January 29, 2016

Dear [Redacted]

Re:  Your request for access to information under Part II of the Access to Information and Protection of Privacy Act LAAO/001/2016

On January 4, 2016, the Labrador and Aboriginal Affairs Office received your request for access to the following records:

“All briefing material prepared for the premier related to his responsibilities for Labrador and Aboriginal Affairs in any and all formats, including but not limited to electronic and written form”.

I am pleased to inform you that a decision has been made by the Deputy Minister for the Labrador and Aboriginal Affairs Office to provide access to some of the requested information. In particular, access is granted to the following records:

- Presentation prepared for Premier Ball titled “LAAO – Aboriginal Issues” December 2015

Access to the remaining records, and/or information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal
   (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;

34. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
   (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies.
As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible.

In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act (a copy of this section of the Act has been enclosed for your reference). 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. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to 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 (a copy of this section of the Act has been enclosed for your reference).

If you have any further questions, please feel free to contact Kathy Michelin, ATIPP Coordinator (A) at (709) 896-1780 or by email at kathymichelin@gov.nl.ca.

Sincerely,

[Signature]

Kathy Michelin
ATIPP Coordinator (A)

Enclosures
Newfoundland Labrador

Labrador and Aboriginal Affairs Office
1. Aboriginal Concepts
2. Land Claims
3. Duty to Consult
4. National Issues
1. Aboriginal Concepts

The Constitution notes three Aboriginal identities in Canada:

First Nations:
- Formerly “Indians” registered under the Indian Act (“Status”)
- Reserves often associated
- In NL, First Nations include MIFN, SIFN, MFN, QMFN (uniquely in NL, no Reserve)

Inuit:
- Four Inuit “Regions”: Inuvialuit, Nunavut, Nunavik, and Nunatsiavut
- Each created by modern comprehensive land claims agreement

Métis:
- There are no Métis organizations east of Ontario. In Unveiling NunatuKavut the NCC denied its formerly asserted Métis identity and asserts a Southern Inuit identity and rights.
Concepts cont.

Section 91(24) of the Constitution Act, 1867:

- Federal government has the exclusive authority to legislate in relation to “Indians and lands reserved for the Indians.”
- *Re: Eskimos* (SCC, 1939): “Indian” includes Inuit
- *Daniels v. Canada* (FCA, 2014): “Indian” includes Métis
Concepts cont.

Section 35 of the *Constitution Act, 1982*:

- s.35 recognizes/affirms Aboriginal & treaty rights existing in 1982, including modern treaties.
- Recognizes Indian, Inuit and Métis peoples as Aboriginal peoples of Canada.
Aboriginal Title and Rights

• For Aboriginal rights other than title, claimants must demonstrate that the activity comprising the right was integral to their distinctive pre-contact Aboriginal societies.
• These rights may now be exercised in a modern way.
• Title is a form of land ownership.
2. Land Claims

Process:
- Aboriginal organization submits claim to Federal Government and Province.
- Federal Government reviews claim
  - If rejected, process ends
  - If accepted, NL reviews claim
- If accepted by NL, negotiation of the land claim and/or self-government agreement with Federal and Provincial governments would ensue.

Outcomes:
- Certainty respecting Aboriginal rights
- Stable environment for sustainable development
- Promote greater Aboriginal autonomy via self-government including enabling program and service design and development in a culturally appropriate manner.
- Facilitate economic and social development of Aboriginal communities.
Labrador Inuit Land Claims Agreement Map
Innu Nation Land Claims Area and AIP Selections

Legend
- Fogo and Mingan Islands National Park Reserve
- Innu Economic Zones
- Innu
- Innu Oil
- Innu Claim Area
NunatuKavut Community Council, Inc.  
Asserted Land Claims Area
Quebec Naskapi and Innu Asserted Land Claims Areas
Cree Asserted Land Claims Area
Aboriginal Assertions In the Gulf of St. Lawrence

- These are the newest assertions from groups in NS, NB and QC North shore in particular.
- Whether to, Whom to, and How to Consult in this area vis a vis these claims is under consideration.
3. Duty to Consult

- **2004: Haida/Taku** - Crown has a duty to consult when it is contemplating a decision which may adversely impact asserted Aboriginal rights
- This duty is to provide protection to Aboriginal peoples, given the long time that may elapse between the assertion of a claim, and its settlement
- In NL consultation features proponent delegation-GNL Aboriginal Consultation Policy
- Spectrum of Accommodation
  - No accommodation ---> Mitigation measures ---> IBA
Duty to Consult cont.

Island vs. Labrador

• In *R. v. Drew*, the courts concluded the Mi’kmaq of Conne River (MFN) do not possess s.35 Aboriginal or treaty rights in NL.

• As a result, there is no obligation on Government to formally consult the MFN on land and resource development decisions.

• Moreover, the court decisions makes it nigh-impossible for a credible assertion of any Mi’kmaq s. 35 rights on the Island-Qalipu
Truth and Reconciliation Commission (TRC)

- TRC arose from 2007 federal Indian Residential Schools Apology and Settlement.
- No schools in NL included in the Settlement.
- Induced Inuit class action suit in NL.
- TRC Interim Report had 94 Calls to Action
- Call 29 essentially asked the federal government addressed the excluded schools issue.
TRC cont.

• Plaintiffs have now released GNL of liability
• Federal government stated it will implement the TRC Calls.
• Could urge the Federal Government to move forward Call 29.
• Of the 94 recommendations, there are 53 calls to action, including multiple actions within one category, which we consider provincial responsibility
• GNL is taking action on 31 of those already. The remainder actions require additional analysis or do not require action.
4. National Issues

• Federal Government has stated it will consult on a National Inquiry into Missing and Murdered Aboriginal Women and Girls.

• Second National Roundtable in Winnipeg in March on Missing and Murdered Indigenous Women and Girls.
NunatuKavut Community Council, Inc. (NCC)

NCC Land Claim

- The NCC filed land claim documentation with the Federal Government as early as 1991, the most recent filing being 2010’s *Unveiling NunatuKavut* in which the NCC asserts a Southern Inuit identity and Aboriginal rights.

- To date, the Federal Government has not accepted the claim, however during the election campaign Prime Minister Trudeau stated “a Liberal government will accept the NunatuKavut Land Claim and move it to the negotiating table immediately”. [Section 29(1)(a), Section 34(1)(b)]

- If it is accepted by the Federal Government, GNL would then make its own determination of whether the claim is appropriate for negotiation.

- JPS has assessed the claim.
NunatuKavut Community Council, Inc. (NCC)

Consultation and Access to Federal Aboriginal Programs

• The Province consults the NCC on projects in its claim area.
• The NCC desires access to federal programs that First Nation and Inuit in NL are eligible for, primarily non-insured Health Benefits program and Post-Secondary Student Support.
• NL has committed to providing support to the NCC in accessing federal programs.
Nunatsiavut Government (NG)

- Voisey’s Bay Resource Revenue Sharing. Innu have sued over the same issue.
- Methylmercury in Lake Melville
- Labrador Inuit Settlement Area (LISA) Land Use Plan
- Public Tendering
- Hopedale Remediation
- Residential Schools