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November 30, 2020

## BY EMAIL

ATIPPA Statutory Review Committee 2020  
3rd Floor, Beothuck Building  
20 Crosbie Place  
St. John's, NL  
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Dear Members of the Review Committee:

### **Re: Comments of the Innu Nation re Access to Information and Protection of Privacy Statutory Review 2020**

I write on behalf of Innu Nation to provide comments with respect to the Access to Information and Protection of Privacy Statutory Review 2020.

Innu Nation has comments regarding the following issues to be considered by the Committee:

1. Public and public body experience in using and administering the *Access to Information and Protection of Privacy Act, 2015* ("ATIPPA, 2015") to access information in the custody or control of public bodies in Newfoundland and Labrador and opportunities for improvement;
2. An examination of the complaints process to the Office of the Information and Privacy Commissioner;
3. Consideration of Recommendations 3 and 16 arising from the Report issued by the Honourable Richard D. LeBlanc, Commissioner of the Commission of Inquiry Respecting the Muskrat Falls Project, dated March 5, 2020, and report on conclusions with respect to those recommendations.

#### **1. Experience using ATIPPA, 2015 to access information**

Innu Nation has made several requests for information under *ATIPPA, 2015*. These requests have primarily been directed towards Intergovernmental and Indigenous Affairs Secretariat ("IIAS"). Innu Nation has been surprised to have its requests for information answered by a Senior Policy Analyst within the Secretariat. Unsurprisingly, this individual had limited time and capacity to provide responsive information to the requests for information. At various times, Innu Nation has been asked to narrow or abandon its information requests. Innu Nation was also informed that due to the IIAS'

limited capacity, processing Innu Nation's requests as made would interfere with the department's operations.

The level of strain that Innu Nation's requests for information appeared to place on the IIAS suggests that that department has either insufficient staffing to be able to provide responses to requests for information, or these requests are being given a low priority.

Innu Nation's experience demonstrates that IIAS is not meeting the purposes of *ATIPPA, 2015*:

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

As a result of this department's failures to meet the purposes of *ATIPPA, 2015*, Innu Nation has not been able to obtain information it needs to participate meaningfully in Newfoundland and Labrador's political landscape, which impacts its ability to participate in the democratic process. Innu Nation also feels that IIAS has demonstrated both an inability and reluctance to respond to information requests, and we do not know whether that is due to resourcing or because of prioritization or other reasons.

We would suggest that to meet the purposes of the legislation, at least with respect to this department, additional resourcing is required.

## **2. Complaints process to the Office of the Information and Privacy Commissioner**

Innu Nation believes that *ATIPPA, 2015*'s current complaints process to the OIPC is accessible and well-designed. As is appropriate, section 43 of *ATIPPA, 2015* stipulates that the burden is on the head of a public body to prove that the applicant has no right of access to the record or part of the record. The OIPC is charged with undertaking any investigation into the complaint that may be necessary, and reaching a determination on the basis of that investigation if no informal resolution is possible. The OIPC is also directed under section 48 of *ATIPPA, 2015* to complete a report that is provided to the person who filed the complaint, the head of the public body concerned and a third party who was notified under section 44. Innu Nation's view is that this procedure properly requires the public body refusing to provide information to demonstrate that its refusal is appropriate, and ensures that the affected parties have notice of the OIPC's decision.

## **3. Recommendations from the Muskrat Falls Inquiry Report**

We offer comment on two of the Muskrat Falls Inquiry recommendations:

*3. The Government of Newfoundland and Labrador should amend s. 5.4 of the Energy Corporation Act to authorize the Information and Privacy Commissioner to determine if*

*Nalcor is required to disclose information it wishes to withhold on the grounds of “commercial sensitivity.”*

Innu Nation sees no good policy reason for the Information and Privacy Commissioner to be engaged in assessing whether Nalcor has a right to withhold information on grounds of commercial sensitivity where Nalcor has already agreed with a third party that an agreement needs to be treated confidentially. The confidentiality terms of agreements that we have entered into with Nalcor Energy in which we have already agreed to maintain confidentiality should not be allowed to be overridden by the Commissioner becoming involved.

*16. To improve the ability of future Commissions of Inquiry to fulfill mandates given pursuant to the Public Inquiries Act, 2006, the Act should be amended to provide for the following:*

- a. A Commission should be exempted from the Access to Information and Protection of Privacy Act legislation so that its investigations can be conducted fully and without potential interference or influence. This exemption should continue at least until each Commission files its final report.*
- b. Documents received from third parties on a confidential basis should be returnable to those third parties without the Commission retaining copies, if such is determined necessary by the Commissioner.*
- c. Documents that have been entered at Commission proceedings as “Confidential Exhibits” or that have been sealed by the Commissioner should not be subject to further disclosure, even subsequent to the fulfilment of the Commission’s mandate.*

We support the need for provincial commissions of inquiry to be able to conduct full and thorough investigations and so support recommendations for changes to the Act set out in that recommendation.

Nin,

  
Deputy Grand Chief Mary Ann Nui