



House of Assembly
Newfoundland and Labrador

October 2, 2026

Keri-Lynn Power

Chair

Access to Information and Protection of Privacy

Statutory Review Committee

Via email: ATIPPARreview@gov.nl.ca

Dear Ms. Power:

I am writing in response to your July 21, 2026 correspondence with Kim Hawley George, KC, Clerk of the House of Assembly. As Speaker of the House, it is not my intent to make a formal presentation to the ATIPPA Statutory Review Committee. I would, however, like to bring several matters to your attention as you complete your review.

Section 4 – Excluded Public Bodies

Section 4 of the *Access to Information and Protection of Privacy Act, 2015* (“the Act”) currently provides that the Lieutenant-Governor in Council, **upon the recommendation of the Management Commission**, may by order amend the schedule of excluded public bodies when the House of Assembly is not in session. The section also provides that such an order does not extend beyond the end of the next sitting of the House, presumably to allow time for a Bill to be brought before the House to effect the change in the Legislature should government wish to do so.

The House of Assembly recommends that the Statutory Review Committee consider whether the Management Commission is the appropriate body to make a recommendation regarding public bodies to be excluded from the operation of the Act. This issue was also raised in then-Speaker Scott Reid’s written submission to the 2020 Statutory Review Committee, chaired by Hon. David B. Orsborn.

The duties and responsibilities of the Management Commission are set out in section 20 of the *House of Assembly Accountability, Integrity and Administration Act* (“HOAAIAA”). The Management Commission is generally “responsible for the

financial stewardship of all public money, within the meaning of the *Financial Administration Act*, that may be voted by the House of Assembly for the use and operation of the House of Assembly and statutory offices, and for all matters of financial and administrative policy affecting the House of Assembly, its members, offices and staff and in connection with them". Paragraphs 20(1)(a) to (g) list certain specific responsibilities of the Commission, consistent with that role.

The Management Commission is a non-partisan body which oversees the financial and administrative operations of the House of Assembly. It does not generally make policy decisions or recommendations which are outside the financial and administrative operations of the House of Assembly and statutory offices. While paragraph 20(1)(g) of the HOAAIAA states that the commission shall "exercise other powers given to the commission and to perform other duties imposed on the commission under this **or another Act**", making a recommendation contemplated in section 4 of the Act is not a matter falling within the broader mandate of the Commission for financial and administrative oversight of the House of Assembly.

The practical difficulties of this provision were demonstrated in 2018 when the Commission was asked to consider an exemption under section 4 of the Act for the first time. Members of the Commission considered the substance of the matter (which was complex in nature) but also expressed reservations about the Management Commission making such a recommendation outside of the parliamentary processes of the House of Assembly. Some Members referenced the fact that, as members of the Commission, they were not acting as representatives of their respective caucuses, but as individual members exercising a fiduciary responsibility over the financial and administrative operations of the House of Assembly. The Commission attempted to amend the resolution before them to defer the matter to consideration by the whole House, but the amendment was deemed to be out of order. The vote on the recommendation under section 4 of the Act resulted in a tie, and the matter was resolved when the deputy chair of the Management Commission exercised a casting vote in favour of the recommendation.

The 2020 Statutory Review Committee reviewed this issue and recommended that s. 4 be amended by deleting the words "on the recommendation of the House of Assembly Management Commission".

Section 85 – Appointment of the Information and Privacy Commissioner

Section 85 of the Act sets out the process by which the Information and Privacy Commissioner, a statutory officer of the House of Assembly, is appointed. This process requires that the Speaker establish a selection committee comprising the Clerk of the Executive Council or his or her deputy; the Clerk of the House of Assembly or, where the Clerk is unavailable, the person appointed under paragraph 10(1)(b) of HOAAIAA; the Chief Judge of the Provincial Court or another judge of that court designated by the Chief Judge; and the President of Memorial University or a vice-president of Memorial University designated by the President.

The selection committee is required to develop a roster of qualified candidates and may publicly invite expressions of interest for the position. The selection committee submits the roster to the Speaker of the House of Assembly, at which point the Speaker is required to “consult with the Premier, the Leader of the Official Opposition and the leader or member of a registered political party that is represented on the House of Assembly Management Commission”. The Speaker is then required to “cause to be placed before the House of Assembly a resolution to appoint as commissioner one of the individuals named on the roster”.

A particular issue arises where no unanimity exists among the individuals with whom the Speaker must consult. How is the name of “one of the individuals named on the roster” chosen to be put forward in the resolution? The selection committee is required to provide a roster of candidates to the Speaker, but the Act is silent as to whether the candidates must be ranked. Further, it does not indicate whether the Speaker is bound to put forward the name of a first ranked candidate, if any, in a subsequent resolution. The decision to appoint a statutory officer is a decision of the House, not a decision of the Speaker. If, after consultation, a preferred candidate is not agreed by those with whom the Speaker consults, there is no clear direction in section 85 as to how the Speaker may proceed.

Further, as a matter of Parliamentary procedure, the Speaker has no ability to put forward a resolution for the consideration of the House. Therefore, the matter of moving the resolution must necessarily fall to the Government House Leader, who is responsible for the business of the House.

The 2020 Statutory Review Committee also considered this issue and found these practical concerns to be valid. While Mr. Orsborn noted that the process is intended to be “a consensual and largely informal one”, in practice it has been challenging to operationalize. The Speaker could be placed in a position of having to put forward a

name without the benefit either of a ranking of the candidates by the selection committee or the consensus of the party leaders who have been consulted. In light of this, the 2020 Statutory Review Committee recommended that the Act be amended to provide that the selection committee be required to submit to the Speaker from the roster of qualified candidates no more than three names and that the formal responsibility for bringing the resolution to the House of Assembly be that of the Government House Leader.

In addition to the above comments regarding the role of the Speaker in the selection process, I would note that the process set out by section 85 of the Act is unique amongst all other statutory officers of the House of Assembly. The appointment of all other statutory office holders, including the Auditor General, is made simply by the Lieutenant-Governor-in-Council “on resolution of the House of Assembly”. However, these appointments are made under the procedures established in the *Independent Appointments Commission Act*, which provides for an independent committee to conduct a merit-based screening process.

The 2020 Statutory Review Committee considered submissions respecting the current process in section 85 (as compared to the Independent Appointments Commission process) but declined to make any recommendation for change. However, the involvement of the Clerk of the Executive Council, the Clerk of the House of Assembly, the Chief Judge of the Provincial Court and the President of Memorial University as part of the selection committee continues to pose practical challenges. In a 2023 Structural Review of the Statutory Offices of the House of Assembly, Hon. Robert A. Fowler commented on these practical issues:

“It is clear that the individuals named in s. 85(3), by the status of their roles and their offices, are highly regarded and are certainly capable of selecting the best candidates for the important role of Information and Privacy Commissioner. I take no issue with these suggestions and I appreciate the reasoning in the Report. However, by the same token, gathering these individuals to meet, discuss, and choose candidates, presents considerable practical difficulties. In their positions, these individuals have a great deal of responsibility and, understandably, incredibly busy schedules. In my view, there are other, more efficient ways of achieving independence and credibility in the appointment process. It should be noted, as well, that these positions being ultimately political decisions, it may not be appropriate to include the

Chief Judge of the Provincial Court or the President of Memorial University on the appointments committee.”¹

In light of the issues above, the Review Committee may wish to consider whether the current process continues to be the most efficient method of ensuring an independent and credible appointment.

Section 114 - Limitation of Liability

Subsection 114(2) was added to the Act after a recommendation by the 2014 ATIPPA Statutory Review. The Act provides that an MHA who assists a constituent may have access to that constituent’s personal information held by a public body (an exception to the general rule of the confidentiality of personal information). Section 114(2) provides an indemnity clause for MHAs who, while acting in good faith, disclose that personal information when requesting help from government departments and other public bodies on behalf of constituents. As noted in submissions from the Speaker of the House of Assembly in 2014, problems might arise in instances where an MHA’s intervention does not produce the desired result for the constituent, and where the constituent might claim they did not understand or consent to the release of their personal information. The Speaker felt such a situation would leave the member vulnerable to an action for breaching privacy.

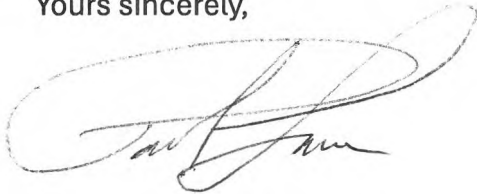
While subsection 114(2) serves to mitigate that risk for a “Member of the House of Assembly”, similar issues may arise after dissolution of the House (i.e. upon an election call). Once the House of Assembly is dissolved, there are no longer any “Members”; however, on a practical note, constituency assistants continue to be employed and may continue to work on files for constituents in the absence of a Member. The Review Committee may wish to consider whether subsection 114(2) should be broadened to include situations where a Member technically no longer holds a seat in the House, but where the Member’s constituency staff continues to work in good faith on issues on behalf of constituents in the district.

As a final matter, as other Speakers have done in prior statutory reviews, I would like to reiterate the importance of parliamentary privilege the functioning and independence of the Legislature. Section 41 of the Act acknowledges that privilege and provides a mandatory exemption from access. The House of Assembly confirms its support for that provision.

¹ <https://www.rsonl.ca/files/Final-Report-Review-of-Statutory-Offices-of-the-House-of-Assembly-FULL-REPORT-20231005.pdf> at page 109.

Thank you for the invitation to provide feedback to the committee for the 2026 Statutory Review of the *Access to Information and Protection of Privacy Act, 2015*. Should you have any questions or wish to discuss this further, please contact Don Hynes, House of Assembly ATIPP Coordinator at 729-7408.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Lane', with a large, sweeping initial 'P'.

Paul Lane, MHA
Speaker of the House of Assembly.