

**Transcript of the Public Hearings of the Statutory Review Committee
on Access to Information and Protection of Privacy**

Date: Thursday, July 24, 2014 (3:10 p.m.)

Presenter: Terry Burry
Private Citizen

ATIPPA Review Committee Members:
Clyde K. Wells, Chair
Doug Letto, Member
Jennifer Stoddart, Member

July 24, 2014

Terry Burry

C. WELLS:

Okay, Mr. Burry.

T. BURRY:

Good afternoon, my name is Terry Burry. I come from Central Newfoundland, just outside of Gander. And I don't know, I believe I may be the only one or one other who may be presenting outside of the St. John's regions. That's what I heard. Is that true?

C. WELLS:

So far you're the only one.

T. BURRY:

Okay. That's a bit sad in a way, that we don't have a broader geographic.

C. WELLS:

I'm inclined to agree with you.

T. BURRY:

Broader geographic.

C. WELLS:

We've tried to give the matter, that fact, as much attention as possible but it hasn't produced an onrush of people from outside the city area.

T. BURRY:

I don't know if that means something that people are not interested in the rural parts or if it means that their presentation wouldn't make a difference if they did come. I don't know what it means but they're not here in large numbers anyway.

C. WELLS:

I'm not sure. I'm not sure that we should read too much into it. It would be speculation and there are probably good and sound reasons for it.

T. BURRY:

Anyway, I'm a private citizen, I'm not a lawyer, and I don't have any particular expertise in this subject matter. I draw most of what I'm going to have to say from our personal experience going back, I guess, six years ago when we made a couple of applications to ATIPPA. And after that, it was announced that Mr. Cummings was going to be going around the province with a series of consultation process, so I thought I would make a presentation to him. That was four years ago. So I did make a presentation in Gander and I was the only one to show up out there, unfortunately. I was not overly impressed with the way Mr. Cummings conducted the hearings and I don't

think I even so much as got a copy of his final report. You think he would have sent it to all the presenters, the courtesy of his final report. I didn't receive anything.

I don't think I'll read verbatim. I'll just touch on some of the points here. As I say, I was very suspicious that Mr. Cummings, given his background, where he had worked for government being a deputy minister, probably wasn't the right person to conduct the hearing. Hopefully this time around, the three individuals before me are all at arm's length and they will give a truly independent report at the end of the day.

I also was suspicious about the person who he had assisting him. Again, she was a lawyer. She was not from the private bar. She was a person who he drew from the Department of Justice who was on the receiving end of applications, including ourselves, back six years ago. And I think I did include a copy of a couple of e-mails exchanged on the Cummings' Report. It was 20 days before I got a reply to my request to this particular lady and who Mr. Cummings

had with him. And even then it was only one of those auto reply. Like, you're out of the office, you're gone to a conference type of thing. So I was very suspicious that that was just a ploy, just adding to the further delay.

In terms of the response that I got, it was, I thought, very rude. Estimates were like \$115 you would have to pay for them to do a search and you had to make a deposit up front and all that sort of thing. So it was not a very user-friendly system that I encountered back then right, at all.

C. WELLS:

And now you're speaking about applications?

T. BURRY:

Yes.

C. WELLS:

Access to information?

T. BURRY:

Yes. It was not a very user-friendly system. I've got the quotation I recall was \$115 that you would have to have. In my view of Bill 29, as I've pointed out, is all about control. It is all about controlling the message, the messenger, controlling

the Commissioner and so on, right. I used some fairly strong language in my presentation, in my submission, which I don't need to repeat it here but you've read it all.

C. WELLS:

We noted that, Mr. Burry, yes.

T. BURRY:

Okay. And then I just make a comment on the whistleblower legislation. And I think that may not be needed as much if you had the proper protocols in place for amendments to Bill 29. I'm not saying have no whistleblower legislation but I'm thinking the whistleblower legislation is probably going to put people's back to the wall to probably snitch on their fellow employees. But if everything was open and access.

C. WELLS:

It would be less need.

T. BURRY:

It would less of a need for the whistleblower legislation. And also, I thought that this committee that was struck was probably politically motivated in my view because I'm pretty sure and certain if the government's polling numbers were at the level they

were say five years ago, they probably wouldn't see a need for this committee. So that's my view.

C. WELLS:

Okay, so I'm relieved by that clarification because what you said was this Committee was politically motivated. But you meant the striking of the Committee.

T. BURRY:

Striking the committee. I'm sorry.

C. WELLS:

All right. I'm glad you clarified that.

T. BURRY:

It was motivated to be put in place. Had the government polling numbers been what they were five years ago, I don't think we would be here today, right. And probably they thinks they may get some kind of a bounce out of better polling numbers by having struck this Committee. I don't know if they will or not. I guess time will tell that. I did go on to talk about Nalcor and, unfortunately, I understand your Terms of Reference does not include that - Nalcor. That's outside of your bounds. Am I correct in that?

C. WELLS:

Well, I'm not sure I would say, Nalcor is a public body that is subject to the ATIPPA legislation. So it's certainly within it. And even if it may not be subject, whether or not it should be subject is certainly within our jurisdiction to express a view.

T. BURRY:

My understanding from one of the other presenters as I was watching on the video camera a few days ago, or maybe it was in June, I'm not sure of the date now, that he felt that only the CEO of Nalcor can release information about that corporation and nobody else.

C. WELLS:

Well, that may or not be the case but the question of whether or not that's the appropriate rules or law is quite properly a matter that you can comment on. Whether Nalcor should be open to unrestricted access, to provide unrestricted access to its information because of its status as a public body is a matter that you can comment on or any aspect of it.

T. BURRY:

My understanding is, if you make an application to, say, Nalcor for information, it would be treated differently than if you made an application to

Department of Health & Community Services or if you made an application to Eastern Health, let's say, it would be totally different.

C. WELLS:

That may well be the case but what I am trying to say to you, Mr. Burry, with a marked lack of success is you have a right to express a view as to whether or not that should be the case. Should it be changed? Should it be opened up?

T. BURRY:

Yes, absolutely.

C. WELLS:

Okay. So there is no restrictions on your abilities.

T. BURRY:

That the government Crown corporation should be treated no different than the health department or a government agency related to Health Authority and so on, right. I did just pick out a few items in Bill 29 that I looked at, that was some of which was reported in the media, item 6, section 18, and talked about barring the Auditor General from certain aspects of the

C. WELLS:

That's probably what you heard in an earlier session.

T. BURRY:

That was a report in the media, that was, right?

C. WELLS:

Yes, and that may be what you're basing your comment on. But let me just explain to you. It happens that Bill 29 also included a provision that not only amended ATIPPA, it amended section 19 of the Auditor General's Act. Whether or not that was right or should have been so or the Auditor General should be blocked or not blocked from access is not a matter that's open to us. But that's the only thing that's not open to us.

T. BURRY:

So that's again, that's outside of your mandate?

C. WELLS:

Yes, outside the mandate because that deals with the status of position of the Auditor General and information that the Auditor General is entitled to obtain, and we're mandated to look at the amendments to ATIPPA caused by Bill 29. That is, Bill 29 is true but it caused an amendment to the Auditor General's Act and we don't like to

T. BURRY:

But it seemed like it was reported on in the media

quite extensively on that point.

C. WELLS:

It was.

T. BURRY:

Yes.

C. WELLS:

Yes, well, it may well have been. I don't take any responsibility for what the media reports.

T. BURRY:

And I also made reference to, but I won't go into any detail because the gentleman was here this morning and he made his own submission for the International Centre for Law and Democracy. I did include some excerpts there, but since he made his own presentation I really won't elaborate anymore on that, except to say he seemed like he was very, very critical of Newfoundland and Canada in terms of comparison to other countries, et cetera. And also another group, Democracy Watch, they were somewhat critical of the Canada and Newfoundland and so on in terms of as they read Bill 29.

So Bill 29, in my opinion, should be completely scrapped and an All-Party Committee should review the

new legislation every three years. And I say government should also better define sensitive corporate information. I'm referring, of course, to Nalcor in particular.

C. WELLS:

So just let me get clear what you're saying there. You think a committee should review the ATIPPA legislation every three years, not every five years?

T. BURRY:

No. An All-Party Committee.

C. WELLS:

So a committee of the House of Assembly?

T. BURRY:

Yes, representing all three parties. Also, I recommended four years ago that Mr. Cummings be given order power.

D. LETTO:

Mr. Ring, you mean?

T. BURRY:

I'm sorry, Mr. Cummings. When I presented to Mr. Cummings, Mr. Ring, the Privacy Commissioner be given order power. And seems to me if you have any communication to the office there, they're unclear on their position on different things. For example,

when the Cummings' Report came out Mr. Ring was all in favor of the report, but now it seems like he would like to see some changes there. So I'm thinking that's kind of related to the fact that possibly he's only got a two-year term and he doesn't want to say anything to be detrimental to getting reappointed because he had an about-face, I think, from his initial feelings about the Cummings' Report and what he presented, I think, to this Committee more recently.

So then I get into what I thought to be, I think it was four or five recommendations in my submission. Firstly, I said that the government should staff a single office. When I made an application in 2008 I was told I had to make one application to the Department of Mines and Energy, another application to Department of Health & Community Services, and another application to the Premier's Office, I think it was. So I think that should be eliminated and there should be one office set up such that the person can coordinate the requests coming from an applicant and can gather the information and then pass it on to the applicant when he received that

information. And probably even be anonymous. He doesn't necessarily have to reveal to Department X or Y who it is that's applying for the information. And also, this would have the benefit of only having one fee; whereas, if you got to make four or five applications you got to pay four or five different fees.

C. WELLS:

Just let me explore that a little bit before you move on to your next point. So what you're suggesting is that there should be a single office of government to receive all requests for information.

T. BURRY:

Yes.

C. WELLS:

And that office has the responsibility and would of course have the knowledge, I assume, to make sure that the request was directed to the appropriate office so it didn't get sent around a couple of times.

T. BURRY:

Yes. That's right.

C. WELLS:

Okay. And you made one other comment. That it would

be helpful if they kept the requester's name anonymous?

T. BURRY:

I don't think there would be any need to pass on.

C. WELLS:

No, it shouldn't matter, should it?

T. BURRY:

No, there is no need to pass on to Department X, Y, Z who it is that's making the application. They could just get the information and maybe even anonymously forward it back to the applicant and that would be the end of the matter.

C. WELLS:

So that the department or office of government concerned would not necessarily know who made the request?

T. BURRY:

They don't need to know, I don't think so. I don't think they would need to know that. All they need is if there is an application request that came in from a Newfoundland citizen or corporation or somebody.

C. WELLS:

News media or whoever.

T. BURRY:

News media, whatever. And they could forward the information back, maybe on an anonymous base. Because I don't know, maybe if certain individuals were seen as, could I use the word "troublemakers", they could sort of give them a harder time in terms of getting this information. Or people unfriendly to government, say. Or perceived to be unfriendly to government. So not knowing I think it would be better as well.

D. LETTO:

So I'm guessing the public body's response would go back through the coordinator who received the request in the first place, because you would have to know who to send it back to.

C. WELLS:

Yes, the response would go back to that basic office.

T. BURRY:

Yes, that single office. That single person office. Like I say, my application back six years ago I was told that I had to apply, I think it was four or five different government departments, agencies, et cetera, and pay a fee each time. And I recall one fee was estimated to be \$115. I assumed that each

application would hold a similar fee attraction as the \$115.

Secondly, the fee should not be \$115. I meant it should be, I think it is \$5 now. Am I correct in that?

D. LETTO:

The application fee.

C. WELLS:

That's the basic application fee.

T. BURRY:

I think it should stay at \$5 and not have any of this add-on fees if they go over, I don't know, if it is five hours, then you got to add \$25 or whatever. I think that should be eliminated completely.

D. LETTO:

So \$5 would be the entire cost?

T. BURRY:

Except if there's photocopying maybe, and I suggest that they keep that at a moderate level of five cents a copy.

C. WELLS:

So other than costs of photocopying?

T. BURRY:

Yes. And I think, I also mentioned that the use of PDF files. Nowadays, most people got high speed internet, most people got computer. Files could be probably instead of sent through the mail, if it was probably 50 pages of the document, it could be sent as a PDF file and there should be no charge for that. I think there was some presenter to, I was listening, apparently there's some problems with sending PDF files in that, if I understood them correctly, that the agency responding sometimes photocopies, then scans and then forwards in a picture form such that you don't have a good working copy.

D. LETTO:

I think that was Mr. Lono.

T. BURRY:

Yes, I believe he mentioned that, right. And I think that shouldn't be. If whatever it gets retracted.

C. WELLS:

It deteriorates.

T. BURRY:

Whatever gets detracted, the remainder could go as a PDF file in a modern era, and no need to having photocopiers working overtime and mail and so on,

right.

D. LETTO:

I think he was speaking as well about like Excel spreadsheets where you might be able to manipulate the data and once it's scanned you lose all the opportunity to do that.

T. BURRY:

I know.

J. STODDART:

Which is why it's done, my understanding, in several jurisdictions.

T. BURRY:

Yes. In terms of a turnaround time, I know even yourself, Mr. Wells, has suggested 10 days. I've heard that number coming through several times now, 10 times in terms of response time and I thought that was a good number, because if you're in Florida at Eastertime and you send a birthday card or Easter card back home, it gets home in 10 days. So I don't know why you would need more than ten days to get a piece of information from St. John's to Grand Falls or whatever. I think 10 days is long enough for it, in my judgment, right.

D. LETTO:

Would it be useful to define it as 10 working days,
in that case?

T. BURRY:

Yeah, you could say exclude Saturday and Sunday if
you want to do that, yes. That way, you'd have to
bring it up to 12 days, right. But I think someone
made a comment this morning, you got 30 days but
probably it goes out on the 28th day.

C. WELLS:

Or they start looking for it on the 28th day.

T. BURRY:

Yes, or starts compiling the information on the 28th
day.

D. LETTO:

What I'm thinking too, if the request came in, say,
at a time of the year when there are a few holidays
back to back, like Easter or Christmas, then you sent
a request on the 23rd of December.

T. BURRY:

Yeah, I know, that's your bad luck, I guess, that
time of the year. And also, I say a fourth
recommendation, that the Privacy Commissioner should
have the final say concerning any disputed

information being released to an applicant and a final judgment on any delays beyond 30 days is warranted without having to go to the court. I said subject only, of course, to limited rights of judicial review.

And the next one, I think, has been debated quite vigorously and I spend a couple of pages on that one. That was the one about the 10-year appointment for the Privacy Commissioner, not every two years on a piecemeal basis. I think I've heard that saying coming up several times during the process of this hearing.

C. WELLS:

What do you recommend?

T. BURRY:

I think 10 years would be appropriate. But then, again, as I was driving in this morning, I said even the 10 years may not be appropriate because government always has the right to dismiss an individual they don't particularly like or. It happened twice. It happened in 2005 with the Child and Youth Advocate as an Officer of the House of Assembly. No, that was the citizen's rep. And in

2009, the Child and Youth Advocate was dismissed. All you have to go is go to the House of Assembly have a recorded (phonetic) vote with the government having a massive majority, the person is out the door in a matter of days. So even if they had a 10-year appointment, they could be out the door within six months.

C. WELLS:

It's possible, Mr. Burry, to structure it as a matter of law to genuinely provide protection and provide for removal only for cause. It could be done. Now you hit on the weakness in it is the government having majority control of the House of Assembly, can amend the law at any time and alter a situation. And there is nothing you can do about that except they pay a political price for action. If that's seen as totally inappropriate action then it's the body politic in the electoral process that has to make the correction for that.

T. BURRY:

But my understanding now, you are appointed at the pleasure of government and can be removed also.

C. WELLS:

No. The appointment is not at pleasure. It is

appointed for a term subject to removal only for cause but you hit upon a critical point. You seem not to have followed it. Even though that's the situation, that with having a majority control of the House of Assembly the government can go to the House of Assembly at any time and say amend this legislation to remove the person by legislation. Then, or amend the Act to allow the government to remove it, whether it is cause or not. So that's where there is a weakness but there is not much you can do about that because the position is not protected by the constitution, so it is within the powers of the House of Assembly to pass such legislation but the control is a political one with the body politic. The government in the end of it has to answer to it and that's part of our political process.

T. BURRY:

And the individual in question may not have done anything terribly wrong. May not have breached anything except that the government just didn't like probably the last four or five decisions that came down from that particular office. So they would gear up for a vote in the House of Assembly to have that

person removed. And I don't know if there is much can be done. Even I think the last lady, she got a lawyer and went to court and I think the court said they were not going to get involved much in an area that was political. An area that was governed by, say, an officer of the House and the government was free to hire and fire as they saw fit. But what I'm saying, even if the two years is moved up to 10, you still got that problem.

C. WELLS:

Well, that's part of our constitutional structure and there is not much you can do about that. As I said, the ultimate accountability is to the body politic in an election.

T. BURRY:

But what I'm afraid of is those officers of the House of Assembly they may feel they have to make decisions in accordance with that particular party stripe or the government interest at this particular point in time and probably sometimes go against their own best judgment. And otherwise they could be out of a job.

C. WELLS:

I would say, Mr. Burry, that it would be a reasonable expectation of anybody accepting appointment for,

say, six or 10 years or 12 years with no possibility of reappointment, so there is no basis for attempting to particularly please a government. Anybody in that position would feel a great deal of freedom in making decisions that might make a government unhappy and probably not have any substantial basis for fearing the possibility the government would act for removal in our political process.

T. BURRY:

Except for the two examples I mention - the citizen's rep in 2005.

C. WELLS:

But you do realize there were at least allegations of cause in the case.

T. BURRY:

There were but I also notice, too, that when the vote came down in the House of Assembly it was completely along party lines. The opposition were completely against.

C. WELLS:

I make no comment on that.

T. BURRY:

So it was not like the various members of parliament voted their conscience. It seemed like it was split

on political votes.

C. WELLS:

There is a solution even to that problem to require a vote of a majority of the members of the House on each side. The majority of the members on the government side and a separate majority of the members on the opposition side. So neither one majority could control. So there is a way of correcting that.

T. BURRY:

All I'm trying to say is that the person in the position should feel comfortable that they can make decisions without having to look over their shoulder.

C. WELLS:

I think most people would share that view.

T. BURRY:

Yes. If it is a short appointment with reappointment or if it's the possibility of being dismissed, either one.

J. STODDART:

Mr. Burry, I'm not familiar with the details of the examples you're talking about. I'm aware that there were previous officers of the legislature who resigned or were removed, I'm not sure which. And

one of the results of this was to create a two-year term for the Information and Privacy Commission of Newfoundland. But in the current legislation I don't read that because of an unpopular decision that is unwelcome to the government of the day, the Commissioner can be removed. At Article 42.3, it talks about: "The majority vote of the members of the House of Assembly actually voting may remove the Commissioner from office or suspend him or her because of an incapacity to act", presumably perhaps you're very ill, "or for neglect of duty or for misconduct." So that seems to me a kind of clear legal standard. It is not simply a pleasure as you say. It is basic. Another term we often use is "on good behavior" but this is not. This takes more, I would think than good behavior. It takes neglective duty or misconduct. So that's a pretty high test. You have to be shown to neglect your duty or to be misbehaving yourself.

So I just say that I don't share your apprehensions because I read this in the statute. So I don't see how the House of Assembly could disagree with some decision and the Commissioner is out the

next day because there is a standard in the law.

T. BURRY:

Well, as I say, in the last two years it happened twice.

J. STODDART:

But did they have the standard in those?

T. BURRY:

2005, 2009.

J. STODDART:

Perhaps we are getting off.

C. WELLS:

But in fairness, yes, what Mr. Burry is suggesting is a government with a commanding majority in the House of Assembly can bring in legislation to amend this provision and give them the right to.

J. STODDART:

To change the present, oh.

C. WELLS:

That's Mr. Burry's comments.

J. STODDART:

Well, yes, that's always the

C. WELLS:

And the only answer I can give Mr. Burry, well, there is nothing we can do about that. There is no

solution to that, short of a constitutional amendment in Canada that would provide constitutional amendment. That's the only way that it could be effected.

J. STODDART:

And that would have to be broken off (phonetic) as standing clause.

C. WELLS:

Except in this circumstance, this is a matter that is ultimately dealt with by accountability to the body politic in an election. That's where it's ultimately dealt with.

T. BURRY:

Anyway, I'll move on. I think I already mentioned that apparently the Privacy Commissioner was initially completely satisfied with the Cummings' Report and now seems like he's got a change of heart and he'd like to see some changes. And I'm wondering if that got something to do with this, the wake that this committee could have in its final report and so on in terms of why it was that four years ago Cummings' Report was okay and now it's not. It sounds rather suspicious to me.

C. WELLS:

Mr. Burry, I know of no basis in our Terms of Reference that would enable us to conduct such an inquiry. We are to look at the position of the Privacy Commissioner, the term of office and other aspects of the office and the powers and so on, but there's nothing in our Terms of Reference that would enable us to cause an inquiry to be made as to why the Commissioner, if what you say is correct, why he expressed that opinion at one stage and an opinion that you now say is at variance with that. That's sort of beyond the Terms of Reference.

T. BURRY:

If I recall from the previous webcast, I think Mr. Letto even asked some questions in that area to the Commissioner in terms of why it was that you had this view four years ago and now you have a different one.

C. WELLS:

Well, when the Commissioner is on the stand and giving evidence we can raise any issues with him with respect to the conduct of his office in his position as Commissioner, and you're suggesting we should raise that one with him?

T. BURRY:

So I think you already did, and I think there must be a curiosity amongst the Committee why that occurred. And it was also a curiosity of mine as well why was this occurring now, right.

C. WELLS:

Okay.

T. BURRY:

I also commented on page 12, Minister Justice, in 2011, thought that the Cummings' Report was a great report as well. And I defer to his comments as a pile of baloney because obviously there's a lot of people, the media and a lot of people across the province, taxpayers is questioning, now, the merits of the Bill 29. So if it was so good as the minister claimed it was in January of 2011, obviously there would be no need for this review at this time in terms of to scrutinize further Bill 29. And I think it all goes back to, as I made quite clear in my presentation, the massive majority of the previous governments in the last two or three elections and with a weakened opposition, they can pretty well do what they please. And that's, I guess, kind of sad in a way that this can occur. Now after I did submit

my presentation I did give a further thought on ten points for you to consider and I think I did submit it as well.

No. 1, independence from the Minister's Office. No involvement in the process. No. 2, protect people's personal information which, I guess, goes without saying as a part of it. And timely response, I've already commented on that. The 10 days sounds like a good number, unless there are extenuating circumstances. And No. 4, all government agencies
.....

C. WELLS:

Just before you go on, I saw your ten points somewhere. I've read it but I'd like to follow it while you're making them and I am trying to find it. Oh, here it is. I have it now. Okay.

T. BURRY:

So No. 1 was the independence from the Minister's Office. No involvement in the province. And 2, I said, goes without saying, protect people's personal information. I think there is no, probably, disagreement on that. And a timely response, I suggested 10 days turnaround. And No. 4, all

government agencies, Crown corporations, including Nalcor, would fall under and must apply. And I guess 4, 5 and 6 in a way you could sort of say should apply to Nalcor. All major agreements with government open for members to the public and cannot hide behind corporate sensitive information. I mean right now we have, since I submitted my application, I just got a copy of Cabot Martin's book, and we're going to spend something like eight million dollars through Nalcor, and much of the information is hidden in terms of the public access to it. I think that's terrible. Absolutely disgraceful. No. 7, cabinet has to make all orders in council public in a timely manner, I suggested. And No. 8, protect Cabinet confidence but limited only, I think this has been discussed by others, I heard it this morning a fair bit, but limited only to the Cabinet exceptions. No. 9, ensure that all ministers and their office are open to access requests. And the last one I think I've already mentioned as well, an All-Party Committee of the House review the legislations every three years. So that's all I have.

C. WELLS:

Ms. Stoddart, do you have anything?

J. STODDART:

Yes. Thank you very much for coming all the way from the interior of Newfoundland. Not a place I've been to yet but I hope to one day. And thank you for making this list which resumes very well your preoccupations.

No. 9, ensure that all ministers and their offices are open to access requests. This morning we heard that in terms of a recommendation the constituency offices -

T. BURRY:

Yes, I heard that.

J. STODDART:

- yes, that perhaps there was some further thinking that we might collectively do. Are you talking about constituency offices here or the offices of the ministers, as ministers?

T. BURRY:

There was a distinction made to the political staff and the political side versus the civil service side. And obviously, the political side, I guess they would have, I think Mr. Wells talked about the competitive nature of politics and parties and so on. You would

need some flexibility there, I guess, to keep things more private than, say, on the ministerial side. Am I correct in saying that?

J. STODDART:

Well, I'm asking you what you mean, "Ensure that all ministers and their offices are open to access requests". This is the minister as a civil servant?

T. BURRY:

Yes, but I think the political harm or the minister DA probably would be excluded from that, I'm thinking.

J. STODDART:

Sorry?

T. BURRY:

The minister's executive assistant probably would be excluded from that.

C. WELLS:

The minister's political assistant would be.

J. STODDART:

You think should be excluded from access to information requests?

T. BURRY:

Probably, yes.

J. STODDART:

Okay. Thank you. And what about their constituency offices?

T. BURRY:

Well I think that would be similar. They would be considered part of the political staff but the problem with some of that stuff is I think there are sometimes a crossover between the two groups and I don't know well that can be monitored; but usually there's a clear distinction between the political staff and the nonpolitical staff. I guess that's per the contract or their right or if the person is hired in the first place.

J. STODDART:

Yes. And what about the protection of personal information side of the ATIPPA legislation, how do you think that should apply to political staff and constituency offices and so on? Or if you haven't really given it any thought or you're not concerned, I don't want to

T. BURRY:

I haven't thought much about it. I think we're doing a pretty good job, in my view, of the protection of privacy. Seemed like where things have fallen down

is more so, what I've heard and read, is more so on the access to information side. But I think a reasonably good job has been done in terms of the protection of privacy. Now there is always the odd incident where something happens inadvertently or somebody makes a mistake or something like that, but normally I think most of the issues appear to be on the access to information.

J. STODDART:

Thank you. Perhaps if I might ask a related question, your No. 1: "Independence from Minister's Offices, no involvement in the process." We heard previously that it's current practice for a Member of the House of Assembly who's acting on behalf of a constituent who would usually like to get some personal information, some information for the government, or, I guess, know how their own particular file is progressing, that the current practice is this has to be given to the ministers' political staff, as I understand.

T. BURRY:

First.

J. STODDART:

First?

T. BURRY:

Yes.

J. STODDART:

And that Members of the House of Assembly therefore cannot communicate directly with civil servants. So this is what you are referring to, this current practice which you think, then, is not appropriate? That the Minister's Office should not be involved in either knowing who's making access requests or knowing the details of my file as I request information privately?

T. BURRY:

Yes, I think it should be rather anonymous. I think the Minister doesn't necessarily have to know the details, the person's name and all that stuff. And as I indicated earlier, if there could be one office set up, then that would remove another barrier from that process.

C. WELLS:

You appear to have missed the thrust of Ms. Stoddart's question. The leader of the opposition, and, I think, the leader of the New Democratic Party, but I'm not certain about that, and at least one or two others who have made

representations, have suggested that Members of the House of Assembly have an impediment placed in their way. If a member of the opposition wants to inquire of the Department of Public Works as to how an application of a constituent is progressing, he has to go to a minister's constituency office first.

T. BURRY:

Yes, I think I heard some of that. Yes.

C. WELLS:

Yes. And I think that this is what Ms. Stoddart was asking you. If that's what you were referring to in your item 1: "Independence from Minister's Offices. No involvement in the process." And I gather from your answer that that is not what you were referring to. You were referring to in the ordinary course of an application of a request for information that it should be handled by the Public Service and doesn't have to go through the Minister?

T. BURRY:

Yes, exactly right.

C. WELLS:

Yes, okay.

J. STODDART:

Okay.

C. WELLS:

I just wanted to make sure we were clear on it.

T. BURRY:

And that's about all I have to say.

D. LETTO:

An issue that's come up before the Committee is that currently information that's in the public interest in a couple of areas can be released, even if it might seem to be protected in some other areas such as health and safety and environmental. And various commentators in front of this group and people who have studied access to information say there should be a further public interest override. That there needs to be a recognition that there can be other circumstances that information that would otherwise be accepted could be released. I'm wondering if you've had any thoughts on that and if that should be part of the ATIPPA?

T. BURRY:

No. As I say, I'm no expert in this field at all, except my personal experience from having made a couple of applications, and the difficulty that I encountered in terms of getting the information, the cost involved, the time delays and so on. So I don't

know if I'd be in a position to respond to that. I think that should be left to the more experts in the field.

D. LETTO:

Fair enough. You mentioned earlier about your own experience with the Act and you were talking about the whole concept of being user friendly.

T. BURRY:

Yes.

D. LETTO:

Your sense of the Act as it is on those grounds in terms of user friendliness, because that's really one of the things that we're asked to report on, what thoughts do you have on that?

T. BURRY:

Well, my experience, as I indicated, is not very user friendly in terms of the cost, in terms of what seems sometimes the arrogant attitude towards like, well, you're almost like you're a nuisance. Why are you making this application? Why do I have to bother with this, right? And then there is delays and so on, right? So you're not very welcomed, in my view, making those applications at all. Right? And I think if there was the one office that was set up, I

think, and the person was properly trained in that office I think you wouldn't have the same rapport with the applicants. I think it would be a better relationship. And I don't know if that's probably, you may know it, does that occur in other provinces, you have one office set up for application intake?

J. STODDART:

Good question. I think it tends to be per office. Depends. I certainly know that the federal government you have to go to each individual department and size is an issue there.

T. BURRY:

So there is no precedence already for that?

J. STODDART:

I don't believe so but perhaps you could ask somebody from Mr. Ring's office who is more familiar with it.

T. BURRY:

So that may be tall order to get implemented if you're breaking new grounds, if it were.

J. STODDART:

It might be but I think, personally, I think it is a very interesting suggestion and given the relevantly smaller size of the Newfoundland government and the concentration of the population compared to, let's

take Ontario, scattered, huge, much bigger bureaucracy, it may be very feasible. I think it is quite a realistic suggestion, personally.

D. LETTO:

We had fair bit of discussion this morning about what various Acts say, so the words that are on paper. The purpose of the Act is to make public bodies more accountable and to your recent point, section 9, "The head of a public body shall make every reasonable effort to assist". So those words sound helpful and opening and welcoming and so on. Do you get the warm fuzzy feeling when you use the Act that those words suggest?

T. BURRY:

Actually, my wife made an application only recent weeks for access to information and now that's six years later. Seems to me that it was a little more friendly atmosphere compared then as it was back then. And she got most of the information, I think, she requested in good order. And the only thing it was, it was you got it on the 29th or 30th day, whatever it was. That was, that part was a bit annoying, right.

C. WELLS:

Yes, another question on this list of general drafting instructions. "No. 5. All major agreements with government open for members of the public." Do you mean contracts signed by the Government of Newfoundland and Labrador with private companies, with other provinces? I don't know if they sign any internationally. They probably do in terms of

T. BURRY:

I think mostly, if you listen to the Newfoundland news, of course, the Muskrat Falls Project is in the news quite a bit, right, and that's the one that seems to getting people's attention right now. And the lack of access for spending a small province like ours, Newfoundland and Labrador, spending taxpayers' money in the multibillion-dollar bracket and you have very little information. Right? I think those type of major initiatives where there is large sums of money involved I think the public should have access and the media, of course, have access. Then, of course, the media has access the public will have access automatically, right. So that's mostly what I was referring to there, where there is a large expenditure of money.

J. STODDART:

Okay. So some kind of automatic publication of government commitments above a certain level because we have to think of it, how would you articulate this in terms of it's supplied to other situations?

T. BURRY:

Yes. I mean if government signs a contract for \$10,000 or a hundred thousand dollars obviously that's very small in terms of the overall government expenditure, and you wouldn't need to deal with those, but the larger items.

J. STODDART:

Okay. Do you have a threshold? I gather Muskrat Falls is very, very (inaudible).

T. BURRY:

Well Muskrat Falls is quite large.

J. STODDART:

Yes.

T. BURRY:

But I'm thinking anything over, say, I don't know, expenditure over, say, a hundred million dollars would qualify, fall in that bracket.

J. STODDART:

Okay. And these would be the details of the

contract?

T. BURRY:

Yes. If it is taxpayers' money involved I think the taxpayers should have a right to information and knowledge, what goes on.

J. STODDART:

Okay, thank you.

C. WELLS:

We may have dealt with this sort of in passing and I'm not sure you were convinced by the comment I made to you. But on page 5, you say that the second concern that you had starts on page 5 and continues on to page 6, and at the top of page 6, you say, "Secondly, your mandate", that is this Committee's mandate, "is so limited in its scope that it is basically useless, i.e. Nalcor is out of bounds." Are you satisfied that that perception is now incorrect on your part?

T. BURRY:

Well, what I was referring to, I mean, it is such a large expenditure that's being proposed by Nalcor and the Muskrat Falls Project in Labrador, and correct me if I'm wrong, if that's out of your mandate or if that's

C. WELLS:

It isn't out of the mandate.

T. BURRY:

It isn't, okay.

C. WELLS:

Nalcor is not out of our mandate. Nalcor is an agency of government and it is open to us to make whatever recommendations we feel, the evidence we've heard and the consideration we will give it will justify. It is not out of our mandate and it is not beyond our scope.

T. BURRY:

Including allowing, say, the media or anybody making a private request to have better access?

C. WELLS:

Yes.

T. BURRY:

Okay.

C. WELLS:

That can be recommended, too. It's open to us. We can't pass a law to require it, of course, that's for the House of Assembly, but we can certainly make recommendations expecting it. And my concern is, you appear to be laboring under the misapprehension that

we can't say anything about Nalcor. That is not so.

T. BURRY:

Well, based on what I've read and based on what I've heard other presenters, it seems to indicate that the only person who can release information about Nalcor is the CEO.

C. WELLS:

And do you recommend that this be changed?

T. BURRY:

Well, that's not the case, say, with Eastern Health. I think you can make a request and

C. WELLS:

You seem to be avoiding my direct question. My question is, do you recommend that this be changed?

T. BURRY:

Yes.

C. WELLS:

And if you don't accept it, that's okay.

T. BURRY:

Nalcor should be no different than any other government department.

C. WELLS:

Okay.

T. BURRY:

And then I also said, I think concluded, having some concerns about given that your recommendation basis only, I'm just wondering if you come down too harsh in your recommendations would they be rejected outright and that would be a travesty, of course, if that occurred.

C. WELLS:

Well, we can only make the recommendations that the evidence and information available to us and our own judgment leads us to conclude it ought to be made, whether they're harsh.

D. LETTO:

And we don't have to be reappointed.

C. WELLS:

And we don't have to be reappointed. So we can make the recommendations that we feel are right and there is no limitation on the recommendations that we can make. None whatsoever. I just want to make sure you were satisfied.

T. BURRY:

Anyway, I'll be watching closely to see if you make, I don't know, 50 recommendations, if 49 gets adopted or if five gets adopted.

J. STODDART:

Well, I think as Shakespeare said, there's the rub.

D. LETTO:

It seems to me, apart from the very specific concerns that you've raised, your basic one is that since Bill 29 the distance between the people and their government has grown wider and larger and the access to your information as a taxpayer, the opportunity and potential for access has become more remote.

T. BURRY:

And the government's attitude in terms of Bill 29 initially was the greatest piece of legislation since sliced bread. But now after this Committee has been struck I think they're after backtracking a bit and see, probably, some of the errors of their ways and see that there is need for changes.

C. WELLS:

Mr. Burry, thank you very much for your interest in this matter and thank you for making the effort you've made to put this submission together and for being here today. We do appreciate your effort.

T. BURRY:

Thank you, and I hope in August when you have your next round you'll get more people representing

different geographic areas of the province, maybe Labrador and not all from just the one area. Thank you very much.

J. STODDART:

Okay, thank you.

C. WELLS:

And this completes this set of hearings. There is nobody else to be heard this time around. Thank you again, Mr. Burry. You will now adjourn until a date to be announced in August.

T. BURRY:

Thank you.

D. LETTO:

And thanks for traveling here.

(Adjourned to a later date TBA)

C E R T I F I C A T E

I, Beverly Guest, of Elite Transcription, of
Goulds in the Province of Newfoundland and
Labrador, hereby certify that the foregoing,
numbered 1 to 50, dated July 24, 2014, is a
true and correct transcript of the proceedings
which has been transcribed by me to the best of
my knowledge, skill and ability.

Certified By:

Beverly Guest
Beverly Guest