

August 26, 2014

Dear Mr. Honourable Wells and Members of the Committee;

I would like to highlight one main concern for the review of Newfoundland and Labrador's *Access to Information and Protection of Privacy Act (ATIPPA)*. Under "Designation", Section 5(d) of ATIPPA regulations defers to the provincial legislation section 115 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* (herein after Atlantic Accord). Section 115 (2) states that "Subject to section 18, information or documentation provided for the purposes of this Part or Part III or a regulation made under either Part, whether or not that information or documentation is required to be provided under either Part or a regulation made under either Part, is privileged and **shall not knowingly be disclosed without the written consent of the person who provided** it except for the purposes of the administration or enforcement of either Part or for the purposes of legal proceedings relating to the administration or enforcement." (highlight mine).

This particular section of the Atlantic Accord and its federal counter-part (section 119) represents a significant obstacle in understanding the environmental impacts of offshore oil and gas in waters off NL. Over the past decade, my colleagues and I have placed various requests for environmental data, specific to the offshore oil industry in NL, under the federal Access to Information and Privacy Act. Some of these requests have been successful, others have not¹, what is important is that the current legislation allows industry to decide what information is disclosed while operating in public waters. The regulator, the Canada-Newfoundland and Labrador Petroleum Board is bound by Atlantic Accord legislation, thus they do not appear to have much maneuverability in what is disclosed. In 2013, the Auditor General recommended greater transparency and the CNLOPB agreed while acknowledging legislative constraints.² While there was a recent change to the federal Atlantic Accord Act in transparency, it did not appear to include environmental data³. Thus, the deferral of ATIPPA to the Atlantic Accord is problematic and is an obstacle to disclosure and transparency.

¹ See Fraser and Ellis 2008. The Canada-Newfoundland Atlantic Accord Implementation Act: Transparency of the environmental management of the offshore oil and gas industry. *Marine Policy* 33(2): 312–316. More recently requests were made for spill reports submitted by industry to the CNLOPB and these were released. In contrast, in 2011, I was informed that "Environmental Protection Plans" (EPPs) for each operator were not releasable under Section 119 (the guidelines that the CNLOPB gives to the operators to develop EPPs were available, but not the EPPs themselves).

² "**1.45 Recommendation.** The boards should work with the operators to improve the transparency, accessibility, and utility of the environmental effects monitoring programs and the results obtained. This should include facilitating continuous improvement and collaborative research involving industry, government, and academia, with the aim of improving understanding of the effects of oil and gas activities on the offshore environment." Office of the Auditor General of Canada 2013. Atlantic offshore oil and gas activities. ISBN 978-1-100-21332-3.

³ Bill C-5, 2014.

I hope you find this information useful in your review and I appreciate your time and effort in this important endeavor.

Regards,

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