seeking standing has received late notice of its need to participate in the Inquiry as a party. Unlike that case, here it appears from the application of the Mekap'sk that the group was aware of its right to apply for standing when standing applications were to have been filed but decided not to do so at that time. It is only after the announcement of the bridge and roadway closures that it has determined that it should apply for standing.

[7] While I question whether the late application should be permitted to proceed in these circumstances, I have decided to proceed to determine whether appropriate grounds exist to grant standing based upon the circumstances set out in Chief Lavers letter to the Commission.

[8] It is true that section 5(a) of the Commission's Terms of Reference requires that I consider participation of Indigenous groups in the Inquiry. However, it is of significance to note that this relates only to Indigenous groups "whose settled or asserted Aboriginal or treaty rights to areas in Labrador have been adversely affected by the Muskrat Falls Project" (my emphasis). Therefore, section 5(a) does not assist the Mekap'sk based upon their geographical claim of Aboriginal title.

[9] However, this does not mean that an Indigenous group such as the Mekap'sk cannot obtain standing if it can bring itself within the test to be applied under section 5 of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P38.1. I will consider that section shortly.

[10] In a decision filed on March 14, 2018, I ruled on the interpretation to be given to the Commission's Terms of Reference. That decision is obviously important in my consideration of the basis put forward by the Mekap'sk for standing. I have determined that the Terms of Reference mainly require this Commission to consider the business case put forward by Nalcor in proceeding with the project. As well, I am mandated to investigate the reasons for the cost escalation to complete the project from what was initially indicated to be the project cost, to consider issues related to the participation of the Public Utilities Board for this Province in the review of this project, as well as whether Government was fully informed by Nalcor so that it could have appropriately considered sanction of the project and whether there has been proper oversight of the construction and costs of the project.

[11] Based upon that interpretation given to the Commission's mandate, it does not appear that the concerns of the Mekap'sk relate to the Commission's Terms of Reference. Issues regarding the removal of bridges or gating of roadways used to access land near transmission towers for the Muskrat Falls Project on the Northern

Peninsula of the island are not matters within the mandate of this Commission of Inquiry.

[12] Having said this, while referring to section 5(a) of the Terms of Reference regarding the consideration of participation of Indigenous groups with land claims in Labrador, I did go on to set out the basis upon which I had decided to give such groups a role in the Inquiry and what that role was to relate to. At paragraph 47 of my decision, I stated the following:

[47] Having said this, it is obvious to me that the Lieutenant Governor-in-Council intended that the established leadership of the Indigenous people would have a part to play in this Inquiry. If that is so, the part that they should play would be in areas of concern or of interest to those Indigenous people. I note that paragraph 4(b)(v)(a) refers, as regards the issue of the cost escalation of the construction of the Project, to any risk assessments, financial or otherwise, conducted in respect to the Muskrat Falls Project. At present, while I do not have full information, I am aware that certain assessments likely were conducted, specifically risk assessments concerning environmental issues prior to, as well as subsequent to, sanction. I have decided here that a contextual and purposive review of the Order in Council permits me to investigate into what consultation occurred between the established leadership of the Indigenous people and Nalcor as well as the Government prior to sanction, what risk assessments and reports were done as regards the concerns of the Indigenous people, whether these assessments were appropriately and reasonably considered by Nalcor and the Government and whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of the Indigenous people both at the time of and post sanction. In investigating these matters, I will not be determining any claims or treaty rights for any of the Indigenous people as this clearly does not fall within the Commission's mandate.

[13] It is on this basis that the Mekap'sk now claim that they should be granted standing for the Inquiry hearings. I am not satisfied that the stated interests of the Mekap'sk fall within the scope or subject matter set out above. My interpretation was based upon what I considered was a reasonable extension to be given to the interpretation of section 5(a) and the other stated Terms of Reference. The reference to Labrador in section 5(a) cannot be ignored in this regard. As stated in my interpretation decision, this Commission of Inquiry must limit its investigation or mandate to that given to it by the Government.

[14] Therefore, I must now go to section 5 of the *Public Inquiries Act, 2006* in order to see if the Mekap'sk should be granted standing. Section 5(1) and (2) state 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.

[15] It is my conclusion here that the application of the Mekap'sk does not disclose anything which would suggest that the findings of this Commission of Inquiry would adversely affect its interest and nor is there any basis to conclude that participation by the Mekap'sk would further the conduct of the Commission's work. In so concluding, I am not satisfied that the issue of consultation regarding the sanction and construction of the Muskrat Falls Project or the issue of assessments done regarding environmental and other risks forms the basis of the interests set out in the Application for Standing. It is clear to me that the reason for the application filed at this time is the decision made by Nalcor regarding the removal of the bridges and gating of roadways used in order to access the transmission towers for the project which I find is not a matter falling within the subject matter of this Inquiry.

[16] As such, the Application for Standing filed by the Mekap'sk is denied.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR NALCOR ENERGY FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Nalcor Energy has been tasked with the management of the development and construction of the Muskrat Falls Project. It will be front and center in this Commission of Inquiry conducting its investigation pursuant to the mandate given. In fact, Nalcor Energy has already been responding to a summons for document disclosure and it has been generally cooperative in its dealings with the Commission to date.

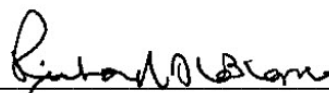
[2] It is clear that the interests of Nalcor Energy may be adversely affected by the findings of this Inquiry, that Nalcor's participation will further the conduct of the Inquiry and that the granting of standing to Nalcor Energy is necessary to contribute to the openness and fairness of this Inquiry.

[3] As a result, full standing is granted to Nalcor Energy. I would take this opportunity to reiterate to Nalcor Energy and its employees that the Commission is desirous of fairly and without bias telling the whole story around the Muskrat Falls

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Project, both those things that are positive and those which may well be negative. To tell that story I am looking for Nalcor Energy's full cooperation.

[4] The grant of standing also has with it the acceptance by the parties of an obligation to comply with the Commission's Rules of Procedure as well as focusing its participation on the mandate given to this Commission of Inquiry as interpreted by me in my March 14, 2018 decision.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATIONS FOR THE NEWFOUNDLAND LABRADOR BUILDING AND CONSTRUCTION TRADES COUNCIL AND THE RESOURCE DEVELOPMENT TRADES COUNCIL OF NEWFOUNDLAND AND LABRADOR FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Jointly, the Newfoundland Labrador Building and Construction Trades Council and the Resource Development Trades Council of Newfoundland and Labrador have applied for limited standing at the hearings of the Commission of Inquiry Respecting the Muskrat Falls Project.

[2] The first co-applicant represents a number of the unions involved in construction on the Project and also has a mandate regarding construction industry workers in this Province. The second co-applicant has acted for and represented all of the affiliated unions representing employees employed in construction of this Project. As such, both organizations submit that the investigations, findings and recommendations of this Commission of Inquiry would impact them and the employees represented by them. They claim that the Commission may well cause further impact as regards major construction projects in this Province including future “special project orders”, collective bargaining and work conditions. They also submit that the Commission will likely be investigating the performance, productivity and conduct of employees they represent who were involved in the

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Project construction. The applicants believe it is necessary to give the employees who worked and continue to work on the project who they represent a “voice” at the hearings and that their involvement will further the conduct of the Inquiry.

[3] They also argue that as Nalcor and other major contractors for the Project will likely seek standing, it is only fair that they obtain some form of standing at the hearings on behalf of the unionized employees working for those companies.

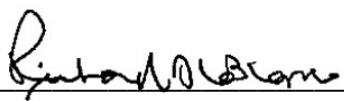
[4] Both co-applicants seek to have limited standing in the sense that they can participate at the hearings on all matters involving them as regards the construction of the Project and, particularly, section 4(b) of the Commission’s Terms of Reference. That Term speaks generally to why there has been a significant escalation in the cost of the Project since the time of its sanction bearing in mind a number of factors including Nalcor’s retention and dealings with contractors and suppliers as well as Nalcor’s contractual arrangements and procurement strategy.

[5] I am satisfied that the co-applicants being given limited standing as requested at the hearings will further the conduct of the Inquiry. The employees they represent may well have information that could assist the Commission in its investigation. The participation of both of these parties jointly will contribute to the openness and fairness of the Inquiry as well. Therefore, the co-applicants will be granted a limited standing in that their participation will be limited to that part of the hearings where the Commission is dealing with section 4(b) issues under its Terms of Reference in those matters that engage their interests.

[6] I have decided to conduct the hearings in three phases. Phase Two of the Inquiry hearings, which I have tentatively scheduled to begin in February 2019, will deal with the matters related to the construction of the Project. The applicants jointly will have standing during Phase Two of the hearings as to matters that engage their interests. As well, they will be permitted to make submissions at the conclusion of the Inquiry related to their interests.

[7] Counsel for both applicants will be entitled to make suggestions and recommendations to Commission co-counsel on evidence to be called, they will be provided with documents relevant to witnesses to be called, they will be permitted to receive advance notice of the schedule of those witnesses to be called and will receive a statement of the witnesses expected testimony related to those issues for which they have been granted limited standing. Counsel will also have the right to cross-examine witnesses and to make closing submissions as I have indicated above.

[8] I would suggest that counsel for the co-applicants coordinate their involvement with Commission co-counsel. I will also caution counsel to avoid unnecessary examination of witnesses or duplication of efforts on the part of other counsel.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR NEWFOUNDLAND POWER INC. FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] Newfoundland Power Inc. (“Newfoundland Power”) has made an application for the granting of full standing for participation at the hearings of the Commission of Inquiry respecting the Muskrat Falls Project. It bases its application generally on the potential that its interests, and those of its customers, may be adversely affected by the Inquiry’s findings and recommendations, that its participation would further the conduct of the Inquiry and its participation would contribute to the openness and fairness of the Inquiry. These reasons correlate with the criteria set out in section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P-38.1 (the “Act”).

[2] Newfoundland Power distributes electricity to some 265,000 customers on the Island portion of the Province and while it generates some 7% of the electricity that it sells to its customers, it is dependent on the supply of its other electricity demand from Newfoundland Hydro.

[3] This standing application is subject, as indicated above, to section 5 of the *Public Inquiries Act, 2006*. Section 5(1) of that Act requires that:

Persons who believe they have an interest in the subject matter of the Inquiry shall be given an opportunity to apply to participate.

[4] The criteria for determining whether or not a party or a person should be able to participate in the Inquiry is set out under section 5(2) and is as referred to above.

ANALYSIS

[5] In the application filed by Newfoundland Power requesting that full standing be granted, its counsel has indicated that Newfoundland Power's "primary focus and participation", at the hearings will be regarding "the future operation of this Province's electrical system, potential impacts upon Newfoundland Power's operations and its customers, including customer rate impacts and rate mitigation measures, as well as the regulation of processes and procedures".

[6] I have now carefully considered the submissions of counsel for Newfoundland Power and have come to the conclusion that a grant of full standing to them for all of the hearings is not required based upon my consideration of the three criteria set out in section 5(2) of the Act. While Newfoundland Power may be adversely affected by recommendations emanating from the Inquiry, I am not satisfied that its full involvement in all phases of the Inquiry would either further the conduct of the Inquiry or contribute to its openness or fairness to the extent that full standing is necessary.

[7] From all that the Commission has seen to date, Newfoundland Power has had no involvement nor decision-making in this Project to date. Sections 4(a), (b) and (d) of the Commission's Terms of Reference are primarily focused on what has happened as regards the sanction, construction and oversight of the Muskrat Falls Project. Finding facts with regards to how sanction came about and, as well, why the cost of the Project has escalated from the initial estimates at the time of sanction will not require Newfoundland Power's expertise or knowledge for the Commission to do its work.

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[8] As well, while Newfoundland Power has experience with this Province's regulatory system, including with the Public Utilities Board, section 4(c) of the Order in Council primarily is requiring a review as to why the Muskrat Falls Project was exempted from PUB scrutiny and how such exemption may have impacted the Project. I am not satisfied here that Newfoundland Power can add anything to that determination on the basis of its present expertise and knowledge.

[9] Determining what has occurred in the past up to now for this Project, which is the main focus of the Inquiry, will not, in my view, have any implications for Newfoundland Power except as I will set out below.

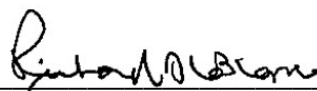
[10] Having said this, I do recognize that Newfoundland Power has knowledge of and experience in the electrical utility industry. It is a regulated utility. Because of this, I am prepared to grant Newfoundland Power special standing for both Phases One and Two of the Inquiry hearings. The special standing that I am prepared to grant to Newfoundland Power recognizes its experience and involvement in the electrical industry as well as their interest in the future operations of this Province's electricity system and its regulation. I will define their special standing status as follows:

1. Newfoundland Power shall be entitled to have its counsel sit with other counsel for parties given standing throughout the hearings.
2. Newfoundland Power will receive all documentation provided to other counsel for parties given standing but they shall have no right to cross-examine witnesses called during Phases One and Two of the Inquiry, except upon my granting leave to do so where I am satisfied that it is appropriate.
3. Subject to the Rules of Procedure and any redaction deemed appropriate to co-counsel, counsel for Newfoundland Power will be entitled to review all documents and reports to be entered at Phases One and Two, or are made available to counsel for other parties given standing, and to receive advance notice of witnesses to be examined at Phases One and Two as well as a statement as to their anticipated evidence.

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[11] I also recognize that the Commission's recommendations may possibly impact such things as future operations in this Province as regards megaproject sanction and construction, the future operations of this Province's electricity system and the regulatory process, all of which could potentially have implications for Newfoundland Power. I agree with the applicant's oral submission that Phases One and Two will establish the factual matrix for Phase Three of the hearings dealing with the future. As such, I have decided to grant Newfoundland Power full standing with full participatory rights during Phase Three of the Inquiry.

[12] Having been granted special standing for Phases One and Two of the Inquiry and full standing for Phase Three, Newfoundland Power is bound by the Commission's Rules of Procedure. Pursuant to Rule 19, disclosure in the hands of Newfoundland Power or in its control of documents relevant to the Commission's work must be provided to the Commission within 14 days of this decision. Counsel should contact Commission co-counsel as regards this obligation.



JUSTICE RICHARD LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR THE NUNATSIAVUT GOVERNMENT FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] The Nunatsiavut Government is a legal entity established pursuant to the *Labrador Inuit Land Claims Agreement Act*, S.N.L. 2004, c. L-3. That *Act* sets out the terms of a comprehensive land claims agreement that recognizes a right of self-government for the Labrador Inuit with the Nunatsiavut Government being the representative of the Labrador Inuit. A significant number of the Inuit beneficiaries under that Agreement live outside the Labrador Inuit settlement area where Inuit people have specified rights including harvesting rights. These areas include the Upper Lake Melville region, including the towns of Happy Valley-Goose Bay and North West River as well as the community of Mud Lake. The Nunatsiavut Government states that many of these Inuit beneficiaries will, or may be, negatively impacted by the Muskrat Falls Project. As a result, they have made a standing and funding request to participate in the hearings of the Commission Inquiry respecting the Muskrat Falls Project.

[2] In its oral argument before me on April 6, 2018, the applicant stated its awareness of my decision interpreting the Commission's Terms of Reference of March 14, 2018 and particularly paragraph 47 of that decision. There I determined

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that the Indigenous people who had settled or asserted aboriginal or treaty rights to areas in Labrador adversely affected by the Project would be able to participate in the hearings regarding the following matters:

1. The consultation that occurred between the established leadership of the Indigenous people and Nalcor and the Government of the Province;
2. The risk assessments and reports done as regards the concerns of the Indigenous people;
3. Whether the assessments or reports were appropriately and reasonably considered by Nalcor and the Government of the Province; and
4. Whether appropriate measures were taken to mitigate against reasonably potential adverse effects on settled or asserted rights of the Indigenous people at the time of and post-sanction.

This Inquiry will not determine any land claims or treaty rights.

[3] To the extent that the interests or rights of the Nunatsiavut Government as just set out might relate to environmental issues, I have also interpreted the Inquiry's mandate such that I have no authority or mandate to determine if the positions taken by Nalcor and the Government were correct on any specific environmental issue but I am able to investigate the analyses and risk assessments completed in order to determine whether these were done in accordance with accepted standards and to assess whether any measures taken to address legitimate environmental concerns were reasonable.

[4] It is important to indicate that the Nunatsiavut Government has participated in consultations related to the Muskrat Falls Project to date and made some 37 submissions to the Joint Review Environmental Assessment Panel.

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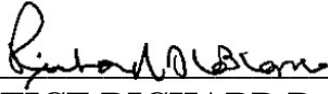
[5] Therefore, based upon my interpretation of section 5(a) of the Order in Council establishing the Inquiry and my interpretation given to the Commission's Terms of Reference, I will grant standing to the Nunatsiavut Government limiting its participation to those parts of the Inquiry hearings where the matters set out above in paragraph 2 will be dealt with. This is consistent with my approach on standing applications made by other Indigenous groups.

[6] Commission co-counsel will coordinate with counsel for the Nunatsiavut Government when the matters referred to above will be the subject matter of the hearings so that counsel for the Nunatsiavut Government can participate in these hearings.

[7] I also encourage consultation and joint preparation with counsel for other Indigenous groups granted standing where there are similar or common interests and positions. This will ensure efficiency during the hearings.

[8] As for the funding request of the Nunatsiavut Government, based upon my review of the financial information submitted, I am satisfied that the Nunatsiavut Government has no funds available to allow it to participate in this Inquiry. As the Commission is requested to consider the participation of the established leadership of Indigenous people affected by the Project and I am satisfied that the participation of the Nunatsiavut Government will further the conduct of the Inquiry and contribute to its openness and fairness on the matters referred to above in paragraph 2, I will recommend that funding be provided to the applicant for the retention of one legal counsel as well as reasonable expenses, including travel costs for that counsel and one representative of the Nunatsiavut Government where such involves travel by airplane. I am not at this time recommending funding for experts or consultants.

[9] Finally, I remind the applicant of its obligation to comply with the Commission's Rules of Procedure. I would note that Rule 19 requires the applicant to provide disclosure of relevant documents in its possession or control to the Commission within 14 days of the grant of standing. I would encourage the Nunatsiavut Government to have its legal counsel speak to Commission co-counsel on this as quickly as is possible.


JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR NUNATUKAVUT COMMUNITY COUNCIL INC. FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 15, 2018

LEBLANC, J.:

INTRODUCTION

[1] The NunatuKavut Community Council Inc. (“Community Council”) has applied for full standing in order to participate in the hearings of the Commission of Inquiry Respecting the Muskrat Falls Project. Pursuant to a public notice issued by the Commission on March 15, 2018, applicants for standing were required to have their applications filed with the Commission on or before March 28, 2018. A hearing took place on April 6, 2018 for all the applicants seeking standing. It was only subsequent to those hearings that legal counsel for the Community Council contacted Commission co-counsel to advise of its wish to apply for standing. Its formal application was received by the Commission on April 13, 2018.

THE APPLICATION

[2] In its application the Community Council states that it is the representative governing body for approximately 6,000 Inuit residing in south and central Labrador and that much of the construction for the Muskrat Falls Project has occurred upon what it claims as the traditional lands of the people it represents. Much of the land flooded by the Project is within the Community Council’s land claim area. The concerns and interests of the Community Council primarily relate to the sustenance

of its members' ability to continue what they have traditionally done as regards the harvesting of country foods, fishing, trapping and utilizing the land for other cultural purposes. The Community Council claims that it is well placed to speak to "the lived reality and consequences" of the Project construction and future operations on the environment and its members. As a result, it submits that its interests would be adversely affected by the findings of the Commission. It also states that its knowledge of the role it has played in the Project to date, including its dealings with Nalcor and the Government of Newfoundland and Labrador, will further the conduct of the Inquiry and that its participation will contribute to its openness and fairness.

[3] As stated above, the Community Council seeks to have full standing at the Inquiry. It acknowledges the terms of the Order in Council establishing this Commission of Inquiry as well as the March 14, 2018 decision I rendered interpreting the Commission's mandate.

[4] Specifically, the Community Council claims that it can speak to section 4(a)(ii) of the Order in Council as regards providing details on alternative energy options that could have served the needs of Labrador and other options currently being considered. It also states that it can address section 4(b)(v) as regards risk assessments and analyses respecting environmental matters as well as mitigation measures taken.

[5] The Community Council has referred in its application to the "very limited consultation that occurred" between itself and Nalcor, as well as the Government, notwithstanding the fact that it is the Indigenous group "most impacted" by the Project. The Community Council refers to its involvement in environmental assessments for the Project to date as well as for other developments in Labrador. Also referred to are discussions that occurred in October 2016 regarding methylmercury mitigation and the formation of the Independent Expert Advisory Committee. Issues involving the stability of the North Spur have also been of concern. The Community Council submits that its level of involvement in the Project to date will provide an important perspective for the Commission in its investigation and in making its findings and recommendations.

DELAY IN FILING

[6] I will first deal with the Community Council not filing its application within the time set by the Commission. Based upon the limited time provided to the Commission to complete its work and the obvious need to organize, an extension of time to file standing applications is obviously not desirable. However, I have decided that for this application an extension of time will be permitted.

[7] I have considered that the Community Council did contact the Commission immediately subsequent to the April 6, 2018 standing hearings to advise of its intention to file an application. As well, I am mindful of section 5(a) of the Order in Council which specifically directs the Commission to consider participation of Indigenous people whose settled or asserted rights to areas in Labrador may have been adversely affected by the Project. I am satisfied that the Community Council is such a group based upon their application. All of this convinces me to consider this application for standing notwithstanding it was not filed on time. The late filing occurred due to inadvertence and there is no prejudice in my now determining standing for the Community Council.

STANDING

[8] It seems clear from the application filed that the interests of the Community Council relate almost exclusively to environmental matters. This is similar to the concerns of other Indigenous groups who have applied for standing, including the Nunatsiavut Government, the Conseil des Innu de Ekuanitshit and, to some extent, the Innu Nation. It also seems that there may be some overlap in who the Community Council and the Nunatsiavut Government represent as regards to its claimed members as well as overlap with respect to land claim areas described by the Community Council and the Innu Nation. Overlap is also evident as regards the Grand Riverkeeper Labrador and Labrador Land Protectors groups who claim that some of their members are Indigenous.

[9] That being said, it seems clear that the Community Council has been recognized by Nalcor and the Government of Newfoundland and Labrador as being the established leadership of an Indigenous group who have asserted rights over the land involved in the Muskrat Falls Project. I base this on their past involvement in assessments and the negotiations regarding the Project.

[10] As such, as stated with regards to the other Indigenous people who have applied for standing, paragraphs 45 to 47 of my March 14, 2018 decision interpreting the Commission's mandate requires participation by the established leadership of Indigenous groups in this Inquiry as regards the following matters:

1. What consultation occurred between the established leadership of the Indigenous people, in this case the Community Council, and Nalcor as well as the Government of Newfoundland and Labrador prior to sanction;
2. What risk assessments and reports were done as regards the concerns of the Indigenous people;
3. Whether these assessments were appropriately considered by Nalcor and the Government; and,
4. Whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the settled or asserted rights of the Community Council both at the time of and post-sanction of the Project.

[11] As the concerns expressed by the Community Council focus primarily on environmental matters, I will repeat here what I stated in my March 14, 2018 decision so that the expectations of the Community Council can be informed. Paragraph 54 states:

54. I will also investigate what analyses, risk assessments, etc., were done as regards environmental concerns and whether these were appropriate and reasonable in the circumstances based upon accepted industry standards and the knowledge that the parties had at the various times when the analyses or risk assessments were completed. Included in this will be a review of the measures taken, if any, to address any legitimate environmental concerns. I will not, however, assess the correctness of the positions taken by the various parties. As well, I am satisfied that the Terms of Reference do not

permit me to conduct any further environmental assessment and nor does the time I have to conclude this Inquiry permit this.

[12] While the Community Council has requested full standing in the Inquiry hearings, I have decided that in accordance with the mandate to be met and the criteria set out in section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006, c. P-38.1 to grant limited standing to the Community Council. The Community Council's involvement will be limited to participation on those matters referred to in paragraph 10 and 11 above. I am satisfied that the grant of full standing is not required in order to permit the Community Council to appropriately address its concerns and interests as they relate to the mandate of this Commission.

[13] Commission co-counsel shall advise legal counsel for the Community Council when evidence relevant to its standing will be presented so that the Community Council can participate when necessary. The Commission will welcome any suggestions as regards the investigation being conducted by it as well as the names of witnesses who might be called.

[14] I would also note here that as there are other parties with standing who have similar or common interests and concerns, it is expected that the Community Council and its legal counsel will work cooperatively with those other groups where possible so as to avoid any duplication with regards to preparation and questioning at the hearings.


FUNDING

[15] The Community Council has submitted extensive information regarding its financial means and I am satisfied that it would be unable to participate in this Inquiry, even with the limited standing granted, without a recommendation to Government for funding. Much of the revenue received by the Community Council is committed to or earmarked for specific purposes and is not available to the Community Council to fund its participation in the Inquiry.

[16] I acknowledge the Community Council's submission that it will fund \$5,000 of the costs incurred for it to participate in the Inquiry and that it will also commit time of its staff to participate in the hearings. With this understanding and proviso, I will recommend to the Government of Newfoundland and Labrador that funding be provided to the NunatuKavut Community Council for its participation in the Inquiry, specifically to cover costs for one legal counsel, both for legal fees and reasonable expenses, together with the costs of travel for one representative of the Community Council to attend the hearings where they are held in St. John's and where required by the limited standing granted. At this time, I am making no recommendation for funding for consultants or expert reports.

CONCLUSION

[17] As limited standing has been granted, I would remind the Community Council and its legal counsel of the requirement to comply with the Commission's Rules of Procedure. Rule 19 places an obligation on those provided with standing to provide to Commission co-counsel disclosure of all documents and other things in their possession or control related to the Inquiry's mandate within a period of 14 days from the grant of standing.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR PHILIP HELWIG FOR THE MUSKRAT FALLS INQUIRY

DECISION

APRIL 16, 2018

LEBLANC, J.:

INTRODUCTION

[1] Philip Helwig, P.Eng. and Hydro-Engineer, as described by him in his application, has provided a copy of an article that he had prepared regarding his reaction to comments made by Danny Williams to the St. John's Board of Trade regarding the cost overruns for the Muskrat Falls Project. It is on the basis of that article as well as his expertise and special knowledge that he now seeks standing at the Commission of Inquiry Respecting the Muskrat Falls Project.

[2] The article, amongst other things, speaks to Mr. Helwig's belief, based upon his past experience, that the Muskrat Falls option was not fairly compared to the other option being considered at the time, that being the Isolated Island Option, due to bias in favour of the Muskrat Falls Project by Nalcor. He also takes the position that not all mega-projects conclude with large cost overruns and suggests that Nalcor did not have the required experience in project management to manage this Project.

[3] Mr. Helwig has also provided information in his application for standing regarding his engineering experience and his specialty in hydro-technological work.

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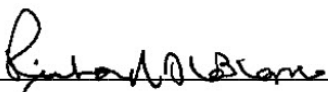
[4] I have carefully considered Mr. Helwig's submissions and have no reason to question his past experience or his stated expertise. However, I am not satisfied that Mr. Helwig has established that his interests would be adversely affected by the findings of the Commission if he were not granted standing, that his involvement in the hearings would further the conduct of the hearings and furthermore, that it would make the hearings more open or fair if he participated. These are the criteria I must consider in any standing application. While he will be impacted by electricity rate increases and any fiscal difficulties the Province will encounter as a result of the Muskrat Falls Project, there are other groups granted, or to be granted, standing who will represent his and other consumers' interests at the hearings.

[5] I will therefore have to deny Mr. Helwig's request for standing. In doing so, I can assure Mr. Helwig that the matters he raises in his application will be within the contemplation of the Commission as we proceed.

[6] Notwithstanding that he will not have standing, I would welcome his providing Commission co-counsel with any information he has that might further the work of the Inquiry. I would also suggest to Mr. Helwig that he might wish to align and involve himself with other groups or persons granted standing whose interests are similar to his.

[7] No application for funding has been made by Mr. Helwig so I need not deal with this.

[8] I wish to thank Mr. Helwig for his application and his obvious interest.


JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

**STANDING APPLICATION FOR
HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND
LABRADOR
FOR THE MUSKRAT FALLS INQUIRY**

DECISION

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Her Majesty the Queen in right of Newfoundland and Labrador (the “Province”) has applied for full standing at the hearings of this Inquiry Respecting the Muskrat Falls Project. Like Nalcor Energy, the Province has already been responding to a summons for document disclosure issued by the Commission. Its efforts in doing so are much appreciated.

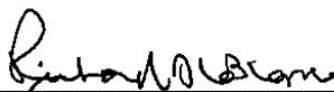
[2] It is clear from my interpretation of the Terms of Reference dated March 14, 2018 that the Province may well be affected by the investigation to be conducted in that Nalcor Energy is a Crown corporation and that the actions and decisions of the Province in the sanctioning and oversight of the construction of this Project will be part of the focus of this Inquiry. Clearly the participation of the Province will further the conduct of the Inquiry and will contribute to its openness and fairness.

[3] It should be noted that counsel for the Province has indicated that the present Premier and Cabinet will not at this time be applying for standing. I will say at this

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juncture that some of the present Government members may well be interviewed by Commission counsel and may be required to testify at the Inquiry hearings. While they, like any other witness, will be entitled to have counsel of their choosing present for this, no formal standing will be given to them except to provide their personal counsel with an opportunity to examine that party at the Inquiry if requested. My understanding then is that the standing request is made here only on behalf of Province and not on behalf of any political party in power at the time of the relevant events to be reviewed.

[4] As a result, Her Majesty the Queen in right of Newfoundland and Labrador is granted full standing to participate at the Inquiry hearings. By having standing, the Government accepts the Commission's Rules of Procedure and the mandate of the Commission Inquiry as interpreted by me.


JUSTICE RICHARD D. LELBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STANDING APPLICATION FOR TERRY PADDON, TODD STANLEY (PUBLIC SERVANTS OF THE GOVERNMENT OF NEWFOUNDLAND AND LABRADOR WITH INVOLVEMENT IN THE MUSKRAT FALLS PROJECT)

DECISION

OCTOBER 15, 2018

LEBLANC, J.:

INTRODUCTION

[1] Terry Paddon and Todd Stanley (the “Applicants”) are past public servants employed by the Government of Newfoundland and Labrador who have had involvement with the Muskrat Falls Project, particularly prior to its sanction in late 2012 based upon the information they provided in their application.

[2] Mr. Paddon was the Deputy Minister of Finance from early 2004 until May 31, 2012 when he was appointed as the Auditor General for the Province. He served in that position until October 31, 2017 at which time he retired.

[3] Mr. Stanley, as a Solicitor with the Department of Justice from 2001 to 2013, provided advice to the Department of Natural Resources regarding such matters as energy policy, resource-related legislation and regarding the Muskrat Falls Project. He was subsequently appointed as the Assistant Deputy Minister of the Department of Justice in 2013 and in 2017 was appointed Deputy Minister of the Department of

Justice and Public Safety as it was then known. He has since resigned and is involved in the private practice of law.

[4] Based upon what the Commission of Inquiry is aware of at this time, as well as the application filed by both Applicants, I am satisfied that both Applicants have had considerable involvement on behalf of the Government of Newfoundland and Labrador regarding policy, legislation and negotiations generally relevant to the Muskrat Falls Project. Their involvement clearly involves matters falling within the mandate of this Commission of Inquiry.

[5] I would note that the Applicants have only applied for standing subsequent to the commencement of the Commission's hearings. No reason has been provided for this delay in doing so. Notwithstanding this, I have decided to deal with their application at this time.

[6] Because of their involvement with the Muskrat Falls Project as public servants, they have already been scheduled as witnesses for the Inquiry hearings and have also been interviewed by Commission counsel. They now seek to have standing as parties during Phase 1 of the Commission's hearings requesting to reserve the right to apply for further standing in the subsequent Phases of the Inquiry.

[7] In the application filed, Mr. Paddon states that, as Deputy Minister of Finance, he had involvement in pre-sanction matters related to giving advice concerning the options considered by the Government to meet the power generation needs of the Province, reviewing project scenarios and alternatives and, as well, he indicates that he can speak to what information was provided to Government prior to the sanction of the Muskrat Falls Project. He also states that he is able to provide information related to the decision of the Government to exempt the Public Utilities Board from consideration of the Muskrat Falls Project to the extent of that exemption.

[8] As such, I am prepared to accept, after full consideration of s. 5 of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P-38.1 as well as the Terms of Reference as interpreted by me, that Mr. Paddon's participation in the Inquiry as a party will

further the conduct of the Inquiry and that his interests may be affected by the findings of this Commission of Inquiry. In saying this, I believe that it is appropriate to grant standing to Mr. Paddon for Phase 1 of the Inquiry. While he was Auditor General from June 2012 to 2017, at this time I see no reason to grant Mr. Paddon standing on Phase 2 issues.

[9] For Mr. Stanley, I am fully satisfied that his involvement in Phase 1 of the Inquiry will meet the legislated criteria to grant standing in this case. His acting as Solicitor to the Department of Natural Resources and his involvement in such matters as the drafting of the Provincial Energy Plan, the establishment of Nalcor Energy, the development of the water and management regime, as well as the Terms of Reference for the Public Utilities Board support his being granted standing for Phase 1. Obviously his involvement in negotiations with Emera and the Federal Loan Guarantee also will assist the conduct of this Inquiry in Phase 1.

[10] While I accept that Mr. Stanley may be able to speak to the reporting structure between the Government and Nalcor at various times as the Project progressed, I am not satisfied that it is necessary for Mr. Stanley to be a party during Phase 2 of the Inquiry based upon the information that the Commission has at this time.

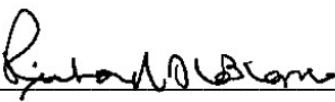
[11] As a result, both Applicants will be granted full standing during Phase 1 of the Inquiry hearings only. As such, they will be provided with disclosure of all documents already provided to the other parties with full standing on all Phase 1 issues.

[12] It is my understanding that neither Mr. Paddon nor Mr. Stanley seek funding for legal counsel as their legal costs will be paid for by the Government of Newfoundland and Labrador.

[13] While the Applicants have requested to collectively be referred to as “Former Civil Servant of Government NL”, I am not prepared to do this. Other public servants have been granted standing under their names and I see no reason why this

should change for these parties. In fact, to accede to this request may cause confusion for other parties as well as to the public.

[14] Finally, now being granted standing, I remind Mr. Paddon and Mr. Stanley of their obligation to comply with this Commission's Rules of Procedure including the requirement that they provide all documents or things in their possession or control relevant to the Inquiry's mandate to Commission co-counsel within the next 14 days. As a matter of fact, as the Inquiry hearings have already commenced, I would ask that they provide those items even earlier than 14 days if at all possible.



RICHARD D. LEBLANC
COMMISSIONER

Commission of Inquiry Respecting the Muskrat Falls Project
Parties with Standing

Party	Counsel	Notes
Full		
Charles Bown	Andrew Fitzgerald	
Concerned Citizens Coalition	Geoff Budden	
Consumer Advocate	John Hogan	
Edmund Martin	Harold Smith, Q.C.	
Former Provincial Government Officials 2003-2015	Thomas Williams, Q.C.	
Julia Mullaley	Andrew Fitzgerald	
Kathy Dunderdale	Erin Best	
Nalcor Energy	Dan Simmons, Q.C.	
Province of Newfoundland and Labrador	Peter Ralph, Q.C.	
Robert Thompson	Bernard Coffey, Q.C.	
Limited		
Andritz Hydro Canada Inc.	Dennis Clarke	7
Astaldi Canada, Inc	Paul Burgess, Q.C.	1
Barnard-Pennecon LP	Richard Gosse	7
Conseil des Innus de Ekuanitshit	David Schulze	2 & 4
Dwight Ball and Siobhan Coady	Peter O'Flaherty, Q.C.	8
Emera Inc.	Darren O'Keefe	3
Former Nalcor Board Members	Glenda Best, Q.C.	5
Grand Riverkeeper Labrador/Labrador Land Protectors	Caitlin Urquhart	4
Grid Solutions Canada ULC	Richard Shaban	7
Her Majesty in Right of Canada	Alison Manzer	
Innu Nation	Senwung Luk	1, 2 & 4
Manitoba Hydro International	Helga Van Iderstine	6
Newfoundland and Labrador Building and Construction Trades Council/ Resource Development Trades Council of Newfoundland and Labrador	Dana Lenehan, Q.C.	1
Nunatsiavut Government	Mark Gillette	2 & 4
NunatuKavut Community Council	Jason Cooke	2 & 4
Terry Paddon	Gerlinde van Driel, Q.C.	6
Todd Stanley	Gerlinde van Driel, Q.C.	6
Special		
Newfoundland Power Inc.	Ian Kelly, Q.C.	9

Notes:

¹ Limited as to Issue 4(b) of the Inquiry's Terms of Reference.

² Limited as to the following four areas:

- (a) Consultation that occurred between the established leadership of the Indigenous people and Nalcor as well as the Government of this Province;
- (b) The risk assessments and reports done as regards the concerns of Indigenous people;
- (c) Whether these assessments and reports were appropriately and reasonably considered by Nalcor and the Government of this Province; and
- (d) Whether appropriate measures were taken to mitigate against reasonably potential adverse effects to the subtle or asserted rights of the Indigenous people both at the time of and post sanction of the Muskrat Falls Project.

³ Limited as to Issue 4(a) of the Inquiry's Terms of Reference.

⁴ Limited as to where evidence will deal with environmental analysis, risk assessments and mitigation measures (Paragraph 54 of Commissioner's decision on Terms of Reference).

⁵ Limited as to where evidence specifically involves one or all of these applicants and their reputations.

⁶ Limited as to Phase 1 of the Inquiry.

⁷ Limited as to its interests in Phase 2 of the Inquiry.

⁸ Limited as to its interests in Phase 2 and Phase 3 of the Inquiry.

⁹ Special standing in Phase 1 and Phase 2 of the Inquiry. Full standing in Phase 3 of the Inquiry.

Commission of Inquiry Respecting the Muskrat Falls Project

Submissions Regarding Commercial Sensitivity - Phase 1

Name of Party Making Submission
Astaldi
Consumer Advocate
Government of Newfoundland and Labrador
Muskrat Falls Concerned Citizens Coalition
Nalcor Energy

Submissions Regarding Commercial Sensitivity - Phase 2

Name of Party Making Submission
Astaldi
Consumer Advocate
Government of Newfoundland and Labrador
Muskrat Falls Concerned Citizens Coalition
Nalcor Energy

Other Submissions

Name of Party Making Submission
Grand Riverkeeper Labrador Inc (Rule 39 and Rule 15)
Government of Newfoundland and Labrador on Non-Disclosure of Documents
Paul Lemay - Application to Appear at Public Hearing via Teleconference or Skype
Paul Harrington - Application Regarding Disclosure of Compensation
Submission by For a New Earth (FANE)
Submission by Andy Wells
Submission by Island Industrial Customers Group
Submission by Maurice Adams
Submission by Michael Harvey, Information and Privacy Commissioner, re Duty to Document
Submission by Alastair O'Rielly
Reply to Requests made at the Hearing - Dwight Ball
Reply to Requests made at the Hearing - Siobhan Coady

Note: Submissions available on website at www.muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

April 24, 2018

Ms. Kendra Wright
 Assistant Deputy Minister
 Department of Justice and Public Safety
 4th Floor, East Block
 Confederation Building
 St. John's, NL

Dear Ms. Wright:

RE: Commission of Inquiry Respecting the Muskrat Falls Project – Funding Recommendation

On April 6, 2018, I conducted a hearing for persons and groups applying for Standing and Funding to appear before the Commission. Subsequent to that hearing, one further application was filed which I have also dealt with.

I have granted standing at the moment to 19 parties with one deferral on funding. As well I deferred the application for standing and funding for Dennis Browne, QC, who applied as a Consumer Advocate. Nine parties have been granted full standing, nine parties have been granted limited standing with one party, Newfoundland Power Inc., granted a combination of special and full standing on Phase Three of the Inquiry. Of those granted standing, I am recommending that eight parties receive funding for legal representation, reasonable expenses for legal counsel as well as travel where plane travel is necessary to attend the hearings relevant to the standing given to each person or group.

Where parties have similar or common interests, I have advised them that they must work cooperatively so as to avoid duplication of effort, time and cost. It should also be noted that in each of the funding recommendations I am making, **I have made it clear to the parties that I would not be at this time recommending reimbursement for consultants that are hired or for any expert reports that are commissioned.**

It is on this basis that I will now advise of the funding recommendations for each of the following parties:

5th Floor, Beothuck Building, 20 Crosbie Place, St. John's, NL A1B 3Y8

Tel: 709-729-6076
 Toll Free: 1-833-235-7702
 Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca
 Website: www.muskratfallsinquiry.ca

1. Innu Nation

The Innu Nation represents some 2,200 people residing in Labrador. Its members have traditionally inhabited the area where much of the Muskrat Falls Project construction is occurring and the Innu Nation has been involved in numerous consultations regarding this project. The Innu Nation has been granted limited standing in the Commission's hearings related to the following matters:

- (i) the consultation that occurred between the Innu Nation and Nalcor and the Government of Newfoundland and Labrador;
- (ii) the risk assessments and reports done as regards to concerns of the Innu Nation;
- (iii) whether these assessments or reports were appropriately considered by Nalcor and the Government of Newfoundland and Labrador; and
- (iv) whether appropriate measures were taken against reasonably potential adverse effects on settled or asserted rights on the Innu Nation both at the time of and post sanctioning of the project.

I have also granted the Innu Nation standing to the extent that it and Innu workers were and are engaged in project construction, which will likely arise during some part of phase 2 of the hearings.

For the Innu Nation, represented by Senwung Luk of Olthuis Kleer Townshend LLP, I am recommending funding for one legal counsel, reasonable expenses related to the work of counsel as well as travel expenses, where travel by plane is required to attend the hearings at relevant times, for one representative of the Innu Nation.

2. Nunatsiavut Government

The Nunatsiavut Government has a comprehensive land claim as regards to certain lands in Labrador and a significant number of the Inuit beneficiaries of that land claim reside in areas impacted by the Muskrat Falls project, including the Towns of Happy Valley-Goose Bay, Northwest River and Mud Lake. The Nunatsiavut Government was consulted on the project by Nalcor and the Government of Newfoundland and Labrador. It has been granted limited standing in the Commission's hearing related to the following:

- (i) consultation that occurred between the Nunatsiavut Government and Nalcor and the Government of Newfoundland and Labrador;
- (ii) the risk assessments and reports done as regards to concerns of the Nunatsiavut Government;
- (iii) whether these assessments and reports were appropriately and reasonably considered by Nalcor and the Government of Newfoundland and Labrador; and

- 3 -

- (iv) whether appropriate measures were taken against reasonably potential adverse effects on settled or asserted rights of the Nunatsiavut Government both at the time of and post-sanctioning of the project.

For the Nunasivut Government, I am prepared to recommend funding for one legal counsel, reasonable expenses related to the work of counsel as well as travel expenses, where travel by plane is required to attend hearings at the relevant times, for one representative of the Nunasivut Government.

3. Conseil Des Innu de Ekuanitshit

The Conseil Des Innu de Ekuanitshit is an Innu band whose members reside on an Indian Reserve in the Province of Quebec. The membership of this band assert that they have an interest in the area where much of the Muskrat Falls project construction is occurring and they have been involved in consultations regarding the project with Nalcor and the Government of Newfoundland and Labrador. I have granted limited standing to the Conseil Des Innu de Ekuanitshit related to:

- (i) consultation that occurred between the Conseil Des Innu de Ekuanitshit and Nalcor and the Government of Newfoundland and Labrador;
- (ii) the risk assessments and reports done as regards to the concerns of the Conseil Des Innu de Ekuanitshit;
- (iii) whether the assessments and reports were appropriately and reasonably considered by Nalcor and the Government of Newfoundland and Labrador; and
- (iv) whether appropriate measures were taken against reasonably potential adverse effects on settled or asserted rights of the Conseil Des Innu de Ekuanitshit at the time of and post-sanctioning of the project.

For the Conseil Des Innu de Ekuanitshit, represented by David Janzen of Dionne Shulze, I would recommend funding for one legal counsel, reasonable expenses related to the work of counsel as well as travel expenses, where travel by plane is required to attend hearings at relevant times, to one representative of the Conseil Des Innu de Ekuanitshit.

4. Former Government Officials – 2003-2015

This group of individuals were members of the governing party in this Province at the time of the conception, sanction and commencement of the construction of the Muskrat Falls project. They are Danny Williams, QC, Thomas Marshall, QC, Paul Davis, Shawn Skinner, Jerome Kennedy, QC, and Derrick Daley. All were significantly involved in decision making surrounding the project on behalf of the Government of Newfoundland and Labrador. I have granted full standing to these individuals as a group for the Commission's hearings. I would also recommend funding for one legal counsel for this group together with reasonable expenses related to the work of counsel. Legal Counsel for this group of individuals is Thomas E. Williams, QC, of O'Dea Earle.

5. Kathy Dunderdale

Kathy Dunderdale was a member of the Government administration as Premier and as a Minister of Natural Resources at relevant times surrounding the conceptualization, sanction and commencement of construction of the Muskrat Falls Project. I have granted Kathy Dunderdale full standing at the hearings of the Commission. I would also recommend that Kathy Dunderdale, represented by Bruce Grant, QC, of Stewart McKelvey, receive funding for one legal counsel, reasonable expenses related to the work of counsel as well as travel costs where travel by plane is required to attend the hearings, for Ms. Dunderdale.

6. Muskrat Falls Concerned Citizens Coalition

The Muskrat Falls Concerned Citizens Coalition is to be an incorporated entity representing the interest of many of those who have had major concerns regarding the sanction, construction and future operations of the Muskrat Falls project. Three individuals, Ronald G. Penney, David Vardy and Des Sullivan are the representatives for this group who have some 200 individual members. The three representatives have been very vocal, active and public about project concerns for some time. Based upon the individual experience and knowledge of these three representatives, and the group's ability to form a coalition with others in the province as well as a cooperative approach with the Grand Riverkeeper Labrador and Labrador Land Protectors groups, I have granted full standing to this group. I would also recommend funding for the Muskrat Falls Concerned Citizens Coalition for one legal counsel, reasonable expenses related to the work of counsel as well as travel expenses, where travel by plane is required to attend the hearings, for one representative of this group.

7. Grand Riverkeepers Labrador and Labrador Land Protectors

Grand Riverkeepers Labrador and Labrador Land Protectors are both presently unincorporated entities which have jointly applied for standing as a party before this Commission of Inquiry. The representatives for these two groups who appeared before the Commission on April 6, 2018, are Roberta Benefiel Frampton and Marjorie Flowers. Both organizations have members who are residents in Labrador, particularly in areas impacted by the construction of the project. The Labrador Land Protectors are comprised of both indigenous and non-indigenous persons. The Grand Riverkeepers Labrador seeks to preserve and protect the water quality and ecological integrity of the Grand (Churchill) River and its estuaries while the Labrador Land Protectors have acted to bring public attention to what it sees are risks to human life due to the project construction and future operations. The Grand Riverkeepers Labrador have been involved in the environmental assessments that took place with regard to this project while the Labrador Land Protectors have held demonstrations to highlight environmental concerns that they have with the project.

Based upon both groups willingness to work together cooperatively with the Muskrat Falls Concerned Citizens Coalition and with each other and their interest in the environmental matters related to the project, I have granted limited standing jointly to these two groups. As environmental matters will not be the primary focus of the Inquiry and based upon my interpretation of the Terms of Reference for this Commission, both groups jointly will have limited standing when the Commission is dealing with evidence regarding analysis, risk assessments and the like that were done as regards to environmental concerns, where the Commission is investigating whether such assessments were appropriate and reasonable based upon accepted industry standards and the

- 5 -

knowledge of the parties at the time when the analysis and assessments were completed and as well where there is an assessment being made as regards mitigating measures taken to address legitimate environmental concerns. It is to that extent that both groups jointly will have limited standing.

I would recommend that funding be provided for one legal counsel, together with reasonable expenses related to the work of counsel. In this case, legal counsel will also be assisting both groups in working cooperatively with the Muskrat Falls Concerned Citizens Coalition as well as appearing on behalf of these groups before Commission hearings on those matters set out above for which limited standing was granted. I will also recommend funding for travel expenses, where travel by plane is required in order to attend the hearings at relevant times, for one representative of each of the two groups.

8. The NunatuKavut Community Council Inc.

The NunatuKavut Community Council Inc. is the representative governing body for appropriately 6,000 Inuit residing in south and central Labrador where much of the construction for the Muskrat Falls project has occurred. Much of the land flooded by the project is within the NunatuKavut Community Council land claim area. The concerns and interests of this group primarily relate to sustenance of its members and its ability to continue what they have traditionally done as regards to harvesting country foods, fishing, trapping and utilizing land for other cultural purposes. Based on the application filed and the focus of this group on environmental matters, I have granted limited standing to the NunatuKavut Community Council Inc. That limited standing will relate to the following matters when they are being dealt with before the Commission:

- (i) consultation that occurred between the NunatuKavut Community Council Inc. and Nalcor and the Government of Newfoundland and Labrador;
- (ii) the risk assessments and reports done as regards to the concerns of the NunatuKavut Community Council Inc.;
- (iii) whether these assessments and reports were appropriately and reasonably considered by Nalcor and the Government of Newfoundland and Labrador; and
- (iv) whether appropriate measures were taken against reasonably and potential adverse effects on settled or asserted rights of the NunatuKavut Community Council Inc. both at the time of and the post-sanctioning of the project.

I am also making a recommendation that the NunatuKavut Community Council Inc. receive funding for one legal counsel, reasonable expenses related to the work of counsel and for travel expenses for one representative of the NunatuKavut Community Council Inc. where travel by plane is required in order to attend hearings that are relevant to the limited standing granted.

9. Consumer Advocate

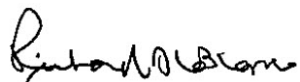
As indicated earlier I have deferred a funding request for one party and I have yet to make a standing decision with regards to the possible involvement of a Consumer Advocate. Once a decision has been made with regards to those matters and should funding be recommended I will be in touch with you immediately to advise you of this.

- 6 -

I trust now that you will consider the recommendations that I have made. I have been very careful here in ensuring that funding be recommended only where it is necessary in order to assist the Commission in completing its work. Should you have any questions regarding any of these recommendations, please feel free to let me know.

Thank you.

Yours sincerely,



RICHARD D. LEBLANC
Commissioner

cc. Mr. Senwung Luk, Olthuis Kleer Townsend LLP
Mr. Rodd Laing, Nunatsiavut Government
Mr. David Janzen, Dionne Schultz
Mr. Thomas Williams, QC, O'Dea Earle
Mr. Bruce Grant, Q.C., Stewart McKelvey
Mr. Mark Gruchy, Gittens Law
Ms. Roberta Benefiel Frampton
Ms. Marjorie Flowers
Mr. Jason Cooke, Burchells
Mr. Ronald Penney
Mr. David Vardy
Mr. Des Sullivan



Commission of Inquiry Respecting the Muskrat Falls Project

May 30, 2018

Ms. Kendra Wright
Assistant Deputy Minister
Department of Justice and Public Safety
Confederation Bldg, P. O. Box 8700
St. John's, NL
A1B 4J6

Dear Ms. Wright

Re: Standing Application for Consumer Advocate

I write at this time in order to enclose a decision recently filed with regards to an Application for Standing by Dennis Browne, Q.C. as Consumer Advocate. I have now granted full standing for the Consumer Advocate to represent the interests of electricity consumers in this Province and at this time make a recommendation that he be provided with funding for the purposes of having counsel represent him at the Inquiry hearings. That recommendation does not include expenses for consultants or other experts be provided to the Consumer Advocate.

Should you have any questions in this regard, please feel free to contact me and I appreciate your consideration of this recommendation.

Sincerely yours,

RICHARD D. LEBLANC
Commissioner

RDL/mm
Encl.

5th Floor, Beothuck Building, 20 Crosbie Place, St. John's, NL A1B 3Y8

Tel: 709-729-6076
Toll Free: 1-833-235-7702
Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca
Website: www.muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

FUNDING APPLICATION FOR KATHY DUNDERDALE FOR THE MUSKRAT FALLS INQUIRY

DECISION

FEBRUARY 8, 2019

LEBLANC, J.:

INTRODUCTION

[1] On April 6, 2018, pursuant to her application, Kathy Dunderdale was granted full standing at the hearings of the Commission of Inquiry respecting the Muskrat Falls Project. It was understood at the time that her participation in the hearings would only be as necessary and to the extent of her interests. Ms. Dunderdale was also granted funding for one legal counsel “as well as expenses including travel expenses for her and her counsel to attend hearings outside of St. John’s”.

[2] Ms. Dunderdale now seeks funding in order to appear as a witness during the Phase Two hearings. She has indicated in her application that she had planned to be outside of the Province to be with family members when she is expected to be called as a witness. She has asked that the Commission pay the cost of return airfare for her to appear in order to testify.

[3] At the time of her application Ms. Dunderdale was scheduled to testify during the period of March 20 – 22, 2019. In order to avoid interrupting her time with her family and believing that she would be returning to St. John’s in early April 2019, I asked Commission counsel to inquire of Ms. Dunderdale’s legal counsel when, in

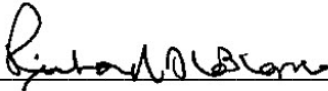
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fact, in April she would be returning. My purpose in doing this was to reschedule her appearance. Notwithstanding what was the earlier understanding as to her availability, I have now been advised that Ms. Dunderdale may not be returning to St. John's until as late as May or June 2019 and that she is actually unsure of her return date.

[4] Commission counsel have now advised that Ms. Dunderdale will be testifying on March 14, 2019. This date has been set based upon Commission counsel's understanding that she would possibly not be returning until May or June of 2019. As a result, I am prepared to recommend to Government that they provide funding for Ms. Dunderdale for airfare at the most economic rate from Halifax to St. John's and return in order that she can appear and testify at the Inquiry's hearing. In doing this I recognize Ms. Dunderdale's financial circumstances as well as the fact that her involvement in the Muskrat Falls Project was in her capacity as an elected member of the House of Assembly.

[5] I have decided to proceed with a funding recommendation as opposed to issuing a subpoena with conduct money as I see Ms. Dunderdale as a party to this Commission of Inquiry whose actual residence is in St. John's. Parties, in my view, absent exigent or special circumstances, should not expect to be paid to attend as a witness before the Commission of Inquiry.

[6] I would ask that Government decide on this recommendation as soon as is possible so that the necessary arrangements for attendance of Ms. Dunderdale on March 14, 2019 can be made. Should funding be approved by Government, the Commission will make the necessary arrangements to obtain a return ticket for Ms. Dunderdale.


JUSTICE RICHARD D. LEBLANC
COMMISSIONER



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.

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- (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.

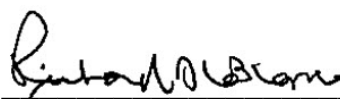
[7] As stated earlier, at this point in time, only interviews of Mr. Turpin are proposed. There has been no decision that I am aware of that he will be called as a witness at the Inquiry hearings.

[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.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

APPLICATION OF THE GRAND RIVERKEEPER LABRADOR INC. RULE 39 AND RULE 15

DECISION

AUGUST 27, 2018

LEBLANC, J.:

[1] The Grand Riverkeeper, Labrador Inc. (the Applicant) has applied to have Philip Raphals called as a witness on its behalf at the hearings of the Commission of Inquiry Respecting the Muskrat Falls Project (Commission). It also seeks funding to consult with Mr. Raphals in order to prepare for the Inquiry hearings.

[2] My understanding is that the Applicant seeks to have Mr. Raphals called in order to provide information to the Commission respecting issues that the Applicant had previously retained Mr. Raphals to address prior to sanction of the project. From their application, it is my understanding that Mr. Raphals had played a “consultative” role prior to sanction and is one of a number of experts who has appeared before various bodies on issues related to the assumptions, analysis and conclusions made by Nalcor in supporting the sanctioning of the project. The Applicant suggests that Mr. Raphals can therefore speak to the integrity of the process leading to sanction, including matters before the Joint Review Panel, as well as speak to the analysis done by Nalcor and the Government of Newfoundland and Labrador and the knowledge held by both prior to sanction. The Applicant has also suggested that Mr. Raphals has noted “gaps” in the information and findings of the Commission’s

expert, Grant Thornton, contained in its sanctioning phase report and that he can assist the Commission regarding these gaps.

[3] The Applicant claims that that it is necessary to hear from Mr. Raphals and that a failure to call him would prejudice the work of the Commission and any findings that it might make.

[4] Before dealing directly with this Application, I note that I have been advised by Commission Co-counsel that a request had previously been made by the Applicant to have the Commission retain Mr. Raphals as an expert witness to testify at the Inquiry hearings. This request was refused by Commission Co-Counsel on the basis that Mr. Raphals had been retained prior to the sanctioning of the project by the Applicant and therefore he did not possess the necessary independence for an expert retained by the Commission. I wish to indicate here that I agree with this position in the circumstances as I understand them to be. I have decided however, that Mr. Raphals should be called as a fact witness at the Inquiry based upon the information set out by the Applicant. As will be seen by my subsequent remarks, this is something that I can now direct Commission Co-counsel to arrange.

[5] In dealing with the application filed by the Applicant, the difficulty that I have with it is that the Applicant has not been given standing to deal with the issues and testimony that I understand they wish the Commission to hear from Mr. Raphals. As such, I am not prepared to permit the Applicant to retain and call Mr. Raphals for the Inquiry hearings. I refer here back to my earlier decision on standing for the Applicant dated April 16, 2018, as well as the further decision I provided on May 16, 2018 regarding an application it made to have its standing reviewed. The Applicant has not been granted standing in order to address concerns related to the assumptions, analysis and conclusions presented by Nalcor to support sanction. It may well have questions regarding environmental assessment and conclusions but the Applicant will have no broader participation in the Inquiry hearings than that set out in my earlier standing decision. I say this recognizing that the Applicant is working collaboratively with the Muskrat Falls Concerned Citizens Coalition who has been granted full standing to participate in the Inquiry hearings.

[6] Having said this, I am very appreciative of the Applicant placing this before me at this time as I am of the view that Mr. Raphael's evidence will likely assist the Commission in completing its work. I do not believe that it is appropriate to have him retained as an expert witness on behalf of the Commission for the reason set out above. However, I do believe that he should now be interviewed by Commission Co-counsel, or their designate, and that he should be called as a witness to speak to his involvement in pre-sanction issues as set out by the Applicant in its application. As such, I direct that Commission Co-counsel contact Mr. Raphals, arrange for him to testify as a witness and prepare him to do so. He will be compensated like any other of the witnesses that we are calling, including those who provided expert assistance to other parties prior to sanction.

[7] As regards the Applicant's request for funding in order to allow it to retain Mr. Raphals to prepare for the hearings, I would repeat what I said above regarding the basis upon which standing has been granted to the Applicant. I see no reason then that the funding request made by the Applicant should be granted.

[8] Again, I wish to express my gratitude to the Applicant for raising this matter at this time as I believe that the testimony of Mr. Raphals will further the work of this Commission of Inquiry.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

**APPLICATION FOR NON-DISCLOSURE OF DOCUMENTS
FOR THE MUSKRAT FALLS INQUIRY**

**HER MAJESTY THE QUEEN IN RIGHT OF
NEWFOUNDLAND AND LABRADOR**

DECISION

SEPTEMBER 7, 2018

LEBLANC, J.:

[1] On August 15, 2018, Peter Ralph, Q.C. forwarded an Application for Non-Disclosure related to documents it has provided to the Commission of Inquiry Respecting the Muskrat Falls Project (“Commission”). The Application makes no reference to the particular or specific documents that have been provided to the Commission by Her Majesty in Right of Newfoundland and Labrador (“GNL”). The bases claimed for non-disclosure of documents are solicitor-client privilege, public interest immunity and commercial sensitivity. The Application actually only deals with the later two claims.

[2] One of Commission counsel contacted Mr. Ralph to ascertain the expectations of GNL respecting this Application.

[3] An email has now been received from Mr. Ralph wherein he advises that GNL is not expecting the Application to be determined. He has reaffirmed that he is prepared to agree to the Commission deciding on non-disclosure or redaction matters regarding documents received from GNL. He describes the Application as a “position paper” to assist the Commission in deciding on appropriate disclosure and redactions of its documents.

[4] That being the position of GNL, no further action needs to be taken at this time regarding this Application and it is therefore deemed withdrawn.


JUSTICE RICHARD D. LEBLANC
COMMISSIONER



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Commissioner's Ruling on Disclosure of Compensation – Paul Harrington

Commissioner: Honourable Justice Richard LeBlanc

Tuesday

20 November 2018

All right, obviously I've given this matter some thought. And I needed some blanks filled in and I think I've got those filled in now for myself, so I'm ready to provide a decision with regards to this.

I think the best way to look at this is to compare the two pieces of legislation that are really involved here, and that is the *Public Inquiries Act, 2006* and the ATIPPA legislation.

So if I look at the Public Inquiries Act, section 3 basically indicates that a Lieutenant-Governor in Council – in other words the government – can “establish a commission of inquiry to inquire and report on a matter that the Lieutenant-Governor in Council considers to be of public concern.”

Section 6(2) of the act talks about the fact that there should be oral hearings, and when there are oral hearings conducted they should be conducted in public. But there are opportunities where a commissioner can have hearings in private where the decision is made that the public interest, in holding the hearing or part of it, is outweighed by another – in public is outweighed by another consideration. And it lists some things like the consequences of disclosure of personal matters, issues related to public security and the rights of a person to have a fair trial.

Section 7(2) sets out the ability to restrict or prohibit the reporting on proceedings. Section 8 talks about the fact that a person who appears before a commission to give evidence has the same immunities as a witness appearing before a court. And I think we would agree here that those immunities are not the type of immunities that we're talking about here with regards to the issue of a pay rate, and for the reasons set out by Ms. Hutchings. Section 9 basically indicates that the commission can summons a person to be a witness and to give evidence and require a person to produce documents and records.

Section 12 – which I think is a key piece of this – talks about the issue of privilege. And section 12(1) basically sets out that persons have the same privilege related to disclosure of information and production of a record, documents, or other things as a person would have in a court of law. So it's equivalent to what a person would have in a court of law. Subsection (2) indicates that there's no ability to withhold or refuse to disclose on the grounds that disclosure would be injurious to the public interest or, alternatively, violate a Crown privilege; so, again, limiting the area in which privilege can be asserted.

And more specifically to this particular application is the fact that sub (3) indicates that a person must disclose information to the commission, even where the disclosure is prohibited by another act or regulation. Now, that seems to be a provision that is being equated to, or at least linked to, the ATIPPA legislation – and I'm going to speak to that in a moment – but I'm not so certain – and basically it's my view that it – the ATIPPA legislation is not what is being referred to, even if subsection (3) of section 12 said something differently.

Section 13 of the Public Inquiries Act that a person can apply to a court to exclude a record or document or thing that is within the operation of section 12(2) or 12(3). Well, in the circumstances here, I don't think it falls within 12(2) or 12(3). And, as a result, as I'm going to refer to in a few moments, I do believe that I have the jurisdiction to make this decision at this particular time. And section 14, obviously, sets out a contempt authority

Now, the *Access to Information and Protection of Privacy Act, 2015*, basically refers to the fact that it applies to a public body, which is said to include a commission. Now, as was pointed out by Mr. Fitzgerald, there has been an exemption granted to this Commission of Inquiry pursuant to section 4 of that act. And to be very forthright about this, this was done at the request of the Commission of Inquiry, at my request, based upon the fact that I felt that the application of the ATIPPA legislation to such things as the investigation and the strategy, and whatever being utilized by Commission counsel and by the Commission in general, was not – was a matter that would not – that would hinder, basically, the full operation of this particular Inquiry. But at the same time this exemption was granted by government, and I take the point raised by Mr. Fitzgerald that it is an indication of – by government with regards to this.

Section 3 of the act talks about the purpose of the legislation, and I think this is important. The act is basically designed to ensure that citizens have information required to participate meaningfully in the democratic process. That's a very general statement but it's loaded. It also provides that the legislation will increase transparency in government and public bodies for accountability purposes. And, also, the act does consider the protection of privacy of information, of personal information about individuals that are held or used by public bodies. So in that – and section 2(u) talks about what is personal information and refers to a person's educational, financial, criminal or employment status or history.

Section 8 of the act talks about that a person can make an application to have access to records by application. So the point again raised by Mr. Fitzgerald related to the fact that this does apply to records, documents, and what they refer to other things, talks about the application being made under section 11 of the act.

Section 9 talks about the ability of a public body to refuse to disclose information but, obviously, the test is where the public interest is outweighed by the privacy interest involved. And there are very limited areas that are set out in section 2 – 9(2) of the act.

So having looked at those two pieces of legislation – and I've only referred to some of it, but I've obviously reviewed all of the legislation that exists – this is not a case where I believe the ATIPPA legislation applies. Even without the section 4 exemption, I don't believe the ATIPPA legislation applies to this Commission of Inquiry. This Commission of Inquiry is investigating the Muskrat Falls Project Terms of Reference. If it's to those Terms of Reference – if information is relative to those Terms of Reference, then the right to have a person or witness disclose exists. And ATTIPA does not – is not at play here.

Now, having said that, I understand that Mr. Harrington has made an application under the ATTIPA legislation; however, having said that and accepting that that is the case, the pure test here for me is the issue of whether this is relevant, whether this information is relevant to this particular Commission of Inquiry's Terms of Reference.

This – the fact that Mr. Harrington has an application before the court related to that ATTIPA legislation is a matter, obviously, I'm taking into account. And I've taken that into account more – and not with regards to the issue of relevance and the issue of disclosure before the Commission of Inquiry – but to consider what injury or what negative impacts could exist for

Mr. Harrington here. And so I have considered that, but as I said, the fact that that application exists and the fact that it's awaiting even another case – the teachers' case before the Supreme Court of Canada leave application – that is really of little consequence to my determination as to the relevance of this particular information for the purposes of meeting the Terms of Reference of this Inquiry.

You know, if Mr. Harrington was appearing before a court of law, the ATTIPA legislation would have no application with regards to his being asked a question, and if the court determined that it was relevant to the issue before the court to his being required to provide that answer. The same thing applies with regards to this particular matter. The interest at stake for Mr. Harrington here are not similar to the interests at stake in the Gomery Inquiry, or the Cornwall Inquiry or whatever. There are no criminal proceedings here ongoing. There is no suggestion of criminal proceedings here, there's no investigations that I'm – been aware of related to criminal charges. And nor are there any specific civil cases that relate to Mr. Harrington, other than, as I say, his application under the ATTIPA legislation.

So I basically have to look at what it is Commission counsel – why it is Commission counsel seek to have this information placed before me.

Having heard what – you know, and I will say this too, the issue of relevance and Ms. Hutchings pointed me to the Rules of Procedure and rule 29 – obviously, that is an issue. But the threshold for relevancy here, I think, is somewhat less than the threshold in a criminal case or even in a civil case. Because this is an Inquiry; this is an investigation into a project that is a matter of public concern in this province.

So when I look at the basis upon which Ms. O'Brien has set out why Commission counsel wish to ask this question, I have to say that I believe it meets that relevancy test. In fact, I have no doubt that it does not. And when I think about – and I have thought about whether or not there was another way. Perhaps this information could be disclosed by asking general questions, whatever the situation is. I don't think that that can happen here. Again, this is a public inquiry. I'm being advised by Commission counsel that this is information that I may well need to ultimately, at the end of the day, to make a decision. And in the circumstances, as a result of that and having considered what the argument is here with regards to relevancy, I do believe that it is relevant.

And as a result, basically, I am of the view that Mr. Harrington can be asked questions here related to his daily rate of pay, which is what I understand is being questioned and generally with regards to his pay scale. So, you know, I'm not – Mr. Harrington, I'm not disregarding your concern here, but I have come to the point in time where the public interest here outweighs that privacy interest that you have in this particular case.

Now, the next step is whether or not in the circumstances this should be part of a public inquiry, or alternatively should be somehow dealt with other restrictions, i.e., for instance, having an in camera hearing, making a non-publication order or whatever. Ms. Hutchings has already indicated that, you know, that may not meet Mr. Harrington's needs, in any event, because of the people that would be present even if we were to have an in camera hearing. But I have considered that, and I've already had to begin to think about the whole aspect of in camera

hearings and hearings in the public with regards to some of the things that are coming before me in the next couple of days and weeks with regards to Nalcor Energy.

Again, my view is that, as far as is possible, this is a public inquiry, it should be held in public. Unless there's a very good reason in the circumstances that outweighs that public interest, then the hearing should be public. You know, some of the things that we're talking about – and just so I can be fair to Mr. Harrington here, when we look at, for instance, my decision here that we are going to conduct a hearing on water management in private, when I look at the interest at stake there and compare it now to other interests at stake with regards to questions that will be asked with regards to privacy hearings, I think, I will have to look to see whether or not there is a distinction.

In this particular case for Mr. Harrington, I understand what his interest is here; however, as I say, the public interest, the fact that the government has called a public inquiry into this project, the information is relevant to those Terms of Reference, and I've decided that based upon what I've been told here this morning by Commission counsel, I think all of that means that this has to be in public and there will be no restrictions with regards to that.

So, Ms. O'Brien, you can proceed with your questions on – with regards to the issue of the day rate.

**Commission of Inquiry Respecting the Muskrat Falls Project
Final Submissions**

Name of Party Making Submission
Astaldi Canada, Inc
Concerned Citizens Coalition
Conseil des Innus de Ekuanitshit
Consumer Advocate
Dwight Ball and Siobhan Coady
Edmund Martin
Former Nalcor Board Members
Former Provincial Government Officials
Grand Riverkeeper Labrador/Labrador Land Protectors
Grid Solutions Canada ULC
Innu Nation
Julia Mullaley/Charles Bown
Kathy Dunderdale
Manitoba Hydro International
Nalcor Energy
Newfoundland and Labrador Building Trades Council/ Resource Development Trades Council of Newfoundland and Labrador
Newfoundland Power
Nunatsiavut Government
NunatuKavut Community Council Inc.
Province of Newfoundland and Labrador
Robert Thompson
Terry Paddon
Todd Stanley

Note: Final Submissions available on website at www.muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

OPENING STATEMENT ON STANDING FOR THE MUSKRAT FALLS INQUIRY

APRIL 6, 2018

LEBLANC, J.:

INTRODUCTION

[1] Good morning and welcome to what was to be our second public session of the Commission of Inquiry respecting the Muskrat Falls Project. While this Project has and will have an impact on all of the citizens of this Province, the Commission had planned to hold our first public session in Labrador. Much of the Project construction has occurred in, and infrastructure is present in Labrador, and, of course, the raw material necessary to produce power has come from the Churchill River. It was only fitting to schedule the Inquiry's first public session in Labrador.

[2] In order to organize this, considerable effort was made to ensure that proper space, technology and personnel would be in place. Notwithstanding our preparation, events beyond our control arose that made it impossible to proceed on April 3, 2018 as planned. We want to assure the people in Labrador that we are continuing our preparations to have some of the hearings of the Inquiry there.

[3] This morning, here in St. John's, we will be hearing from those seeking to have standing at the Inquiry hearings. An option was given to those seeking standing or their legal counsel to appear in person or by telephone. This was prepared in order

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to minimize cost to those who were outside of the St. John's area or whose legal counsel were outside of this area.

[4] My name is Richard LeBlanc. On November 20, 2017, I agreed to act as the Commissioner for this Inquiry. I am a Justice of the Supreme Court of Newfoundland and Labrador.

[5] Before we commence hearing the standing and funding applications to be dealt with here today, I would like to take a few minutes to talk about the approach the Inquiry team will be taking as regards the conduct of this Inquiry and other pertinent matters.

PRINCIPLES AND INQUIRY FOCUS

[6] In the recent decision I gave on my interpretation of the Order in Council creating the Inquiry, and particularly the Terms of Reference or the mandate given to this Commission of Inquiry, I referred to certain principles that I expect will guide the Commission's work and the conduct of the hearings that will be held. I wish to reiterate those principles at this time and will likely repeat them often as this Inquiry proceeds. It is my full expectation that not only will Commission staff be bound by these principles but also that the parties granted standing and their counsel will be guided by them.

[7] These principles can be summarized as follows:

1. The Commission of Inquiry is totally independent of any party, including the Government of Newfoundland and Labrador, and will proceed with no pre-conceived or pre-formed bias or position.
2. The Inquiry is to be conducted on the basis of encouraging cooperation between all parties so as to promote the hearing of all relevant matters

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in the least adversarial manner possible. This will ensure an efficient use of time, effort and expense so as to best promote the interests of the participants in the Inquiry as well as the interests of the public.

3. The Inquiry will be thorough in doing its work. Due, in part, to the volume of material related to this Project's sanction and execution as well as the limited time available to conclude this Inquiry, the Commission shall be taking a proportionate approach as to what evidence is most relevant to present and consider in order to respond to the mandate given. Being thorough does not mean the investigation needs to be a fully exhaustive one. There is a story to be told about the Muskrat Falls Project. In telling that story, in line with the Terms of Reference as I have interpreted them, there may well be subplots that emerge that will have to be assessed as to their significance or importance to the whole of the story to be told. Therefore, proportionality will be considered when determining the extent of the investigation the Commission will be conducting and the evidence to be presented at the hearing.
4. The Inquiry will be conscious of the need to be expeditious in all aspects of its work as this Inquiry must be, and will be, completed by December 31, 2019. I am also very conscious of the need to be fiscally prudent in expending public funds and being expeditious will best ensure such prudence.
5. The Inquiry will be conducted in as transparent and open manner as possible while bearing in mind any privilege claims protected by law and the need to ensure that any disclosure provided would not negatively impact the overall costs of the Project.
6. Finally, but certainly not least important, is the need to ensure fairness not only to the public but also to those involved as parties and witnesses during this Inquiry. This includes fairness in a procedural sense as well as ensuring that the conduct of those involved not be judged on the basis of any inappropriate reliance on hindsight but rather on the basis of the knowledge available at the time.

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WHAT A PUBLIC INQUIRY DOES

[8] Let me now speak briefly about what a public inquiry is and what it is not. A public inquiry is generally established to investigate and report on matters of substantial public interest. In this case that interest relates to the Muskrat Falls Project sanction and construction and, particularly, the involvement of Nalcor and the Government of Newfoundland and Labrador. A public inquiry is not a trial. No one is charged with any criminal offence, nor is anyone being sued. I am not permitted to express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization as part of my findings or in any recommendations I might make.

[9] It seems to me that an apt manner to describe the work of this Commission of Inquiry in meeting its mandate is to set out the story of what occurred as regards this Project from the time of its conception and the events that have occurred since to its expected completion and operation. This means giving all those integrally involved an opportunity to explain what occurred. Questions will be asked on the basis of the explanations and facts presented so that the full story can be made known. As the Commissioner, it will then be for me to assess the evidence presented, make findings based upon the requirements of the mandate of the Inquiry and then to make recommendations.

[10] Having said this, I want everyone to understand that there is a difference between telling the story and presenting a soap opera. Grandstanding on the part of any party, their counsel or any witness will not serve the interests of anyone, including the public interest. Emotions and feelings may well be strong here but this Inquiry will be one that will be controlled and *it will be* limited to those matters reasonably relevant to the Inquiry's mandate. As stated earlier, this Inquiry will be one that is fair to all those involved in it as well as the citizens of this Province.

[11] The Terms of Reference, as interpreted by me in my decision of March 14, 2018 are specific and I intend to ensure a responsible spending of public funds as well as an efficient and fair process. I will be ensuring that our work, including the

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efforts of Commission counsel and the parties given standing, focus on the specific areas listed in the Terms of Reference as interpreted by me.

[12] The hearings to be conducted will generally be open to the public. As well, we have established a website, www.muskratfallsinquiry.ca, that will provide a live webcast of all of the public hearings held by the Commission of Inquiry. The website will also have other information, including transcripts of witnesses' testimony, public exhibits and information about the Commission's work.

[13] I expect that the media will be covering this Inquiry, at least to some extent, which will provide a further opportunity for the public to be kept informed. To ensure that the media can accurately report what is happening at the Inquiry in a timely manner, we will be making materials as accessible as possible to the media. As well, Inquiry staff will be available to respond to their needs as best as can be done.

HOW THE INQUIRY WILL PROCEED

[14] As stated earlier, the Commission's work must be completed by December 31, 2019. I, as well as the Commission team, are completely committed to doing our best to meet the deadline notwithstanding that we are dealing with a huge volume of documents that must be reviewed and investigated as well as the complexities surrounding many of the matters that are to be investigated. We have been moving quickly to put necessary key staff in place, establish an office and hearing space in St. John's, develop a budget for the Inquiry as well as build an information management system that allows us to do a thorough review of many terabytes of data. We have developed Rules of Procedure, issued some summonses for relevant documents and Commission counsel have begun to do interviews. An investigative audit, independent of the Commission, into certain aspects of the Project has commenced.

[15] Although not set in stone, the plan we have is to conduct the hearings in three separate phases in order to best organize the evidence. Phase One, dealing primarily

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with pre-sanction matters for the Project as well as the involvement of the Public Utilities Board, will take place in the fall of 2018 beginning on September 17 till December 6, 2018 with possibly a further week or so added if required. Phase Two, dealing with the construction of the Project as well as oversight by Nalcor and the Government will take place from February 4, 2019 to April 4, 2019 and then April 29 to May 16, 2019. Phase Three, dealing with policy and potential systemic matters focused on looking forward, will take place from June 17 to July 4, 2019. Final submissions are presently scheduled for *early* August 2019. These dates are somewhat tentative but the hearing schedule should not change drastically from what I have just set out. More than one hundred hearing days will be necessary in order for the Commission to meet its mandate.

[16] Based upon our present thinking, most of the hearings will likely be conducted in St. John's based upon considerations such as the place of residence of the various witnesses to be called and bearing in mind cost issues. Having said this, *we are* cognizant of the need for some of the hearings to take place in Labrador and there will certainly be hearing days scheduled in Happy Valley-Goose Bay.

[17] The hearings will be conducted in the manner most public inquiries follow. Witnesses to be called will be decided upon by Commission counsel, in consultation with the parties given standing. Witnesses will, in the normal course, be examined first by Commission counsel and then examined by counsel for the parties having standing.

[18] For this hearing, each party given standing will be expected to have legal counsel to represent them at the hearings. This is necessary in order to ensure appropriate communication channels with Commission co-counsel as well as an efficient hearing process. Where necessary, funding for legal counsel will be recommended for parties requiring such assistance. The relatively short timeframe given for the Inquiry to report dictates the need to organize the hearings to ensure the most efficient use of time. Being represented by legal counsel will assist the parties in understanding the hearing process and will also promote fairness for all parties involved.

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[19] I intend to consult with counsel for the parties granted standing on an ongoing basis on issues that I believe are necessary and which may directly impact them. Counsel for those parties should feel free to provide their thoughts and feedback about procedural issues and processes through Commission co-counsel so that I may consider them.

INTRODUCTION OF COMMISSION STAFF

[20] I now wish to introduce Commission staff. Our Chief Administrative Officer is Gerry Beresford. Our Operations Manager is Diane Blackmore. We also have four researchers presently on staff; Kate Dutton, Chris McGee, Rosie Myers, Stephen Kiraly, as well as two dedicated information management people, Jackie Barry and Courtney Careen. I have appointed Kate O'Brien of O'Brien, White and Barry Learmonth, Q.C. of Learmonth, Dunne & Boulos as co-counsel to the Commission. I have also two Associate legal counsel, Michael Collins and Adrienne Ding providing assistance to Commission co-counsel and myself. Finally, Marcella Mulrooney is our administrative assistant and hearing clerk. Contact information for our staff members can be found on our website.

STANDING AND FUNDING

[21] Standing means the right to participate in the Inquiry. Section 5(2) of the *Public Inquiries Act, 2006*, S.N.L. 2006 c. P38.1 provides that:

- 5.2 A person may be granted standing upon a consideration of the following:
- (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.

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[22] In the Rules of Procedure for this Inquiry, it is encouraged that persons with similar interests seek joint standing in order to avoid duplication and to promote time and cost efficiencies. Even where not applying jointly, I will be encouraging parties with similar interests on certain issues to work collaboratively so as to avoid duplication of effort and questioning at the hearings.

[23] I must decide not only who will have standing but also the extent to which a party granted standing will participate in the Inquiry. There are three types of standing that I will be considering for this Inquiry; full standing, limited standing and special standing.

[24] A person given full standing will have full participatory rights in all aspects of the Inquiry to the extent of that person's interest. Limited standing will generally mean that the person will have full participatory rights (including the right to cross-examine) but only in respect to certain limited phases or parts of the Inquiry that engage their interest. Special standing participants will not have any right to participate in the Inquiry hearings except as I will describe but, due to their particular interests, knowledge and/or expertise, they will be given an opportunity to make submissions to the Commission of Inquiry. Counsel for the person granted special standing will be seated with all other counsel and will be able to consult with Commission counsel and make suggestions or recommendations to them as to witnesses to be called, questions to be asked on matters of interest to them and they will also be provided with all documents disclosed to other parties having full standing.

[25] As to applications for funding, section 5(5) of the *Public Inquiries Act, 2006* permits me to make recommendations to the Government of Newfoundland and Labrador to provide funding for counsel and other expenses of a person granted standing. It is presumed, however, that counsel will be retained at the expense of a party. Where it is shown that without funding a person with standing would be unable to participate in the Inquiry or for any other reason funding is necessary, I am permitted to recommend that funding for counsel come from the Government. However, that is a recommendation only and not a binding order. I would obviously hope that the government will honour my recommendation as I will only make a recommendation where such is appropriate. It is also to be noted here that I have no

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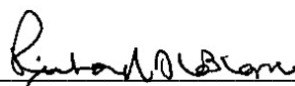
power to set rates to be paid for legal counsel. I also have the discretion here to recommend, or not recommend, that other specific expenses be funded by Government.

[26] Having said all this, I will now call upon Commission co-counsel to set out who we will be hearing from today and the order in which they will be heard. I would advise the applicants for standing that I have read their applications and would remind you that you must limit your submissions today to a maximum of twenty minutes. I may also use some of that time to ask questions in order to better understand your standing request.

[27] Finally, all persons who are seeking standing should clearly understand that upon the grant of standing they agree to be bound by the Commission's Rules of Procedure and, as well, will act in accordance with the focus of the Inquiry as set out in its Terms of Reference as interpreted by me in the March 14, 2018 decision.

[28] After our session ends, particularly for those parties granted standing who have yet to retain counsel, Commission co-counsel will conduct an information session. I encourage all those parties without counsel to attend and this will give you the opportunity to learn more about the Inquiry process and to ask any questions that you might have. A light lunch will be provided (as an incentive to attend!)

[29] As well, after all of the parties granted standing have had time to retain and instruct their legal counsel, I plan to meet with all legal counsel to discuss the process and timing for the hearings. I realize that we all have lives outside of this Inquiry but adhering to the schedule that we develop to conclude this Inquiry will be a priority for the Commission.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

OPENING STATEMENT (FIRST DAY OF HEARINGS – HVGB)

SEPTEMBER 17, 2018

LEBLANC, J.:

INTRODUCTION

[1] Good morning. Today we begin the public hearings of the Commission of Inquiry Respecting the Muskrat Falls Project. I welcome those present here in the Lawrence O'Brien Arts Centre as well as those persons joining online by webcast. My name is Richard LeBlanc and I am a Justice of the Supreme Court of Newfoundland and Labrador and Commissioner for this Inquiry.

[2] Let me first of all thank everyone here in Happy Valley-Goose Bay and elsewhere who has assisted us in any manner to begin the Commission hearings in Labrador. I recognize that the Muskrat Falls Project has, and will have, a significant impact to all of the Province but, in particular, to the residents of Labrador,

indigenous and non-indigenous, as much of the physical infrastructure for the Project is constructed and situate on the Churchill River. While most of the hearings of the Inquiry must be held in St. John's due to space requirements, practicality and cost considerations, this Commission has scheduled further hearing dates here in Happy Valley-Goose Bay in recognition of the link between the Project and Labrador.

[3] The last nine months or so have been extremely challenging for the staff of the Commission in order to prepare for these hearings. We have received over two and one-half million documents that have had to be dealt with. I must acknowledge the efforts of those involved who provided documents, in particular of the Government of Newfoundland and Labrador and Nalcor from whom the vast majority of documents emanated. We have been actively reviewing what we have categorized as potentially relevant documents in preparing for these hearings. Numerous witnesses have been interviewed and experts have been engaged where necessary.

[4] I could never thank the staff of the Commission enough for their dedication and countless hours of work, including evenings and during very warm weekends, to assist in the investigation conducted. Led by Kate O'Brien and Barry Learmonth,

Commission co-counsel, our team of three associate lawyers, six researchers, two IM staff as well as our CAO, Operations Manager, able administrative assistant and a summer student, significant work has been done to prepare for these public hearings. The workload and output by the staff has been gargantuan from my perspective. I wish to publicly express my sincere appreciation to all of them for their past and continuing service to this Commission of Inquiry. I am satisfied as of now that we have used the limited time we have been given to investigate the Project as best as possible considering the magnitude and complexity of the what it is we have been given as a mandate to do.

[5] I can say that the work of this Commission of Inquiry has been framed by the Terms of Reference establishing this Inquiry as well as my interpretation decision of those Terms of Reference on March 14, 2018.

[6] Full standing has been granted to ten parties while eleven others have been granted limited or special standing as regards the Inquiry hearings. While those parties granted full standing may participate in all aspects of the Inquiry hearings,

limited and special standing parties will participate only to the extent of their interests as determined by the basis upon which each has been granted standing.

[7] In making my opening remarks this morning I am keenly aware that they must be shorter than what I would have liked based upon the importance of giving as much time to the first witness to be called today as is possible. This too means that I will only be able to call upon Commission counsel to speak to the plans and schedule we have established for Phase 1 of this Inquiry after we complete the evidence of the first witness.

[8] However, it is important that I reiterate some of what I stated on April 6, 2018 at the Standing Hearings. First of all, it is important to describe what a public inquiry is and what it is not. A public inquiry is generally established to investigate and report on a matter of substantial public interest. Here the sanction and construction of the Muskrat Falls Project is generally what will be looked at, particularly as regards the involvement and actions of the Government of Newfoundland and Labrador and of Nalcor. What this public inquiry is not is that it is not a trial as that term is generally understood. No one is charged with a criminal offence and nor is

anyone being sued. I am not permitted to express any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization as part of my findings or in any recommendations I might make.

[9] Here I see the Commission's purpose as being to permit the relevant parties and people involved to set out the story as regards the Muskrat Falls Project from its conception to its expected completion and operation based upon the mandate given to us. This Commission of Inquiry and the public must be given the opportunity to hear about what has transpired and to be able to assess this. I will be ensuring that the witnesses called are given a fair opportunity to provide the relevant information they have. Counsel to this Inquiry are well aware of my desire in this regard.

[10] I do recognize that we have set an aggressive and robust schedule for these hearings. This is necessary again due to the complexity and extent of the issues we must deal with, the number of witnesses that are needed as well as the limited time that we have to conclude all phases of this Inquiry. This means that all counsel present, and the parties they represent, must be cognizant of the need to move along in the most efficient yet thorough manner possible. I intend to keep us all on track

as regards the schedule we have. While I am quite aware that some of the public want me to extend the Terms of Reference or mandate for this Inquiry, I am not able or willing to do so. Participation by the parties given standing is restricted to the Terms of Reference as interpreted by me in my March 14th, 2018 decision as well as the basis upon which each party has been granted standing.

[11] I also recognize fully the importance of transparency and openness in these hearings. However, it now seems clear to me that I may be receiving some evidence that I must not make fully public. This is not being done to hide anything. I am bound by certain legal privileges that require that some evidence not be presented. For instance, evidence subject to solicitor–client privilege cannot be led unless the privilege is waived by the applicable parties.

[12] The issue of water management on the Churchill River is a matter that I will be considering. There is litigation between Nalcor and Hydro Quebec currently ongoing in the Quebec courts possibly impacting the management of the flow of water on the Churchill River. While I have already indicated that I will be looking at what consideration was given to water management at the time of sanction, I do

not want to do or say anything that could negatively impact the interests of this Province and the position taken by Nalcor in that court case. That would not be in the public interest. Therefore, some of the evidence that I hear and consider regarding this issue may not be able to be made public notwithstanding that I will be considering it in making my findings and recommendations.

[13] As well, particularly for Phase two of the Inquiry regarding cost overruns and oversight, with a project of this magnitude and with construction continuing, it can be expected that certain of the issues we will deal with may be subject to further court or legal processes. As a result, and to ensure that the parties and the public are protected as much as is possible from further negative legal and/or financial consequences, there may well be some evidence that cannot be fully accessible to the public or all of the parties, although, again, such will still be part of my consideration in making findings and recommendations at the conclusion of these hearings. For such evidence, I have instructed Commission counsel to ensure that they should presume that the evidence is to be led in public and it is only where they are satisfied that it would not be in the public interest or unfairly damaging to a party should they seek to have this evidence heard without full public scrutiny. I wish here to be clear that merely because the evidence in question may cause

embarrassment, a loss of confidence or amount to serious misbehavior, such is not a basis for the evidence to be withheld from public scrutiny at these hearings. In any event, where it is decided that evidence will not be presented for public viewing, I am hopeful that some notice of what that evidence generally entails will be made accessible to the public where possible. Having said this, it is clear that the vast majority of the evidence to be presented at this Inquiry will be available to the public.

[14] The focus of these hearings, being Phase 1, is on the sanction decision for this Project as well as a review of the involvement of the Public Utilities Board. This Phase will take us up to the Christmas break. Commencing in late February 2019, as indicated above, the Commission's focus will be on the construction of the Project, the resultant cost escalation and the oversight of construction and costs by both Nalcor and the Government. That phase, Phase 2, will take us to mid-May and will be followed by the final phase of the hearings, Phase 3, dealing with future policy and systemic matters.

[15] Finally, there has been much publicity and discussion regarding this Project to date. Now the opportunity to hear about the significant details of the story of

Muskrat Falls has arrived. We at the Commission are determined to present the facts in as fair a manner as is possible for all involved in order for there to be fair and appropriate consideration of the evidence.

[16] With all of this in mind, I now ask Commission co-counsel to call their first witness for these hearings.

JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

OPENING STATEMENT PHASE TWO

FEBRUARY 18, 2019

LEBLANC, J.:

[1] Good morning. Today we begin Phase Two of the public hearings related to the Muskrat Falls Project. I welcome those present here in Happy Valley-Goose Bay as well as those viewing the Commission's webcast.

[2] In a moment Commission co-counsel will be setting out the plan for these Phase Two hearings. A tentative schedule has earlier been released but will now be changed to provide Commission counsel and staff with more time to prepare. Since the Phase One hearings ended, Commission counsel and staff have been diligently preparing for Phase Two. Along the way, we have encountered difficulties in obtaining and finalizing disclosure from various parties. I am advised that certain parties have yet to complete their disclosure requirements even now. As well, certain legal issues have arisen related to alleged commercially sensitive documents, possible litigation privilege claims as well as jurisdictional concerns, all of these have had to be dealt with.

[3] Commission counsel have been working hard to resolve these issues in order to avoid potential delay in the hearings. However, I am advised, as a result of what I have just stated, that we are not fully where we need to be at this time for the hearings once we return to St. John's

[4] Having said this, as it is important for the Commission of Inquiry to respond as best as is possible in the timeframe we have, I have decided to add up to a further three weeks during Phase Two where no hearings will be scheduled. Based upon the advice I have been given, this time will be made up by rescheduling of certain witnesses and possibly adding two further weeks, at most, to the end of our Phase Two schedule.

[5] Therefore, I expect that a revised schedule for Phase Two and Phase Three will be placed on our website shortly. As a result, we will likely be concluding the Phase Three hearings in the first week of August 2019 rather than the last week of July. I expect that we should still have oral submissions completed as presently scheduled by August 26, 2019.

[6] While it is regrettable that a revision of the schedule must occur at this time, such is necessary in the circumstances. I can assure the Government of Newfoundland and Labrador, who established this Commission of Inquiry, all parties with standing, as well as the public that this Commission will continue to use its best efforts to respond to its Terms of Reference and that the Commission's Report will be provided on time by December 31, 2019.

[7] The focus of the Phase Two hearings will be related to and the reasons for the cost overruns on the Project since its sanction as well as general oversight of the Project by those with Nalcor Energy as well as the Government of Newfoundland and Labrador. I reiterate here what I stated at the commencement of the hearings for this Inquiry on September 17, 2018 to the effect that this Inquiry is an opportunity to publicly set out the story of the Muskrat Falls Project, providing those involved with an opportunity to speak to the various matters that occurred. I would further reiterate that this is a public inquiry and it is not a trial as no one is charged with a criminal offence and nor is anyone being sued. Again, I am not permitted to express a conclusion or make a recommendation regarding criminal or civil responsibility in setting out my findings and recommendations in the Inquiry Report.

[8] Our schedule remains tight for the upcoming hearings due to the complexity and extent of the issues to be dealt with. With the addition of parties for Phase Two,

it will continue to be my expectation that all counsel present, as well as the parties represented, be cognizant of the need to be as efficient as is possible in their questioning of witnesses to permit this schedule to be met.

[9] From what I am advised, it is not expected that there will be any in-camera hearings for this Phase. There may be some documents that will be entered as confidential exhibits and which will not be made publicly available. This is so due to the fact that there are continuing ongoing contracts in place in order to complete the Project and it is not the intent of this Commission to in any way possibly create a situation where added cost to the Project occurs. I do not expect that there will be many of these confidential exhibits as this Commission remains committed to a transparent and open process.

[10] I continue to commit to all involved that this Commission of Inquiry will provide for a fair presentation of the facts in issue and that there will be a fair and appropriate consideration given to all of the evidence presented.

[11] I will now call upon Mr. Learmonth to outline the plans for the Phase Two hearings.

JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

STATEMENT ON WATER MANAGEMENT PROCESS

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR

NOVEMBER 14, 2018

LEBLANC, J.:

[1] Water Management on the Churchill River has been identified as a matter for consideration by this Commission of Inquiry. I have raised and identified concerns about any risks regarding the control of the flow of the river and its potential impact on the operation and output from the Muskrat Falls generating station as an area that the Commission of Inquiry would look into. My purpose in doing so is to determine how this particular issue was assessed and considered at the time of and up to sanction of the Muskrat Falls Project by the Government of Newfoundland and Labrador, as well as Nalcor Energy.

[2] In order to deal with evidence on water management, it has become obvious to me that much of what needs to be presented would be privileged information in that there is a solicitor-client privilege attached to it. Evidence that is subject to solicitor-client privilege can be legitimately withheld from a Commission of Inquiry. For this Inquiry, both the Government of Newfoundland and Labrador and Nalcor Energy have provided documentation, including solicitor-client privileged information, related to the water management issue to us, which remains subject to privilege pursuant to s. 24.1 of the *Public Inquiries Act, 2006*. As a result, it is the Government of Newfoundland and Labrador and Nalcor Energy that controls my ability to assess what I believe is important and relevant evidence on this issue as both can rely on Solicitor-Client privilege.

- [3] To understand the position taken by Government and Nalcor on water management, and what consideration was given with regards to water management prior to sanction of this Project, it is imperative that I receive this information as evidence notwithstanding the fact that much of it is subject to solicitor-client privilege. Litigation privilege is also likely potentially applicable.
- [4] In order to have this evidence presented to the Commission notwithstanding the privilege asserted, the Commission has endeavoured to try to find a way to satisfy the Government and Nalcor that the information presented would be protected. I, too, wish to avoid potentially negatively impacting the position of the Government and Nalcor on this issue, particularly with ongoing litigation taking place. In this regard, I am mostly concerned about any possible impact on the ratepayers and taxpayers of the Province already faced with the cost burden of this Project.
- [5] In considering the development of a process to deal with water management, I have insisted that there be at least some ability for the interests of the public to be represented as part of the process other than just by having Commission Counsel present. This has been indicated to both Nalcor and the Government. With the agreement of both, the public's interests will be represented in the process that I will be setting out by representation by the Consumer Advocate and his counsel during the process, with them having the ability to explore any concerns or questions, including questions provided by Counsel for the other parties with Standing.
- [6] My final review and assessment of the water management issue will be made part of my report to be filed at the conclusion of these proceedings. That report will ultimately be made public. In that report, I will be cautious to ensure that nothing is disclosed that could impact any existing legal position or strategy in place with regards to the water management issue.

[7] The process will be as follows:

- i) The water management issue will be dealt with in-camera. Notwithstanding this, not all exhibits used during the in-camera session will be confidential exhibits. Those already in the public domain or not subject to any privilege will certainly be public exhibits and will be available on the Commission's website.
- ii) Counsel for the following parties will be in attendance at the in-camera hearing:
 - Commission counsel
 - Province of Newfoundland and Labrador
 - Nalcor Energy
 - Consumer Advocate
 - Todd Stanley
- iii) Parties represented by these counsel, including the Consumer Advocate, can be in attendance but all counsel and parties attending will be subject to strict confidentiality agreements for the in-camera hearing.
- iv) Counsel for other parties with standing before this Commission may provide the Consumer Advocate, or other counsel to be present, with questions they would like to have asked of the witnesses to be called at the in-camera hearing. The Consumer Advocate or any counsel will not be permitted to report the answers back to counsel for other parties as such will be covered by the confidentiality agreement.
- v) Transcripts for the in-camera hearing will be transcribed by Commission staff only and all confidential exhibits will be sealed to protect disclosure to anyone.

vi) Witnesses to be heard during the in-camera hearing are as follows:

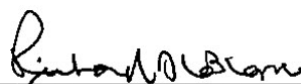
- Philip Raphals
- Todd Stanley
- Peter Hickman
- Gilbert Bennett
- Dennis Browne

With these witnesses and the exhibits to be tendered, the Commission will have the benefit of different views on the water management issue.

vii) The in-camera hearing will take place on November 30, 2018.

[8] Again, while I would have preferred a much more open and public hearing on this issue, to deal with it at all I have had to recognize that without the agreement of the Government of Newfoundland and Labrador and Nalcor, I would not be able to assess what is potentially an important aspect related to the Commission's Terms of Reference.

[9] Finally, I would add that my ruling on this process applies only to the water management issue. It will have no bearing on any other application presented for an in camera hearing.



JUSTICE RICHARD D. LEBLANC
COMMISSIONER



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

PROPOSED SCHEDULE FOR PUBLIC HEARINGS

The Honourable Justice Richard D. LeBlanc, Commissioner for the Inquiry Respecting the Muskrat Falls Project (Inquiry), wishes to advise that the Inquiry will be conducting public hearings during 2018 and 2019 in Happy Valley-Goose Bay and St. John's. The hearings are expected to run from Monday to Thursday – 9:00 a.m. to 4:30 p.m. and on Friday – 9:30 a.m. to 1:00 p.m. (ending time each day will be subject to the call of the Commissioner) on the dates set out below:

Phase 1

Lawrence O'Brien Arts Centre Happy Valley-Goose Bay, NL

- Monday, September 17, 2018 through Wednesday, September 19, 2018;
- Friday, September 21, 2018; and
- Monday, September 24, 2018 through Thursday, September 27, 2018.

Beothuck Building 3rd Floor, 20 Crosbie Place St. John's, NL

- Monday, October 1, 2018 through Friday, December 14, 2018.

Phase 2

Lawrence O'Brien Arts Centre Happy Valley-Goose Bay, NL

- Monday, February 4, 2019 through Friday, February 15, 2019.

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**Beothuck Building
3rd Floor, 20 Crosbie Place
St. John's, NL**

- Monday, February 18, 2019 through Friday, April 5, 2019; and
- Monday, April 29, 2019 through Friday May 31, 2019.

Phase 3

**Beothuck Building
3rd Floor, 20 Crosbie Place
St. John's, NL**

- Monday, June 17, 2019 through Friday, July 12, 2019

Summations

**Lawrence O'Brien Arts Centre
Happy Valley-Goose Bay, NL**

- Monday, July 29, 2019 through Friday, August 2, 2019.

Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT
5th Floor, Suite 502, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8
Telephone: 709-729-6076, Toll Free: 1-833-235-7702
Fax: 709-729-6070
Email: admin@muskratfallsinquiry.ca
Website: www.muskratfallsinquiry.ca

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Media contact:

Barry Learmonth
Commission Co-Counsel
(709) 729-6030
barrylearmonth@muskratfallsinquiry.ca

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Commission of Inquiry Respecting the Muskrat Falls Project

NOTICE TO PUBLIC

PROPOSED SCHEDULE FOR PUBLIC HEARINGS

The Honourable Justice Richard D. LeBlanc, Commissioner for the Inquiry Respecting the Muskrat Falls Project (Inquiry), wishes to advise that the Inquiry will be conducting public hearings during 2018 and 2019 in Happy Valley-Goose Bay and St. John's.

The dates listed below are subject to change. All times are local. Any changes will be noted on our website or you can call our office.

Hearing Dates

Phase 1

Lawrence O'Brien Arts Centre

Happy Valley-Goose Bay, NL

Start Time: 9:00 a.m.

Ending Time: Subject to the call of the Commissioner

- Monday, September 17, 2018 through Wednesday, September 19, 2018;
- Friday, September 21, 2018; and
- Monday, September 24, 2018 through Thursday, September 27, 2018.

Beothuck Building

3rd Floor, 20 Crosbie Place

St. John's, NL

Start Time: 9:30 a.m.

Ending Time: Subject to the call of the Commissioner

- Monday, October 1, 2018 through Thursday, December 20, 2018.

Phase 2

Lawrence O'Brien Arts Centre

Happy Valley-Goose Bay, NL

Start Time: 9:30 a.m.

Ending Time: Subject to the call of the Commissioner

- Monday, February 18, 2019 – Friday, March 1, 2019

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Beothuck Building
3rd Floor, 20 Crosbie Place
St. John's, NL
Start Time: 9:30 a.m.
Ending Time: Subject to the call of the Commissioner

- Monday, March 4, 2019 – Friday, April 5, 2019; and
- Monday, April 29, 2019 – Friday June 14, 2019.

Phase 3

Beothuck Building
3rd Floor, 20 Crosbie Place
St. John's, NL
Start Time: 9:30 a.m.
Ending Time: Subject to the call of the Commissioner

- Tuesday, July 2, 2019 – Friday, July 12, 2019

Summations

Lawrence O'Brien Arts Centre
Happy Valley-Goose Bay, NL
Start Time: 9:30 a.m.
Ending Time: Subject to the call of the Commissioner

- Monday, August 5, 2019 – Friday, August 9, 2019.

The hearings are open to the public and will also be webcast via the Commission website.

Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT
5th Floor, Suite 502, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3Y8
Telephone: 709-729-6076, Toll Free: 1-833-235-7702
Fax: 709-729-6070
Email: admin@muskratfallsinquiry.ca
Website: www.muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

NOTICE TO PUBLIC

PROPOSED SCHEDULE FOR FUTURE PUBLIC HEARINGS

The Honourable Justice Richard D. LeBlanc, Commissioner for the Inquiry Respecting the Muskrat Falls Project (Inquiry), wishes to advise that the Inquiry will be conducting public hearings in 2019 in Happy Valley-Goose Bay and St. John's.

The dates listed below are subject to change. All times are local. Any changes will be noted on our website or you can call our office.

Hearing Dates

Phase 2

Lawrence O'Brien Arts Centre

Happy Valley-Goose Bay, NL

Start Time: 9:30 a.m.

Ending Time: Subject to the call of the Commissioner

- Monday, February 18, 2019 – Friday, March 1, 2019

Beothuck Building

3rd Floor, 20 Crosbie Place

St. John's, NL

Start Time: 9:30 a.m.

Ending Time: Subject to the call of the Commissioner

- Monday, March 4, 2019 – Friday, April 5, 2019; and
- Monday, April 29, 2019 – Friday June 28, 2019.

Phase 3

Beothuck Building

3rd Floor, 20 Crosbie Place

St. John's, NL

Start Time: 9:30 a.m.

Ending Time: Subject to the call of the Commissioner

- Tuesday, July 16, 2019 – Friday, July 26, 2019

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Summations

Lawrence O'Brien Arts Centre

Happy Valley-Goose Bay, NL

Start Time: 9:30 a.m.

Ending Time: Subject to the call of the Commissioner

- Monday, August 12, 2019 – Friday, August 16, 2019.

The hearings are open to the public and will also be webcast via the Commission website.

Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

5th Floor, Suite 502, Beothuck Building

20 Crosbie Place

St. John's, NL A1B 3Y8

Telephone: 709-729-6076, Toll Free: 1-833-235-7702

Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca

Website: www.muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

NOTICE TO PUBLIC

REVISED SCHEDULE FOR PUBLIC HEARINGS IN HAPPY VALLEY-GOOSE BAY

The Honourable Justice Richard D. LeBlanc, Commissioner for the Inquiry Respecting the Muskrat Falls Project (Inquiry), wishes to advise that the witness schedule for the public hearings at the Lawrence O'Brien Arts Centre in Happy Valley-Goose Bay from February 18 – March 1, 2019 has been adjusted, as follows:

- Dr. Jim Gilliland of Williams Engineering will not be providing testimony on February 25, 2019. It is the intention of Commission Co-Counsel to call Dr. Gilliland at a later date;
- Messrs. Keith Dodson (Westney Consulting Group), Paul Davis (Former GNL Official) and Derrick Dalley (Former GNL Official) will provide testimony on February 25, 2019, February 26, 2019 and February 27, 2019, respectively.

To follow is the revised schedule for February 18 - March 1, 2019 in Happy Valley-Goose Bay:

Date	Witness
February 18, 2019	Commission Co-Counsel (Remarks) Jean-Charles Piétacho (Conseil des Innu de Ekuanitshit) Scott Shaffer (Grant Thornton)
February 19, 2019	Scott Shaffer (Grant Thornton)
February 20, 2019	Scott Shaffer (Grant Thornton)
February 21, 2019	Scott Shaffer (Grant Thornton)
February 22, 2019	Roberta Benefiel/Marjorie Flowers (Grand River Keeper Labrador/Labrador Land Protectors)
February 25, 2019	Keith Dodson (Westney Consulting Group) Dr. Guy Holburn (Expert)
February 26, 2019	Dr. Guy Holburn (Expert) Paul Davis (Former Government of Newfoundland and Labrador Official)
February 27, 2019	Derrick Dalley (Former Government of Newfoundland and Labrador Official) Todd Russell (NunatuKavut Community Council Inc.)
February 28, 2019	Anastasia Qupee/Clementine Kuyper (Innu Nation) Carl McLean/Rodd Laing (Nunatsiavut Government)
March 1, 2019	Pat Hussey (Nalcor Energy)

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The Commissioner also wishes to advise that the Commission envisages changes to the schedule for public hearings in St. John's commencing in March 2019. These adjustments will be communicated in the near future.

The hearings are open to the public and will also be webcast via the Commission website.

Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

5th Floor, Suite 502, Beothuck Building

20 Crosbie Place

St. John's, NL A1B 3Y8

Telephone: 709-729-6076, Toll Free: 1-833-235-7702

Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca

Website: www.muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

PHASE 3

Phase 3 of the Commission's hearings will explore a number of forward-looking topics in relation to the Commission's *Terms of Reference*.

Phase 3 hearings will be held at the Beothuck Building, 3rd Floor, 20 Crosbie Place, St. John's, NL on **Tuesday, July 16, 2019 to Friday, July 26, 2019**. These hearings are open to the public and will be webcast on the Inquiry's website: www.muskratfallsinquiry.ca/webcast

Phase 3 will cover the following main topics:

Financial Effects of the Muskrat Falls Project on Ratepayers and Taxpayers

The Commission has arranged for a panel of witnesses to provide presentations on the consequences of paying for Muskrat Falls from increased power rates and/or general tax revenue. Panel witnesses will include Denise Hanrahan (Department of Finance), Dennis Browne (Consumer Advocate), Professor Brandon Schaufele (Ivey Business School, Western University), Jerry Earle (NAPE), Lorraine Michael, Peter Alteen (Newfoundland Power), and Kevin Fagan (NL Hydro).

Preparing for 2041

The Commission will explore how the province can prepare for 2041 and the expiry of the 1969 Agreement, including an examination of exports, load forecasts, and strategy. The witness for this topic will be Pelino Colaiacovo (Morrison Park Advisors Inc.). Mr. Colaiacovo will also provide expert testimony on the Cumulative Present Worth (CPW) analysis that supported the decision to sanction the Muskrat Falls Project.

Energy Regulation in Newfoundland and Labrador

The Commission will hear additional evidence relevant to the Province's energy regulation framework and energy legislation. The expert witness for this topic will be AJ Goulding (London Economics International LLC).

Managing Large-Scale Publicly Funded Projects

This topic will supplement earlier evidence and cover governance schemes for large-scale publicly funded projects in other jurisdictions. The Commission will hear expert testimony from Professor Ole Jonny Klakegg (Norwegian University of Science and Technology).

The Role of the Civil Service, Record-Keeping, the Duty to Document and Document Production

This topic covers questions about the role of the civil service, record keeping, whether there should be a duty to document, and document production. Witnesses will include Professor Mel Cappe (Munk School of Global Affairs and Public Policy, University of Toronto), Judge Donovan Molloy, Associate Professor Kelly Blidook (Harris Centre, Memorial University), and Gobhina Nagarajah (Commission Associate Counsel).

The Commission has also engaged the Leslie Harris Centre for Regional Policy and Development (Harris Centre) to facilitate two consultation sessions that will be open to the public and the media. The purpose of these sessions is to gather comments from members of the public who do not have standing at the Inquiry but who would like to provide input on matters within the Commission's mandate. The dates for these sessions are **July 30, 2019 (7:00-9:00 PM)** in St. John's at the Emera Innovation Centre, Signal Hill Campus, Memorial University of Newfoundland and **August 8, 2019 (7:00-9:00 PM)** in Happy Valley-Goose Bay at the Lawrence O'Brien Arts Centre. Further details for these public consultation sessions will be available on the Commission's website.

In view of the Quebec Court of Appeal's recent decision on water management of the Churchill River, the Commission expects to hold an additional in-camera hearing on water management on July 23, 2019. This session will be similar to the panel on water management that was held in Phase 1 of the Commission's hearings.

Please note that these arrangements for Phase 3 are subject to change.

Media contact:

Irene Muzychka
Commission Co-Counsel
(709) 729-6064
irenemuzychka@muskratfallsinquiry.ca

Barry Learmonth
Commission Co-Counsel
(709) 729-6030
barrylearmonth@muskratfallsinquiry.ca

2019-06-28



Commission of Inquiry Respecting the Muskrat Falls Project

SCHEDULE FOR PUBLIC HEARINGS / PUBLIC CONSULTATIONS

The Honourable Justice Richard D. LeBlanc, Commissioner for the Inquiry Respecting the Muskrat Falls Project (Inquiry), wishes to advise that the Inquiry will be conducting public hearings/consultations in 2019 in Happy Valley-Goose Bay and St. John's.

The dates listed below are subject to change. All times are local. Any changes will be noted on our website or you can call our office.

Hearing Dates

Phase 2

Lawrence O'Brien Arts Centre

Happy Valley-Goose Bay, NL

Start Time: 9:30 a.m.

Ending Time: Subject to the call of the Commissioner

- Monday, February 18, 2019 – Friday, March 1, 2019 (Completed)

Beothuck Building

3rd Floor, 20 Crosbie Place

St. John's, NL

Start Time: 9:30 a.m.

Ending Time: Subject to the call of the Commissioner

- Friday, March 15, 2019 – Friday, April 5, 2019; and
- Friday, May 3, 2019 – Friday, July 5, 2019

Phase 3

Beothuck Building

3rd Floor, 20 Crosbie Place

St. John's, NL

Start Time: 9:30 a.m.

Ending Time: Subject to the call of the Commissioner

- Tuesday, July 16, 2019 – Friday, July 26, 2019

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Public Consultations (NEW)

Facilitated by Harris Centre, Memorial University of Newfoundland

**Emera Innovation Exchange
Signal Hill Campus
Memorial University of Newfoundland
St. John's, NL**

- Tuesday, July 30, 2019 – 7:00-9:00 PM

**Lawrence O'Brien Arts Centre
Happy Valley-Goose Bay, NL**

- Thursday, August 8, 2019 – 7:00-9:00 PM

Summations

**Lawrence O'Brien Arts Centre
Happy Valley-Goose Bay, NL
Start Time: 9:30 a.m.
Ending Time: Subject to the call of the Commissioner**

- Monday, August 12, 2019 – Friday, August 16, 2019.

The hearings are open to the public and will also be webcast via the Commission website.



Subject: Muskrat Falls Inquiry invites public comments

Date: July 4, 2019

The Commission of Inquiry Respecting the Muskrat Falls Project is inviting interested members of the public to share relevant information with the Commissioner as he prepares for his final report. The public consultation process will be managed by Memorial University's Leslie Harris Centre of Regional Policy and Development, and will include two public sessions that will be webcast live, in addition to an online submission form for individuals to submit comments and information to the Inquiry.

"As we work toward the final stage of the Inquiry, we wanted to give the general public the opportunity to share their thoughts about the project," explained Commission Co-Counsel Barry Learmonth. "We recognize that there are people who have been following this project and the Inquiry, who may have some very valuable insights that would otherwise not be heard through the public hearings process."

Individuals are invited to attend one of two public sessions – one in St. John's on July 30 (7:00-9:00pm) at the Emera Innovation Exchange, Signal Hill Campus, Memorial University of Newfoundland and one in Happy Valley-Goose Bay on August 8 (7:00-9:00pm) at the Lawrence O'Brien Arts Centre, Happy Valley-Goose Bay. Alternatively, they can submit their comments online anytime until August 15.

The Harris Centre will facilitate the public sessions and provide a summary report of comments received at these sessions and through the online submission process.

"This is an important process in our province, with critical implications for future public policy and democracy," said Dr. Rob Greenwood, Associate Vice-president, Public Engagement and External Relations, and Director of the Harris Centre. "As an independent public policy centre we are very pleased to be working with the Commissioner and his team on this consultation."

Individuals wishing to speak publicly at the open sessions should register ahead of time, and may do so online or via telephone. Individuals interested in providing their comments should also consider the Inquiry's overall scope, which is available for review on the Inquiry's and the Harris Centre's websites.


"The Commissioner is only able to act on comments that fall within the Inquiry's Terms of Reference," said Mr. Learmonth. "This includes things related to the economic case and costs of the project, as well as the management of the project, but does not include any criminal or civil responsibility or current or pending court cases."


For more information about the sessions, to register or submit comments online, please visit www.mun.ca/harriscentre. For more information about the Muskrat Falls Inquiry, please visit www.muskratfallsinquiry.ca.


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For more information, please contact:

Cathy Newhook,
Manager, Engagement and Communications,
Harris Centre, Memorial University
(709) 864-7918 (office)
(709) 631-9278 (cell)
cathyn@mun.ca

<div>  <div> <p>Commission of Inquiry Respecting the Muskrat Falls Project</p> <p>Commencing 9:30 a.m. Local Time</p> <p>Lawrence O'Brien Arts Centre, Happy Valley-Goose Bay (September 17 - 27, 2018)</p> <p>Beothuck Building, St. John's (October 1 - December 20, 2018)</p> <p>Witness Schedule</p> <p>(Please Note: Schedule subject to change)</p> </div> </div>	
Date	Witness
September 17, 2018	Commissioner LeBlanc (Opening Remarks) Dr. Bent Flyvbjerg (Expert)
September 18, 2018	Commission Co-Counsel (Remarks) Carl McLean (Nunatsiavut Government) Jean-Charles Piétacho (Conseil des Innu de Ekuanitshit) Sebastian Penunsi (Innu Nation) Todd Russell (NunatuKavut Community Council)
September 19, 2018	Dr. Jason Churchill (Expert) Stan Marshall (Nalcor Energy)
September 20, 2018	Venue not Available
September 21, 2018	David Malamed, Scott Shaffer - Panel (Grant Thornton)
September 24, 2018	David Malamed, Scott Shaffer - Panel (Grant Thornton)
September 25, 2018	David Malamed, Scott Shaffer - Panel (Grant Thornton) Bob Moulton, Paul Stratton, Auburn Warren - Panel (Nalcor Energy)
September 26, 2018	Bob Moulton, Paul Stratton, Auburn Warren - Panel (Nalcor Energy)
September 27, 2018	No Public Hearing
September 28, 2018	Venue not Available
October 1, 2018	Danny Williams (Former Government of Newfoundland and Labrador Official)
October 2, 2018	Danny Williams (Former Government of Newfoundland and Labrador Official)
October 3, 2018	Aubrey Gover (Government of Newfoundland and Labrador) Prote Poker (Innu Nation) Todd Russell (NunatuKavut Community Council Inc.)
October 4, 2018	Carl McLean/Rodd Laing (Nunatsiavut Government) Jean-Charles Piétacho (Conseil des Innu de Ekuanitshit)
October 5, 2018	Dr. Stephen Bruneau
October 8, 2018	Thanksgiving Holiday
October 9, 2018	Dr. Wade Locke Dr. James Feehan
October 10, 2018	Ron Penney, David Vardy - Panel (Muskrat Falls Concerned Citizens Coalition)
October 11, 2018	Roberta Benefiel (Grand River Keeper/Labrador Land Protectors) Philip Raphals (Helios Centre)
October 12, 2018	No Witness Scheduled
October 15, 2018	Ken Marshall, Tom Clift, Gerry Shortall, Terry Styles - Panel (Former Nalcor Board Members)
October 16, 2018	Ken Marshall, Tom Clift, Gerry Shortall, Terry Styles - Panel (Former Nalcor Board Members) John Mallam (Nalcor Energy)
October 17, 2018	Derek Owen (Nalcor Energy)
October 18, 2018	Tom Brockway (Grant Thornton)
October 19, 2018	Tom Brockway (Grant Thornton)

<p style="text-align: center;">Commission of Inquiry Respecting the Muskrat Falls Project</p> <p style="text-align: center;">Commencing 9:30 a.m. Local Time</p> <p style="text-align: center;">Lawrence O'Brien Arts Centre, Happy Valley-Goose Bay (September 17 - 27, 2018)</p> <p style="text-align: center;">Beothuck Building, St. John's (October 1 - December 20, 2018)</p> <p style="text-align: center;">Witness Schedule</p> <p style="text-align: center;">(Please Note: Schedule subject to change)</p>	
	
Date	Witness
October 22, 2018	Todd Stanley (Former Government of Newfoundland and Labrador)
October 23, 2018	Dr. Guy Holburn (Expert)
October 24, 2018	Maureen Greene (Public Utilities Board) Fred Martin (Former Public Utilities Board)
October 25, 2018	Darlene Whalen (Public Utilities Board) Andy Wells (Former Public Utilities Board)
October 26, 2018	Tom Garner (Price Waterhouse Coopers)
October 29, 2018	Mack Kast, Allen Snyder, Paul Wilson - Panel (Manitoba Hydro International)
October 30, 2018	Mack Kast, Allen Snyder, Paul Wilson - Panel (Manitoba Hydro International)
October 31, 2018	Derrick Sturge (Nalcor Energy)
November 1, 2018	Derrick Sturge (Nalcor Energy) Paul Lemay (SNC-Lavalin)
November 2, 2018	Paul Lemay (SNC-Lavalin) Shawn Skinner (Former Government of Newfoundland and Labrador Official)
November 5, 2018	Dr. Stephen Bruneau Terry Paddon (Former Government of Newfoundland and Labrador)
November 6, 2018	Tom Marshall (Former Government of Newfoundland and Labrador Official)
November 7, 2018	Tom Marshall (Former Government of Newfoundland and Labrador Official) Jason Kean (Former Muskrat Falls Project Management Team)
November 8, 2018	Jason Kean (Former Muskrat Falls Project Management Team)
November 9, 2018	No Public Hearing
November 12, 2018	Remembrance Holiday
November 13, 2018	Paul Humphries (Nalcor Energy)
November 14, 2018	Robert Thompson (Former Government of Newfoundland and Labrador)
November 15, 2018	Robert Thompson (Former Government of Newfoundland and Labrador)
November 16, 2018	Richard Westney (Westney Consulting Group)
November 17, 2018	Commercial Sensitivity
November 19, 2018	Paul Harrington (Muskrat Falls Project Management Team)
November 20, 2018	Paul Harrington (Muskrat Falls Project Management Team)
November 21, 2018	Paul Harrington (Muskrat Falls Project Management Team)
November 22, 2018	Jim Keating, Nalcor Energy
November 23, 2018	Jim Keating, Nalcor Energy
November 26, 2018	Gilbert Bennett (Nalcor Energy)
November 27, 2018	Gilbert Bennett (Nalcor Energy)
November 28, 2018	Gilbert Bennett (Nalcor Energy)
November 29, 2018	Gilbert Bennett (Nalcor Energy)
November 30, 2018	Water Management Agreement (In Camera)

<div style="display: flex; justify-content: space-around; align-items: center;">  <div style="text-align: center;"> <p>Commission of Inquiry Respecting the Muskrat Falls Project</p> <p>Commencing 9:30 a.m. Local Time</p> <p>Lawrence O'Brien Arts Centre, Happy Valley-Goose Bay (September 17 - 27, 2018)</p> <p>Beothuck Building, St. John's (October 1 - December 20, 2018)</p> <p>Witness Schedule</p> <p>(Please Note: Schedule subject to change)</p> </div> </div>	
Date	Witness
December 3, 2018	Jerome Kennedy (Former Government of Newfoundland and Labrador Official)
December 4, 2018	Jerome Kennedy (Former Government of Newfoundland and Labrador Official)
December 5, 2018	Charles Bown (Government of Newfoundland and Labrador Official)
December 6, 2018	Charles Bown (Government of Newfoundland and Labrador Official)
December 7, 2018	Charles Bown (Government of Newfoundland and Labrador Official)
December 10, 2018	Edmund Martin (Former Nalcor Energy)
December 11, 2018	Edmund Martin (Former Nalcor Energy)
December 12, 2018	Edmund Martin (Former Nalcor Energy)
December 13, 2018	Edmund Martin (Former Nalcor Energy)
December 14, 2018	Edmund Martin (Former Nalcor Energy)
December 17, 2018	Peter Alteen (Newfoundland Power) Kathy Dunderdale (Former Government of Newfoundland and Labrador Official)
December 18, 2018	Kathy Dunderdale (Former Government of Newfoundland and Labrador Official)
December 19, 2018	Kathy Dunderdale (Former Government of Newfoundland and Labrador Official)
December 20, 2018	Kathy Dunderdale (Former Government of Newfoundland and Labrador Official)
December 21, 2018	No Witness Scheduled

Updated: December 11, 2018




Commission of Inquiry Respecting the Muskrat Falls Project Witness Schedule - Phase 2

Commencing 9:30 a.m. Local Time
Lawrence O'Brien Arts Centre, Happy Valley-Goose Bay
(February 18 - March 1, 2019)
Beothuck Building, St. John's (March 15 - July 5, 2019)

(Please Note: Schedule subject to change)

Date	Witness
February 18, 2019	Commission Co-Counsel (Remarks) Jean-Charles Piétacho (Conseil des Innu de Ekuanitshit) Scott Shaffer (Grant Thornton)
February 19, 2019	Scott Shaffer (Grant Thornton)
February 20, 2019	Scott Shaffer (Grant Thornton)
February 21, 2019	Scott Shaffer (Grant Thornton)
February 22, 2019	Roberta Benefiel/Marjorie Flowers (Grand River Keeper Labrador/Labrador Land Protectors)
February 25, 2019	Keith Dodson (Westney Consulting Group) Dr. Guy Holburn (Expert)
February 26, 2019	Dr. Guy Holburn (Expert) Paul Davis (Former Government of Newfoundland and Labrador)
February 27, 2019	Derrick Dalley (Former Government of Newfoundland and Labrador) Todd Russell (NunatuKavut Community Council Inc.)
February 28, 2019	Anastasia Qupee/Clementine Kuyper (Innu Nation) Carl McLean/Rodd Laing (Nunatsiavut Government)
March 1, 2019	Pat Hussey (Muskrat Falls Project Management Team)
March 4, 2019	No Public Hearing Scheduled
March 5, 2019	No Public Hearing Scheduled
March 6, 2019	No Public Hearing Scheduled
March 7, 2019	No Public Hearing Scheduled
March 8, 2019	No Public Hearing Scheduled
March 11, 2019	No Public Hearing Scheduled
March 12, 2019	No Public Hearing Scheduled
March 13, 2019	No Public Hearing Scheduled
March 14, 2019	No Public Hearing Scheduled
March 15, 2019	Larry Cavaliere, Ed Knox, Perry Snook and Ken White (Workers' Panel)
March 18, 2019	St. Patrick's Day
March 19, 2019	Nik Argirov (Independent Engineer)
March 20, 2019	Tim Harrington (Cahill-Ganotec)
March 21, 2019	Dr. Jim Gilliland (Williams Engineering) James Meaney (Nalcor Energy)
March 22, 2019	James Meaney (Nalcor Energy)

<div>  <div> Commission of Inquiry Respecting the Muskrat Falls Project Witness Schedule - Phase 2 Commencing 9:30 a.m. Local Time Lawrence O'Brien Arts Centre, Happy Valley-Goose Bay (February 18 - March 1, 2019) Beothuck Building, St. John's (March 15 - July 5, 2019) </div> </div>	
(Please Note: Schedule subject to change)	
Date	Witness
March 25, 2019	James Meaney (Nalcor Energy) Jean-Daniel Tremblay (SNC-Lavalin)/ Scott Thon (SNC-Lavalin)
March 26, 2019	James Meaney (Nalcor Energy) Normand Béchard (SNC-Lavalin)
March 27, 2019	Normand Béchard (SNC-Lavalin) Derrick Sturge (Nalcor Energy)
March 28, 2019	Derrick Sturge (Nalcor Energy)
March 29, 2019	Paul Lemay (SNC-Lavalin)
April 1, 2019	Tom Marshall (Former Government of Newfoundland and Labrador Official)
April 2, 2019	Kathy Dunderdale (Former Government of Newfoundland and Labrador Official)
April 3, 2019	BJ Ducey/Kelly Williams (Valard) Mark Turpin (Former Nalcor)
April 4, 2019	Aaron Rietveld/Derek Tisdell (Barnard-Pennecon)
April 5, 2019	Bill Mavromatis (Andritz)
April 8, 2019	Easter Break
April 9, 2019	Easter Break
April 10, 2019	Easter Break
April 11, 2019	Easter Break
April 12, 2019	Easter Break
April 15, 2019	Easter Break
April 16, 2019	Easter Break
April 17, 2019	Easter Break
April 18, 2019	Easter Break
April 19, 2019	Easter Break
April 22, 2019	Easter Break
April 23, 2019	Easter Break
April 24, 2019	Easter Break
April 25, 2019	Easter Break
April 26, 2019	Easter Break




Commission of Inquiry Respecting the Muskrat Falls Project Witness Schedule - Phase 2

Commencing 9:30 a.m. Local Time
Lawrence O'Brien Arts Centre, Happy Valley-Goose Bay
(February 18 - March 1, 2019)
Beothuck Building, St. John's (March 15 - July 5, 2019)

(Please Note: Schedule subject to change)

Date	Witness
April 29, 2019	No Public Hearing Scheduled
April 30, 2019	No Public Hearing Scheduled
May 1, 2019	No Public Hearing Scheduled
May 2, 2019	John Mulcahy (Former Nalcor Energy)
May 3, 2019	Thierry Martin/Laszlo Von Lazar (Grid Solutions Canada)
May 6, 2019	Jason Kean (Muskrat Falls Project Management Team)
May 7, 2019	Jason Kean (Muskrat Falls Project Management Team)
May 8, 2019	Mauro Palumbo (Astaldi) Don Delarosbil/Georges Bader (Astaldi)
May 9, 2019	Don Delarosbil/Georges Bader (Astaldi)
May 10, 2019	Darren Debourke (Former Nalcor Energy)
May 13, 2019	Michael Kennedy (Ernst Young)
May 14, 2019	Ken McClintock (Former Nalcor Energy) Des Tranquilla (Former Nalcor Energy)
May 15, 2019	James Meaney (Nalcor Energy) Charles Bown (Government of Newfoundland and Labrador Official)
May 16, 2019	Charles Bown (Government of Newfoundland and Labrador Official)
May 17, 2019	No Public Hearing Scheduled
May 20, 2019	Victoria Day
May 21, 2019	Ron Power (Muskrat Falls Project Management Team)
May 22, 2019	Ron Power (Muskrat Falls Project Management Team)
May 23, 2019	Lance Clarke (Muskrat Falls Project Management Team)
May 24, 2019	Tanya Power (Muskrat Falls Project Management Team)
May 27, 2019	Dave Wade (NLBT/RDCNL) Pat McCormick/Tom Walsh (NLBT/RDCNL)
May 28, 2019	No Public Hearing
May 29, 2019	Julia Mullaley (Government of Newfoundland and Labrador Official)
May 30, 2019	Julia Mullaley (Government of Newfoundland and Labrador Official) Scott O'Brien (Muskrat Falls Project Management Team)
May 31, 2019	Scott O'Brien (Muskrat Falls Project Management Team)

<div>  <div> Commission of Inquiry Respecting the Muskrat Falls Project Witness Schedule - Phase 2 Commencing 9:30 a.m. Local Time Lawrence O'Brien Arts Centre, Happy Valley-Goose Bay (February 18 - March 1, 2019) Beothuck Building, St. John's (March 15 - July 5, 2019) (Please Note: Schedule subject to change) </div> </div>	
Date	Witness
June 3, 2019	Craig Martin (Government of Newfoundland and Labrador) Paul Carter (Government of Newfoundland and Labrador)
June 4, 2019	Paul Carter (Government of Newfoundland and Labrador) Auburn Warren (Nalcor Energy)
June 5, 2019	Paul Harrington (Muskrat Falls Project Management Team)
June 6, 2019	Paul Harrington (Muskrat Falls Project Management Team)
June 7, 2019	No Public Hearing Scheduled
June 10, 2019	Ken Marshall (Former Nalcor Board Member)
June 11, 2019	Cathy Bennett (Former Government of Newfoundland and Labrador) John MacIsaac (Former Nalcor Energy)
June 12, 2019	Edmund Martin (Former Nalcor Energy)
June 13, 2019	Edmund Martin (Former Nalcor Energy)
June 14, 2019	No Public Hearing Scheduled
June 17, 2019	Donna Brewer (Former Government of Newfoundland and Labrador Official) Paul Myrden (Former Government of Newfoundland and Labrador Official) Paul Morris (Former Government of Newfoundland and Labrador Official)
June 18, 2019	Brendan Paddick (Nalcor Energy) George Jergeas (Expert)
June 19, 2019	George Jergeas (Expert)
June 20, 2019	Ed Over/Greg Snyder (SNC Lavalin) Jamie Chippett/Martin Goebel/ Dr. Susan Squires (Government of Newfoundland and Labrador)
June 21, 2019	Gilbert Bennett (Nalcor Energy)
June 24, 2019	Discovery Day
June 25, 2019	Gilbert Bennett (Nalcor Energy)
June 26, 2019	Gilbert Bennett (Nalcor Energy)
June 27, 2019	Siobhan Coady (Government of Newfoundland and Labrador)
June 28, 2019	Jennifer Fiddian-Green (Grant Thornton) Stan Marshall (Nalcor Energy)
July 1, 2019	Canada Day
July 2, 2019	Stan Marshall (Nalcor Energy)
July 3, 2019	Stan Marshall (Nalcor Energy)
July 4, 2019	Dwight Ball (Government of Newfoundland and Labrador)
July 5, 2019	Dwight Ball (Government of Newfoundland and Labrador)

Rev 7a
Updated: June 17, 2019



Commission of Inquiry Respecting the Muskrat Falls Project

Witness Schedule - Phase 3

Commencing 9:30 a.m. Local Time

Beothuck Building, St. John's (July 16 - 26, 2019)

(Please Note: Schedule subject to change)

Date	Witness
July 15, 2019	Orangeman's Day
July 16, 2019	Financial Effects Panel: Peter Alteen, Dennis Browne, Jerry Earle, Kevin Fagan, Bernice Hancock, Denise Hanrahan, Lorraine Michael, Brandon Schaufele
July 17, 2019	Pelino Colaiacovo (Morrison Park Advisors)
July 18, 2019	Pelino Colaiacovo (Morrison Park Advisors) AJ Goulding (London Economics)
July 19, 2019	AJ Goulding (London Economics)
July 22, 2019	Gobhina Nagarajah (Commission Associate Counsel) Judge Donovan Molloy
July 23, 2019	Water Management Hearing
July 24, 2019	Dr. Ole Jonny Klakegg (Norwegian University of Science and Technology)
July 25, 2019	Dr. Kelly Blidook (Memorial University of Newfoundland)
July 26, 2019	Mel Cappe, OC (University of Toronto)

Dated: July 9, 2019



**Commission of Inquiry Respecting the Muskrat Falls Project
Final Summations - Oral Submissions**

**Commencing 9:30 a.m. Local Time
Lawrence O'Brien Arts Centre, Happy Valley-Goose Bay
(August 12 - 16, 2019)**

(Please Note: Schedule subject to change)

Full Standing	Province of Newfoundland and Labrador
	Nalcor Energy
	Concerned Citizens Coalition
	Edmund Martin
	Kathy Dunderdale
	Former Provincial Government Officials 2003-2015
	Julia Mullaley/Charles Bown
	Robert Thompson
	Consumer Advocate
Limited and Special Standing	Innu Nation
	NunatuKavut Community Council
	Conseil des Innus de Ekuanitshit
	Grand Riverkeeper Labrador/Labrador Land Protectors
	Astaldi Canada, Inc
	Former Nalcor Board Members
	Newfoundland Power Inc.
	Dwight Ball/Siobhan Coady
	Grid Solutions Canada ULC



Commission of Inquiry Respecting the Muskrat Falls Project

NEWS RELEASE

The Honourable Justice Richard LeBlanc, Commissioner for Commission of Inquiry Respecting the Muskrat Falls Project (“Inquiry”), wishes to clarify its budget request based upon the content of yesterday’s Provincial budget.

The budget that the Commission submitted to the Government of Newfoundland and Labrador (“Government”) for Fiscal Years 2018/19 and 2019/20 was significantly lower than the \$33.7 million that was stated in yesterday’s Provincial budget. It is the Inquiry’s understanding that in addition to the amount it submitted, Government added costs to cover its participation in the Inquiry, as well as a contingency for unforeseen expenditures. Furthermore, the Inquiry understands that the Provincial budget included amounts for other anticipated inquiries.

The Inquiry wishes to assure the public that priority is being given to fiscal prudence in everything it does. It will spend only that which is necessary to respond to its mandate. Additionally, prior to incurring capital costs, the Inquiry sought Government advice so as to best ensure that, once its work has been completed, the items purchased for the Inquiry could be used for future inquiries or other Government needs.

It is also our intention to provide periodic summaries of the costs being incurred by the Inquiry and these will be posted on the Commission website.

Contact Information:

COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

5th Floor, Suite 502, Beothuck Building
20 Crosbie Place

St. John’s, NL A1B 3Y8

Telephone: 709-729-6076, Toll Free: 1-833-235-7702

Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca

Website: www.muskratfallsinquiry.ca

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Media contact:

Kate O’Brien
Commission Co-Counsel
(709) 729-6064
kateobrien@muskratfallsinquiry.ca

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Commission of Inquiry Respecting the Muskrat Falls Project

The Honourable Justice Richard D. LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project, is pleased to provide an update on the Inquiry's expenditures for the period ending March 31, 2018.

Expenditures during Fiscal Year Ended March 31, 2018

The Inquiry was established by the Government of Newfoundland and Labrador on November 20, 2017, in accordance with Part I of the *Public Inquiries Act, 2006*. From that time through March 31, 2018, the Inquiry recorded expenditures of \$1.33 million, summarized as follows:

Expenditures for Fiscal Year 2017/18

Category	Actual
Professional Services	\$ 888,382
Staff	101,217
Purchased Services	258,673
Furnishings and Equipment	38,349
Supplies	30,113
Travel and Communications	12,885
TOTAL	\$ 1,329,619

Professional Services: This category covers the compensation paid to the two Commission Co-Counsel, a Financial and Audit Advisor and a Forensic and Investigative Auditor.

Staff: The Inquiry has an eleven-person staff complement providing administrative, information management, research and legal support to the Commissioner and Commission Co-Counsel. These expenditures comprise the compensation paid these personnel.

Purchased Services: This expenditure category covers rent, leasehold improvements and transcripts.

Furnishings and Equipment: This category includes costs for computer equipment, broadcast and transcription equipment, as well as furnishings for the hearing space and administrative offices.

Supplies: This expenditure category includes photocopying, publishing of notices and the provision of hearing broadcast capabilities.

Travel and Communications: This category includes expenditures on travel and communications.



Commission of Inquiry Respecting the Muskrat Falls Project

The Honourable Justice Richard D. LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project, is pleased to provide a quarterly update on the Inquiry's expenditures. The Inquiry was established by the Government of Newfoundland and Labrador on November 20, 2017, in accordance with Part I of the *Public Inquiries Act, 2006*.

Expenditures during the Three Months Ending June 30, 2018

For the three months ending June 30, 2018, the Inquiry recorded expenditures of \$1.64 million, summarized as follows:

Expenditures for the Three Months Ending June 30, 2018

Category	Actual
Professional Services	\$ 1,365,921
Staff	179,609
Purchased Services	85,124
Furnishings and Equipment	6,736
Supplies	2,017
Travel and Communications	3,386
TOTAL	\$ 1,642,793

Expenditures for the Inquiry To-Date

Since the establishment of the Inquiry on November 20, 2017, the Inquiry has recorded expenditures of \$2.97 million, summarized as follows:

Expenditures since Establishment of the Inquiry (November 20, 2017)

Category	Actual
Professional Services	\$ 2,254,303
Staff	280,826
Purchased Services	343,797
Furnishings and Equipment	45,085
Supplies	32,130
Travel and Communications	16,271
TOTAL	\$ 2,972,412

Explanatory Notes:

Professional Services: This category covers the compensation paid to the two Commission Co-Counsel, a Financial and Audit Advisor and a Forensic and Investigative Auditor.

Staff: The Inquiry has a fourteen-person staff complement providing administrative, information management, research and legal support to the Commissioner and Commission Co-Counsel. These expenditures comprise the compensation paid these personnel.

Purchased Services: This expenditure category covers rent, leasehold improvements and transcripts.

Furnishings and Equipment: This category includes costs for computer equipment, broadcast and transcription equipment, as well as furnishings for the hearing space and administrative offices.

Supplies: This expenditure category includes photocopying, publishing of notices and the provision of hearing broadcast capabilities.

Travel and Communications: This category includes expenditures on travel and communications.



Commission of Inquiry Respecting the Muskrat Falls Project

The Honourable Justice Richard D. LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project, is pleased to provide a quarterly update on the Inquiry's expenditures. The Inquiry was established by the Government of Newfoundland and Labrador on November 20, 2017, in accordance with Part I of the *Public Inquiries Act, 2006*.

Expenditures during the Three Months Ending September 30, 2018

For the three months ending September 30, 2018, the Inquiry recorded expenditures of \$2.11 million, summarized as follows:

Expenditures for the Three Months Ending September 30, 2018

Category	Actual
Professional Services	\$ 1,614,396
Staff	277,860
Purchased Services	81,916
Furnishings and Equipment	48,486
Supplies	79,840
Travel and Communications	12,470
TOTAL	\$ 2,114,968

Expenditures for the Inquiry To-Date

Since the establishment of the Inquiry on November 20, 2017, the Inquiry has recorded expenditures of \$5.09 million, summarized as follows:

Expenditures since Establishment of the Inquiry (November 20, 2017)

Category	Actual
Professional Services	\$ 3,868,699
Staff	558,686
Purchased Services	425,713
Furnishings and Equipment	93,571
Supplies	111,970
Travel and Communications	28,741
TOTAL	\$ 5,087,380

Explanatory Notes:

Professional Services: This category principally covers the compensation paid to the two Commission Co-Counsel, a Financial and Audit Advisor, a Forensic and Investigative Auditor and Counsel for Parties with Standing.

Staff: The Inquiry has a fourteen-person staff complement providing administrative, information management, research and legal support to the Commissioner and Commission Co-Counsel. These expenditures comprise the compensation paid these personnel.

Purchased Services: This expenditure category covers rent, leasehold improvements and transcripts.

Furnishings and Equipment: This category includes costs for computer equipment, broadcast and transcription equipment, as well as furnishings for the hearing space and administrative offices.

Supplies: This expenditure category includes photocopying, publishing of notices and the provision of hearing broadcast capabilities.

Travel and Communications: This category includes expenditures on travel and communications.



Commission of Inquiry Respecting the Muskrat Falls Project

The Honourable Justice Richard D. LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project, is pleased to provide a quarterly update on the Inquiry's expenditures. The Inquiry was established by the Government of Newfoundland and Labrador on November 20, 2017, in accordance with Part I of the *Public Inquiries Act, 2006*.

Expenditures during the Three Months Ending December 31, 2018

For the three months ending December 31, 2018, the Inquiry recorded expenditures of \$2.76 million, summarized as follows:

Expenditures for the Three Months Ending December 31, 2018

Category	Actual
Professional Services	\$ 2,120,410
Staff	347,349
Purchased Services	237,103
Furnishings and Equipment	9,968
Supplies	22,793
Travel and Communications	19,219
TOTAL	\$ 2,756,841

It should be noted that there are approximately \$0.8 million in additional costs (primarily professional fees) that have been incurred but not paid during the quarter.

Expenditures for the Inquiry To-Date

Since the establishment of the Inquiry on November 20, 2017, the Inquiry has recorded expenditures of \$7.84 million, summarized as follows:

Expenditures since Establishment of the Inquiry (November 20, 2017)

Category	Actual
Professional Services	\$ 5,989,109
Staff	906,035
Purchased Services	662,816
Furnishings and Equipment	103,539
Supplies	134,763
Travel and Communications	47,960
TOTAL	\$ 7,844,221

Explanatory Notes:

Professional Services: This category principally covers the compensation paid to the two Commission Co-Counsel, a Financial and Audit Advisor, a Forensic and Investigative Auditor and Counsel for Parties with Standing.

Staff: The Inquiry has a fourteen-person staff complement providing administrative, information management, research and legal support to the Commissioner and Commission Co-Counsel. These expenditures comprise the compensation paid these personnel, sheriffs and the broadcast and transcription personnel from the House of Assembly.

Purchased Services: This expenditure category covers rent, leasehold improvements and transcripts.

Furnishings and Equipment: This category includes costs for computer equipment, broadcast and transcription equipment, as well as furnishings for the hearing space and administrative offices.

Supplies: This expenditure category includes office supplies, photocopying, publishing of notices and the provision of hearing broadcast capabilities.

Travel and Communications: This category includes expenditures on travel and communications.



Commission of Inquiry Respecting the Muskrat Falls Project

The Honourable Justice Richard D. LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project, is pleased to provide a quarterly update on the Inquiry's expenditures. The Inquiry was established by the Government of Newfoundland and Labrador on November 20, 2017, in accordance with Part I of the *Public Inquiries Act, 2006*.

Expenditures during the Three Months Ending March 31, 2019

For the three months ending March 31, 2019, the Inquiry recorded expenditures of \$3.30 million, summarized as follows:

Expenditures for the Three Months Ending March 31, 2019

Category	Actual
Professional Services	\$ 2,447,339
Staff	728,442
Purchased Services	68,802
Furnishings and Equipment	8,705
Supplies	8,928
Travel and Communications	41,734
TOTAL	\$ 3,303,950

Expenditures for the Inquiry To-Date

Since the establishment of the Inquiry on November 20, 2017, the Inquiry has recorded expenditures of \$11.15 million, summarized as follows:

Expenditures since Establishment of the Inquiry (November 20, 2017)

Category	Actual
Professional Services	\$ 8,436,448
Staff	1,634,477
Purchased Services	731,618
Furnishings and Equipment	112,244
Supplies	143,691
Travel and Communications	88,694
TOTAL	\$ 11,148,171

Explanatory Notes:

Professional Services: This category principally covers the compensation paid to the two Commission Co-Counsel, a Financial and Audit Advisor, a Forensic and Investigative Auditor and Counsel for Parties with Standing.

Staff: The Inquiry has a fourteen-person staff complement providing administrative, information management, research and legal support to the Commissioner and Commission Co-Counsel. These expenditures comprise the compensation paid these personnel, sheriffs and the broadcast personnel from the House of Assembly.

Purchased Services: This expenditure category covers rent, leasehold improvements and transcripts.

Furnishings and Equipment: This category includes costs for computer equipment, broadcast and transcription equipment, as well as furnishings for the hearing space and administrative offices. It should be noted that the majority of the expenditures recorded in the most recent quarter resulted from the late receipt of an invoice for hearing space furniture delivered in September, 2018.

Supplies: This expenditure category includes office supplies, photocopying, publishing of notices and the provision of hearing broadcast capabilities.

Travel and Communications: This category includes expenditures on travel and communications.



Commission of Inquiry Respecting the Muskrat Falls Project

The Honourable Justice Richard D. LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project, is pleased to provide a quarterly update on the Inquiry's expenditures. The Inquiry was established by the Government of Newfoundland and Labrador on November 20, 2017, in accordance with Part I of the *Public Inquiries Act, 2006*.

Expenditures during the Three Months Ending June 30, 2019

For the three months ending June 30, 2019, the Inquiry recorded expenditures of \$1.99 million, summarized as follows:

Expenditures for the Three Months Ending June 30, 2019

Category	Actual
Professional Services	\$ 1,278,208
Staff	572,287
Purchased Services	122,993
Furnishings and Equipment	--
Supplies	9,708
Travel and Communications	10,686
TOTAL	\$ 1,993,882

Expenditures for the Inquiry To-Date

Since the establishment of the Inquiry on November 20, 2017, the Inquiry has recorded expenditures of \$13.14 million, summarized as follows:

Expenditures since Establishment of the Inquiry (November 20, 2017)

Category	Actual
Professional Services	\$ 9,714,655
Staff	2,206,764
Purchased Services	854,612
Furnishings and Equipment	112,244
Supplies	153,399
Travel and Communications	100,380
TOTAL	\$ 13,142,054

Explanatory Notes:

Professional Services: This category covers the compensation paid to the two Commission Co-Counsel, a Financial and Audit Advisor and a Forensic and Investigative Auditor.

Staff: The Inquiry has a fourteen-person staff complement providing administrative, information management, research and legal support to the Commissioner and Commission Co-Counsel. These expenditures comprise the compensation paid these personnel.

Purchased Services: This expenditure category covers rent, leasehold improvements and transcripts.

Furnishings and Equipment: This category includes costs for computer equipment, broadcast and transcription equipment, as well as furnishings for the hearing space and administrative offices.

Supplies: This expenditure category includes photocopying, publishing of notices and the provision of hearing broadcast capabilities.

Travel and Communications: This category includes expenditures on travel and communications.



Commission of Inquiry Respecting the Muskrat Falls Project

The Honourable Justice Richard D. LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project, is pleased to provide a quarterly update on the Inquiry's expenditures. The Inquiry was established by the Government of Newfoundland and Labrador on November 20, 2017, in accordance with Part I of the *Public Inquiries Act, 2006*.

Expenditures during the Three Months Ended September 30, 2019

For the three months ending September 30, 2019, the Inquiry recorded expenditures of \$2.47 million, summarized as follows:

Expenditures for the Three Months Ended September 30, 2019

Category	Actual
Professional Services	\$ 1,756,318
Staff	584,343
Purchased Services	96,173
Furnishings and Equipment	-
Supplies	3,341
Travel and Communications	28,635
TOTAL	\$ 2,468,810

Expenditures for the Inquiry To-Date

Since the establishment of the Inquiry on November 20, 2017, the Inquiry has recorded expenditures of \$15.61 million, summarized as follows:

Expenditures since Establishment of Inquiry (November 20, 2017)

Category	Actual
Professional Services	\$ 11,470,973
Staff	2,791,107
Purchased Services	950,784
Furnishings and Equipment	112,244
Supplies	156,740
Travel and Communications	129,015
TOTAL	\$ 15,610,863

Explanatory Notes:

Professional Services: This category covers the compensation paid to the two Commission Co-Counsel, Standing Counsel that requested and received funding, a Financial and Audit Advisor and a Forensic and Investigative Auditor.

Staff: The Inquiry currently has a staff complement of ten (fourteen at June 30, 2019) providing administrative, information management, research and legal support to the Commissioner and Commission Co-Counsel. These expenditures comprise the compensation paid these personnel as well as sheriff and broadcast staff.

Purchased Services: This category covers rent, leasehold improvements and transcripts.

Furnishings and Equipment: This category includes costs for computer equipment, broadcast and transcription equipment, as well as furnishings for the hearing space and administrative offices.

Supplies: This category includes photocopying, publishing of notices and the provision of hearing broadcast capabilities.

Travel and Communications: This category includes expenditures on travel and communications.



Commission of Inquiry Respecting the Muskrat Falls Project

The Honourable Justice Richard D. LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project, is pleased to provide a quarterly update on the Inquiry's expenditures. The Inquiry was established by the Government of Newfoundland and Labrador on November 20, 2017, in accordance with Part I of the *Public Inquiries Act, 2006*.

Expenditures during the Three Months Ended December 31, 2019

For the three months ending December 31, 2019, the Inquiry recorded expenditures of \$0.8 million, summarized as follows:

Expenditures for the Three Months Ended December 31, 2019

Category	Actual
Professional Services	\$ 490,370
Staff	217,993
Purchased Services	125,347
Furnishings and Equipment	-
Supplies	3,038
Travel and Communications	-
TOTAL	\$ 836,747

Expenditures for the Inquiry To-Date

Since the establishment of the Inquiry on November 20, 2017, the Inquiry has recorded expenditures of \$16.5 million, summarized as follows:

Expenditures since Establishment of Inquiry (November 20, 2017)

Category	Actual
Professional Services	\$ 12,046,780
Staff	2,970,801
Purchased Services	908,317
Furnishings and Equipment	105,629
Supplies	330,601
Travel and Communications	133,995
TOTAL	\$ 16,496,123

Explanatory Notes:

Professional Services: This category covers the compensation paid to the Commission Co-Counsel, Standing Counsel that requested and received funding, a Financial and Audit Advisor and a Forensic and Investigative Auditor.

Staff: At December 31, 2019, the Inquiry currently has a staff complement of six (ten at September 30, 2019) providing administrative, information management, research and legal support to the Commissioner and Commission Co-Counsel. These expenditures comprise the compensation paid these personnel as well as sheriff and broadcast staff.

Purchased Services: This category covers rent, leasehold improvements and transcripts.

Furnishings and Equipment: This category includes costs for computer equipment, broadcast and transcription equipment, as well as furnishings for the hearing space and administrative offices.

Supplies: This category includes photocopying, publishing of notices and the provision of hearing broadcast capabilities.

Travel and Communications: This category includes expenditures on travel and communications.



Commission of Inquiry Respecting the Muskrat Falls Project

The Commission of Inquiry Respecting the Muskrat Falls Project was established by the Government of Newfoundland and Labrador on November 20, 2017, in accordance with Part I of the *Public Inquiries Act, 2006*. Its mandate expires on March 31, 2020, at which time it becomes *functus officio*. The Honourable Justice Richard D. LeBlanc, Commissioner for the Commission of Inquiry Respecting the Muskrat Falls Project, is pleased to provide his final update on the Inquiry's expenditures.

During the period November 20, 2017 through March 31, 2020, it is estimated that the Commission will record expenditures of \$16.9 million, summarized as follows:

Estimated Expenditures — November 20, 2017- March 31, 2020

Category	Estimate
Professional Services Retained by Commission	\$ 9,440,534
Counsel of Parties Recommended for Funding ^{Note 1}	2,858,546
Staff	2,984,802
Purchased Services	1,008,317
Supplies	335,624
Travel and Communications	134,636
Furnishings and Equipment	105,629
TOTAL	\$ 16,868,088

Note 1: Includes only payments made to legal counsel for the nine parties with standing that the Commissioner recommended for funding.

Explanatory Notes:

Professional Services Retained by Commission: This category covers the compensation paid to the Commission Co-Counsel, a Financial and Audit Advisor, a Forensic and Investigative Auditor, and expert witnesses.

Counsel of Parties Recommended for Funding: This category represents the payments made to legal counsel for the nine parties with standing that the Commissioner recommended for funding by the Government of Newfoundland and Labrador.

The Commission understands that the Government of Newfoundland and Labrador has incurred other expenses for legal counsel and consultants. No application was made to the Commission for a recommendation for such funding, nor were these expenses approved or reviewed by it. As a result, these expenses have not been included here.

Staff: The Commission staff provided administrative, information management, research and legal support to the Commissioner and Commission Co-Counsel. The staff complement peaked at 16. These expenditures comprise the compensation paid these personnel as well as sheriff and broadcast staff.

Purchased Services: This category covers rent, leasehold improvements and transcripts.

Supplies: This category includes photocopying, publishing of notices and the provision of hearing broadcast capabilities.

Travel and Communications: This category includes expenditures on travel and communications.

Furnishings and Equipment: This category includes costs for computer equipment, broadcast and transcription equipment, as well as furnishings for the hearing space and administrative offices. All expenses for furnishings and equipment remain with Government of Newfoundland and Labrador for future use.



Commission of Inquiry Respecting the Muskrat Falls Project

Undertaking of Counsel to the Commission

I undertake to the Commission of Inquiry Respecting the Muskrat Falls Project (the Commission) that any and all documents or information which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documents or information to anyone for whom I do not act and, to anyone for whom I act, only upon the individual in question giving the written undertaking annexed hereto. In the event I act for a corporation, coalition, or other organization, I will disclose such documents and information to anyone who is an employee or member of that corporation, coalition, or other organization, only upon the individual in question giving the written undertaking annexed hereto. I will provide the original of all written undertakings to the Commission.

I understand that the undertaking has no force or effect once any such document or information has become part of the public proceedings of the Commission, or to the extent that the Commission may release me from the undertaking with respect to any document or information. For greater certainty, a document is only part of the public proceedings once the document is made a public exhibit at the Inquiry or otherwise published on the Inquiry's website.

With respect to those documents or information which remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy those documents or information, and provide a certificate of destruction to the Commission, or to return those documents to the Commission for destruction.

I undertake to make best efforts to collect for destruction such documents or information from anyone to whom I have disclosed any documents or information which were produced to me in connection with the Commission's proceedings. I further undertake that in the event that I am unable to collect such documents or information, I will advise Commission Counsel forthwith and provide in writing a description of the efforts undertaken as well as identify the person(s) from whom I have been unable to collect the documents or information.

Name (Printed): _____

Signature: _____ Date: _____

Witness (Printed): _____

Signature: _____ Date: _____



Commission of Inquiry Respecting the Muskrat Falls Project

Confidentiality Undertaking - Parties to the Commission

I undertake to the Commission of Inquiry Respecting the Muskrat Falls Project (the Commission) that any and all documents or information which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documents or information to anyone.

I understand that this undertaking will have no force or effect with respect to any document or information which becomes part of the public proceedings of the Commission, or to the extent that the Commission may release me from the undertaking with respect to any document or information. For greater certainty, a document is only part of the public proceedings once the document is made a public exhibit at the Inquiry or otherwise published on the Inquiry's website.

With respect to those documents or information which remain subject to this undertaking at the end of the Inquiry, I further understand that such documents or information will be collected from me by the person acting as my counsel who disclosed them to me. I will not make or retain any copies.

Name (Printed): _____

Signature: _____ Date: _____

Witness (Printed): _____

Signature: _____ Date: _____



Commission of Inquiry Respecting the Muskrat Falls Project

Confidentiality Undertaking – Staff, Suppliers and Service Providers

I undertake to the Commission of Inquiry Respecting the Muskrat Falls Project (the Commission) to keep confidential any and all of the Commission's documents or information that are not in the public domain and to which I may become privy during the course of my assignment with the Commission. I understand that keeping documents or information confidential means that I cannot disclose any such documents or information to anyone other than the Commissioner, other Commission staff, or third parties to whom the Commissioner or Commission Counsel has explicitly instructed me to disclose.

I will not use these documents or information for any purpose other than my work for the Commission. I understand that confidential information includes both written material as well as that conveyed through discussion in the course of the Commission's daily business.

At the end of my assignment with the Commission, I will not make copies of, and will return, any and all documents that are subject to this undertaking.

Name (Printed): _____

Signature: _____ Date: _____

Witness (Printed): _____

Signature: _____ Date: _____



Commission of Inquiry Respecting the Muskrat Falls Project

Confidentiality Undertaking - Auditor

I undertake to the Commission of Inquiry Respecting the Muskrat Falls Project (the “Commission”) to keep confidential any and all documents or information that are not in the public domain and to which I may become privy during the course of my work with the Commission. I understand that keeping documents or information confidential means that I cannot disclose any such documents or information to anyone other than the Commissioner, other Commission staff, my own staff who are under a duty of confidentiality, or third parties to whom the Commissioner has explicitly instructed me to disclose.

I undertake not to use these documents or information for any purpose other than my work for the Commission. I understand that confidential information includes both written materials as well as information conveyed through discussion in the course of the Commission’s daily business.

At the end of my work with the Commission, I will only keep such documents as I deem necessary to meet my regulatory and professional obligations and for such a period as I deem necessary to meet these obligations. Such documents will be kept confidential and will be stored in a secure location.

I confirm that I have had all staff and consultants who may have access to documents or information related to my work with the Commission sign a similar Confidentiality Undertaking.

Name (Printed): _____

Signature: _____ Date: _____

Witness (Printed): _____

Signature: _____ Date: _____



Commission of Inquiry Respecting the Muskrat Falls Project

Confidentiality Undertaking - Witness to the Commission

I undertake to the Commission of Inquiry Respecting the Muskrat Falls Project (the Commission) that any and all documents or information which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documents or information to anyone.

I understand that this undertaking will have no force or effect with respect to any document or information which becomes part of the public proceedings of the Commission, or to the extent that the Commission may release me from the undertaking with respect to any document or information. For greater certainty, a document is only part of the public proceedings once the document is made an exhibit at the Inquiry or otherwise published on the Inquiry's website.

With respect to those documents or information which remain subject to this undertaking at the end of the Inquiry, I further understand that such documents or information will be collected from me by the person acting as my counsel who disclosed them to me. I will not make or retain any copies.

Name (Printed): _____

Signature: _____ Date: _____

Witness (Printed): _____

Signature: _____ Date: _____



Commission of Inquiry Respecting the Muskrat Falls Project

Confidentiality Undertaking - Expert

I undertake to the Commission of Inquiry Respecting the Muskrat Falls Project (the Inquiry) to keep confidential any and all of the Inquiry's documents or information that are not in the public domain and to which I may become privy during the course of my assignment with the Inquiry. I understand that keeping documents or information confidential means that I cannot disclose any such documents or information to anyone other than the Commissioner, other Inquiry staff, or third parties to whom the Commissioner or Commission Counsel has explicitly instructed me to disclose.

I will not use these documents or information for any purpose other than my work for the Inquiry. I understand that confidential information includes both written material as well as that conveyed through discussion in the course of the Commission's daily business.

At the end of my assignment with the Inquiry, I will not make copies of, and will return, any and all documents that are subject to this undertaking.

Name: _____

Signature: _____

Date: _____

Witness: _____

Signature: _____

Date: _____



Commission of Inquiry Respecting the Muskrat Falls Project

Exhibit Undertaking - Media

I undertake to the Commission of Inquiry Respecting the Muskrat Falls Project (the “Commission”) as follows:

- I will not broadcast or publish any anticipated public exhibits of the Commission prior to the exhibit being formally entered by Commissioner Richard LeBlanc as a public exhibit.
- I will not broadcast or publish any confidential exhibit or anticipated confidential exhibit of the Commission.
- I will not knowingly provide any confidential or anticipated exhibit of the Commission to any person who has not provided a similar undertaking to the Commission.

Name (Printed): _____

Signature: _____ Date: _____

Witness (Printed): _____

Signature: _____ Date: _____



Summons to Produce

(Issued under Section 9(b) of the *Public Inquiries Act*, 2006, S.N.L. 2006, c. P-38.1)

Re: Commission of Inquiry Respecting the Muskrat Falls Project

To:

Attention:

Documents for immediate production

You are hereby required to produce to Commission counsel Barry Learmonth, Q.C. and Kate O'Brien of the Commission of Inquiry Respecting the Muskrat Falls Project at the Commission's offices at 5th Floor, Beothuk Building, 20 Crosbie Place, St. John's, NL A1B 3Y8, on or before _____ the following documents:

-
-

On-going production

Document production is an on-going requirement and any documents and things that may relate in any way to the Terms of Reference of the Commission of Inquiry Respecting the Muskrat Falls Project and that come into the custody and control of _____ after the above-cited deadlines or are uncovered after the above-cited deadlines must be produced to Commission counsel as soon as practicable.

"Documents"

The term "documents" is intended to have a broad meaning, and includes the following mediums: written, electronic, text, cellular or social media messaging, audiotape, videotape, digital reproductions, photographs, films, slides, maps, graphs, microfiche, metadata, and any data and information recorded or stored by means of any device.

Form of production

Documents should be produced in optical character recognition (OCR) pdf format. Each document should be produced as a separate file named using the following convention:

[date of creation in yyyyymmdd format] [description of document]

For example: 20120327 letter from Jane Doe re meeting with John Deer

Dated at St. John's, Newfoundland and Labrador,
this ____ day of _____, 201__.

**Commission of Inquiry Respecting the
Muskrat Falls Project**

Commissioner Richard D. LeBlanc



Commission of Inquiry Respecting the Muskrat Falls Project

Summons to Witness

(Issued under s. 9(a) of the *Public Inquiries Act, 2006*, SNL 2006, c. P-38.1)

Re: Commission of Inquiry Respecting the Muskrat Falls Inquiry

To:

You are hereby summoned to attend before the Commission of Inquiry Respecting the Muskrat Falls Project at the Beothuck Building, 20 Crosbie Road, 3rd Floor, St. John's, Newfoundland and Labrador, _____, 201__ at 9:00 a.m. in the forenoon, and from time to time until the Commission of Inquiry is concluded or Commissioner Richard LeBlanc orders.

Dated at St. John's, Newfoundland and Labrador, this __ day of _____, 201__.

Commissioner Richard LeBlanc

A person summoned to attend as a witness before the Commission of Inquiry Respecting the Muskrat Falls Project is entitled to be paid the same personal allowances for their attendance at the hearing as are paid for the attendance of a witness to attend before the Supreme Court of Newfoundland and Labrador.

Warning: If you fail without lawful excuse to attend on being summoned as a witness under s. 9(a), you are liable to punishment by the Supreme Court of Newfoundland and Labrador in the same manner as if you were found guilty of contempt in that Court.



Commission of Inquiry Respecting the Muskrat Falls Project

Date

TO:

By Email:

Dear

**Re: Commission of Inquiry Respecting the Muskrat Falls Project
Notice of Appearance at Public Hearing**

The Commission of Inquiry Respecting the Muskrat Falls Project (Commission) will be holding Public Hearings this fall in Happy Valley-Goose Bay from _____, 201__; and in St. John's from _____, 201__ through _____, 201__.

The Commission wishes to advise you that it intends to call you as a witness to appear at the Public Hearings. While we are continuing to refine our schedule, as a matter of courtesy, we wish to advise that we expect to call you to appear at some point during the period _____, 201__ through _____, 201__. Please organize your calendar such that you are available to appear during this period.

As the Commission firms up its schedule in the coming weeks, it will issue you a Summons to Witness, pursuant to Section 9(a) of the *Public Inquiries Act, 2006*, SNL2006. C. P38-1. You will be required to appear as a witness on the date(s) included on that summons.

If you have any questions or require further information, please feel free to contact one of us.

Sincerely yours,

KATE O'BRIEN
Commission Co-Counsel

BARRY LEARMONTH, Q.C.
Commission Co-Counsel

5th Floor, Beothuck Building, 20 Crosbie Place, St. John's, NL A1B 3Y8

Kate O'Brien
709-729-6064
kateobrien@muskratfallsinquiry.ca

Barry Learmonth
709-729-6030
barrylearmonth@muskratfallsinquiry.ca



Commission of Inquiry Respecting the Muskrat Falls Project

Affidavit of Service

I declare that I, _____ of _____
 in the Province of _____ served _____
 on _____ by giving him/her a Summons to Witness to appear before
 the Commission of Inquiry Respecting the Muskrat Falls Project.

Sworn to or Affirmed at _____, this ____ day of _____, 201__.

 Signature of Person authorized to
 Administer Oath

 Signature



Commission of Inquiry Respecting the Muskrat Falls Project

Acknowledgement of Service

I acknowledge that I, _____ received a copy of a Summons to Witness to appear before the Commission of Inquiry Respecting the Muskrat Falls Project on the following date(s):

_____ day(s) of _____, 2019.

I was served by:

_____ Personal Service

_____ Regular Mail

_____ Email

_____ Fax

Signature

Dated



Commission of Inquiry Respecting the Muskrat Falls Project

Draft Letter to Parties with Standing Regarding the Secure Destruction of Documents Disclosed by the Commission of Inquiry

February __, 2020

TO: Counsel for Parties with Standing

**RE: Secure Destruction of Documents Disclosed by the Commission of Inquiry
Respecting the Muskrat Falls Project “the Commission”**

In accordance with Rule 24 of the Rules of Procedure, if you had transferred electronic records from our Kiteworks Secure File Transfer site to another storage medium, such as a computer hard drive, network server, flash drive, CD-ROM, DVD, or made a printed version of documents, other than those that were made public as “P” Exhibits during the Inquiry, we ask that you certify to us in writing that you have securely destroyed all versions of the documents.

In addition, as per your signed Confidentiality Undertaking on record with the Commission, you undertake to make best efforts to collect for destruction such documents or information from anyone to whom you have disclosed any documents or information which were produced to you in connection with the Commission’s proceedings. You further undertake that in the event that you are unable to collect such documents or information, you will advise Commission Counsel forthwith and provide in writing a description of the efforts undertaken as well as identify the person(s) from whom you have been unable to collect the documents or information.

A letter certifying that the electronic and paper documents have been securely destroyed should be returned to our office no later than _____.

Sincerely yours,

Gerry Beresford
Chief Administrative Officer

5th Floor, Beothuck Building, 20 Crosbie Place, St. John’s, NL A1B 3Y8

Tel: 709-729-6076
Toll Free: 1-833-235-7702
Fax: 709-729-6070

Email: admin@muskratfallsinquiry.ca
Website: www.muskratfallsinquiry.ca

Commission Summary

Key Dates

Order-in-Council establishing the Commission and appointing the Honourable Richard LeBlanc as Commissioner	November 20, 2017
Hearing of Applications for Standing and/or Funding.....	April 6, 2018
First Day of Phase I Hearings	September 17, 2018
Last Day of Phase I Hearings.....	December 21, 2018
First Day of Phase 2 Hearings.....	February 18, 2019
Last Day of Phase 2 Hearings	July 5, 2019
First Day of Phase 3 Hearings.....	July 16, 2019
Last Day of Phase 3 Hearings	July 26, 2019
First Day of Final Summations.....	August 12, 2019
Last Day of Final Summations	August 15, 2019

Key Statistics

Number of witnesses	134
Number of hearing days.....	140
Number of public exhibits	4,559
Number of in camera exhibits	119
Number of pages of transcripts – Witness Interviews.....	11,426
Number of pages of transcripts – Public Hearings.....	12,288
Number of documents in Commission database.....	5,932,167

Commission Expenditures

November 20, 2017 – March 31, 2020 (Estimated).....	\$16,868,088
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Note:

HST is not included

Commission of Inquiry Staff and Support Services

Commissioner

Justice Richard LeBlanc

Commission Co-Counsel

Barry Learmonth, Q.C.
Irene Muzychka, Q.C.
Kate O'Brien

Associate Counsel

Michael Collins
Adrienne Ding
Kirsten Morry

Researchers

Kate Dutton	Chris McGee
Joanne Harris	Sheridan Moores
Stephen Kiraly	Rosie Myers

Legal Services

Gobhina Nagarajah

Audit and Financial Advisor

David Howe

Chief Administrative Officer

Gerry Beresford

Manager of Operations

Diane Blackmore

Hearing Clerk/Administrative Assistant

Marcella Mulrooney

Information Management

Jackie Barry	Patricia Oliver
--------------	-----------------

Administrative Assistant

Natasha Boodansingh

Editorial Services

Sandy Newton

Sheriff's Officers

Tina Bradbury	Neil Kelly
Wally Broomfield	Corrine Pye
Adam Byrne	

Broadcast Services, House of Assembly

Danny Arsenault	Cathy Simms
Darren Churchill	Calvin Tobin
Shayne Meade	

IT and Network Support

Office of the Chief Information Officer

Transcription Services

Hansard Office, House of Assembly

Logistics

Neil Croke, Justice and Public Safety
Mark Jerrett, Hansard Office

Cover and Report Design

Diane Blackmore
Photos provided by Nalcor

Purchasing

Denise Eddy, Justice and Public Safety
Public Purchasing Agency

Report Production

Office of the Queen's Printer