



Province of Newfoundland and Labrador

FORTY-EIGHTH GENERAL ASSEMBLY
OF
NEWFOUNDLAND AND LABRADOR

Volume XLVIII

SECOND SESSION

Number 48A

HANSARD

Speaker: Honourable Perry Trimper, MHA

Monday

March 5, 2018
(Night Sitting)

The House resumed at 6:30 p.m.

MR. SPEAKER (Trimper): Order, please!

The hon. the Government House Leader.

MR. A. PARSONS: Thank you, Mr. Speaker.

At this time, I would call from the Order Paper second reading of Bill 33.

Thank you.

Motion, second reading of a bill, “An Act To Amend The Access To Information And Protection Of Privacy Act, 2015.” (Bill 33)

MR. SPEAKER: The hon. the Leader of the Third Party.

MS. MICHAEL: Thank you, Mr. Speaker.

I’m pleased to stand and speak to Bill 33, which is the ATIPPA exemption for the Muskrat Falls inquiry. This is the second time some of us have had a chance to speak to this issue because as a Member of the House Management Commission we were asked by the Commissioner of the inquiry to allow, actually, for this exemption that we are talking about here this evening.

At that time, all that the House Management Commission could do was to – because the House wasn’t opened and the Legislature wasn’t sitting – give temporary permission to the Commissioner. For it to go any further, it had to come back, of course, in here to the House of Assembly and had to come back in the form of legislation from government.

What we’re looking at tonight is a bill that would amend Schedule B of the ATIPPA Act to exempt the Muskrat Falls inquiry from ATIPPA so that the inquiries records will not be subject to freedom of information requests throughout the inquiry.

The rationale that we heard in the House Management Commission – I’m sorry, actually, not everybody could have heard it. They could have heard it because it would have been livestreamed. They could have followed it and maybe a lot of the House did, but we got interesting information at that time. The

rationale that was given was that the *ATIPPA* request would slow down the work of the inquiry, cost more money and most important, discourage corporate entities such as Nalcor from handing over sensitive documents.

My position at that time, as a Member of the House Management Commission, was that I was quite disturbed, actually, by the fact that the Commissioner of the inquiry was put in the position that he was put in because he is actually asking to act differently than other inquiries by asking for this exemption to happen.

If we pass this tonight and the Muskrat Falls inquiry is exempt and becomes the first item on Schedule B of the *ATIPPA* bill, if that happens, the inquiry will be going a different route from other inquiries. I think it’s important to point this out.

In the *Public Inquiries Act* – and I should have had that in my hand, here we go – which covers all inquiries, it says that, subsection 1 of section 12: “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.”

The subsections that I’m particularly interested in are subsection 2: “Notwithstanding subsection (1) but subject to subsection (4), a rule of law that authorizes or requires the withholding of records, documents or other things or a 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.”

And going with that: “Notwithstanding subsection (1) but subject to subsection (4), 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.”

What this is saying is that Nalcor, which is protected by the *Energy Corporation Act*, that Nalcor without the inquiry going on Schedule B, would be open to having everything requested,

whatever the commissioner wanted requested from it. However, section 13 says that “A person may apply to the court for an order excluding a person or a record, document or thing from the operation of subsections 12 (2) and (3), and the court may, after considering the application and the submission” Well, it goes on, the court may say: Yes, you have to give what they’re looking for or, no, you don’t.

Now, when I brought this up, when we met with the co-counsel for the inquiry, and I think the commissioner also said it publicly in releases that he made, what was concerning him was that if the inquiry went the route of other inquiries and fit in with this definition, then he would have the right and, not only that, he would be covered by the legislation to ask Nalcor for whatever he wanted to ask it for, or anybody else as far as that goes, but, obviously, Nalcor is the key thing when we are talking about in Muskrat Falls. Nalcor would have the right to say: Well, we’re going to the court to find out if we have to do this.

So what Commissioner LeBlanc pointed out was that he was in a very tough spot because he’s been given a two-year deadline by the government to do its work, to do his work and the work of the inquiry. By the end of December 31, 2019, he has to have his report in place.

With that time constraint, he felt he had no choice but to ask for this exemption because, you know, his fear – and I think fear is the word to use – is that people would come looking for information under ATIPPA, but for him – I’ll come back, I’ve shot ahead of myself – the fear is that he would want things from Nalcor that they might say no to and things would go to court. Then he, of course, as a lawyer and a judge understands how long that process could take.

He was put in the situation by the government’s constraint that was put on him that the report had to be done in two years. Other inquiries that I’m aware of have run their course, done their work and put in their report. Government could have asked him two years prior to do this, to do this kind of an inquiry. He would have had a longer period of time and they wouldn’t have had to get the exemption that he’s looking for.

What really concerned me when we discussed this at the House Management Commission, and why I voted against the resolution, was that he was being forced to do this, not because it was necessary but only because it was necessary because of constraints put on it by government. I still feel the same way. Forcing the inquiry to be the first entity to request ATIPPA exemption on Schedule B does not help to build public confidence in the inquiry or in the government. That’s a real concern I have.

Let’s look at the issues, then, that I had when we discussed this in the House Management Commission and which I still have. I do understand, as has been pointed out by the minister, the exemption that would happen now because of this bill would only be in effect until – no, the permission we gave in the House Management Commission would only be in effect until the end of this session. Well, I saw publicly today this session is going to end on March 12 so now we know why this bill is coming to us now. What we’re facing here now is putting in place the exemption that will go to the end of the inquiry which means until December 31, 2019.

People, I think – and I’ve had people say to me – are concerned because they thought they might have been able to finally access Nalcor documents, not themselves personally, but through the inquiry. Documents they’ve wanted to learn about, they’d be able to finally get them to see them. This is debatable.

The Privacy Commissioner has noted that even had the inquiry not been placed on Schedule B, Nalcor docs could not have been accessed through an ATIPPA request to the inquiry because of the *Energy Corporation Act*. In actual fact, they could be. They could be demanded by the commissioner, as I said, but could end up going to court and taking time to make it happen.

Regardless of that, the option now has been totally eliminated with the inquiry going on Schedule B. It’s on Schedule B temporarily; government is going to move tonight, obviously, that it be there until the end of the inquiry. The concern I have – it was explained to us by the co-counsel and I questioned them quite heavily on this – is that at any time during the inquiry

the commissioner can release whatever he wants to release. He can do that. He can make public anything that comes to him but he's going to be constrained. Documents that Nalcor is protected by right now, under the *Energy Corporation Act*, he won't release them, most likely, during the inquiry.

What we've been told is that we shouldn't be upset because at the end of the inquiry, all the documentation from the inquiry will go into the hands of government. I'm presuming it will be the Department of Justice and Public Safety. That would seem like a logical place. The minister did say in presenting the bill that all of those documents then would be accessible under ATIPPA.

I have a question or I have a concern. The concern is: Who owns the documents once they're released by the inquiry? Is it totally under the Department of Justice, that no matter what those documents are they will be able to be accessed through ATIPPA? Or will Nalcor be able to say: No, now that those documents are no longer with the inquiry, they are our documents and they'll still get protected by ATIPPA?

That's a question I asked of the co-counsel when we had the discussion here in this room. The co-counsel said they did not know the answer to that question. I could see why, for them, it wouldn't be an issue because once the inquiry is over they're no longer responsible; it's out of their hands. But it's an issue that I have, I didn't get an answer from them and I will be hoping to get clarity on this from the minister.

If it so happens that at the end of the inquiry there were documents that weren't released by the commissioner and people start to learn what maybe some of those documents are that weren't released – and then you get to the end and the documents go back into government to the Department of Justice and people are now told: Oh no, you're not going to be able to get the documents that Nalcor is protecting because now they belong to Nalcor again. If that happens, people are going to be extremely upset. They thought this inquiry was going to be an open process, that it was going to be transparent and that they were finally going to be able to get

to materials to answer questions they've had for years.

I am proposing that because of the way government has set this up with the restraints that were put on the commissioner in terms of the time – and his point is valid. If something has to go to court because he has said to Nalcor, I want what they have and they fight it in court – if that were to happen, he was right, that would take time and he doesn't have the time. So because of the constraints put on him by the government, then people are going – possibly, if the answer to my question is that those documents will actually be Nalcor's again – to not get the full answers they're expecting. They will have to go by whatever report the judge gives us without being able to look at documents themselves. If that happens, that's going to defeat the whole purpose of this inquiry – one of the major purposes of the inquiry – and it really and truly upsets me.

The final point I want to make is the one thing that has to happen – and this could happen, actually, prior to the report coming out – is that government has to take the step to remove Nalcor's exemption from ATIPPA that is present in the *Energy Corporation Act*. If that happened, if that happened prior to the report coming out, documentation then that would go from the inquiry to government would be completely accessible.

Under ATIPPA, there could be documents that will be commercially sensitive and it will be decided by the – if Nalcor said no to people requesting some documents, it would be decided by the Office of the Information and Privacy Commissioner whether or not a document is commercially sensitive, but at least the Information and Privacy Commissioner would be able to make a judgment. Right now, you ask Nalcor for something and you don't get it because it's commercially sensitive and nobody can challenge them.

If their protection under the *Energy Corporation Act* were removed, then that would end. As I said, that can happen prior to December 31, 2019 so that the documents would then be at least accessible and one could, if they needed to fight something with Nalcor – have the

Information and Privacy Commissioner be the one to make a determination, not Nalcor.

I understand why the commissioner made the request that he made. He was put in a situation where he had no choice, I don't think. But it's government's responsibility that he's there and government can change the rules of the game. So it's still in government's hands.

The other thing I would like to see government do – and they could do this as well before the end of December 31, 2019 – is to change the whole protection that Nalcor has now, away from the Public Utilities Board that they are not under, the aegis of the Public Utility Board, when it comes to how they operate. Not with regard to Hydro and rates and that kind of thing.

What we have here is something – three issues are in government's hands and they could change the timeline. They could say that we are going to go after the future and take Nalcor's protection from the *Energy Corporation Act*. They could also say that Nalcor has to come under our Public Utilities Board.

I put this to the minister. I look forward to further discussion of these issues, particularly, my point about what will happen to the documents when the inquiry passes them over. Will they belong to the Department of Justice or will the documents belong to the different bodies that gave them to the inquiry?

Thank you very much, Mr. Speaker.

MR. SPEAKER: The hon. the Member for Mount Pearl - Southlands.

MR. LANE: Thank you, Mr. Speaker.

I'm glad to speak to this bill. Mr. Speaker, I want to say, first of all, when this request first came out, I had concerns, I think, like a lot of people did. But I took the opportunity to call Mr. Molloy, the Privacy Commissioner, and we had a good chat. I called him a couple of times, actually.

When he explained it to me, any concerns I had were really gone, to be honest with you. I don't see, really, where there's a big issue with what is being requested and what's being done. I think

the part we have to bear in mind, as it was described to me at least, is that you cannot get information through the back door that you couldn't otherwise get through the front door.

In other words, if there was information that came out, the commissioner, as I understand it, under the *Public Inquiries Act* can obtain information that if you or I tried to obtain that information through Nalcor, the department or whatever, we may or may not get that information. Certainly we know we wouldn't get anything from Nalcor, very little because of the *Energy Corporation Act*, but there would be things we could get from the Department of Natural Resources, the Department of Finance and so on, that would be subject to ATIPPA.

When the inquiry starts, that same information that someone may want to ATIPP from the inquiry, they could still make that same ATIPP request to the department and the same rules would apply. So applying to the Commission of Inquiry is not going to really change any circumstances. I think where people are disappointed is that people felt that once the commissioner got all this information through the *Public Inquiries Act, 2006* then we could get all the information that we had gone to Nalcor looking for and they said no, now we can just simply ATIPP the inquiry and receive all the information we wanted that we couldn't get before.

In other words, get it through the back door what you could not get through the front door. I think that's what a lot of people were kind of hoping for, but that's not the way it works. That's not how the inquiry of that works. It's not how ATIPPA works. It's not how the *Energy Corporation Act* works.

As the Member for St. John's East - Quidi Vidi just alluded to, really what needs to happen if we want to get more information – for example, the information on the embedded contractors that the Premier had said at the time didn't pass the smell test and he was going to get it and he couldn't get it. He would prevent it from getting that because of the *Energy Corporation Act*.

Specifically, according to Mr. Molloy – I think it was section 4(2), if I'm not mistaken, which is the section the Member for St. John's East -

Quidi Vidi just alluded to – that basically under ATIPPA we can request information. If we're turned down from a department, you have the option to go to the Privacy Commissioner and say, I asked for some reasonable information, I was turned down. I don't think it's reasonable, and I could appeal that.

The Privacy Commissioner can look at that situation and say to the department, yes, the information this person was looking for should be released. He can advise them, they need to release it. If they say, no, we're not releasing it; then the Privacy Commissioner could take that department to court. That has happened in the past with ATIPP requests, where the Privacy Commissioner has indeed taken the government of the day to court and actually got information which was publicly released.

The problem under section 4(2) of the *Energy Corporation Act* is if I asked for information – as an example, the embedded contractor information – Nalcor can just outright say, no, you're not getting it. They don't have to give a reason. There's no requirement to give a reason or any rationale and there's no appeal. They can look at it and say, no, you're not getting it.

Every single request that goes to Nalcor, under the *Energy Corporation Act*, they can simply say you're not getting anything. They don't have to explain it, they don't have to give a reason and there is no appeal; just go away, I don't want to be bothered, you're not getting it.

If we were to change the *Energy Corporation Act* similar to the ATIPP Act, that's all we would need to do is make an amendment to section 4(2) that says if Nalcor says no, the same as ATIPP, then we could appeal to the Privacy Commissioner. The Privacy Commissioner could look at the request and then the Privacy Commissioner could, in theory, instruct Nalcor to provide the information because he felt it was reasonable and there was no reason why we couldn't get it. If Nalcor says no, then the Privacy Commissioner could take Nalcor to court, the same as he could take a government department to court.

If we want to get information out there, that's what we need to do. As the Member said, it has nothing to do with this inquiry. Legislation

could be brought in tomorrow to change that section of the *Energy Corporation Act* and a lot more information that people are looking for would be put out there.

That's not what we're here to discuss tonight. We're here to discuss the request from the commissioner to exempt the inquiry from ATIPPA. Based on the parameters that are there, based on the law, based on the *Public Inquiries Act*, based on the *Energy Corporation Act* and the ATIPP Act, I really don't see – as much as we would have liked and hoped that we could get all this additional information through to ATIPP the inquiry, unfortunately, that's not the way it works.

Even if we weren't exempted, instead of the Department of Natural Resources saying, no, you can't have it because it's commercially sensitive, the commissioner would be guided by the same policy and he would have to say, no, you can't have it. Instead of Nalcor saying, no, you can't have it because of the *Energy Corporation Act* the commissioner would have to say, no, you can't have it.

If the commissioner can't give you anything additional that you wouldn't already get or not get through Nalcor or through the department, then why waste your time, why waste his time looking for information through the back door that you couldn't get through the front door? I think that's the whole point and I think that makes sense.

As much as I would certainly – and I'm sure everyone would like to see a situation where we could obtain more information, unfortunately, that's not the way it's going to work.

Will there be more information that will come forward through the inquiry? I'm sure there will be. There's going to be information that will be obtained by the commissioner. It will come through the inquiry and it will be discussed publicly. There will be a number of public exhibits.

I'm told, in speaking with Mr. Learmonth who I've spoken to now on a couple of occasions, that those public exhibits are going to be posted on a website for the whole world to see. So anybody will be able to go in to the inquiry,

they'll be able to listen to the inquiry, they'll be able to go into the website and any public exhibits – and that's the key – will be made available.

That doesn't mean everything is going to be made available because when the commissioner is determining what – he gets all the information. When he's determining what will be public, the counsel for Nalcor, for the Department of Natural Resources and the Department of Justice could say to the commissioner: You can't release this information. Obviously, they would have to – through their lawyers interacting – decide whether or not it could be made public or not.

It could go to the courts. The commissioner could say I intend to make this part of the public documentation and Nalcor's lawyer can say: Oh no, you're not, Mr. Commissioner, take it to court and let a judge of the court decide whether or not it's going to be public or not.

There's going to be a lot of stuff that people are hoping was going to be seen that isn't going to be seen. There's no doubt about that. I guess the concern the public has on a lot of this is will any of that information, will any of that evidence be what some people would view as the smoking gun. Some people believe there are some smoking guns here. Whether there is or isn't, who knows. I guess we'll find out, hopefully. People feel there will be information that Nalcor won't release and documents that will be hidden from the public, hidden from the inquiry, not made public because it's going to implicate certain things, certain people. It could implicate the government.

I can understand why the government – by the way, I had discussions with officials in the Department of Justice on a subsequent bill we are going to be talking about regarding client-solicitor privilege and all this stuff. I can understand their concerns about not wanting to make every single thing public. I get it because there could be some legal opinions thrown into this inquiry that could have – for argument sake, there could be a legal opinion on where we stand legally with Quebec on some of these issues that could be totally detrimental, in theory, if it fell into the hands of Hydro-Québec or whatever in

some other subsequent case that has something to do maybe with the Upper Churchill.

I understand the reason why they can't just simply take every single document and throw it all out there for public consumption and let anyone take it and use it any way they wish. It could result in lawsuits against the government which is not in the best interests of the province. I get that.

It is a balancing act. That's why the commissioner is there to balance those things and make those calls. Like I said, if there are things that he wants to release that the province or Nalcor feels he shouldn't because they feel it will be detrimental in some other way, they can certainly argue that point. They can certainly go to court on that point. But there's no doubt there will be things that are not going to come out in this inquiry and I understand people are not happy about that. Again, it's going to be a balance, there's no doubt.

As for this particular request, as I said, I was initially concerned, but after speaking to the Privacy Commissioner, understanding the fact that this is not going to stop information from coming out any more than would have come out anyway – but, again, it's just saying if you want information, you're entitled to it. You can go to the department and do an ATIPP. If you want to go to the commissioner, he's only going to apply your request for that ATIPP the same as if you had applied through the department.

Why not let the department do it instead of tying up the Commission of Inquiry doing the same thing? That's the rationale. The rationale makes sense to me. I'd love to see more information out there. Unfortunately, there are going to be some constrictions there, no doubt about it – some restrictions, I should say. I guess we'll see how it all plays out.

At the end of the day, I don't see anything unreasonable about the request other than the disappointment in knowing – and the public would have – that not everything, not every shred of evidence they were hoping was going to come forward for the whole world to see, is likely not going to happen. Hopefully, all the important stuff does come out.

Hopefully, the Commissioner is going to apply good judgment in this whole process. Hopefully, if there are things that come out that show things weren't done properly and not done above board, then there will be accountability for those involved. That's all we can ask and hope for and I certainly hope that happens.

Thank you, Mr. Speaker.

I will be supporting this bill.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: The hon. the Leader of the Official Opposition.

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

I'll just take a few minutes this evening to discuss this matter. It was discussed at great length back on February 1 at the Management Commission. The Management Commission met in a public meeting here in the Chamber. Co-counsel of the inquiry, Kate O'Brien and Barry Learmonth, attended. We had a very lengthy discussion at the Management Commission.

Mr. Speaker, I remember the result at that point in time of the debate. The decision came down to – it was a split vote. Actually, I know the chair of the day, the Member for Springdale – is it just Springdale – was Chair at the time and broke the tie on the vote.

I'm not going to repeat everything that everyone has said here today because there seems to be – there are two positions here in the Chamber, Mr. Speaker: you're either in favour of exempting the inquiry or you're not. It's been a discussion, I can tell you, that my colleague who sits on the Management Commission with – he and I had extensive discussion on this. I've talked to colleagues on this side of the House on this; we've had extensive discussions on it as well. So it's something that has been talked about publicly as well, not just amongst Members. It's a very difficult decision.

One of the aspects of the conversation that I find myself going back to is back to 2014-2015 when Justice Wells did a full review of the access to information legislation. I don't need to remind

Members because they still like to remind us about how we came to a point where Justice Wells carried out a review of access to information. What resulted – and I think everyone universally agrees with that, within the province and outside the province. What Justice Wells delivered was seen as the best legislation anywhere in the country today and I believe that.

I also believe legislation that provides the tight timelines, the access to information that exists in Newfoundland and Labrador today, also comes with a burden in a sense, to government who has to provide that information and meet the timelines. I know there have been challenges within government to make them. They generally meet those timelines and get information out as has been requested on time. But I know sometimes it's a challenge for government to do that, especially if they have an influx of access to information requests after a particular event or a topic or a policy discussion takes place.

Justice Wells also considered – and one of my colleagues brought this up at the Management Commission – recommendations from Justice Cameron and discussions and considerations that Justice Cameron brought forward. The conclusion was Justice Wells decided to leave the legislation as it is today. It was this type of a topic of discussion that took place.

Mr. Speaker, there's one aspect of this is cost, I'm going to get to that in a minute, but one is about access to information. I think that if we're going to change what Justice Wells had done, then there is pretty serious consideration that has to be made or taken to do so. It's one that, as I said, created great conversation and hesitation in changing this.

I've heard arguments about timelines. My colleague for Mount Pearl - Southlands just talked about what's the difference if it's done through the inquiry or done through Justice after. As Ms. O'Brien mentioned during our Management Commission, she said when the inquiry is over they box up all the materials and they send it to the Department of Justice. Anybody who wants to ATIPP the Department of Justice at that point in time can do that and follow the ATIPP rules as they exist.

For example, if using contractors – as the Member for Mount Pearl - Southlands talked about – then very easily the decision could be made, well, it's commercially sensitive information, or for some other rule you're not going to get the information, the information is not going to be released. Whereby, I have to wonder if it was happening during the inquiry, would there be a different approach or different implications to that.

Some would argue, I'm sure – the minister may argue – no, it wouldn't change anything. Some others may say: Well, let's just think this through; it may have a different outcome. That's where I'm hesitant to agreeing with adding the exemption under the act. If something could potentially be dealt with differently through the inquiry process than afterwards through the Department of Justice, and there could be a change or difference in that response, then that's something we have to consider.

There's been some discussion about cost. I know it's not the main point, but during our discussion co-counsel for the inquiry suggested that in their estimation it could be somewhere between a \$300,000 and \$400,000 cost to process ATIPP through the inquiry. Again, I'd say if it's not going to happen in the inquiry, it could very well happen with the Department of Justice.

Access to information legislation is a costly process. We know democracy can be a costly process, but access to information, as part of that, is a costly process. The cost to do it, the work, resources necessary to process requests, shouldn't be a prohibiting factor from someone making the request or accessing the request as well.

Mr. Speaker, I'm not going to comment or repeat what everyone else has already said here. I've listened attentively to all of the debate, the minister as well, as well as Members on this side of the House, but I just wanted to take a few minutes to point out some of those concerns that still remain for me.

Thank you, Mr. Speaker.

MR. SPEAKER: If the hon. the Minister of Justice and Public Safety speaks now he will close debate.

The hon. the Minister of Justice and Public Safety.

MR. A. PARSONS: Thank you, Mr. Speaker.

I'm happy to stand here and speak to the conclusion of second reading of this particular bill. I appreciate the comments from my colleagues across the way and their input in this piece of legislation.

There are a number of points and questions referenced. I think perhaps the best bet to ensure that I answer them is to wait until the Committee stage to do so. I certainly hope we'll have a thorough debate where we can ask the questions and I'll certainly endeavour to do everything I can to provide answers.

I will reference the comments made by the Member for St. John's East - Quidi Vidi. One of the comments that the Member makes is that she was concerned about the position that the commissioner was put in and feels that the commissioner only did this because of government putting him in this position, put in a tough spot, and about the timeline and everything else.

What I would suggest is that Commissioner LeBlanc, Justice LeBlanc would not have signed up for something that he did not think feasible or doable. He had every opportunity to have input and to know the timeline. Again, Justice LeBlanc felt this timeline was doable. So this was not a case of government saying: Well, here it is, take it or leave it. Because if that's the case, I'm pretty confident Justice LeBlanc would leave it.

These commissioners need to have input on this. It bears their names. It's a tremendous amount of work. It's a huge commitment of their time. So to suggest that Commissioner LeBlanc was forced into this and had no say is simply incorrect. Government did not put anybody in a hard position here.

All government wants is to get the information here, to have the inquiry proceed as quickly and expeditiously as possible, to comply with what Justice LeBlanc wants and what our Commissioner of Information and Privacy, Mr. Molloy, is also saying is quite appropriate.

Thank you.

MR. SPEAKER: Is the House ready for the question?

The motion is that Bill 33 be now read a second time.

Is it the pleasure of the House to adopt the motion?

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

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

This motion is carried.

CLERK (Murphy): A bill, An Act To Amend The Access To Information And Protection Of Privacy Act, 2015. (Bill 33)

MR. SPEAKER: This bill has now been read a second time.

When shall the bill be referred to a Committee of the Whole House?

MR. A. PARSONS: Now.

MR. SPEAKER: Now.

On motion, a bill, "An Act To Amend The Access To Information And Protection Of Privacy Act, 2015," read a second time, ordered referred to a Committee of the Whole House presently, by leave. (Bill 33)

MR. SPEAKER: The hon. the Government House Leader.

MR. A. PARSONS: Thank you, Mr. Speaker.

I move, seconded by the Minister of Municipal Affairs, that the House resolve itself into a Committee of the Whole to consider Bill 33.

MR. SPEAKER: It is moved and seconded that I do now leave the Chair for the House to resolve itself into a Committee of the Whole House to consider the said bill.

Is it the pleasure of the House to adopt the motion?

All those in favour?

SOME HON. MEMBERS: Aye.

MR. SPEAKER: All those against?

The motion is carried.

On motion, that the House resolve itself into a Committee of the Whole, the Speaker left the Chair.

Committee of the Whole

CHAIR (Warr): Order, please!

We are now considering Bill 33, An Act To Amend The Access To Information And Protection of Privacy Act, 2015.

A bill, "An Act To Amend The Access To Information And Protection Of Privacy Act, 2015." (Bill 33)

CLERK: Clause 1.

CHAIR: Shall clause 1 carry?

The Chair recognizes the hon. the Member for St. John's East - Quidi Vidi.

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

The minister heard me speak to this question so I'm going to put it to him now and hope that he'll have an answer that we couldn't get from co-counsel of the inquiry. Rightly so; I understand why they wouldn't have had the answer to it.

Minister, what I'm looking at is when the documents from the inquiry get turned over to the government: number one, is it a correct assumption that they will go to the Department of Justice; and then, number two, what will be the protection for those documents?

Will they be totally in the hands of Justice? If ATIPPA requests get made, it's the Department of Justice that will make the decision around

responding to the ATIPPA? Or will the documents, while they're maybe in the Department of Justice, are still under the authority of where they originally came from which would mean Nalcor would be protected outside of ATIPPA?

CHAIR: The hon. the Minister of Justice and Public Safety.

MR. A. PARSONS: Thank you, Mr. Chair.

It's a good question by the Member opposite. It's my understanding the information will be governed by section 28 of the *Public Inquiries Act*, which means that Cabinet will dictate the policies and procedures which guide the information.

With the Cameron inquiry, my understanding is that information did go back to the Department of Justice with a letter from Justice Cameron basically saying what could be released and what could not. For the Dunphy inquiry, the information went back to Justice. Right now, there is nothing set in stone as to what would happen. It's my anticipation that it would likely come back to the Department of Justice similarly with a letter explaining what can be released and what cannot be released.

I believe the information for Cameron was people's personal health information, stuff that nobody would anticipate or expect to be released. The rules have not been totally laid out. What I can say is that once it comes back, though, it is governed by ATIPPA.

Your question is if you have Nalcor information under Justice, is it governed by Nalcor or governed by Justice. What I would suggest is that there are certain pieces of legislation even then that supersede ATIPPA. I think the *Energy Corporation Act* that you referenced, section 5.4 says that there's certain commercially sensitive information that cannot be released.

There's still a little bit of work left to be done on that, but it's my anticipation that it would come back to Justice, that it would likely be held by Justice. But depending on the third party information, there may be some further conversations that have to happen and then we have to look at the legislation there as well.

MS. MICHAEL: Thank you.

CHAIR: The hon. the Member for Mount Pearl - Southlands.

MR. LANE: Thank you, Mr. Chair.

Mr. Chair, a question for the minister. I just want to clarify this point. I made it in second reading; I just want his view if I'm on the right track on it.

As indicated, and when I certainly spoke to the Privacy Commissioner, my understanding of it is that if the inquiry, for example, didn't get this exemption and hence they were required to abide by ATIPPA, then if I made a request to the inquiry, the same rules are going to apply if I had made it to the Department of Justice or Natural Resources. In other words, the whole notion of applying to the inquiry versus the department is really kind of a waste of time, it's redundant anyway.

I wouldn't get anything extra from the inquiry even if they were deciding to entertain ATIPPA because they'd say if something was deemed commercially sensitive or private information or whatever in the Department of Natural Resources, whatever test they would use to make that determination, the inquiry would use the same test. It's not like we're depriving anyone of any additional information. All we're saying is anything that you would want to ATIPP the inquiry for, you would get the same thing if you just ATIPPed the department anyway. So why go through that extra step.

CHAIR: The hon. the Minister of Justice and Public Safety.

MR. A. PARSONS: Thank you, Mr. Chair.

I'll try my best to answer that. I certainly understood the question that the Member asked.

What Justice LeBlanc has said is, yes, we want to be exempted from ATIPPA because we do not want to have to comply with the provisions which demands a lot of time. He's saying I want to get it done within the two years. We all know the limitations, the rules and responsibilities that ATIPPA places. I think the Leader of the Official Opposition mentioned it, that when you

apply there are so many days and everything else. They're saying we do not want to have to deal with that, that's going to prevent us from doing our job.

A couple of things: (a) that exemption only lasts while we're there; (b) as you say, the information will go back into the department and then ATIPPA would apply. It's the same way now. If you made an access to information request to Justice for X documents, then ATIPPA applies, but there are also certain pieces of legislation.

Like if you were to look at Schedule A of the ATIPP Act it lists out all the different pieces of legislation which take priority over ATIPPA. I'm not going to reference the sections, but *Adoption Act, Adult Protection Act, Energy Corporation Act, Evidence Act, Fish Inspection Act, Highway Traffic Act*. There's a whole bunch of different pieces of legislation that already have that priority there that cannot be revealed for various reasons. Whether there's health, safety, you name it.

So, I think I agree actually with the point you're trying to make, is that this not about preventing information from getting out. The information will get out there. It's going to be put out during the Commission process. There is certain information that will not be able to be released for various reasons, as they wouldn't be now. Again, I can only state the overlying goal here for any inquiry. I don't see why you would want to do an inquiry, unless you want to get out as much information as possible with reasonable limitations.

CHAIR: Shall the motion carry?

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

CHAIR: All those against, 'nay.'

Carried.

On motion, clause 1 carried.

CLERK: Clause 2.

CHAIR: Clause 2.

Shall the motion carry?

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

CHAIR: All those against, 'nay.'

Carried.

On motion, clause 2 carried.

CLERK: Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows.

CHAIR: Shall the enacting clause carry?

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

CHAIR: All those against, 'nay.'

Carried.

On motion, enacting clause carried.

CLERK: A bill, An Act To Amend The Access To Information And Protection Of Privacy Act, 2015.

CHAIR: Shall the title carry?

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

All those against, 'nay.'

Carried.

On motion, title carried.

CHAIR: The hon. the Government House Leader.

MR. A. PARSONS: I move, Mr. Chair, that the Committee rise and report Bill 33.

CHAIR: The motion is that the Committee rise and report Bill 33.

Shall the motion carry?

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

CHAIR: All those against, 'nay.'

Carried.

On motion, that the Committee rise, report Bill 33 carried without amendment, the Speaker returned to the Chair.

MR. SPEAKER (Trimper): The hon. the Deputy Chair of the Committee of the Whole.

MR. WARR: Mr. Speaker, the Committee of the Whole have considered the matters to them referred and have directed me to report Bill 33 without amendment.

MR. SPEAKER: The Chair of the Committee of the Whole reports that the Committee have considered the matters to them referred and have directed him to report Bill 33 without amendment.

When shall the report be received?

MR. A. PARSONS: Now.

MR. SPEAKER: Now.

When shall the said bill be read a third time?

MR. A. PARSONS: Tomorrow.

MR. SPEAKER: Tomorrow.

On motion, report received and adopted. Bill ordered read a third time on tomorrow.

MR. SPEAKER: The hon. the Government House Leader.

MR. A. PARSONS: Thank you, Mr. Speaker.

Given the hour of the day, I'd like to thank my colleagues for their co-operation in moving this legislation forward and I would move, seconded by the Member for Torngat Mountains, that the House do now adjourn.

MR. SPEAKER: It is moved and seconded that this House do now adjourn.

Is it the pleasure of the House to adopt the motion?

All those in favour, 'aye.'

SOME HON. MEMBERS: Aye.

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

This House stands adjourned until tomorrow at 1:30 o'clock.

On motion, the House at its rising adjourned until tomorrow, Tuesday, at 1:30 p.m.