



**House of Assembly  
Newfoundland and Labrador**

**Minutes of the House of Assembly  
Management Commission**

**Date:** December 6, 2017

**Location:** House of Assembly Chamber

**Time:** 5:05 p.m.

**Members Present:**

Hon. Perry Trimper, MHA, Lake Melville, Speaker  
Ms. Sandra Barnes, Clerk of the House of Assembly  
Hon. Andrew Parsons, Government House Leader  
Mr. Paul Davis, MHA (PC) Topsail-Paradise  
Ms. Lorraine Michael, MHA (NDP), St. John's East-Quidi Vidi  
Mr. Mark Browne, MHA (Lib) Placentia West - Bellevue  
Mr. Keith Hutchings, MHA (PC), Ferryland  
Hon. Siobhan Coady, MHA (Lib), St. John's West

**Other**

Mr. Brian Warr, Deputy Speaker

As required under the *House of Assembly Accountability, Integrity and Administration Act*, the Speaker reported the following decisions made at an *in camera* meeting, held prior to the televised meeting:

**CM 2017-070** The Commission, at an *in camera* meeting, concurred in the Lieutenant Governor in Council's recommendation that, upon appointment as Auditor General, Ms. Julia Mullaley continue to be compensated on point scale 2676 (EP-01) at step 25 with general economic increases to apply.

**CM 2017-071** The Commission, at an *in camera* meeting, approved the restructuring proposal submitted by the Information and Privacy Commissioner. In order to give effect to the new organizational structure, the Commission approved the following:

- Abolishment of the following positions:
  - o Assistant Commissioner;

- Senior Access and Privacy Analyst (Advocacy and Compliance); and,
- Intake Officer.
- Creation a new position of Director, Research and Quality Assurance (DRQA), reporting directly to the Commissioner;
- Re-titling and reclassification of the current position of Senior Access and Privacy Analyst to Senior Access and Privacy Analyst – Investigations, Advocacy and Compliance, reporting directly to the Commissioner;
- Creation of two new permanent positions of Access and Privacy Analyst, reporting to the Senior Access and Privacy Analyst – Investigations, Advocacy and Compliance; and
- Re-titling and reclassification of the current position of Executive Assistant to the Commissioner to Administrative Assistant, reporting to the Business Manager.

**CM 2017-072** The Minutes of the House of Assembly Management Commission meeting held on November 8, 2017 were approved as read.

In accordance with the Standard Office Allocation Package, the Clerk reported approvals of furniture and equipment purchased for constituency offices up to a maximum of \$1000 (per item) for the period ended November 30, 2017. The Clerk reported the following items for the Member for St. George's-Humber:

- Document holder - \$32.00
- Compact keyboard - \$92.00
- Wireless headset - \$392.00
- High back, multi-tilter chair - \$675.00

The financial reports for the Legislature and the Member Accountability and Disclosure Reports for the period April 1, 2017 to September 30, 2017 were provided to the Commission for review.

**CM 2017-073** Pursuant to subparagraph 20(6)(b)(ii) of the *House of Assembly Accountability, Integrity and Administration Act*, the Commission approved the Consolidated Severance Policy for Members of the House of Assembly and defined the transition period as:

The Member may select a transition period that is not less than 3 months, and not greater than 12 months.

**CM 2017-074** In accordance with the Transfer of Funds Policy, the Commission approved the following transfer of funds:

**From:**

Subdivision 1.1.04.09 Members' Resources – Allowances and Assistance: \$54,000

**To:**

Subdivision 1.1.03.02 Hansard and the Broadcast Centre – Property, Furnishings and Equipment: \$ 54,000

**CM 2017-075** The Commission did not approve an amendment to the House of Assembly Broadcast Guidelines to allow for split-screen shots.

**CM 2017-076** In accordance with CM 2017-033, the Commission agreed to the following schedule of meetings for the Spring of 2017-2018 as follows:

- January 2018, with the exact date to be determined in consultation with Commission members early in January 2018;
- March 14, 2018; and,
- April 18, 2018.

**Adjournment:** 5:51 p.m.

Hon. Perry Trimper, MHA  
Speaker and Chair of the Commission

Sandra Barnes  
Clerk and Secretary to the Commission

**House of Assembly Management Commission**

**Briefing Note**

**Title:** Request for Appeal - Member for Lake Melville

**Issue:** Payment of expenses submitted past the 60-day deadline.

**Background:**

- The Member for Lake Melville is appealing the denial of payment by Corporate and Members' Services Division of expenses incurred by the Member. The expenses were rejected because they were incurred more than 60 days prior to the claim for reimbursement.
- Subsection 7(6) of the *Members Resources and Allowances Rules* (the Rules) states that:
  - (6) *A claim against an allowance for payment or reimbursement shall not be made more than 60 days after the date on which the expenditure was made.*
- The expenses submitted, totaling \$979.32, are permitted under the Rules, but could not be approved for payment as per the provisions of subsection 7(6). The expenditures include airfare and meals for House in Session travel.
- The Member for Lake Melville is appealing this decision and has made a request to the Management Commission in accordance with Section 24 *House of Assembly Accountability, Integrity and Administration Act* (the Act).
- The Commission may make a ruling these expenses as per subsection 24(9) of the Act which states:
  - (9) *Notwithstanding that an expense claim has been denied by an officer, staff member or the speaker, in accordance with the rules, where there is an appeal to the commission under this section and the commission determines that that claimed expense amount*
    - (a) *has been incurred by the member; and*
    - (b) *is a permitted expense under the Act and rules; and*
    - (c) *does not exceed an expense amount or allowance allocation permitted under the rules,*

*and a denial of payment of the expense amount would, in the opinion of the commission, be unjust, the commission*

*may approve the expenditure for the claimed expense to the extent that the commission considers to be just and the decision of the commission is final.*

- The attached correspondence from the Member for Lake Melville provides details. As the Member is the Chair of the Management Commission, his request was sent to the Clerk (Secretary to the Commission) to bring forward on his behalf.

**Analysis:**

**Legal Consultation:**

Not applicable.

**Internal Consultation(s):**

Not applicable.

**External Consultation(s):**

Not applicable.

**Comparison to Government Policy:**

Not applicable.

**Financial Impact:**

Not applicable.

**Legislative Impact:**

Not applicable.

**Options:**

1. Approve the payment of expenses totaling \$979.32 for the Member for Lake Melville.
2. Deny the payment of expenses totaling \$979.32 for the Member for Lake Melville.

**Status:**

- The Member's claim for reimbursement remains outstanding.

**Action Required:**

- The decision of the Commission is requested.

Prepared by: Bobbi Russell  
Date: January 24, 2018

Approved by: Sandra Barnes

**Attachments:**

1. Correspondence dated January 18, 2018 from the Member for Lake Melville to the Clerk.

**From:** Trimper, Perry  
**Sent:** Thursday, January 18, 2018 4:09 PM  
**To:** Barnes, Sandra M. <[sbarnes@gov.nl.ca](mailto:sbarnes@gov.nl.ca)>  
**Cc:** Learning, Bonnie <[BonnieLearning@gov.nl.ca](mailto:BonnieLearning@gov.nl.ca)>  
**Subject:** Appeal Regarding Expense Claim Decision - MECMS1028780

Ms. Barnes – as discussed yesterday, I understand that an appeal will need to go before the Management Commission. I offer the following by way of an explanation.

Please note that this claim was submitted late due to the following:

My Constituency Assistant was awaiting additional information from Harvey's Travel in order to submit this claim for some time (she did inquire for a response on repeated occasions); and by the time we were ready to assemble this claim, the items that are on this claim actually ended up having to be extracted from a larger claim within the same period, which delayed it further. Sincerest apologies for the delay.

Thanks for your consideration  
PGT



**HON. PERRY TRIMPER | Speaker of the House of Assembly**  
**MHA – District of Lake Melville**

**House of Assembly – Newfoundland & Labrador**

P.O. Box 8700, 100 Prince Phillip Drive  
St. John's NL A1B 4J6

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**House of Assembly Management Commission**

**Briefing Note**

**Title:** Request for Exemption to the *Access to Information and Protection of Privacy Act, 2015*

**Issue:** Request from the Commission of Inquiry into the Muskrat Falls Project for an exemption to the *Access to Information and Protection of Privacy Act, 2015* (in accordance with Section 4 of that Act).

**Background:**

- On January 24, 2018, the Speaker received correspondence from the Government House Leader requesting that a meeting of the Management Commission be scheduled to consider a request from the Commissioner of the Inquiry into the Muskrat Falls Project, Justice Richard LeBlanc.
- In correspondence to the Assistant Deputy Minister of Justice and Public Safety (Courts and Legal Services), Commissioner LeBlanc requests an exemption for the Inquiry from the *Access to Information and Protection of Privacy Act, 2015* (ATIPPA, 2015) in accordance with section 4 of that Act. Further details are outlined in Attachment 1 which includes the correspondence of the Government House Leader and Commissioner LeBlanc.
- *ATIPPA, 2015* is premised on public bodies being subject to the provisions of the legislation unless specifically excluded. The mechanism to exclude entities not already excluded from application of the Act under subsection 5(1) is to list them in Schedule B. When the House is sitting, this is accomplished by an amendment to the Act. When the House is not sitting, amendments to Schedule B are made by the Lieutenant-Governor in Council following a recommendation by the Management Commission.
- The legislative provision that guides this process is as follows:

***ATIPPA, 2015***

***Schedule of excluded 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.***

- Subsection 2(x) of ATIPPA, 2015 defines a public body as follows:

***ATIPPA, 2015***

(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,*

(viii) *the Court of Appeal, the Trial Division, or the Provincial Court , or*

(ix) *a body listed in Schedule B;*

- The duties and responsibilities of the Management Commission are outlined in Section 20 of the *House of Assembly Accountability, Integrity and Administration Act*, which states the following:

***House of Assembly Accountability, Integrity and Administration Act***

*Duties and responsibilities of commission*

*20(1) The commission is responsible for the financial stewardship of all public money, within the meaning of the Financial Administration Act, that may be voted by the House of Assembly for the use and operation of the House of Assembly and statutory offices, and for all matters of financial and administrative policy affecting the House of Assembly, its members, offices and staff and in connection with them and, in particular, the commission shall*



(g) exercise other powers given to the commission and to perform other duties imposed on the commission under this or another Act.

**Analysis:**

**Legal Consultation:**

Law Clerk

**Internal Consultation(s):**

Not applicable.

**External Consultation(s):**

Not applicable.

**Comparison to Government Policy:**

Not applicable.

**Financial Impact:**

Not applicable.

**Legislative Impact:**

If an exemption to the ATIPPA, 2015 is recommended by the Management Commission, the Lieutenant-Governor in Council will issue an Order in Council requiring that an order be published under the ATIPPA, 2015 to establish a Schedule B. That order can only remain in effect until the end of the upcoming sitting of the House of Assembly. In accordance with the Parliamentary Calendar, the spring sitting of the Legislature is scheduled to conclude on May 31, 2018. In order to continue the exemption beyond May 31, 2018, an amendment to the Act will need to be passed by the House during the Spring 2018 sitting.

**Options:**

1. Recommend to the Lieutenant-Governor in Council that the Commission of Inquiry on the Muskrat Falls Project be exempted from the *Access to Information and Protection of Privacy Act, 2015*, in accordance with Section 4 of that Act.
2. Do not recommend an exemption of the Commission of Inquiry on the Muskrat Falls Project from the *Access to Information and Protection of Privacy Act, 2015*.

**Action Required:**

- The direction of the Commission is requested.

Prepared by: Bobbi Russell  
Date: January 24, 2018

Approved by: Sandra Barnes

**Attachments**

1. Correspondence dated January 24, 2018 from the Government House Leader to the Speaker.



HOUSE OF ASSEMBLY  
NEWFOUNDLAND AND LABRADOR

Government Members Office

January 24, 2018

Honourable Perry Trimper  
Speaker  
House of Assembly

Dear Mr. Speaker:

On November 20, 2017, the Premier announced the establishment of a Commission of Inquiry into the Muskrat Falls Project ("Inquiry") and appointed Supreme Court Justice Richard LeBlanc as the sole Commissioner of the inquiry (OC2017-339 refers). The Inquiry has been operational since on or about January 10, 2017 and is mandated to provide a report to the Minister of Natural Resources no later than December 31, 2019.

In correspondence to the Assistant Deputy Minister of Justice and Public Safety (Courts and Legal Services), dated December 21, 2017, the Commissioner requests an exemption for the Inquiry from the *Access to Information and Protection of Privacy Act, 2015* ("Act") in accordance with section 4 of that Act. I have attached a copy of the Commissioner's letter for reference.

In his letter, the Commissioner indicates that application of Act will adversely affect the operations of the Commission; impede the work of the Commission staff, including the Commissioner; interfere with ongoing investigations conducted by the Commission; and expend unnecessary time and personnel resources which would be more appropriately utilized to fulfill the mandate of the Terms of Reference.

If approved, the requested exemption for the Inquiry from the Act would not interfere with any ATIPPA, 2015 requests received by core government or Nalcor with respect to its interactions with the Inquiry (ie. budget finances, administrative records). Ultimately, the Commissioner feels an exemption is essential for the Commission to fulfill its mandate in the fixed timeframe.

To address the Commissioner's request, section 4 of the Act sets out process for excluding a public body when the House of Assembly is not in session. It authorizes the Lieutenant-Governor in Council, on the recommendation of the House of Assembly Management Commission, to amend Schedule B by order, but the order shall not continue in force beyond the end of the next sitting of the House of Assembly.

Accordingly, I respect that you convene a meeting of the Management Commission, on an urgent basis, to address the request of the Commissioner of the Muskrat Falls Project, Justice Richard LeBlanc.

I trust the above is satisfactory.

Yours truly,

  
Andrew K. Parsons  
Government House Leader

Enclosure

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

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December 21, 2017

**VIA ELECTRONIC AND REGULAR MAIL**

Government of Newfoundland and Labrador  
Department of Justice and Public Safety  
P.O. Box 8700  
St. John's, NL A1B 4J6

Retrieval No: R 2965 - 2017  
Referred To: \_\_\_\_\_  
Action: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: Ms. Kendra Wright  
Assistant Deputy Minister

Dear Ms. Wright:

**Re: Access to Information and Protection of Privacy Act ("ATIPPA")**

I write at this time in my capacity as the Commissioner of Inquiry Respecting the Muskrat Falls Project Order.

I hereby request that the Lieutenant Governor in Council be asked to provide a partial exemption to the Commission of Inquiry pursuant to the *Access to Information and Protection of Privacy Act, 2015*. The exemption being sought at this time relates to the ongoing investigation including requests and disclosure of documentation as the Commission investigates for the purposes of responding to the Terms of Reference for the Inquiry. We are in no way seeking exemption with regard to administration or finances with regard to the ongoing Inquiry. We are seeking the type of exemption that is permitted with regard to investigative bodies that provide a privilege so that the Commission staff can appropriately and effectually investigate the matters required under the Terms of Reference.

As the Commission is commencing its work now, it is imperative that a decision be made in this regard as soon as possible. Should there be further information that is required or should I need to meet with anyone, please feel free to contact me.

Ms. Kendra Wright  
Page 2  
December 21, 2017

Your earliest attention to this matter would be greatly appreciated and we await your prompt reply.

Yours sincerely,

COMMISSION OF INQUIRY RESPECTING THE  
MUSKRAT FALLS PROJECT ORDER



Richard D. LeBlanc  
Justice

/hs

**House of Assembly Management Commission**

Addendum to **BN 2018-002**  
Letter from Commissioner Richard LeBlanc to Speaker



## Commission of Inquiry Respecting the Muskrat Falls Project

January 30, 2018

Honourable Perry Trimper  
Speaker  
House of Assembly  
East Block, Confederation Building  
St. John's, NL

Dear Mr. Speaker:

I am writing as the Commissioner of the Commission of Inquiry Respecting the Muskrat Falls Project (the "**Commission of Inquiry**"). The Commission of Inquiry is an independent body tasked with making findings and recommendations with respect to its Terms of Reference established on November 20, 2017 by Order-in-Council pursuant to the terms of the *Public Inquiries Act, 2006*.

### ***Request for Exemption***

I am requesting that the Commission of Inquiry be added to Schedule B of the *Access to Information and Protection of Privacy Act, 2015* ("**ATIPPA**") which is the schedule of bodies excluded from public bodies that are subject to ATIPPA.

Pursuant to section 4 of ATIPPA, 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 order the amendment of Schedule B. Such an order does not continue in force beyond the end of the next sitting of the House of Assembly. I am writing to ask that the House of Assembly Management Commission recommend to the Lieutenant-Governor in Council that the Commission of Inquiry be added to Schedule B.

I became aware for the need for ATIPPA exclusion shortly after my appointment as Commissioner and I first wrote to the Department of Justice and Public Safety with my request in December. I wish to make clear to the House of Assembly Management Commission that the request for the amendment is mine alone. I have not been asked by the Department of Justice and Public Safety or any other person or entity to seek this exemption.

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Fax: 709-729-6070

Email: [admin@muskratfallsinquiry.ca](mailto:admin@muskratfallsinquiry.ca)  
Website: [www.muskratfallsinquiry.ca](http://www.muskratfallsinquiry.ca)

## **Reasons for Request**

There are three primary reasons for my request

### **1. Impact on the ability to carry out a thorough investigation**

The policy need to protect the integrity of on-going investigations is recognized by ATIPPA for other investigative bodies. For example:

- Records relating to an on-going investigation by the Royal Newfoundland Constabulary are exempted from disclosure [s.5(1)(k)].
- Records connected with the investigatory functions of statutory offices as defined in the *House of Assembly Accountability Integrity and Administration Act* are exempt from disclosure. Statutory offices include the Chief Electoral Officer, the Child and Youth Advocate, the Information and Privacy Commissioner and the Citizens' Representative [s.41(c), also for the Information and Privacy Commissioner s.101]
- All relevant information created or gathered for the purpose of a workplace investigation is exempt from disclosure [s.33(2)].

The need to protect the investigations of public inquires is recognized as public inquiries are not subject to access to information legislation similar to ATIPPA in other jurisdictions.

If the Commission of Inquiry is required to respond to ATIPPA requests during the course of its investigation, the investigation will be hampered. Investigators need to have the ability to carry out their work in confidence, both to give the investigators full freedom to explore avenues of investigation and to help ensure that all relevant evidence is preserved and available.

### **2. Impact on the ability to collect evidence**

In order to complete its mandate within the allotted time, the Commission of Inquiry will need the cooperation of key players. To obtain cooperation, the Rules of Procedure for the Inquiry that I have put into place require production of all documents to Commission Counsel, even those possibly subject to a legal privilege. A process to deal with privilege claims has been established to subsequently deal with privilege claims prior to disclosure to others. If the Commission is unable to assure parties that the documents provided will not be potentially subject to an early release in response to ATIPPA requests, I expect we will lose some or much of the cooperation needed to ensure a timely and full investigation. We will then be required to expend time and effort dealing with legal challenges or other issues in the courts that would be otherwise avoided.

### **3. Impact on Commission of Inquiry resources**

If the Commission of Inquiry is required to respond to ATIPPA requests, it is expected that we will require four additional staff and the additional resources that they would require, such as copiers, computers, office space, etc. It is expected that at least one position would have to be an additional legal counsel as Commission Co-Counsel are already fully engaged working to meet our mandate. Based on early estimates from parties, we are anticipating receiving several million documents.

I am keenly aware of the Province's need for financial prudence and I am conducting this Inquiry with a careful eye to our budget. We do not currently have a budget allotment for ATIPPA staff. The additional cost would be significant but would be necessary if we are to meet the December 31, 2019 deadline for my report.

### ***Transparency and the Public Interest***

A public inquiry governed by the *Public Inquiries Act, 2006* is recognized as one of the best tools for ensuring transparency and accountability of public bodies. In gathering and marshalling evidence, Commission counsel represent the public's interest in a full exploration of all facts relevant to the Terms of Reference. Ultimately, the public record that results from such an inquiry through published exhibits, testimony at public hearings and the Commissioner's report means that disclosure of information is extensive.

Many of the Commission of Inquiry's records will be accessible to the public during its work. We submit our annual budget and regular requisitions for payment to the Department of Justice and Public Safety, which is subject to ATIPPA requests. Additionally, I am committed to transparency of the Commission of Inquiry's workings and will be providing regular financial updates on our website to help keep the public informed as to its costs.

At the end of the Commission of Inquiry's work, section 28 of the *Public Inquiries Act, 2006* requires that the Lieutenant-Governor in Council adopt policies and procedures for the preservation of the Commission of Inquiry's records. I understand that the current procedure is for those records to be turned over to the Department of Justice and Public Safety. Regardless of which department takes the records, once the records are in the custody and control of Government, they are accessible through the usual ATIPPA process. This means that the exemption created by adding the Commission of Inquiry to Schedule B is effectively a temporary exemption as it only lasts until the Commission of Inquiry has completed its work.

Additionally, the primary parties that the Commission of Inquiry will be seeking document production from, Nalcor and the Government of Newfoundland and Labrador, are public bodies governed by ATIPPA and their records will remain fully accessible through ATIPPA processes throughout the Commission of Inquiry's work.

### ***Conclusion***

There is much urgency to this request. If the Commission of Inquiry is not included on Schedule B now, my ability to ensure that a full and complete investigation within the time frame I have to complete my work will be significantly compromised. I accepted my appointment with an open mind and a willingness to work for the public's interest. I hope you will allow me to continue to do that to the best of my abilities.

Sincerely,



**RICHARD D. LEBLANC**  
Commissioner