

April 4, 2018



Dear 

**Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act* (File # NR-44-2018)**

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On March 5, 2018, the Department of Natural Resources received your request for access to the following records/information:

**Any briefing notes prepared for the Minister in the last six months regarding reopening negotiations on the Atlantic Accord 2005**

The Department of Natural Resources have reviewed this request and identified the attached responsive records. Please note that we have provided the maximum amount of information possible and are relying on the following exemptions under *ATIPPA, 2015* for the redactions:

S.30(1)(a) The head of a public body may refuse to disclose to an applicant information that is subject to solicitor and client privilege or litigation privilege of a public body

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the *Access to Information and Protection of Privacy Act* (the *Act*). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy  
Commissioner  
2 Canada Drive  
P. O. Box 13004, Stn. A  
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309  
Toll-Free: 1-877-729-6309  
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act*.

Please be advised that this letter will be published following a 72 hour period after it is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the letter posted to the Office of Public Engagement's website within one business day following the applicable period of time.

If you have any questions, please feel free to contact me at Rodney Hynes at 709-729-0463 or [rhynes@gov.nl.ca](mailto:rhynes@gov.nl.ca).

Sincerely,

A handwritten signature in cursive script that reads "Rod Hynes".

Rod Hynes  
ATIPP Coordinator

**Information Note**  
**Department of Natural Resources**

**Title:** Atlantic Accord Agreement

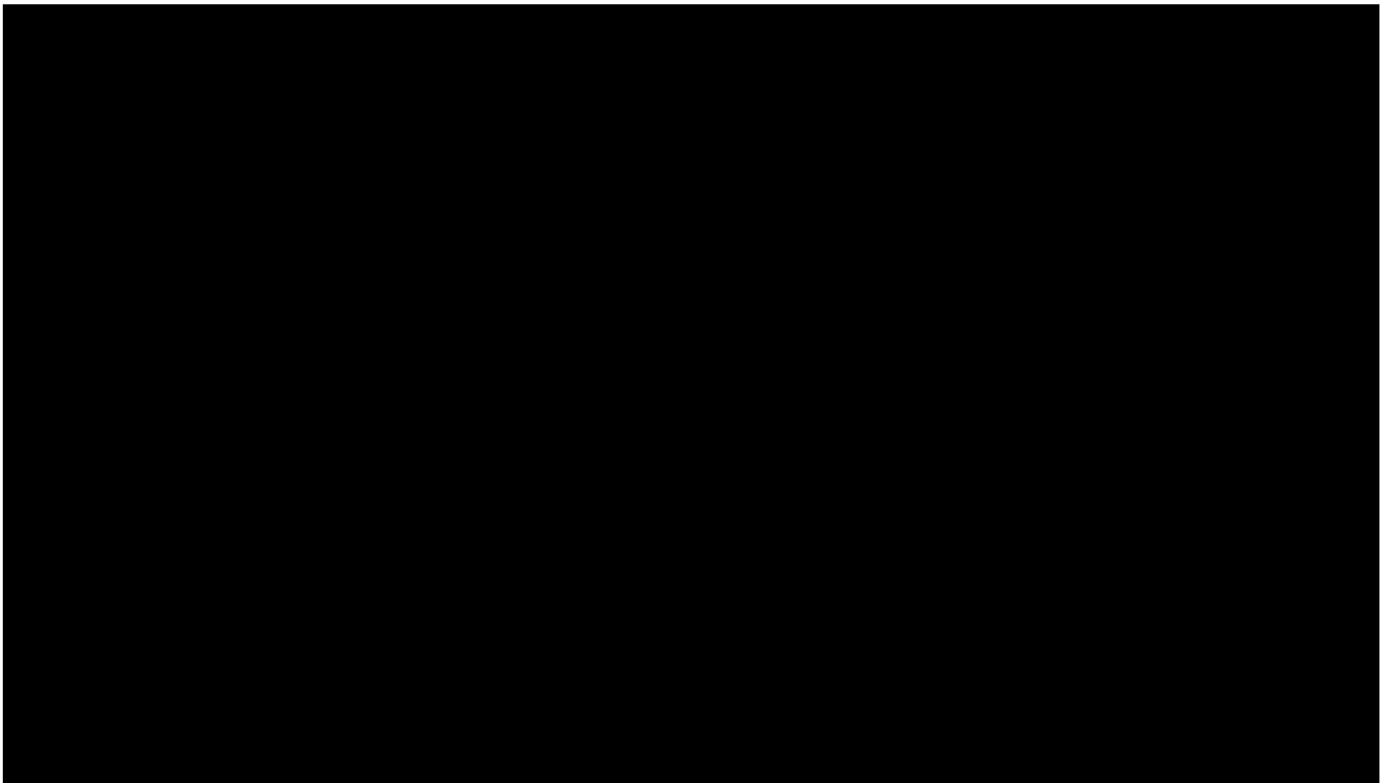
**Issue:** Review of the Atlantic Accord Agreement (the Accord) current arrangement.

**Background and Current Status:**

- The 1985 Atlantic Accord is an agreement between the province and Ottawa concerning the management of the oil and gas reserves off the coasts of Newfoundland and Labrador (NL). It determines how the two governments share revenues, and how that income affects the equalization payments received by the province.
- The Accord granted the province significant decision-making powers and financial benefits. It made the federal and provincial governments equal partners in the management of offshore developments through the Canada-Newfoundland and Labrador Offshore Petroleum Board. A \$300-million offshore development fund was established to help prepare the province for industrial growth, to which Ottawa contributed \$225 million and the Accord ensured that residents of NL would benefit from jobs and training opportunities.
- A major component of the Accord dealt with revenue distribution. It allowed the province to collect taxes and royalties from petroleum resources as if it owned them. This income was protected from a dollar-for-dollar loss of equalization payments for the first 12 years of oil production.
- For the first five years of production, the province could keep 90 per cent of what it would have otherwise lost to equalization due to oil revenues. The percentage dropped by another 10 per cent for each subsequent year of the Accord's 12-year life. Protection from claw-backs allowed the province's income to grow, instead of losing as much to equalization as it earned from the oil industry
- Subsequently, however, it became apparent that the Accord was not achieving its fundamental purpose of making the province the principal beneficiary of the oil industry. Production developed more slowly than anticipated and resulted in low revenues during the critical early years of the Accord, when equalization protection was at its greatest. By 2003, the province received only 12 cents for every dollar of offshore revenues, while the remaining 88 went to Canada and the other provinces.
- The Accord was amended in 2005 (see attached) to give the province 100 per cent protection from equalization claw-backs arising from offshore revenues. The protection was guaranteed for an eight-year period, beginning in the 2004-05 fiscal year. The province received an up-front payment of \$2 billion from Ottawa, which equaled about 75 per cent of the total benefits it was expected to receive by the time the agreement expired in 2012.
- Section 8 of the 2005 Accord states that no later March 31, 2019, the parties (federal and provincial governments) agree to review the current arrangement.

**Analysis:**

- Below are excerpts from the Department of Justice and Public Safety's opinion (see attached full opinion) on whether the 2005 Accord Section 8 review could be interpreted broadly to include a review of the Federal and Provincial Accord Acts:



**Action Being Taken:**

- For information purposes.

**Prepared/Approved by:** C. Carter

**Ministerial Approval:**

January 8, 2018

**Atlantic Accord 2005**

**The Agreement**

**Arrangement between  
the Government of Canada and  
the Government of Newfoundland and Labrador**

## on Offshore Revenues

The Government of Canada recognizes the unique economic and fiscal challenges faced by Newfoundland and Labrador and the strong commitment of the province to improve its fiscal situation, as outlined in the correspondence received from Newfoundland and Labrador.

1. Recognizing that the obligations intended to be assumed by the Government of Canada, as outlined in this document, will require legislation, the Government of Canada will seek legislative authority from Parliament that will authorize additional payments to provide 100 per cent offset against reductions in Equalization payments resulting from offshore resource revenues.
2. This document reflects an understanding between the Government of Canada and the Government of Newfoundland and Labrador that:
  - Newfoundland and Labrador already receives and will continue to receive 100 per cent of offshore resource revenues as if these resources were on land;
  - the Government of Canada intends to provide additional offset payments to the province in respect of offshore-related Equalization reductions, effectively allowing it to retain the benefit of 100 per cent of its offshore resource revenues<sup>1</sup>.
3. Given that, under the new Equalization framework agreed at the October First Ministers Meeting, Equalization payments are determined for 2004-05 and 2005-06:
  - For the fiscal year 2004-05, the value of the additional offset payment to provide this 100 per cent offset will be \$133.6 million.
  - For the fiscal year 2005-06, the value of the additional offset payment to provide this 100 per cent offset will be \$188.7 million.
4. Commencing in 2006-07, and continuing through 2011-12, the annual offset payments shall be equal to 100 per cent of any reductions in Equalization payments resulting from offshore resource revenues. The amount of additional offset payment for a year shall be calculated as the difference between the Equalization payment that would be received by the province under the Equalization formula as it exists at the time if the province received no offshore petroleum resource revenues in that year, and the Equalization payment for the province in that year under the Equalization formula as it exists at the time, net of any payments made with respect to the existing Atlantic Accord or Equalization offset provisions.
5. If in any fiscal year in the period 2006-07 to 2011-12 the province does not qualify for receipt of an Equalization payment, no additional offset payment in respect of clause 4 will be made for that fiscal year beyond the payment specified in the existing Atlantic Accord. The province will also be provided benefits equal to what it would have received if Part 1 of the Equalization offset provision of the Atlantic Accord had been extended to include the year 2011 12, should the province not qualify for Equalization in that fiscal year.
6. It is the Government of Canada's intent to provide the Government of Newfoundland and Labrador a payment equal to \$2.0 billion upon passage of legislation implementing this arrangement. This payment will allow the province to reduce its outstanding debt. Amounts calculated starting in 2004 05 under clauses 3 and 4 will not result in actual payments to the province until such time as their cumulative value exceeds \$2.0 billion.
7. A successor arrangement would be put in place for the period 2012-13 to 2019-20 if the province qualifies for an Equalization payment in 2010 11 or 2011-12 and its per capita debt servicing charges have not become lower than those of at least 4 other provinces.

Payments would continue to be calculated to provide 100 per cent offset for Equalization declines, as per clause 4, in any year in which Newfoundland and Labrador would qualify for Equalization.

Should the province not qualify for an Equalization payment in any year in the period 2012-13 to 2019-20, the province would receive, in that year, an offset payment equal to two-thirds of the previous year's offset payment and an offset payment equal to one-third of that previous year's payment in the following year, should it continue not to qualify for Equalization.

**8. No later than March 31, 2019, the parties agree to review the current arrangement.**

**The review will address a) the extent to which the Atlantic Accord objectives have been achieved, including the key objectives of the Atlantic Accord that Newfoundland and Labrador be the principal beneficiary of its offshore; b) whether Newfoundland and Labrador has realized lasting fiscal and economic gains from its offshore petroleum resources revenues; c) the Equalization arrangements then in effect; d) the fiscal disparities that then exist between Newfoundland and Labrador and other provinces; e) Newfoundland and Labrador's undeveloped offshore petroleum discoveries; and will have regard to the 1987 Canada-Newfoundland Atlantic Accord Implementation Act, any legislation that implements the terms of this arrangement, and any other relevant considerations.**

9. If, in the future, the Government of Canada enters into an arrangement with another province or territory concerning offshore petroleum resource revenues, which in Newfoundland and Labrador's view provides, on balance, benefits greater than those contained in this arrangement, Newfoundland and Labrador may elect to enter into discussions with the Government of Canada to revise this arrangement.

10. Signed in St. John's on February 14, 2005.

[1] Defined as revenue received from the Government of Canada under the *Canada-Newfoundland Atlantic Accord Implementation Act* and Hibernia contractual royalties.

30(1)(a)

**From:** McConnell, Meaghan  
**Sent:** Friday, December 29, 2017 1:19 PM  
**To:** Allen, Fred A.; Stanley, Todd  
**Cc:** Pelletier, Randy  
**Subject:** RE: Arrangement

30(1)(a)

Fred,

