November 5, 2018

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [IIAS 012 2018]

On October 22, 2018, the Intergovernmental and Indigenous Affairs Secretariat (Indigenous Affairs) received your request for access to the following records/information:

"Any messaging prepared for the fall sitting of the house of assembly during the month of October 2018."

Please be advised that a decision has been made by the Deputy Minister for Indigenous Affairs to provide access to some of the requested information (attached). Access to the remaining records, and/or information contained within the records, has been refused in accordance with Sections 34(1)(a)(i) and 34(1)(b) of the Access to Information and Protection and Privacy Act (the Act). A list of these sections is enclosed.

As required by 8(2) of the Act, we have severed information that is exempt from disclosure and have provided you with as much information as possible.

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).

Please be advised that responsive records will be published following a 72 hour period after the response 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 responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

The Access to Information and Protection of Privacy Act requires us to provide an advisory response within 10 days of receiving the request. As this request has been completed on day 10, this letter also serves as our Advisory Response.

If you require any further questions, please contact me by telephone at (709) 729-7487 or by email at RCarter@gov.nl.ca.

Sincerely,

[Signature]

Ruby Carter
ATIPP Coordinator

Enclosures
Disclosure harmful to intergovernmental relations or negotiations

34. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm the conduct by the government of the province of relations between that government and the following or their agencies:
   (i) the government of Canada or a province,
   (ii) the council of a local government body,
   (iii) the government of a foreign state,
   (iv) an international organization of states, or
   (v) the Nunatsiavut Government; or

(b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies.

(2) The head of a public body shall not disclose information referred to in subsection (1) without the consent of

(a) the Attorney General, for law enforcement information; or

(b) the Lieutenant-Governor in Council, for any other type of information.

(3) Subsection (1) does not apply to information that is in a record that has been in existence for 15 years or more unless the information is law enforcement information.

Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.
(6) A person or third party who has appealed directly to the Trial Division under subsection 52 (1) or 53 (1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

**Direct appeal to Trial Division by an applicant**

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45 (2).
KEY MESSAGES

Intergovernmental and Indigenous Affairs Secretariat
Innu Inquiry
Oct. 17, 2018

Summary:
The Government and the Innu entered into a Memorandum of Understanding on July 5, 2017 that outlined their mutual intent to pursue an inquiry into the treatment, experiences and outcomes of Innu in the child protection system.

The Provincial Government and Innu Leadership jointly completed a draft Terms of Reference and transmitted them to the Federal Government on September 19, 2017, asking the federal government to “fully” participate in the Inquiry.

The Innu have not been satisfied with the level of federal participation in the Inquiry, and stated to federal Minister Jane Philpott that the Inquiry is on hold until the Federal Government’s participation is satisfactory to the Innu. This was communicated by the Innu on the day before and the days after a federally convened emergency FPT-Indigenous meeting on Indigenous children in care, which took place in Ottawa in January 2018.

On April 4, 2018, Minister Philpott wrote the Innu and copied the Government regarding the level of federal participation in the Inquiry. Since that time, there have been ongoing talks, mostly bilateral, amongst the Federal Government, Innu and Government.

Anticipated Question:
• When will the Innu inquiry start?

Key Messages:
• The Innu Nation and the Government of Newfoundland and Labrador have agreed to hold an inquiry into the treatment of Innu children in the foster care system. Budget 2018 allocated $1 million to start this work.

• Similar to the rest of Canada, our province is experiencing an over-representation of Indigenous children in the child protection system and we are committed to working with our Indigenous and federal partners to reduce the number of Indigenous children in care and improve outcomes for those children that are in care.

• There remain some details that need to be finalized with the Federal Government on the Inquiry. When the final terms of the federal participation are worked out, the stage will be set for the Inquiry to begin.
**Backgrounder:**
- The Federal Government and/or the Innu have communicated the following to Indigenous Affairs:
  - The changes the Federal Government wishes to have made to the noted joint draft Terms of Reference;
  - That it have a senior representative present at the Inquiry;
  - That it will provide documentation it has that is requested by the Inquiry;
  - That it identify witnesses with knowledge of the federal role in the provincial child protection services;
  - That it will, with the other parties, address the inquiry’s recommendations; and

- Indigenous Affairs has arranged a meeting with the Innu on Oct. 19 in St. John’s to discuss the Inquiry.

**Prepared by:** Indigenous Affairs Communications
**Approved by:** Indigenous Affairs Executive

*Section 34(1)(a)(i), Section 34(1)(b)*
Intergovernmental and Indigenous Affairs Secretariat
Supreme Court Ruling on Duty to Consult on Legislation
October 17, 2018

Summary:
The Supreme Court of Canada ruled on Oct. 11, 2018 that the Federal Government does not have a duty to consult with Indigenous people on the development, introduction, consideration or enactment of bills.

Anticipated Questions:
- Where does the Provincial Government stand on the Supreme Court of Canada ruling on the duty to consult with Indigenous people prior to introducing legislation?
- Does the ruling impact the Province's relationship and interactions with Indigenous Governments and Organizations in Newfoundland and Labrador?

Key Messages:
- Through the annual Indigenous Leaders Roundtable, led by the Premier, Government is establishing stronger relationships with Indigenous peoples as part of building a strong, diversified province with a high standard of living.

- While Indigenous Affairs will review the implications of the court decision on its consultation practices on legislation. We believe that there are benefits of engaging with Indigenous groups.

- The court ruling does not impact Government's ongoing and established practices of engaging in meaningful dialogue with Indigenous Governments and Organizations, including Native Friendship Centres and Indigenous Women's Organizations.

Secondary Messages:
- The Government of Newfoundland and Labrador works collaboratively with Indigenous Governments and Organizations to advance reconciliation.

- Reconciliation, like consultation, is a dialogue that is needed because Indigenous people have unique social and economic needs, resulting from historic, social, cultural, and geographic factors. Government legislation, like policy and programs, that do not reflect these unique needs are far less likely to advance the social and economic aspirations of Indigenous people.
Background:
- While a majority of Supreme Court (7 to 2) ruled there is no constitutional duty to consult on the process to enact legislation, the Court also found that this did not leave Indigenous peoples without remedies should the legislation, once enacted, produced adverse impacts on Indigenous rights.

- Therefore, while there is no legal obligation to consult on legislation prior to its enactment, this does not mean that consultation is not relevant to justifying adverse impacts arising from the legislation on Indigenous rights. As Justice Rowe wrote in his opinion, “The significance of prior consultation in the infringement/justification analysis is a strong incentive for law makers to seek input from Indigenous communities whose interests may be affected by nascent legislation. This is exemplified by provinces which have recognized the importance of consulting Indigenous peoples prior to enacting legislation that has the potential to adversely impact the exercise of treaty or Aboriginal rights in the province…”

- Government convened the province’s first Indigenous Leaders Roundtable in 2017 to discuss and advance goals shared with Indigenous communities.
- Building on the success of the first roundtable, the second Indigenous Leaders Roundtable was convened in 2018 to identify and initiate new areas of collaboration.
- The Indigenous Leaders Roundtable is a commitment of The Way Forward: A vision for sustainability and growth in Newfoundland and Labrador.

- Some examples of engagement with Indigenous Governments and Organizations include:
  - Discussions on pursuing and establishing an inquiry into the treatment, experiences and outcomes of Innu in the child protection system;
  - Supporting the Child and Youth Advocate on an inquiry into Inuit children and youth in care as requested by the Nunatsiavut Government;
  - A new Children, Youth and Families Act, introduced in the House of Assembly in spring 2018, which provides for strengthened service delivery to Indigenous children, youth and their families;
  - Consultations with the Innu Nation and the Nunatsiavut Government leading up to the June announcement of Vale’s underground development at Voisey’s Bay;
  - Working with the Federal Government, Qalipu First Nation and the Mi’kmaq First Nations Assembly on the membership enrolment process;
  - Establishing the Independent Experts Advisory Committee to assess issues of methylmercury associated with the Muskrat Falls Project; and
  - Assessing the Calls to Action particular to Newfoundland and Labrador as recommended by the Truth and Reconciliation Commission.
KEY MESSAGES

Executive Council
Intergovernmental and Indigenous Affairs Secretariat
Qalipu First Nation Enrolment
Oct. 17, 2018

Summary:
The Federal Government and the Federation of Newfoundland Indians reached agreement in 2008 on the creation of the Qalipu First Nation. A Supplemental Agreement was signed in 2013 as a means of clarifying criteria for Mi’kmaq membership criteria. A series of court challenges and decisions, along with other outstanding pieces of litigation, has since complicated the enrolment process.

Anticipated Questions:
- What is the Provincial Government’s role in the Qalipu First Nation enrolment process?
- What is the Provincial Government doing to rectify concerns expressed by individuals who have issues with the enrolment process?

Key Messages:
- Status under the federal Indian Act is exclusively a federal matter, and the creation and membership enrolment of Qalipu First Nation is a matter for the Federal Government, Qalipu First Nation, and the Federation of Newfoundland Indians.
- Government is concerned about the high number of rejected Founding Members, the rejection and acceptance of members from the same family, and the large number of applicants who were rejected with no right to appeal the decision.
- While the enrolment situation has grown exceedingly complex with multiple court decisions and outstanding court cases, Government has been and remains quite willing to work with the Federal Government, Qalipu First Nation, and the Mi’kmaq First Nations Assembly of Newfoundland to help ensure all applications are fully and fairly processed.

Secondary Messages:
- As the Minister Responsible for Indigenous Affairs, the Premier is in close contact with all Indigenous governments and organizations and the Indigenous Affairs Secretariat to work with the Federal Government, Qalipu First Nation, and the Mi’kmaq First Nations Assembly of Newfoundland to help ensure all applications are fully and fairly processed.
- The Government of Newfoundland and Labrador has reached out to the Federal Government to relay the above noted concerns that have been raised.
- The Indigenous Affairs Secretariat will continue to monitor the enrolment process and any associated litigation. We are assessing the implications of the most recent court rulings.
• Government has supplied Qalipu applicants with documentation in its possession, such as birth certificates and wildlife licences to assist applicants with the completion of their application.

Background:
• The Mi’kmaq First Nations Assembly of Newfoundland was established by individuals who felt disenfranchised by the enrolment process and represented 80,000+ rejected applicants. It began legal cases to challenge the actions of the Federal Government and the Federation of Newfoundland Indians.

• By January 2017, all 100,000+ applications, including those of the 23,877 Founding Members who had already been granted membership, were (re)assessed, with notifications being sent to all applicants. In February 2017, the Federal Government released the results of the reassessment application process, as follows:
  o 13,365 Founding Members remained eligible.
  o 10,512 Founding Members were found to not meet the criteria of the Supplemental Agreement.
  o 4,679 applicants who were not Founding Members are eligible for founding membership.
  o 68,134 applications were not Founding Members and are not eligible.
  o 3,984 applicants have invalid applications and are not eligible.
  o For more than 70,000 applicants who were rejected, there was no right to appeal.

• In May 2018, the Federal Court issued two decisions (Wells cases), the most significant being that certain revisions made to the enrolment process by the Supplemental Agreement were unreasonable and that denying applicants the right to appeal was unfair. The Federal Government has stated it will decide this fall on what it will do given the ruling in Wells, but no decision has been announced.

• The Newfoundland Labrador Trial Division in the Benoit case ruled on June 22, 2018 that six Founding Members had the right to stay on the Founding Members list and that the Federation of Newfoundland Indians must take steps to ensure this occurred.

• Notwithstanding the ruling in Benoit, three days later, the Federal Government published a new band list that removed about 10,000 former Founding Members, effective June 25, 2018.

• The removal of these former Founding members, several of whom are veterans, has induced a hunger strike (strike started Sept. 1, 2018) by one removed veteran, Richard Collier, in Pictou, Nova Scotia, and public controversy in this province.

• On Aug. 30, 2018, Qalipu First Nation Chief Mitchell met with Veterans Affairs Minister Seamus O’Regan, together with three veterans and the province’s Deputy Minister of Indigenous Affairs.
• Chief Greg Janes of the Burgeo Band of Indians in Burgeo, NL, spent 22 years in the Canadian Armed Forces. He said he lost his Indian status for the same reasons that Collier did — inability to prove a connection to a Mi'kmaq community. “Veterans serve all over the world ... and that took away our connection from the Mi'kmaq community,” he said. Janes attended the above noted Aug. 30 meeting. In protest, Janes sent back his Canadian Forces Decoration medal.

Prepared by: Communications, Indigenous Affairs
Approved by: Indigenous Affairs Secretariat
KEY MESSAGES

Executive Council
Intergovernmental and Indigenous Affairs Secretariat
Truth and Reconciliation Commission’s Calls to Action
Oct. 17, 2018

Summary:

Anticipated Questions:
- Where does the Provincial Government stand on implementing Calls to Action recommended by the Truth and Reconciliation commission that apply to Newfoundland and Labrador?

Key Messages:
- The Government of Newfoundland and Labrador completed an initial assessment of all policies/programs/initiatives where Government has taken action, or where opportunities for Government action may exist, for those Truth and Reconciliation Calls to Action that were directed at Provinces and Territories.

- The Provincial Government has shared this assessment with Indigenous Governments and Organizations to seek their input and comments, and is currently reviewing these comments internally to complete a public response on the Calls.

- Government remains committed to working with Indigenous leaders on advancing the ideals set out by the Truth and Reconciliation Commission.

Background:
- In 2005, in response to legal action by former students of Indian Residential Schools across Canada, the Federal Government entered into settlement negotiations, which concluded in March 2007 with the Indian Residential Schools Settlement Agreement. The Truth and Reconciliation Commission was created as a part of the Settlement Agreement.

- The Truth and Reconciliation Commission was mandated to inform Canadians about Indian Residential Schools, and to guide a process of reconciliation through documenting information from survivors, families, communities and anyone else affected by the experience.
• Commissioners heard more than 6,750 survivor and witness statements from across the country.

Prepared by: Communications, Indigenous Affairs
Approved by: Indigenous Affairs Executive