



PROVINCE OF NEWFOUNDLAND AND LABRADOR
HOUSE OF ASSEMBLY

HOUSE OF ASSEMBLY
MANAGEMENT COMMISSION

Sixty-fourth Meeting

Thursday, February 1, 2018

HANSARD

Speaker: Honourable Perry Trimper, MHA

The Management Commission met at 9:30 a.m. in the House of Assembly.

MR. SPEAKER (Warr): Good morning, and welcome to the House of Assembly Management Commission.

I'm Brian Warr, Deputy Speaker for the House of Assembly, and I'll be substituting in for Speaker Trimper today who is on government business out of the province. It is certainly a privilege to chair the Management Commission meetings this morning.

The first thing we'd like to do is go around the table and have each Member, along with the House of Assembly staff, introduce themselves.

MR. P. DAVIS: Thank you, Mr. Speaker.

Paul Davis, MHA for Topsail – Paradise.

MR. HUTCHINGS: Keith Hutchings, MHA, District of Ferryland.

MS. MICHAEL: Lorraine Michael, MHA, St. John's East – Quidi Vidi.

MR. BROWNE: Mark Browne, MHA, Placentia West – Bellevue.

MS. RUSSELL: Bobbi Russell, Clerk's Office.

CLERK (Barnes): Sandra Barnes, Clerk.

MR. SPEAKER: We have two Members that couldn't be here this morning. They're on the intercom and I'd like for them to introduce themselves as well.

MS. COADY: Good morning, it's Siobhan Coady, St. John's – West.

MR. A. PARSONS: Andrew Parsons, Burgeo – La Poile.

MR. SPEAKER: Thank you.

Because we have Members this morning, again, who are coming via teleconference, I would like to remind Members that if you are making a comment or statement this morning, if you'd speak up a little higher than normal so our friends on the telephone can hear us as well.

The first thing we'd like to do is entertain a motion to approve the minutes for December 6, 2017. I'd certainly like to ask all Members if there are any errors or omissions.

MS. MICHAEL: Moved.

MR. BROWNE: Seconded.

MR. SPEAKER: It's been moved by Ms. Michael and seconded by Mr. Browne.

Any further discussion?

All those in favour?

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Opposed?

Motion carried.

On motion, minutes adopted as circulated.

MR. SPEAKER: Agenda item 2 is a request for appeal for the Member for Lake Melville. 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 did not comply with the provisions of subsection 7(6) of the Members' Rules that expenses must be submitted for reimbursement within 60 days of being incurred. The expenses submitted totalled \$979.32. They 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 the House-in-session travel.

Any discussion?

MR. P. DAVIS: I'll move it.

MS. MICHAEL: Seconded.

MR. SPEAKER: It's been moved by Mr. Davis and seconded by Ms. Michael that they be accepted.

Any further discussion?

All those in favour?

SOME HON. MEMBERS: Aye.

MR. SPEAKER: Opposed?

Motion carried.

Item 3 is the request from the Commission of Inquiry into the Muskrat Falls Project for the exemption to the *Access to Information and Protection of Privacy Act, 2015*. On January 24, 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, Commissioner LeBlanc requests an exemption for the inquiry from the *Access to Information and Protection of Privacy Act, 2015*, in accordance with section 4 of that act. Further details are outlined in Briefing Note 2018-002, which also includes the correspondence from the Government House Leader to the Speaker and from Commissioner LeBlanc to Justice and Public Safety.

Additional information was also provided by Commissioner LeBlanc in accordance to the Speaker dated January 30. You all have a copy of that. This correspondence was distributed to the Commission as an addendum to Briefing Note 2018-002.

I'd certainly like to take the pleasure of welcoming Ms. Kate O'Brien and Mr. Barry Learmonth, co-counsel for the Commission of the Inquiry into the Muskrat Falls Project, who are joining us today to answer any questions that the Management Commission may have with respect to this request.

I open the table for discussion.

MR. P. DAVIS: I believe the meeting was at the request of Minister Parsons, the Minister of Justice and Public Safety. I would expect him to introduce the item.

MR. SPEAKER: Mr. Parsons.

MR. A. PARSONS: Say that again? The meeting was at the request of myself.

I wrote the letter requesting the meeting, yes, because we had a request come in from the Commission regarding ATIPPA, which I think the only way to address this now was through a meeting of the Management Commission. Again, perhaps, given the fact it was the Commission that wrote and requested this exemption, perhaps the counsel for the Commission can explain why this request is being made.

MR. SPEAKER: Thank you.

MS. O'BRIEN: Thank you.

Good morning. Kate O'Brien speaking, one of the Commission co-counsel, and with me today is Mr. Learmonth, the other Commission co-counsel.

You should – and I understand you do have before you a letter from Commissioner LeBlanc that set out the reasons for this request, and I'll just briefly bring you through it.

Public inquiries have three parts; there are three main parts to a public inquiry. The first part is the investigative stage. That's when we, as the Commission team, would be gathering evidence, following leads, collecting the documents and evidence from individual witnesses.

The second stage would be the public hearing stage. That's where we present the relevant evidence to the commissioner, primarily at public hearings. That, of course, is a very public process and the evidence goes before the commissioner then.

The final stage is the reporting stage. That would be when the commissioner writes and then, ultimately, delivers his final report.

The concern that's brought us here today and the reason for the commissioner's request really has to do with the investigation stage. So that would be the first stage that I've spoken about. And outlined in the commissioner's letter of January 30, he stated three primary reasons for looking at this request. I'll just quickly go through them.

The first is the potential impact on our ability to conduct a thorough investigation. The need to protect the integrity of ongoing investigations is well recognized, I believe. It certainly is recognized within ATIPPA already.

Investigations of the Royal Newfoundland Constabulary, the Information and Privacy Commissioner, the Citizens' Representative, as well as other public bodies are already exempt from ATIPPA disclosure.

Simply stated, quality investigations cannot be carried out in public, as investigators really need to have the full freedom to explore avenues of investigation.

The second concern that Commissioner LeBlanc has raised is on our ability to collect evidence. We have an enormous task ahead of us. We want to do that task as thoroughly and efficiently as possible, and to do that we will need the co-operation of the key players.

The commissioner has developed rules of procedure, and those rules have within them a process to deal with privilege claims and other claims that party might make. The process has, in the first instance, legal counsel for the parties and legal counsel for the Commission working together to resolve issues.

If we can't agree, then the procedure sets out that we would go before a judge of the Supreme Court of Newfoundland and Labrador. However, we don't want to be going before a judge for every issue. That would take a lot of time, a lot of effort and, quite simply, that's time and effort we don't have at this stage.

Our ability to give parties assurances that documents they provide to us do not get released, other than through the procedures that we developed, we believe is key to ensuring that we do get their full co-operation.

The third and final reason the commissioner has set forward in his letter is the impact on commission resources. Currently, we have two commission co-counsel and we are expecting to receive millions of documents.

Mr. Learmonth and I, we represent the public's interest as we sift through these documents, and we'll do that with a team to support us. What we

have to do is go through all those documents and determine what's relevant in terms of the terms of reference for the Commission of Inquiry. It is the public's interest in a full airing of the facts that will guide us.

We can't do that work with our team as planned and respond to ATIPPA requests, too. It would just be too much work. So we have estimated that if we do not get an ATIPPA exemption, we would need four additional full-time staff. I did ask our chief administrative officer to just give us an idea of what the expense of that would be, given that it's not just the staff but it's all the equipment and space and all that that comes with the staff. He gave me an estimate of between \$300,000 and \$400,000. That's a really significant amount of money. And, really, what is the benefit that we'd be getting for that?

Certainly, at the end of our inquiry process, all information that should be made public will be made public. When we are done our work, all the records of the Commission would go to the Department of Justice and Public Safety. There they would be subject to the full ATIPPA scheme; people would be free to make ATIPPA requests.

In the meantime, the two bodies that we expect to get the most documents from – those would be the Government of Newfoundland and Labrador and Nalcor – those are both public bodies that still throughout the course of the Commission's work remain under ATIPPA and still subject to ATIPPA requests on a day-to-day basis as they are now.

In light of those two things, a lot of the documents still remain accessible during and then, ultimately, they will all be available to the public pursuant to the ATIPPA scheme. We really see no loss in transparency. What we're looking for here is just a matter of timing of when the public can access the fullness of the records through ATIPPA.

In conclusion, I just wanted to say we are here working for the public's interest and a public inquiry is just about one of the best ways to bring transparency and openness to the decision-making processes of public bodies. The commissioner is making this request now to ensure that our efforts are not compromised. He

has been entrusted with a task and he wants to perform that to the best of his abilities.

Thank you for your time.

MR. LEARMONTH: Could I ...?

MR. SPEAKER: Yes, go ahead.

Thank you, Ms. O'Brien.

MR. LEARMONTH: While I fully endorse the reasons stated by Ms. O'Brien today and also the letter that was written by the commissioner, there are a couple of other points I'd like to make. What we're asking for today is just a temporary or interim ruling on this matter.

Under section 4 of the legislation, this Commission can recommend to the Lieutenant Governor in Council that we should be excluded by amending Schedule A of the ATIPPA legislation. This is just a temporary measure. When this section 4, which gives you the right to make this recommendation was passed – the Legislature must have contemplated that there would be situations where an urgent request such as this would be made and that's why I would suggest to you section 4 was passed to handle a situation exactly like the one before you today.

In the fullness of time, this matter, if the exemption is to continue, will have to be debated fully in the House of Assembly because the exemption, if you see fit to grant it, could not continue beyond the end of the next sitting of the House of Assembly. So this is just an interim measure. It's sort of a bridge to a full and fulsome discussion of the matter, should one be necessary or appropriate in the House of Assembly. Just a temporary measure.

Once again, another temporary aspect of this is that in the fullness of time when the final report is filed, all of our records are going to be made public. So this is not a request to bury information or conceal or hide information. This is just a request to postpone the public disclosure of it.

One of the most compelling reasons why we ask you to consider this request is that, as Ms. O'Brien has said, we expect to get millions of

documents. We have had the co-operation of the main parties – that's the government and Nalcor – so far. If we don't get an exemption, it's possible – no one has said this to us, but it's possible that some, Nalcor or the government, may claim privileged documents and that would impede our ability to examine the records carefully in order to come to a proper conclusion on the matter.

So my main concern – and this is one of the reasons the commissioner and Ms. O'Brien has touched on – is that I don't think that it's feasible for us to do a full and thorough investigation unless we get this exemption. I feel very strongly on that point. The point of the public inquiry is to shine light on what happened here, and that's our mandate and we consider it a solemn duty to do our very best to achieve that end. And if we don't get the exemption, our work will be affected and the final product may be compromised unless an exemption is granted.

So that has to do with the product that we hope to arrive at and to give to government after the Commission's work has been completed.

Now, the other point is the fact that we will be slowed down if there are ATIPPA requests because we have millions of documents. Ms. O'Brien has said we may need an extra budget of \$300,000. My personal opinion – I don't have any facts to prove it – is that's a very low number. That would add extra money to a public process that's going to cost enough anyway if a proper job is to be done.

So, in conclusion, I ask you to consider this matter seriously. I respectfully submit that unless we get this exemption, our ability to do our job in a thorough manner will be compromised. We will not be able to produce the kind of report that we want to.

MR. SPEAKER: Thank you, Mr. Learmonth.

The Chair has recognized Mr. Hutchings, followed by Ms. Michael.

It's a little difficult as a Chair this morning because we have two Members that I cannot see. So I'd ask that both Mr. Parsons and Ms. Coady, if you could chime in. I guess if you need to

Speak, or if you want to speak, chime in. We'll try and fit this in, in the right sequence.

Anyway, Mr. Hutchings, you have –

MR. HUTCHINGS: Thank you, Mr. Speaker.

I just wanted to revert to Ms. O'Brien, when she mentioned the three stages of the inquiry process. One of them, obviously, is an issue that Judge LeBlanc identified in his letter related to the investigative stage.

In terms of the inquiry, obviously, it's vast in regard to three stages: the start, the beginning, the end, then the final report. But within that context, the investigative stage wouldn't be all encompassing through that period. I guess there would be a period within the inquiry where the investigative stage would do interviews, collection of data. All of that material would be a portion of that overall inquiry.

Is that correct, or would you foresee the investigative stage throughout the whole part of the inquiry. Could you speak to that, please?

MS. O'BRIEN: Absolutely. Thank you.

Certainly, we are in the investigative stage now. These are loose categories, obviously, but the investigative stage – we are starting to get documents in now. We will start to be interviewing witnesses.

The bulk of the investigative stage is typically done before hearings begin; however, it does happen where, as the public hearings are going on, more evidence is produced, more information comes to light. So you can't really say the investigative stage really stops once the public hearings begin.

As well, the commissioner is still setting up the structure of the inquiry, but we're certainly anticipating at this point that it would take place in at least two phases. One phase would look at the sanctioning issues, and then there would be a later phase of public hearings that would look at execution. There will be an in-between period, between at least those two phases where ongoing investigation would be happening.

So while I did break it down into three phases, you can't really say one ends and the other begins. Certainly, we would expect that by the time the public hearings have all closed – and that might be two and there might even be a third phase, it hasn't been determined yet. But at that point, we would expect that we'd have all the information then, and then the commissioner would begin his work of going through that information and developing his recommendations and findings for the final report.

MR. HUTCHINGS: Okay, thank you.

Mr. Learmonth, you suggested in regard to the ATIPPA in section 4, you referenced the fact that in 2015, when the ATIPP legislation I think was reviewed and recommendations made, there was a provision for an exemption. Therefore, this would be a case, I guess in public inquiries, where knowingly the Commission would have recognized that this is something that may need to be considered in the future.

Would the reverse also be suggested? Is it at that point they didn't think that it should be *carte blanche*, that a public inquiry should have immediate exemption in regard to release of information?

MR. LEARMONTH: Well, I think that's true. I mean it's difficult for me to say what the legislator had in their mind but, we are – this Commission, like all commissions, is a public body as defined in the legislation.

Yes, the Legislature, by writing this in the way that they did, there must have been a presumption that public bodies would be subject to ATIPPA, but there would be circumstances where they would be excluded. The compelling point in support of this conclusion is the volume of documents that we anticipate receiving.

I also point out that this legislative position differs, for example, in the legislation in Ontario. In Ontario, it's done the opposite way. Here, under section 4, the public body, which is the Commission here, has to be added to the list excluding it. In Ontario, the public body is not subject to the legislation unless it's added. So it goes the opposite way.

I think it's like that in BC and other places. The result of that is that a public commission in Ontario is not subject to their equivalent of the ATIPPA legislation unless it's added to Schedule B, whereas in our legislation it is subject to it unless there's exclusion in Schedule B. So it's just a different approach.

I'd like to emphasize, if I may, that by inserting this section we have to assume it was put in there for a purpose, and that purpose would be to serve situations such as this, I submit, where an exemption is appropriate.

MR. SPEAKER: Before we chime in with Ms. Michael, I just want to ensure that both Ms. Coady and Mr. Parsons – are you having any issues with the volume?

MS. COADY: I'm good, thank you. I also have it on speakerphone. So I'm good, thank you very much.

MR. SPEAKER: Minister Parsons?

MR. A. PARSONS: A little bit more difficult in hearing Mr. Learmonth and Ms. O'Brien, but I'm getting by.

MR. SPEAKER: Okay.

Ms. Michael.

MS. MICHAEL: Thank you very much, Mr. Speaker.

I'd like to pick up on a point being made by Mr. Learmonth, and it's not to get into argumentative discussions or anything, but just another aspect to what you're saying with regard to the public body.

First of all, Schedule B, which at the moment has nothing listed under it – this is the first time something would be listed under Schedule B of the ATIPPA – has to deal with public body, and there's no doubt that the inquiry is a public body. I think under ATIPPA it's clear that it is a public body. But I still think there is the duty and the responsibility to determine whether a public body, at any given time, should go on it.

It's not just it's a public body, therefore it should go on it. I think we have to look at, well, what

public body is it and what is it dealing with, et cetera. I think that's what we have to be determining. I think that's my responsibility here. So just to put that out.

AN HON. MEMBER: I agree with that.

MS. MICHAEL: Oh, great, thank you very much.

But I do have a question of clarification with regard to the point that Ms. O'Brien first made. That has to do with the records being made public. In Mr. LeBlanc's letter he talks about the record – everything with regard to the public inquiry – and we know this – will go to most likely the Department of Justice.

To me, that's not making the records public. So do we have two steps here? Is it that with the report of the inquiry everything will be made public and, of course, as happens with all inquiries, everything will then move on to a department because going to a department is not going to be automatically making it public? I believe that if it goes to a department, then ATIPP is going to have to be brought into play.

There's a difference to me in those two things, so I need clarification on that.

MR. SPEAKER: Ms. O'Brien.

MS. O'BRIEN: Yes, okay. Thank you.

You are correct. In the course of carrying out the public inquiry, certain exhibits are entered into evidence and they become public exhibits and they will be published on the Commission's website.

There is still ability under the Commission's rules of procedure, as is usual for all commissions that I'm aware of, where certain exhibits are confidential exhibits. So there is some information – there's a test that the commissioner has to meet before making a decision on whether something is a confidential exhibit, but generally most exhibits become public exhibits and they go all out there in a very, very public way. That's the process during the inquiry.

You are quite right; after the inquiry, when we're done our work and the commissioner gives his report, which is for December 31, 2019, we pack up our files. We go back to our other lives. Our records all go over to – as it's set out in the act – the act is not so prescriptive – it says someone has to take care and custody of them. I understand the current procedure is that they go the Department of Justice and Public Safety.

I suppose that's subject to change, but someone's going to get them; someone in government will get them. Then they are just subject to regular ATIPPA requests because they're now documents in the care and custody of the Department of Justice and Public Safety or whoever has them and then people can make ATIPPA requests, as they do in the usual course, and get responses under ATIPPA.

So you are right. It is two different levels of disclosure but, at the end of the day, all these records will be subject to the usual ATIPPA regime.

MR. SPEAKER: Ms. Michael.

MS. MICHAEL: A follow-up question, and I do have one more point after this follow-up question.

It's still not clear to me. So when the report of the inquiry comes out, will what had been held back as confidential become public at that point in time? You're saying no. I see your head saying no.

MS. O'BRIEN: (Inaudible.)

MS. MICHAEL: Okay, so that's my concern.

MS. O'BRIEN: I would just put on the record, if I may, no, what happens, when we're done our work and the commissioner submits his report, we don't then put out everything in public. We just pack it up, deliver it to the Department of Justice and Public Safety, say, but then people can make requests and would be subject to the usual vetting under ATIPPA, the usual ATIPPA scheme.

Thank you.

MR. SPEAKER: Ms. Michael on another point.

MS. MICHAEL: The other point has to do with something Mr. Learmonth brought up. With regard to ATIPPA and our ATIPPA and the fact that the public body being exempt under other similar acts in a couple of places in the country, I'd like to point out that Commissioner Wells, when he did the 2014 ATIPPA report, did deal with the requested exemptions to the access principle. He looked very seriously at what Justice Cameron had gone through in her inquiry. While it wasn't a company, she was dealing with the health care system and dealing with physicians, medical people wanting their stuff to be kept confidential, she made a strong recommendation with regard to that particular context of, no, their stuff should not be confidential.

I think that Justice Wells, he gave serious, serious consideration. I'd really like to point out the fact that he did not do what others did; he left it the way it is, and I think he did that after great consideration. If we read chapter nine of his report, you see that there. That's something I'm looking at very seriously.

MR. LEARMONTH: Could I speak to that?

MR. SPEAKER: Absolutely.

Mr. Learmonth.

MR. LEARMONTH: I agree that this wasn't an error or wasn't an accident; it was intentional. I'm just pointing out that – certainly, I'm not suggesting that there's something wrong with it or anything like that, it's just a slightly different approach that was taken, for example, in Ontario. I'm not saying that there's something wrong with it. It says what it means; it's just a different approach.

I'm not suggesting that it's an error or it shouldn't be there. But it is here and we have to deal with it, and we think we come under it. We think it's an appropriate case, but that's for you to decide.

MS. MICHAEL: Thank you and I guess just to add one more thing. I wasn't being accusatory or anything, but I think it is significant for us to consider that, after careful consideration, Justice

Wells did not make that recommendation and he believed that what we had, I think, in our province was superior to what was elsewhere. We all know how thoughtful he is and I think he gave great thought to this. Just to make that point.

MR. LEARMONTH: I don't disagree with that at all.

MS. MICHAEL: That's right, yes. Thank you.

That's all for now. I have a lot of other things, but as we move forward.

MR. SPEAKER: Thank you, Ms. Michael.

Mr. Davis.

MR. P. DAVIS: Thank you.

An interesting comment and I'm glad that Ms. Michael raised it because I sat here in the Legislature during the discussions around access to information –

MS. MICHAEL: Paul, could you speak up? I can't hear you.

MR. P. DAVIS: Oh, I'm sorry.

MS. MICHAEL: Thank you.

MR. P. DAVIS: I said I, as well as Ms. Michael, Mr. Hutchings and the other Mr. Parsons as well was here, we all sat here in the Legislature during the time of debate and much public discussion about access to information and protection of privacy. I remember it quite well, and I remember the need and the significant focus on access to information and public disclosure. I think Ms. Michael's comments regarding Judge Wells's deliberations and consideration of Justice Cameron's commentary were valid and very important.

I have a couple of questions, and there's no particular order. But it comes to mind during my thoughts coming to this inquiry – and for you in particular, Ms. O'Brien, it's quite valid. We recently had the Barry inquiry, which you were in the same role as you are on this inquiry. Mr. Barry led an inquiry into the death of Mr. Dunphy.

Ms. O'Brien, can you enlighten us on how access to information was dealt with during that inquiry?

MS. O'BRIEN: Absolutely.

At the time, the amount of documentation that we were dealing with in the Donald Dunphy inquiry and Justice Barry's inquiry was almost insignificant in comparison to the amount of documents that we will be dealing with in this inquiry.

The Donald Dunphy inquiry, we did consider ourselves subject to ATIPPA; we did not seek an exemption. We had no ATIPPA requests, to my memory. The record may show otherwise, but if we did, it would have been one or two. I know there were requests made after we finished our work and requests would have been made then, but during the course of the inquiry, it really didn't take up any of our time that I can really think of. This is a different case.

As Mr. Learmonth said earlier, really the reason we're here today has a lot to do with the volume of documents. I had an estimate from another counsel who had been on the Cameron inquiry which, as you just alluded to, was, of course, the hormone receptor testing inquiry.

A counsel I was speaking to, who was involved on that inquiry and is now going to be involved with this one, has estimated that we will be facing between 100 and 1,000 times the number of documents that was being dealt with in Cameron. We are on a very different scale here. Our concern here is that we want to make sure the work that's been entrusted to us is not compromised in any way.

It's a huge dollar amount that would have to be spent in order for us to keep up with ATIPPA requests, \$300,000 to \$400,000; or, if Mr. Learmonth is correct, even more than that. That's not a small amount of money for this province, particularly at this particular time. So we want to make sure that's value well spent; but more important than that to us, because we're most concerned with the integrity of the work we do, we want to ensure that our ability not be compromised in carrying out our mandate. We don't want to be compromised in

carrying out our mandate. So that's the most important point for us.

MR. SPEAKER: Mr. Davis.

MR. P. DAVIS: Thank you, Mr. Speaker.

Ms. O'Brien, I think what I'm hearing from you, and one of the significant messages or points you're making here is one of what would be involved in the complexities and the work that would be needed to carry out and to respond appropriately as required under the act for access to information requests.

Would it be fair to say it's really one of resources? In a major way, it's part of resources. Is that what I'm hearing from you, resources of the Commission to be able to handle what potentially could be a difficult task to keep up with potential requests through access to information?

MR. SPEAKER: Ms. O'Brien.

MS. O'BRIEN: Thank you.

Certainly, resource is one reason, and that's the one I just spoke to. In the letter that Commissioner LeBlanc wrote to the committee, it's the third reason he mentioned there, resources; but, I don't want to lose the fact that he did raise two other reasons. They have to really do with the quality of the work, and that would be our ability to carry out a thorough investigation.

Investigations are typically not done in public, and there are good reasons for that. Because investigators do need to have the freedom to explore avenues – evidence as the investigation is unfolding. There is also the very important piece of the co-operation of the parties.

Currently, as Mr. Learmonth said, we have had wonderful co-operation, both from the government and Nalcor. Those are the two bodies we have interacted most with at this point. Having their continued co-operation is important to us in terms of the success of our ultimate efforts.

We believe if they have to be concerned about – at this stage, if they send documents over to us,

whether they might go out under ATIPPA, not through the processes and the rules and procedures that the commissioner has developed, that would be, we are anticipating, of some concern to them and may cause things to flow much less smoothly: more applications to court, more time, more effort, more expense.

So it is both. It is definitely, Mr. Davis, a resource issue, but it's also the ability to do a thorough and full investigation.

MR. SPEAKER: Mr. Davis.

MR. P. DAVIS: Thank you.

It may come back to me. I'm sure others are going to have some questions as well, or I expect they will. So it may come back to me, and I intend to further comment on resources.

One question, and it's not for either one of our guests, but maybe for the Clerk or for you as Chair. My understanding under access to information legislation is the reason the Management Commission is dealing with this here today is because the House is not in session. If the House was in session, this would be a matter to come before the House.

The legislation also indicates that this is to come before the House during the next session, which I would assume to mean the next scheduled session which starts in three weeks' time, just a little over three weeks' time, February 26, then would end in late spring, the end of May, the 1st of June. So this would have to come back to the House before that point in time.

CLERK: (Inaudible) an amendment to the act.

MR. P. DAVIS: Yes, and whatever decision the Management Commission makes it would have to come back to the House. This decision then, potentially, could be a three-week decision.

CLERK: The order would continue in force until an amendment either the sitting finished at the end of the spring, at which point it would expire, or it would be superseded by an amendment to the act to establish the Schedule B.

MR. P. DAVIS: So once the House closes, if I understand, I ask Madam Clerk –

CLERK: If there's no amendment brought forward –

MR. P. DAVIS: Yes.

CLERK: – once the House recesses after the spring sitting, the exemption would be no longer in place.

MR. P. DAVIS: Okay.

MR. HUTCHINGS: If I could just clarify something on that.

MR. SPEAKER: Yes, sure.

Mr. Hutchings.

MR. HUTCHINGS: So the exemption would expire after that session of the Legislature would close. Then could it be revisited back here at the Management Commission again for a temporary exemption?

CLERK: I would have to go to legal counsel to get that, but our read of the act is the intent is that this is a temporary measure and then it would be incumbent upon the government to bring forward an amendment to the legislation.

MR. HUTCHINGS: When the Legislature sits, which is three weeks.

CLERK: Yes. I don't think you could always use the House –

MR. HUTCHINGS: No, I'm just suggesting. But in terms of actual ability to do it, it does exist; and recognizing, as Mr. Davis has said, I think the House is set to reconvene on February 26, which is a few weeks.

CLERK: Yes. It's similar into the statutory offices where we can do – the Management Commission does acting appointments until there's a resolution brought to the House.

MR. HUTCHINGS: Sure.

I'm sorry, Paul.

MR. P. DAVIS: No, no that's fine. There were good points you make, because access to information is a very serious matter and it's not something that we, as legislators, should take lightly. It's something that we know, from our own recent history in this province, to be of utmost concern and importance to the people of the province. It's something we should take very, very seriously.

One of my thoughts and considerations of this as we're discussing here now is that we're going to be in the House in less than four weeks from now. We'll be here in a full Legislature with all Members of the House which could provide the opportunity for a full debate. Of course, the government reserves the right to reconvene the House at any time that it needs to come to the House to introduce a bill that's of importance.

That's why I raised that question, because either way it's going to have to come to the House, as I understand, between now and the end of May or the first of June. Or what we do here would expire anyways, I understand from the Clerk. I point it out because in a matter of such importance, the government does have the right to recall the House or to introduce it on the first day the House sits on February 26, if it so desired.

MR. SPEAKER: Mr. Browne.

MR. BROWNE: Thank you, Mr. Speaker.

I did want to ask, Ms. O'Brien: Could you estimate or give some sense to the Commission what percentage of your overall submissions, in terms of documents you'll be receiving, would you estimate to be from Nalcor and the Government of Newfoundland and Labrador?

MR. SPEAKER: Ms. O'Brien

MS. O'BRIEN: Mr. Browne, it's difficult at this time to give you a precise figure because, obviously, while we touched base with other parties, and we are expecting documents to come from them, we haven't gotten an assessment of their numbers of documents yet. I certainly think that we would – 80 per cent of our documents coming from government and Nalcor, it's going to be around that ballpark.

I'm looking at Mr. Learmonth because he will probably have his own estimate.

MR. LEARMONTH: I think I'd go along with that, but it is a bit of a rough estimate.

MR. BROWNE: Sure.

MR. LEARMONTH: Because there are other parties who will have to supply documents. We can only –

MR. BROWNE: Of course.

Just for my clarity and the clarity of those who are watching and Members of the Commission, if, in fact, 80 per cent of what you receive, in terms of documents, comes from Nalcor and the Government of Newfoundland and Labrador, can you confirm or perhaps clarify whether those are existing public bodies which are subject to ATIPP now? Is that correct?

MS. O'BRIEN: That is correct.

The Government of Newfoundland and Labrador answers ATIPP requests on a daily basis, as Nalcor does – I don't know on a daily basis but I know they regularly answer ATIPP requests. They put all their requests and the documents produced in responses to those requests online.

Whether it's 80 per cent, give or take, all that body of documents is still – this exemption will not change that. All those documents will still be as accessible as they are today and were yesterday through the regular ATIPPA processes for people in Newfoundland and Labrador and beyond who want to make –

MS. MICHAEL: At this moment.

MS. O'BRIEN: At this moment. Adding the Commission to Schedule B will not change that.

MR. BROWNE: Ms. O'Brien, if this exemption is not granted and the Commission is subject to the ATIPP, would it be possible that a scenario could be that an ATIPP request could be submitted to Nalcor for the very same document that an ATIPP request could be submitted to the Commission for? Would both

bodies coordinate to put out one response or would both be obliged to provide a response?

I'm asking: Would there be duplication if this exemption is not granted?

MS. O'BRIEN: Absolutely. Yes.

To answer your question, it would be possible for people to make identical requests to both public bodies. My understanding is both public bodies would have to respond independently because they have to look through all their records. They may have slightly different records or whatnot. There's no coordination. That could be a huge duplication of resources, ultimately coming out of the public purse.

MR. BROWNE: Ms. O'Brien, could I also ask: With respect to the letter that Justice LeBlanc sent the Speaker, he mentions an arrangement that has been constructed surrounding the issue of privilege and documents. Could you expand on that for the Commission?

MS. O'BRIEN: Absolutely.

The rules of procedure of the Commission are published on our website, which is at www.muskratfallsinquiry.ca. Our rules of procedure are there.

The procedure that's been developed is if a party who's subject to a summons has documents in their possession that they believe should be subject to a privilege claim – solicitor-client privilege or any number of privileges that are available – what they first do is meet with Commission counsel. We see the documents; we review them together. If Commission counsel and the party's counsel agree with the party's counsel assessment that's privilege, then we would redact that information and be done with it.

If we get to a point where we cannot agree – for example, Mr. Learmonth and I feel that's information that's not subject to privilege and the party's counsel believes that it is – then the procedure there would be that we would go before a judge of the Supreme Court of Newfoundland and Labrador. The commissioner has made arrangements with the chief justice of the Trial Division of the Supreme Court so that

we would have a judge available to deal with those issues as they arise.

We don't expect we're going to get rid of issues, but we've tried to have a very efficient, cost-effective, time-effective process to do that.

Our concern is if we do not get the ATIPPA exemption, we will be able to resolve far fewer issues with Commission counsel, counsel for the parties, getting a meeting of the minds around the table. We would be having to go and use the resources of the Supreme Court much more frequently.

MR. BROWNE: Ms. O'Brien, just one final question, at this time, that I'd like to ask: If the exemption is not granted, would that affect the timeline of the conclusion of the inquiry, in your mind?

MS. O'BRIEN: We certainly hope not. Our commissioner has been very straight with us that he expects to get his work done on time. He is a man – when he's focused on a goal, I have no doubt that he'll be able to achieve it.

But, of course, you can't foresee everything. We do have concern, to the level that our resources could be taxed, that it could – it's possible that it could put the deadline in jeopardy. We would do everything in our power not to have that happen, but to not have that happen, that would necessitate a greater spend of resources, there's no doubt about that.

MS. COADY: Mr. Speaker.

MR. SPEAKER: Yes.

Okay, we have Ms. Michael scheduled to go.

Ms. Coady, you'll be directly after.

Ms. Michael.

MS. MICHAEL: Thank you very much, Mr. Speaker.

I want to make a general statement and then pick up on the evidentiary privileges point. I think it's really important for us all – and I'm sure we do, but I think we need to say it here at this meeting,

which is a public meeting, which we know people are paying attention to.

One of the expectations I think of the public – we all know this is a very special inquiry. We all know the situation that we're dealing with, with regard to the Muskrat Falls Project and I think we have to recognize that. One of the things that has come out in the public over the last years over and over and over again is the lack of transparency of the project, the lack of transparency of Nalcor in doing this project.

One of the things I think that I heard people calling for is openness and transparency. They want information. They want to see it. They don't want, after this inquiry – and I'm saying this; this is not to counsel – two years down the road, then having to get an ATIPPA to even try to find out things that have been named as confidential.

We have a major problem here. We have public expecting that they're going to get full information and in a timely fashion. The concern I have, and it has to do directly with what Ms. O'Brien has just been outlining, we do know that the evidentiary privileges that are under the *Public Inquiries Act* could mean ending up in court to get a resolution. What's holding things back is what I'm hearing and what I saw in Mr. LeBlanc's letter is, number one, that government has put a two-year deadline on their work and they do not have enough resources to deal with ATIPPA if they don't get the exemption. And that's not their problem. They shouldn't have to be dealing with it. Mr. LeBlanc shouldn't have to be dealing with it.

So we have a very serious discussion here. What comes first, deadline in jeopardy or the right of the people of the province to know in a timely fashion? I'm pointing out "in a timely fashion." They've already been years upset over what's going on. We've had billions of dollars already spent on this project. Is government now going to hold back \$300,000 or \$400,000 in order for the inquiry to have the sufficient resources if they do not get an exemption?

It's a big issue that we have to deal with. I'm really quite concerned because I do know, and I think any of us who say that I'm wrong are putting our heads in the sand, that the public are

going to be really upset if they know that they're not going to see certain documentation until after the inquiry is over and they, through ATIPPA, have to go to the Department of Justice.

To let people know, because not everybody has the act in front of them, but under evidentiary privileges in the *Public Inquiries Act* it says very specifically that a rule of law that authorizes or requires the withholding of records, documents or other things or 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. What that means, for example, is that the protection for Nalcor under the *Energy Act* doesn't supersede the public inquiry. No piece of law that we have supersedes the evidentiary privileges of the inquiry.

Now, we do know, as it's been explained by both counsel, that it can mean ending up in court and that can take time. What we're going to have to struggle with in making a decision is what is more important: Government removing a deadline so the inquiry can do its work under the law as we have it, or give the exemption and then cause a real creation for the public of this province with regard to getting timely disclosure of what they're expecting to learn in terms of the type of documentation they're expecting to be able to get information on? They don't know the details, but the type of information they're looking for.

I think we're skirting that very, very serious issue. Again, I'm pointing out that this is not a legal issue that's the concern of counsel, but they have to understand what we're having to deal with as the people who are going to be making this decision.

MR. LEARMONTH: Could I expand? I just wanted to clarify one point.

MR. SPEAKER: Sure.

Mr. Learmonth.

MR. LEARMONTH: I have listened carefully to what you've said and I believe I understand your concerns. So that has to do with the financial part about it, the extra cost and so on.

In terms of the evidentiary privileges, there's one other point I'd like you to consider. I'll do it by way of an example. A company, a corporation has a right to claim solicitor-client privilege for a document. They don't have to disclose solicitor-client privilege.

So a company following that approach could send us the document with their solicitor-client redacted. Now, under the system that we hope will work here, the companies won't do that. They will send everything un-redacted and then we'll have this review process – it will be reviewed by Ms. O'Brien and I and if we agree with their position, that's fine, but we will have seen it to satisfy ourselves. If there's a problem, then it goes to the Supreme Court judge who will be appointed.

MS. MICHAEL: Right.

MR. LEARMONTH: The point I'm trying to make is that if we don't get this exemption, and it's possible – no one has said this, but it's certainly a possibility, in my mind anyway, that a company might say, okay, if this is subject to ATIPPA we're not giving you any of these documents over which we claim solicitor-client privilege and we'll go to court to protect it. Whereas if we are exempt from ATIPPA and the company decides to comply with our rules, we will at least see it to satisfy ourselves as to exactly what is in it. We'll get to see it and if there's an argument, it will go to the judge.

If the exemption isn't granted, it could affect the documents that we get, the flow of documents that are covered by solicitor-client privilege. We won't get as much and everything may be redacted. There is the cost factor, but there's also the fact that if we're not made exempt from ATIPPA, a company may take a formal legal position that we're not giving you anything that's solicitor-client privilege and then we won't see it. So we won't get as much from the corporations and that will inhibit our ability to make a fulsome assessment of all the evidence.

MR. SPEAKER: Ms. Michael, just on a point and then we have Ms. Coady followed by Mr. Davis.

MS. MICHAEL: Yes, I'm not a lawyer so I want to check out subsection 12(3):

“Notwithstanding subsection (1)” – this is under the *Public Inquiries Act* which says that you could end up in court – “but subject to subsection (4)” – which doesn’t deal with what we’re talking about here right now – “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.”

MR. LEARMONTH: Yes, but –

MS. MICHAEL: Where does what you’re saying fit under that subsection? I know you’re referring to solicitor-client privilege.

MR. LEARMONTH: Okay. Yeah.

The claim to solicitor-client privilege is not written in any act or legislation.

MS. MICHAEL: Or a regulation.

MR. LEARMONTH: It’s a part of the common law.

MS. MICHAEL: Right.

MR. LEARMONTH: In fairly recent decisions, the Supreme Court of Canada has clearly said that’s a substantive right. It’s enforced and guarded very carefully by the Supreme Court of Canada.

Solicitor-client privilege is not something that is just you look at a statute or a regulation and it’s written down; it’s developed through the English common-law system. It’s a right that the Supreme Court of Canada has indicated they’re very vigilant about protecting a person or corporation’s right to claim solicitor-client privilege.

With respect, I don’t think there’s anything in section 12 of the act under evidentiary privileges that would prohibit someone from making a claim to solicitor-client privilege and, if justified, having that claim confirmed by the Supreme Court.

MR. SPEAKER: Ms. Coady.

MS. MICHAEL: I have one more question, but I’ll come back to it.

MS. COADY: Thank you very much.

I want to thank the commissioner and counsel for bringing forward this important issue and for the opportunity to speak to it. I do note on the reasons for the request the commissioner feels if he has to move forward with ATIPPA, it would have an impact on the ability to carry out a thorough investigation.

He goes on to speak to how other public bodies, other investigative bodies, for example the RNC, other statutory Officers of the House of Assembly and any workplace investigations are exempt from disclosure. He talks about if the Commission of Inquiry is required to respond to ATIPPA requests during the course of this investigation, the investigation will be hampered.

I take those words very seriously, as we all do. I want to make sure that the public right to know the issues and concerns around Muskrat Falls are well known, and I think that it would be important for us in this very open process of a public inquiry, ensuring maximum disclosure, maximum capability of investigative powers, maximum outcome and improving of processes to ensure what comes out of the inquiry is in the best interests of all of Newfoundland and Labrador. I would think that we would want to adhere to request of the commissioner because of his ability and to ensure his ability to do a thorough investigation.

I do note that government and Nalcor are always subject to ATIPPA, so that would remain the case. It would just mean that during the course of the investigation, during the public inquiry, the public inquiry itself, work would not be subject to ATIPPA. But, of course, all those records would become public following the public inquiry.

I also want to note – I did hear the issues around transparency and accountability, and I think a public inquiry gives the utmost in accountability and transparency in that on a daily basis, of course, there will be hearings, there will be discussions on documents and there will be discussions on issues and manners of all same. I

think that is paramount to getting to the bottom of Muskrat Falls and the concerns that the people of the province have.

So I'm supportive of Commissioner LeBlanc's request. I do think that the people of the province want to get to the bottom of this issue; they want to have a thorough investigation. As I said, government, as well as Nalcor, are still subject to ATIPPA and, of course, all documentation and all information will be available publicly in any event.

I wanted to put that on our record and I wanted to say to counsel that I appreciate their work, I appreciate the timeliness of their work because, of course, the Muskrat Falls concerns have been known for quite some time and now we will hopefully get to see how the decision-making process was made and all the information will be out there in public realm.

Thank you.

MR. SPEAKER: Thank you, Ms. Coady.

Mr. Davis.

MR. P. DAVIS: Thank you very much.

I have a number of comments I would like to make, but first of all I'll just follow up on Ms. Coady's comments. I'm not convinced or satisfied at this point in time that all records will become public at the end of the inquiry. They'll be passed over to government and then government would have a number of options and opportunities available to them. There's been no formal assurance if that would happen or how that would happen.

The inquiry itself could easily take the position that at the end of the inquiry they will release all documents or make them public, but that's not the normal process. I understand from Ms. O'Brien that would happen and I'm not confident that government would.

We have a serious matter here. I appreciate the commentary from our guests that represent the inquiry. Cost is certainly an issue, but we know that access to information costs should not be a barrier to access to public information and what should be available. If it does cost some money

to do so, that's the cost of doing business quite often in government.

We know in government today that access to information coordinators are busy and departments are busy. It's a difficult, difficult task to keep up sometimes with the number of requests, the quantity and the quality of requests and so on. But that's not a reason for government not to abide by those requests and it shouldn't be.

There are six of us, and you, Mr. Speaker, as Members of this Commission. It comes to mind this morning that Ms. Coady is the minister of the department who is the front and centre of this. Mr. Parsons is the Minister of Justice and Public Safety and Attorney General. I'm a former Cabinet minister and premier. My colleague, Mr. Hutchings, is a former Cabinet minister.

Some may say or make the case or take the position that all four of us here have or may have or potentially could have an interest personally to ourselves. It could be judged as being in a conflict. I suggest here, on a matter of such importance I don't think it would pass the test of the public for us in this forum as a Management Commission when we have four of us here in these positions to make this very serious decision.

I don't want to be an obstructionist to the Commission. I've said publicly I have nothing to hide. I called for publicly that the inquiry take place. The government agreed and announced then in November the inquiry would take place. I certainly don't want to obstruct the process; I certainly don't want to obstruct the flow of information. I want to have the best opportunity for the commissioner to do the work and understand the concerns of the commissioner and the Commission itself.

I believe this is a matter that should be discussed in the full of the House and the full House of Assembly. I want to do some work and review further what Justice Cameron has said and what Justice Wells may have considered. I think they are very important points as well.

I think it's a matter that should come to the full of the House. We're a little over three weeks

away from a sitting of the House and the government could call the House. I think it's important that we make a full discussion and consideration of what the justice has asked.

I'm not satisfied this is the right forum for us to do this. I'm not satisfied that all the information will be made public at the end of the inquiry.

MR. SPEAKER: Ms. Michael.

MS. MICHAEL: Thank you, Mr. Speaker.

I do want to support what Mr. Davis is saying. We are here as a Management Commission with certain responsibilities, there is no doubt, but we're not here officially representing our caucuses actually.

You'll notice, when we identify ourselves we identify ourselves as MHAs. While the rules and regulations make sure there's representation from all parties on the Commission, for us to have this responsibility, just ourselves, I think, is wrong. I absolutely agree with Mr. Davis on that point.

I do want to come back to something else that was said by Ms. Coady. I think it's important to point out that under the *Energy Corporation Act* the section which is called records of commercially sensitive information, section 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" – and in the energy act the corporation is Nalcor, that's the definition 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"

I'm not going to read the whole section but, in actual fact, the *Energy Corporation Act* exempts Nalcor from significant pieces of ATIPPA. I

think that point needs to be made because I did hear Ms. Coady say that Nalcor is covered by ATIPPA. It has major, significant exemptions based on the *Energy Corporation Act*.

MR. SPEAKER: Mr. Davis.

MR. P. DAVIS: Yes, just a very quick comment in that. My recollection and understanding is this is commonly used by Nalcor, third party notice and commercial sensitivity. It's quite often used.

MS. MICHAEL: Oh, yes.

Well, they use it all the time because the *Energy Corporation Act* says they may and we can't get the information. This is one of the reasons why I think government was forced, by public opinion and the Opposition voice in the House of Assembly, to finally set up a public inquiry. I think this is so important to point out.

There is so much information that is protected for this corporation that other corporations haven't been protected for under ATIPPA. That's why the public have been so incensed over not having real information about what's going on with this project.

I need to make this point really strongly: It is totally protected and the exemption continues that. The exemption continues the information being protected. To me, the fact that at the end of the inquiry everything goes to the Department of Justice – and if people want to start then trying to get the information, they could be 10 years down the road still looking for it.

Now, if the inquiry doesn't get the exemption and has to do the work in three or four years – it could be, we're still waiting for some information. But if they don't get the exemption, then we can have documentation being released as the inquiry is working.

I understand the concerns. I understand what can happen if that is the case. But I also understand the people of this province have been promised openness and transparency. I don't see it happening with the way things are going right now.

I know the commissioner wants it. I know that. I don't question that at all. I know counsel has its

commitment. I believe that. I think there have been restrictions laid on and I can't speak strongly enough to it at this moment.

I've heard nothing yet that is changing my thinking at the moment. I'll continue asking questions however long it takes.

MR. SPEAKER: Mr. Browne.

MR. BROWNE: Thank you, Mr. Speaker.

I just want to make reference to some comments that Mr. Davis made with respect to conflict and whether or not the Management Commission should be considering this matter.

I think coming out of last year's MCRC one of the recommendations that independent panel made was to ensure the Management Commission follows its fiduciary responsibility to address matters that it is empowered to address. If Mr. Davis says that he, Mr. Hutchings, Ms. Coady and Mr. Parsons are in conflict, would those people not be able to participate in a vote or partake in debate in the House of Assembly?

I believe this matter needs to be addressed. If the commissioner feels that it's going to impede the investigatory ability of the Commission – the people of this province have waited far too long for the veil of secrecy to be lifted on the Muskrat Falls Project.

I say to Ms. Michael: None of us are lawyers here, with the exception of Mr. Parsons. I would question your interpretation of the act because my interpretation is that Nalcor is subject, with the exception of commercial sensitivities.

If you look at the public body clause, subsection of the ATIPPA, it says a constituency office of a Member of the House of Assembly is also a public body considered, but it is also exempt from ATIPPA as a caucus record and as a political record. Through the ATIPPA process, there are measures in place that not every piece of information can be released.

I believe the people of this province deserve a fair and open hearing of the Muskrat Falls debacle. That's what the inquiry itself is set up to address. In my view, it's the most open and

transparent way to address the grave concerns that the people of the province have.

MR. SPEAKER: Mr. Hutchings.

MR. HUTCHINGS: Thank you, Mr. Speaker.

I wonder if I could go back and just ask a question in regard to our guests and counsel.

Ms. O'Brien, I think you indicated there was reference made to the Dunphy inquiry and Judge Barry's overseeing that process, and reference made to, at that time, requests for ATIPPA during that process. Could you again just reference what transpired in that particular case in regard to if there was and how they were handled?

MS. O'BRIEN: Yes, absolutely.

Now, Mr. Hutchings, I can only do to the best of my memory here today.

MR. HUTCHINGS: Sure. Yes.

MS. O'BRIEN: When we started our work, we did look at ATIPPA. We did read that we, as a public inquiry, were covered by the ATIPPA legislation. Justice Barry did not seek an exemption for the Donald Dunphy inquiry.

I believe for a time I was actually appointed the ATIPPA coordinator for that commission. I do not recall getting a single ATIPPA request. I do recall at one point that government had an ATIPPA request and we were consulted as to whether we had any input on that. We didn't, was my memory at the time, but I don't recall us ever getting an ATIPPA request.

MR. HUTCHINGS: Okay. So in that scenario, if you had received one, there would be a determination made by counsel of whether there was privilege, or reasons, or solicitor-client, or whatever, of why that wouldn't be released. Would that be true? You would have to make a determination?

MS. O'BRIEN: We would have, without an exemption –

MR. HUTCHINGS: Yes.

MS. O'BRIEN: Whether we started getting a lot, maybe Commissioner Barry would have sought an exemption. It's hard to say that here today, but the fact is we didn't. Had we gotten a request, unless we had an exemption, it would have been our duty to fulfill our obligations under ATIPPA – absolutely.

MR. HUTCHINGS: Yes. Sure.

MS. O'BRIEN: It really was not an issue. Again, the amount of documentation in the Donald Dunphy inquiry would have been much smaller than that even under the Cameron inquiry.

What we're looking at today compared to the Cameron inquiry – as I said earlier, one lawyer who was involved in both of them and aware of the volume of documents they're getting, he's estimated to be 100 to 1,000 times greater. So that's what we're dealing with.

MR. HUTCHINGS: Another point of clarity, if I could.

Mr. Learmonth indicated – I think we had a discussion in regard to determination of privilege and the exemption provision of whether it existed or not. I apologize, but could you just take us through again how the exemption would affect your determination of the privilege or protecting information when you go through the investigative process.

MR. SPEAKER: Mr. Learmonth.

MR. LEARMONTH: I attempted to answer that by an example. If a party has the right to claim solicitor-client privilege over advice they received from a lawyer. If a party takes the view, well, I'm going to redact the solicitor-client privilege items; I'm not giving it to the Commission because they may have to release it in an ATIPPA request that's made to the Commission. I don't want that to happen. So what I'm going to do is I'm going to redact it and then make an application to court to confirm that this information is protected.

Now, in the case of an ATIPPA exemption, if that is granted, I believe – I can't say for sure because we haven't had this before – with our rules the procedure that a party would follow

would be that they would give us the document un-redacted and then we'd see what's in it. If it is covered by solicitor-client privilege, if we agree with that, then we would agree to it being redacted, but we'd have the opportunity of seeing it. What are they trying to cover? I don't mean that in a negative way. They have a right to it. If there's a dispute, it would go to a judge who would be designated by the chief justice in an informal basis.

The advantage that an ATIPPA exemption would give us is I think we would see a lot of the legal advice, for example, that Nalcor, for example, received.

MR. HUTCHINGS: Yes.

MR. LEARMONTH: Whereas if there's no ATIPPA exemption, it's unlikely that we would.

Now, I want to emphasize. I'm just talking on – we haven't dealt with this issue before, but that's a scenario that I think is reasonable to believe could exist. It may come at us today or tomorrow.

With an ATIPPA exemption, I believe we have a much greater chance of seeing all the legal advice, for example; whereas if there's no exemption, a party may choose to redact that information and we'll never see it. They may have good legal grounds to redact it.

MR. HUTCHINGS: Okay, just a follow-up to that.

In that scenario, with an exemption in place, your expectation would be that there would be less reluctance to maybe redact information when you're asked?

MR. LEARMONTH: I say that with great confidence, that if we are not subject to ATIPPA, parties will feel free to follow the procedure we have set out in the rules, the informal procedure where they'll give us the document and we will review it. If we agree there's solicitor-client privilege, we'll give it back to them or redact it. If there's a dispute, it will be decided by a judge.

MR. HUTCHINGS: Okay. So in that context, that's the exemption. But with an exemption in

place, that same party understands that for the intervening period that the exercise is going on, the inquiry, there is a temporary exemption.

I don't know if protected is the right way, but they'd have some confidence that what they're putting in would be vetted and they could make the case for privilege.

MR. LEARMONTH: Yes.

MR. HUTCHINGS: Yet, knowing that what we've said, once the inquiry is over, supposedly all that information is becoming available anyway.

MR. LEARMONTH: Yes.

MR. HUTCHINGS: How does that change? It's –

MR. LEARMONTH: Well, you see, I don't know –

MR. HUTCHINGS: I'm just trying to get it in my mind, because at the end of the day there's information that should be made available anyway, right?

MR. LEARMONTH: What information? That's a question that I really can't answer for you. I'm not exactly sure how that would apply.

MR. HUTCHINGS: Yes.

MR. LEARMONTH: I can't tell you that one way for sure or this way. There are legal issues involved in that. I'm just talking about what I believe would be the tendency of companies –

MR. HUTCHINGS: Sure.

MR. LEARMONTH: – to give it to us on that, but I can't say to you exactly what the result of that will be when the inquiry is over.

MR. HUTCHINGS: Yes. My final comment is – I certainly respect your opinion, and you have far greater knowledge on this than I would have. But if someone out there is concerned about releasing a certain, say, solicitor-client privilege and there's an exemption exists and you believe they would knowingly now not redact that and forward it to you, because they know an

exemption exists and it has to go through a process to determine whether there's privilege and they have an avenue to go through to protect it, we'll say.

MR. LEARMONTH: Yes, right.

MR. HUTCHINGS: That's with the exemption.

Even with that exemption, they understand at some point down the road, if what we're saying is accurate, all this information is going to be made available anyway. Why would they knowingly – if they wanted to protect information – do it with an exemption in place, knowing at some point down the road, that information is going to be publicly available anyway?

MR. LEARMONTH: I don't know for sure under the ATIPPA, when we turn over the records, whether there will be still claims for solicitor-client privilege.

MR. HUTCHINGS: Right.

MR. LEARMONTH: I can't tell you exactly how that's going to happen. That's an unknown.

MR. HUTCHINGS: No.

MR. LEARMONTH: It's a legal issue that will have to be decided down the road. I can't give you any confident assurance that this is exactly how it's going to happen.

MR. HUTCHINGS: No, sure, I understand that. I appreciate it.

MR. LEARMONTH: I'm talking about at this stage, my perception – and it's only my perception – of the tendencies of parties to make more fulsome disclosure to us if we're exempt from ATIPPA than if we're subject to ATIPPA. I think there would be a little bit of a hesitation if we aren't exempt.

MR. HUTCHINGS: Okay.

MR. SPEAKER: Ms. O'Brien, just on a point.

MS. O'BRIEN: Yes.

There's one thing I do want to make clear – and perhaps everyone in this room knows, but I know the public is listening too – the role of Commission counsel. Commission counsel is retained by the commissioner and we are his legal counsel.

In carrying out our duties, the law states, and we are honour bound, to carry out our duties in the public's interest. In other words, when we are doing our work, it is the public's interest that we are representing, and first and foremost, the public's interest in a full airing of all the relevant facts.

So us being able to see and make decisions of what should be in and should be out, when we're doing that, we are very much doing that through the lens of the public interest. We are in that way working for the public. I just want to make that clear.

Thank you.

MR. SPEAKER: Thank you, Ms. O'Brien.

Ms. Michael followed by Mr. Davis.

MS. MICHAEL: Yes, it's a follow-up to what Mr. Hutchings was just discussing.

I guess I'm still not clear – and you may not have the answer to this, as you've already indicated with the question that was put to you by Mr. Hutchings. It's still not clear to me why, if the documents are going to become public through passing on to a department – and I question how public that is because I know what the process is going to be – if they're going to become public anyway, as Mr. Hutchings has indicated, why wouldn't they be part of the final report of the inquiry and made public at the time with the report of the inquiry?

I mean that's what happens with commissions, task force, et cetera, once the report is out you can go in and you can find all the documentation that they had received, et cetera. It's all there. Why wouldn't that practice be happening if the exemption is only for protection while you're doing the actual work?

MR. LEARMONTH: I don't necessarily agree with you that in all commissions of inquiry

everything that is filed is open to the public after the commission has completed its work. There are confidential documents. They may be confidential by reason of –

MS. MICHAEL: I realize that.

MR. LEARMONTH: There may be commercially sensitive documents that we see but for whatever reasons – and we have procedures under our rules to deal with that. So there's no assurance that just because we receive a document that it's going to be disclosed to the public, whether we're subject to ATIPPA or not.

Maybe Ms. O'Brien would like to speak further to that for clarification.

MS. O'BRIEN: No.

MR. SPEAKER: Ms. Michael, on a point.

MS. MICHAEL: I do realize that. I do understand that the documents that you use still will have the inquiry – with counsel doing the work, will still have the ability to determine whether something should be made public. So I'm talking about everything that you would determine could be public, why can't it be public, understanding that restriction? Yes, I do understand that.

MR. LEARMONTH: Yes.

MR. SPEAKER: Ms. O'Brien.

MS. O'BRIEN: Thank you.

Just to speak to that, certainly everything that can be public and should be public will be public during the course of our work.

MS. MICHAEL: Yes.

MS. O'BRIEN: Confidential exhibits are the exception, certainly not the rule. The commissioner has to have an articulable reason. There is a balancing and a weighing of the interest involved in making that decision, but the vast majority – public inquiries, things really, really do become public and they go out there in the public light.

MS. MICHAEL: Right.

Thank you.

MR. SPEAKER: Mr. Davis.

MR. P. DAVIS: Thank you, Mr. Speaker.

My questions are still of the same discussion because under the *Public Inquiries Act*, I'm right in that a public inquiry can compel anybody to provide all information, records and so on. Would that be accurate?

MS. O'BRIEN: That's right.

The commissioner has powers under the public investigations act, too, so he can issue summons. He can even do something akin to a search warrant, actually, and summon witnesses and whatnot.

The act itself, the *Public Inquiries Act*, does preserve certain privileges. I'll just say under section 12(1) of the *Public Inquiries Act* it says, "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."

So the *Public Inquiries Act* recognizes that certain privileges are preserved, but the subsection (2) of section 12 goes on and addresses specifically grounds of a claim that disclosure would be injurious to the public interest or would violate Crown privilege. That subsection specifically says that those types of privileges do not apply in an inquiry under the act.

Does that address your –?

Thank you.

MR. SPEAKER: Ms. Michael.

MS. MICHAEL: (Inaudible) I'd like to make. It has to do with – and I'm not being difficult, I'm just doing every single angle in terms of openness and accessibility. You may not know the answer to this, but you may have to find it.

When everything from the inquiry then moves on to the department – we assume it's the

Department of Justice – people ATIPPING – because that's what they're going to have to do – will be ATIPPING documentation which now – well, I'll put it this way: How is that documentation now going to be classified?

Is it documentation that is still inquiry documentation or is it documentation that will now be under the jurisdiction of the acts as they are? Will documents that are protected for Nalcor, under the *Energy Corporation Act*, be protected at that time?

The inquiry's over. The documents are there in the Department of Justice. What is now going to rule the ATIPP requests that are going to come in? I don't know if you know the answer to that.

MS. O'BRIEN: I don't at this time. I can't give it to you in that level of detail. I certainly know, for example, for solicitor-client privilege documents, if we get something and we look at and we say: Yes, that's clearly solicitor-client privilege, we wouldn't hang on to that information. We would recognize that privilege. So that information wouldn't go any further.

I think your question is specifically with respect to the exceptions under the *Energy Corporation Act*, how that would play out when those documents are ultimately turned over to the Department of Justice and Public Safety. I don't know.

MS. MICHAEL: Is there any way we can get an answer to that question?

MR. LEARMONTH: Could I –?

MR. SPEAKER: Mr. Learmonth.

MR. LEARMONTH: A lot of that we don't – that's uncharted water. It would depend, to a certain extent, on the position taken by the party who gave the – they could make an application of course. So it would be of no use for me to try and give you an answer that satisfies that question.

MS. MICHAEL: Right.

MR. LEARMONTH: The best thing for me to say is I'm not sure. There are complicated legal issues that would have to be resolved in court.

There are no judicial precedents that I'm aware for them, so as I said, we're in uncharted water.

MS. MICHAEL: Right.

Thank you.

MR. SPEAKER: Mr. Hutchings.

MR. HUTCHINGS: Just one point, again, on the issue of privilege.

If a request for information was produced to you as legal counsel for the Commission or the inquiry and you got to review it to make a determination that it should be redacted or privileged, and when the inquiry is completed and the information is turned over to the Department of Justice and Public Safety, the information that you reviewed that you determined would be privileged and would not be released – would anybody know what that review was or what that information was contained after the inquiry is over and it's with Justice and Public Safety?

MR. SPEAKER: Ms. O'Brien.

MS. O'BRIEN: Yes, let's take an example of solicitor-client privilege. That's a privilege that would be maintained. If we looked at it and we agreed that was solicitor-client privilege, we would not take that information. It would either be redacted if it's a part of a document, or we wouldn't keep custody of the document.

MR. HUTCHINGS: Okay.

MR. LEARMONTH: But at least we would have the chance to see –

MR. SPEAKER: Excuse me.

Mr. Learmonth.

MR. LEARMONTH: At least in that situation we will have had the chance to see it, to satisfy ourselves that it's not, for example, a bogus claim to solicitor-client privilege. Under the rules that we have we would get the benefit of seeing the documents, whereas, if there's no exemption, it's possible we would never see them.

MR. SPEAKER: Ms. Michael.

MS. MICHAEL: I just want to ask Mr. Learmonth what he sees as the benefit of seeing it, if you're not going to be able to use it. What is the benefit the inquiry would be getting from you at least being able to see it?

MR. LEARMONTH: To satisfy ourselves that this is a legitimate claim. In other words, let's say someone – this is all hypothetical – claimed something was solicitor-client privilege and it wasn't. Let's say it wasn't or they had an interpretation that really was weak.

They claim solicitor-client privilege. This is without an exemption. Then, it would have to be decided by the court. A formal application may have to be made to the court.

MS. MICHAEL: Yes.

MR. LEARMONTH: Not the informal procedure we have. A formal application to the court may have to go forward. That would slow things down. The benefit we get, if parties comply with our rules, is we get to see them and satisfy ourselves.

We don't keep them. If it is solicitor-client privilege, pure legal advice, then we would pass that back or redact it from the document. But as I say, we would have had the benefit of satisfying ourselves that we're looking at everything, whereas in the other situation, there would be a question mark because –

MS. MICHAEL: Until the court decision.

MR. LEARMONTH: Yeah.

But then, if we had to go to court time and time again, the two-year time limit becomes unworkable. Also, the time of filing applications and responding to applications in court would really detract from our ability to focus on the core documents that we hope we'll receive.

MS. MICHAEL: Thank you.

MR. SPEAKER: Mr. Browne.

MR. BROWNE: Thank you, Mr. Speaker.

I certainly want to reiterate my commitment and openness to transparency and accountability. It's so important in an open, free and democratic society that we have a free press. That we have the ability for our citizens to see the documents they need to see to ensure things are not going awry. I think that's part of the problem with Muskrat Falls and why there was a need to convene a public inquiry.

I do want to reiterate this is a request that has come from the commissioner of the inquiry. I have listened intently to the witnesses here today and I have to say this has been an extremely thorough process this morning. It's something that we, as Members of the House, have been saying: a committee process works often much better than the full House of Assembly because it allows for this back and forth and candid testimony from expert witnesses such as yourselves.

I go back to a comment Ms. O'Brien made that as co-counsel for this Commission you're duty and honour bound to the public interest. I take that very seriously. I also take very seriously the comment Mr. Learmonth made earlier that, without such an exemption, you feel the work of the Commission will be hampered.

God forbid, after this Commission is over, that we look back and say: We wish we had all the information available to us so that a full and thorough airing of what happened, why it happened and why decisions were taken to prevent it from happening in the future – so we don't get in a position where our citizen's electricity bills are going to double, so that good public policy can be improved as a result of the inquiry, which I think is everyone's goal.

I think those comments from co-counsel stuck with me, that they are duty and honour bound to the public interest. That's why I think it's important they see all the documents they can and they have mechanisms in place that allows for the free flowing of documents from the parties.

The commissioner himself, Commissioner LeBlanc, I have no reason to believe he is acting in anything but the public interest. He's made this request of the Commission. We're

empowered to consider this and make a decision.

Mr. Speaker, I'm moving that the Commission now vote on Mr. LeBlanc's request.

MR. SPEAKER: Any further discussion?

Ms. Michael?

MS. MICHAEL: It's a request for a motion. Somebody has to second it. I'm not seconding it.

MR. SPEAKER: Is there a seconder to the motion?

MR. P. DAVIS: Who made the motion again, Mr. Speaker?

MR. A. PARSONS: The motion was made by Mr. Browne. Correct?

MR. SPEAKER: It was.

Mr. Browne, would you repeat your motion, please.

MR. BROWNE: Yes, I'm moving that the Commission vote on Commissioner LeBlanc's request to grant the exemption that he has requested in the public interest.

MR. SPEAKER: Were you able to hear that?

MR. A. PARSONS: Yes.

I'll second that motion.

MR. SPEAKER: It's been moved by Mr. Browne and seconded by Mr. Parsons.

MS. MICHAEL: We get discussion.

MR. SPEAKER: Discussion on the motion?

MS. MICHAEL: That's right.

MR. SPEAKER: Ms. Michael.

MS. MICHAEL: Yes, because I still have questions. The motion may be on the floor, but we can still discuss it.

MR. SPEAKER: Absolutely.

MS. MICHAEL: Thank you very much.

I would like to know from counsel – let's say the deadline was taken away. Let's say the resources would be there for the ATIPPA requests to be taken care of, because these are two major issues that Mr. LeBlanc has raised and you've spoken to them.

Let's say all of that was taken care of and time wasn't a factor, the deadline is not there, you have the resources for staff to deal with the ATIPPA requests, et cetera. Would Mr. LeBlanc still be saying that he required the exemption or you as counsel require the exemption? If so, why would you still say that?

MR. SPEAKER: Mr. Learmonth.

MR. LEARMONTH: I would say emphatically: Yes, we would still be looking for it, Ms. Michael. I'm more concerned – from my own personal perspective anyway, I can't speak for the commissioner. From my own perspective as co-counsel, I'm less concerned about the cost as I am concerned about our ability to get access to documents, because we have to do that in order to discharge our duties to the public. The money is something that is important to all of us. We know that's a scarce resource now, unfortunately, and the government is challenged in a fiscal way. But that's not my biggest reason for urging you to give this exemption. It's because it will affect our ability to do our job as required under the order-in-council.

MS. MICHAEL: Thank you.

MR. SPEAKER: Any further –?

Ms. Michael.

MS. MICHAEL: Yes, I would like to come back again to the point that Mr. Davis raised early on in our discussion with regard to the fact that this issue was brought to us, to the House of Assembly Management Commission, as a request from the Minister of Justice made to the Chair of the Commission, and I'm still concerned about the fact that I'm still not convinced that it is the responsibility of the House Management Commission to make a final decision on this, even on the temporary exemption. I need more to say yes to that.

I don't have the act in front of me. I hadn't thought about that until Mr. Davis spoke to it. I don't have the *House of Assembly Accountability, Integrity and Administration Act* in front of me. But we are dealing with something which is bigger, it seems to me, than the House of Assembly Management Commission. I could be wrong on that, but I really have a concern.

MR. SPEAKER: Mr. Davis.

MR. P. DAVIS: Thank you, Mr. Speaker.

I was waiting to speak on exactly that point. What we're being asked to do here, I believe, is to amend a piece of legislation until the House, sometime in its next sitting, can sit to debate and the government can bring forward an amendment to the legislation.

I never captured the full wording of Mr. Browne's motion, but I'd like to move an amendment to his motion. I, again, would ask for the Chair's assistance in having the proper wording for it. I'd ask to move an amendment to the motion to read that Justice LeBlanc's request be brought to a sitting of the full House of Assembly for debate and decision.

MR. SPEAKER: Is there a seconder to the amendment?

MS. MICHAEL: I'll second it.

MR. P. DAVIS: To that amendment, may I speak to it?

MR. SPEAKER: Yes.

MR. P. DAVIS: (Inaudible) we've heard a lot of discussion here this morning. It's been a very comprehensive discussion, and I thank both of the guests for coming in and providing information; the information they've provided to us to the best of their abilities. I thank them for that. I acknowledge the complexities, as I've said earlier.

To Mr. Browne's comments about our fiduciary responsibilities, we do, not only as Management Commission Members but Members of the House of Assembly. He's pointed out the importance of this matter and has taken some

time to do that. It is very important, and it's a complex matter.

What we're being asked to do here is to essentially amend Schedule B of the access to information legislation. So we're essentially amending legislation. If the House was in session, it would be coming before the whole House, but it is a significant matter that I think is worthy of that debate in the House of Assembly in discussion.

I'm not here representing anyone else or my caucus, only myself. As all Members of the Management Commission are, we're representing ourselves. I believe it would be, giving consideration to our responsibilities as the Management Commission in considering the gravity and the significance of what's being asked of us here, that the right thing to do would be to have this matter considered before the House of Assembly, which will meet in just over three weeks' time.

Thank you, Mr. Speaker.

MR. SPEAKER: Mr. Browne.

MR. BROWNE: Mr. Speaker, I'm wondering if the Clerk can expand on her earlier comments.

It was my understanding, and Ms. Michael is throwing this into question now. I'd like some clarification for myself and the Members of the Commission around the process of why this is at the Management Commission. If, in fact, Ms. Michael is correct, that this is not the right place to address it or is it written down somewhere that the Management Commission is to address this when the House is not in session?

Could you please clarify and ensure that we have a very clear answer as to whether we have the authority to decide on this matter and if it is, in fact, the rightful place when the House is not in session? I'd like a clear answer on that.

CLERK: That advice is given in the Briefing Notes that we provided.

Under section 4 of ATIPPA 2015, it clearly states: "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."

That is where ATIPPA directs – that's the mechanism to amend Schedule B when the House is not sitting. Then we need to look at the legislation, the House of Assembly Accountability, the Green act, to make sure that the Management Commission has the authority to deal with such matters.

That is given – if you look under the responsibilities of the Management Commission outlined in section 20, it outlines the thrust of the Management Commission. Section (g) specifically states: "exercise other powers given to the commission and to perform other duties imposed on the commission under this or another Act."

So the clear authority for the Management Commission to deal with this matter is there.

MR. BROWNE: Thank you.

Mr. Speaker, I'm not done.

CLERK: If I might; if you would like a further explanation, I would suggest we would just take a brief recess and we could have the Law Clerk speak to you. That's an option as well.

MR. SPEAKER: Mr. Browne.

MR. BROWNE: Thank you, Madam Clerk. I did read the note, that's why I was a little confused when discussion arose of whether or not the Management Commission was the rightful place, given the information that was provided to us by the House of Assembly staff.

I just want to go back to Mr. Learmonth, just to ensure that I'm clear.

The funding allocation resource piece aside, if we were to write a cheque today for whatever the number is and say hire the additional four staff for ATIPP, would the commissioner still be bringing this request?

MR. LEARMONTH: Absolutely. That would address – now, I'm not speaking for the

commissioner; I can't speak for the commissioner. I can speak as co-counsel only for myself. I can't even speak for Ms. O'Brien.

That is not my biggest concern. My biggest concern is ensuring that we have the ability to do our duty here, which is to get to the bottom of the question that we've been asked to address.

The first question: Is it of concern to me, the finances? Yes, but if someone said: We'll give you the finances. I'd say: Well, I'm sorry, that wouldn't satisfy my perception of the problem. I realize others may have different perceptions on it, but that's my heartfelt, serious problem with not having an exemption, is the ability – I feel we'll be handcuffed, that we won't be able to do our job within the two-year period.

MR. BROWNE: Thank you.

Sorry, Keith, I know –

MR. SPEAKER: Mr. Hutchings.

MR. HUTCHINGS: Thank you, Mr. Speaker.

Thanks, Mr. Browne.

I just want to reiterate a comment Mr. Browne made in regard to this exercise. I guess having counsel come in and having a discussion on, which is a complex issue, I think it's a great exchange. It's very beneficial to try and reach a conclusion on what's before us here this morning.

I just want to reference section 4 of ATIPPA, in reference to the House of Assembly Management Commission. In the reference it may order the amendment of section B. It doesn't say it shall; it said it may.

So that gives discretion to the Management Commission to certainly review it and, I guess, make a determination and/or – obviously, recognizing we're all part, the Members are part of a 40-Member legislative body here in the province. If they think the breadth and scope of something we're discussing here is of an importance, or of a level that we think it should be considered by the full body of the Legislature, I don't think that's in any way not in keeping with the spirit and intent of the

Management Commission and/or the 40-Member legislative body that we have here in the province.

To the issue, which I think is complex, and at this stage in terms of – as I said, it's been a very wholesome discussion and a lot of information, it is complex. I think at the end of the day we all want to make sure that every piece of information that can be available is made available, and going through the process the public has the confidence that they have access to information as the inquiry continues on.

Now, how we do that and how we ensure that happens; there's a debate here today in regard to whether it's during the actual inquiry or whether there's confidence that can be relayed to the general public that that information will be readily available at some point in the future. Maybe that's one of the issues here, when that point in the future is going to be and what guarantee is there that information that the people want to know, which I want to know, which I think most Members here want to know, what that information is and when will people see it in the general public of Newfoundland and Labrador.

So at this stage, I can't definitively say where I'm to with this exemption that's been asked for. I'm very respectful of Judge LeBlanc and what he's asked for. It's a complex issue. I certainly support the concept of – because this is a change to the ATIPPA legislation, this amendment.

I'm certainly very supportive of bringing it to the Legislature in the next few weeks, or on the 26th when it opens, and having a full and wholesome discussion in the people's House on this issue which is complex, and we'll move forward from there.

Thank you, Mr. Speaker.

MR. SPEAKER: Ms. Michael.

MS. MICHAEL: Just to add to that, we aren't talking months. Counsel has indicated at this point in time the work hasn't been hampered. That's my understanding. You're doing the work of getting evidence. It hasn't been hampered, that's my understanding. If they want to clarify that, for that reason, I see no reason for not

waiting until we go into the House of Assembly in three weeks' time.

MR. SPEAKER: Ms. O'Brien.

MS. O'BRIEN: Thank you.

Ms. Michael, just to speak to that, if you look at the commissioner's letter, in the last paragraph of his letter he wrote: "There is much urgency to this request." The commissioner was very aware of when the House would be speaking and he was very concerned that a decision be made on this as soon as possible.

While we have not been hampered to date – we have not received an ATIPP request to date – we expect that if this matter is to wait even a matter of weeks that we will be affected. That is why he specifically came to the Management Commission and requested this body to make the recommendation to the Lieutenant Governor.

MS. MICHAEL: Thank you.

MR. SPEAKER: Any further?

Mr. Browne.

MR. BROWNE: No.

Ms. O'Brien, could you answer this question for me? Should we grant an exemption, it would have to come to the House of Assembly within the next session – am I correct in saying that – with a formal amendment from the Lieutenant Governor in Council? Is that how it works?

MS. MICHAEL: Only for extension.

MR. SPEAKER: Ms. O'Brien.

MS. O'BRIEN: Your own resources may be able to speak better to this. My understanding is any order that would ultimately be granted is a temporary order and would expire at the conclusion of the next sitting of the House of Assembly.

MS. COADY: Mr. Speaker?

MR. SPEAKER: Yes.

Ms. O'Brien, go ahead.

MS. O'BRIEN: I understand that the reason being would be so that the matter could come again before the House of Assembly while it is sitting so they could make a determination on the matter.

MR. SPEAKER: Thank you, Ms. O'Brien.

Ms. Coady.

MS. COADY: I understand, Mr. Speaker, this would have to come to the House and it would likely be very early in the session.

MR. SPEAKER: Thank you.

Ms. Michael.

MS. MICHAEL: Just to get clarification – because of the legislative impact – in order to continue the exemption beyond May 31 there would have to be an amendment to the act, but this exemption can go right up until May 31. Correct?

Is Ms. Coady making a commitment on behalf of the LG in Council that, in actual fact, they're going to be dealing with this immediately when we go into the House?

That was a question for Ms. Coady, Mr. Speaker.

MR. SPEAKER: Ms. Coady, were you able to hear that question?

MS. COADY: Yes, thank you.

Sorry, I had the phone on mute. My understanding is that it will be coming to the House. The House Leader is on the line as well. I understand it will be coming to the House, possibly very early in the session.

House Leader, would you like to comment?

MR. A. PARSONS: Yes, that's my understanding as well. I have no issue trying to have this dealt with as soon as possible within the House.

MR. SPEAKER: Any further discussion?

There is a motion and an amendment on the floor. The motion was to recommend to the LGIC that the Commission of Inquiry on the Muskrat Falls Project be exempted from the *Access to Information and Protection of Privacy Act* in accordance with section 4 of that act.

There is an amendment and we have to vote on the amendment prior to the other motion. I think the amendment just asks that we consider, in lieu of the original moving – was that we would consider it being discussed at the sitting of the full House.

MS. COADY: For clarity, is the amendment to the motion that this be deferred to the full House or that we would vote on this now giving temporary access to the exemption? Then, further, it would go to the House of Assembly following the same?

MR. SPEAKER: My understanding of the amendment is that we would defer it to the full House. Mr. Davis, you can correct me if I'm wrong on that. That's correct?

Mr. Davis on a point –

CLERK: May I be –

MR. SPEAKER: Oh.

CLERK: I just want to be clear now because the options outlined in the note are either to recommend to the LGIC that the inquiry be exempted or do not recommend to the Commission of Inquiry.

MR. SPEAKER: Mr. Davis, on a point.

MR. P. DAVIS: It's very important that we clearly understand what it is we're voting on. Mr. Browne's motion, as I understood, was that the Management Commission vote to accept and provide the exemption requested by Justice LeBlanc. That's what I understood.

MR. SPEAKER: That's correct.

MR. P. DAVIS: My amendment to the motion was that the vote be brought to the full House of Assembly for a decision.

MR. HUTCHINGS: We're not denying the request.

MR. P. DAVIS: We're not denying the request. Our amendment is that the decision not be made here by the Management Commission, but brought to the full House.

I do want to close debate when we get to that point.

CLERK: You want to amend the – that basically the Management Commission defer the consideration to the General Assembly. I just want to be sure I have an understanding.

MR. P. DAVIS: Yes.

CLERK: Just for clarification purposes – it did come up; I think Ms. Michael and Mr. Browne had discussed it. If the exemption is granted by the Management Commission – not granted. If the Management Commission recommends the exemption – it's actually granted by the Lieutenant Governor in Council by an order – then that order would stay in place until an amendment goes through the House and Royal Assent is given.

We would expect at that time, if there was an order in place, the order would be rescinded and the act would replace it, the amendment to the act. Am I being clear there?

AN HON. MEMBER: Yes.

MR. P. DAVIS: No.

CLERK: For example, if there was an exemption granted by the Lieutenant – if there was a recommendation to grant the exemption and government chose not to bring in an amendment, that's when it would actually expire at the end of the sitting.

So there has to be some intervention for it to continue. I just wanted to make sure that's clear with everyone.

MR. SPEAKER: Mr. Browne.

MR. BROWNE: Can we get a clear ruling on whether the amendment, as proposed, is in order to be accepted as an amendment?

CLERK: Well, I mean it's not quite the same as in the House. Bobbi is going to write it out now.

MR. P. DAVIS: Can we take a recess for a few minutes, Mr. Speaker?

MR. SPEAKER: Sure.

MR. P. DAVIS: Maybe take a 10-minute recess.

CLERK: We'll get the wording of the amendment, okay?

MR. SPEAKER: It's been recommended that we take a 10-minute recess.

Thank you.

Recess

MR. SPEAKER: Okay, we'll reconvene our sitting.

Just prior to our recess we were considering the amendment to the recommendations. I've considered the amendment and the amendment is not in order, which leads us back to the motion made by Mr. Browne, the motion –

CLERK: Recommend to.

MR. SPEAKER: Yes.

Recommend to the LGIC 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.

Before I ask for that motion to go to the Table, I just want to make sure that Mr. Parsons and Ms. Coady are on the line and if you have heard everything to date.

MS. COADY: Yes, thank you.

I'm ready for the question.

MR. A. PARSONS: Same here.

MR. SPEAKER: Ms. Michael.

MS. MICHAEL: Yes.

I thank counsel for coming back in after the recess. I do want to get a couple of things further clarified.

In the electronic email, the message that came initially from Mr. LeBlanc on December 21, he says – it's the third sentence in his second paragraph: "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."

I'd like a definition or clarity around what is meant by: not seeking exemption with regard to finances with regard to the ongoing inquiry.

MS. O'BRIEN: I can answer that, Ms. Michael.

Certainly, when the commissioner first drafted that letter on December 21, he was not aware whether there could be a partial or full exemption under ATIPPA. His concern was really for the investigative part of our work, as set out in letter.

We understand now that we really have to be in or out. That's the way it works. There's no ability to do a partial exemption. However, the commissioner is incredibly dedicated to transparency and if you look at the FAQ, the frequently asked questions section of our website, you will see that he's already committed there that there will be regular updates, fiscal updates to the public as to how much money the Commission has spent to date, details on what it spent it on and so forth.

He wants the Commission's internal processes to be very transparent to the public so they know what their money is being spent on and how.

MS. MICHAEL: So it has no meaning with regard to finance questions with regard to the project. It's in terms of the inquiry itself?

MS. O'BRIEN: Exactly.

MS. MICHAEL: That's right. I thought that, but I just wanted to be certain that's what it meant.

MS. O'BRIEN: Thank you.

MS. MICHAEL: Just one other question; it comes to the solicitor-client issue. What gets defined as solicitor-client? That's a really broad question. The Supreme Court has dealt with it, but I'll be a bit clearer for you. Is it only the documentation that is actually between the solicitor and the client? If there's documentation outside like financial records and that kind of thing, which is the running of the company, that would or would not be solicitor-client?

MR. LEARMONTH: Can I answer that, Mr. Speaker?

MR. SPEAKER: Absolutely, Mr. Learmonth.

MR. LEARMONTH: Solicitor-client privilege generally is – the law protects the disclosure of advice obtained from a lawyer to a client. The client can waive the claim to privilege if the client decides to do so, but it's advised – so when a lawyer is advising a client, that communication is privileged if the client claims the privilege.

The law on the solicitor-client privilege is very complex. There are all kinds of cases in the Supreme Court of Canada and in the appeal courts of all the provinces. It's the type of thing that you think you get a decision from the Supreme Court that will settle the matter and then the next thing you know there's another part going to the Supreme Court. So it's a very complex area of the law.

MS. MICHAEL: Okay.

MR. LEARMONTH: It has to do generally with advice given by lawyer to his or her client.

MS. MICHAEL: Thank you.

MR. SPEAKER: Any further questions to the motion?

Hearing none, I'll ask the question.

All those in favour of the motion?

SOME HON. MEMBERS: Aye.

MR. SPEAKER: All those against, 'nay.'

SOME HON. MEMBERS: Nay.

MR. SPEAKER: Okay, given the fact that we have a Commission of six and three have voted in favour of the motion and three have voted against, do not recommend the motion, it will come down to a – I get an opportunity, as Chair of this Commission, to vote. I vote in favour of the motion.

I consider the motion to be passed.

Any further discussion?

MS. MICHAEL: Yes.

MR. SPEAKER: Ms. Michael.

MS. MICHAEL: Just to thank counsel of the inquiry for being here with us today and giving us very clear answers. I appreciate what I've learned from you.

MR. SPEAKER: Sorry, Mr. Learmonth.

MR. LEARMONTH: I can't speak for Ms. O'Brien, she'll speak for herself of course, but I appreciate the fact that you saw fit to allow us to come in and answer your questions. I know some of the questions we were unable to answer with clarity, but we did our best and we appreciate being part of this process.

MR. SPEAKER: Anything further?

Again, I certainly want to add my comments, as well, as Chairing my first Management Commission meeting. I certainly appreciate the attendance of co-counsel, Ms. O'Brien and Mr. Learmonth. I certainly appreciate your attendance, appreciate your expertise. As I do, and all Members of the Commission, thank the two ministers for tuning in as well.

I would entertain a motion for adjournment.

MR. HUTCHINGS: So moved.

MR. SPEAKER: So moved by Mr. Hutchings; seconded by Mr. Davis.

Motion carried.

AN HON. MEMBER: Thank you.

MS. COADY: Thank you.

MR. SPEAKER: Thank you.

On motion, meeting adjourned.