



May 13, 2026

The Honourable Helen Conway Ottenheimer
Minister of Justice and Public Safety
Government of Newfoundland and Labrador
P.O. Box 8700
St. John's, NL A1B 4J6

Dear Minister Conway Ottenheimer,

The Newfoundland and Labrador Arts Council (ArtsNL) is writing to bring forward a significant policy concern arising from the recent application of the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* to our peer assessment process. Respectfully, we are requesting a targeted amendment for consideration as part of the next statutory review of the Act, in your capacity as Minister of Justice and Public Safety and Minister Responsible for Access to Information and Protection of Privacy.

ArtsNL is an arm's length Crown agency responsible for the adjudication and distribution of public arts funding. Our programs rely on independent peer assessors—artists and cultural professionals—who evaluate applications and make funding recommendations free from political or institutional influence. ArtsNL staff do not participate in adjudication decisions on funding recommendations. Peer assessment remains the primary, established standard for determining excellence in public funding for the arts, and practiced by all public arts funding institutions, including Canada Council for the Arts. It is foundational to the credibility, fairness, and integrity of public arts funding in Newfoundland and Labrador.

Legislative Context and Review Timing

Section 117 of *ATIPPA, 2015* requires a comprehensive review of the Act at intervals of not more than five years. The most recent statutory review was undertaken in 2020, with a final report released in 2021. Based on this cycle, ArtsNL anticipated that a subsequent review process would be initiated in or around 2025. At the time of this letter, we have not found any public notice of a new review process and would be grateful for any information you can share about plans for the next review.

In advance of any impending review, we respectfully request that the attached brief be accepted as a formal submission for consideration in the next statutory review. This request is prompted by a recent court decision concerning the disclosure of peer assessor identities under *ATIPPA, 2015*, which is presently upending ArtsNL's core lines of business, causing trepidation in our peer assessors, and a reluctance to assume this role in future.



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We would welcome the opportunity to discuss this matter further with you and the relevant officials in your department and to participate in the review process in order to continue to support the success of the arts community in Newfoundland and Labrador.

Kind Regards,

Melanie Martin
Executive Director | ArtsNL

David Brown
Chair | ArtsNL

Cc: The Honourable Andrea Barbour, Minister of Tourism, Culture, Arts and Recreation
Carol-Anne Gilliard, Deputy Minister, Tourism, Culture, Arts and Recreation
Christina Harrington, Assistant Deputy Minister, Tourism, Culture, Arts and Recreation
Sonja El Gohary, ATIPP Office, Department of Justice and Public Safety



Contextual Brief

ArtsNL Peer Assessor Confidentiality under *ATIPPA*, 2015

Background

In June 2023, ArtsNL received an access to information request seeking disclosure of the names of peer assessors, categorized by discipline and funding session.

ArtsNL refused the request on the basis that linking individual assessors to specific competitions would undermine the integrity of the peer assessment process and expose assessors to potential harm.

The matter was subsequently reviewed by the Office of the Information and Privacy Commissioner and proceeded to the Supreme Court of Newfoundland and Labrador.

The Court Decision and Its Implications

In *Newfoundland and Labrador Arts Council v. Newfoundland and Labrador Information and Privacy Commissioner*, 2025 NLSC 159, the Court considered whether ArtsNL could lawfully refuse disclosure of the names of peer assessors by discipline and funding session.

The Court concluded that the requested information must be disclosed under the current legislative framework, as no applicable exemption was found to apply. The information—names of assessors linked to particular assessment groupings within specific granting rounds—was not found to fall within any exemption. The Court held that it could not be withheld under section 40 because, applying section 40(2)(f), disclosure was not an unreasonable invasion of personal privacy, as peer assessors were found to be performing functions for a public body.

In effect, the decision demonstrates that *ATIPPA*, 2015 does not currently provide a mechanism to protect the confidentiality of peer assessors when their identities can be linked to specific funding categories and sessions. ArtsNL has since received a subsequent access to information request seeking similar disclosure for additional funding cycles, reinforcing the ongoing nature of this issue. Under the current framework, similar requests may reasonably be expected following each funding cycle, creating both a cumulative impact on assessor participation and an ongoing administrative burden associated with repeated access to information requests.

A Structural Risk to Peer Assessment

This outcome has immediate and practical implications.

Peer assessment depends on the ability of assessors to provide candid, independent evaluations without concern that their participation in a specific competition will expose them to direct scrutiny or pressure. ArtsNL has long recognized this risk and, for that reason, has committed to publishing assessor names only in aggregate form (i.e., annual alphabetical lists), without linking individuals to specific programs or sessions.

This approach has been shaped by experience. ArtsNL has previously encountered situations in which assessors were approached, questioned, or treated poorly when their participation could be inferred. We have identified the potential for a chilling effect on open and honest evaluation in these circumstances.

Following the Court's decision and our notification to assessors, ArtsNL has identified significant concern across the arts community, including from artists and organizations who rely on a fair and stable assessment process. These concerns include:

- Assessors are concerned about being identifiable in relation to specific funding decisions
- Some are reconsidering their willingness to participate under the current interpretation of the *Act*
- Artists share concern that the assessor pool will shrink and become less representative

In a small and closely connected arts community such as Newfoundland and Labrador's, these risks are amplified. Linking individuals to specific competitions makes it significantly easier to infer or speculate about their role in funding decisions, increasing the likelihood of reputational harm, professional strain, or direct contact from unsuccessful applicants, and the potential for reprisal and work loss on major projects in disciplines like film and theatre. This is not a theoretical concern. It presents a credible risk to assessor confidence, willingness to serve, and ArtsNL's ability to secure assessors for upcoming competitions.

Existing Transparency Measures

ArtsNL recognizes the importance of transparency in the administration of public funding and already publishes an alphabetical list of peer assessors who have served during the fiscal year in our annual summary, which appears on the website. This approach ensures that:

- The public knows who is involved in the assessment process
- The composition, expertise, and diversity of the assessor pool is fully transparent
- ArtsNL remains accountable for who is selected to adjudicate public funds

Since transparency is already achieved through full public disclosure of the assessor pool, it is unclear what additional public interest is served by linking individual assessors to specific competitions. In practice, this additional level of disclosure does not enhance accountability or understanding of how decisions are made. It does not clarify criteria, improve consistency, or strengthen accountability mechanisms. Instead, it shifts attention toward individual assessors and creates conditions where decisions may be second-guessed, challenged, or personalized.

The Legislative Gap

While ArtsNL has had no choice but to accept the Court's interpretation of *ATIPPA, 2015*, the decision exposes a clear gap in the legislation. The *Act* does not distinguish between the following:

- Transparency regarding who serves as a peer assessor (which ArtsNL already provides), and
- Disclosure that links *specific* individuals to *specific* funding decisions, which introduces risks that undermine the assessment process itself and poses safety concerns and fear of reprisal for peer assessors.

Without that distinction, public bodies administering peer-based adjudication processes have no discretion to protect the integrity of those processes—even where there is credible evidence of harm.

This issue aligns with themes raised during the 2020 statutory review of *ATIPPA, 2015*, where some submissions noted that confidentiality expectations can be important to encouraging candid participation in certain public processes. Peer assessors operate within a comparable context of independent, evaluative contribution and face similar risks when that expectation is removed.

Why Amendment Is Necessary

The *Act* treats transparency and privacy as static categories. It does not adequately account for roles that require limited confidentiality to support independent, arm's length decision-making. A targeted amendment is necessary because:



- The current *Act* compels disclosure in circumstances where doing so undermines the function of the program itself
- The Court has confirmed that existing exemptions cannot be interpreted to address this issue
- The absence of protection creates a real and immediate risk to the sustainability of peer assessment, including the potential inability to recruit sufficient assessors to carry out adjudication processes, and introduces a recurring administrative burden as similar access requests are now following each funding cycle
- Without legislative change, public bodies cannot balance transparency with the need to ensure independent, expert decision-making

This issue is quickly moving beyond reputational or procedural concern and into operational impact. ArtsNL's ability to deliver funding programs depends on the availability of independent assessors. It also depends on the capacity to administer those programs efficiently within existing resources. A sustained reduction in assessor participation would compromise program timelines, delay funding decisions, and disrupt support to the arts sector. In a system that depends on timely, peer-driven adjudication, this creates a credible risk of program disruption.

Without amendment, the *Act* requires disclosure in a way that may progressively and predictably erode the very pool of independent experts it relies upon, with direct consequences for ArtsNL's ability to deliver its programs effectively and on schedule.

Recommendation: Introduce a Limited Exception for Peer Assessor Confidentiality in Arm's-Length Funding Programs

ArtsNL recommends that the next statutory review consider a narrowly framed amendment that would:

1. Allow public bodies administering arm's-length arts and culture grant programs to refuse disclosure of information that would identify a peer assessor in relation to a specific competition, category, or assessment session; and
2. Affirm the continued disclosure of assessor names in aggregate form (e.g., annual lists), ensuring transparency is maintained.

A provision along the following lines could be considered:



Peer assessor confidentiality

(1) The head of a public body that administers an arm's-length grant funding program in the arts, culture, or heritage sectors may refuse to disclose personal information that would reveal the identity of a peer assessor in relation to a specific funding program, grant category, or assessment session.

(2) Subsection (1) does not limit a public body from disclosing the names of peer assessors in a manner that does not link them to specific programs, categories, or sessions.

(3) "Peer assessor" means an individual engaged to evaluate applications for funding based on artistic, cultural, or heritage merit at arm's length from the public body.

Request

ArtsNL respectfully requests that the Government of Newfoundland and Labrador:

1. Confirm the timeline and process for the next statutory review of *ATIPPA, 2015*;
2. Accept this brief as a formal submission to that review;
3. Include within the review a focused examination of peer assessment processes in arm's-length funding bodies; and
4. Consider adopting a targeted amendment addressing the issue described above.

Closing

Peer assessment ensures that public arts funding is allocated based on merit, expertise, and community knowledge. It is one of the clearest safeguards against politicized or administratively driven decision-making.

The current legislative framework unintentionally places that system at risk, with emerging consequences for both the integrity and the delivery of public arts funding. A narrowly tailored amendment would align *ATIPPA, 2015* with its underlying principles by ensuring that transparency continues to serve the public interest without compromising the processes it is meant to protect.