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Dear members of the ATIPPA Review Committee:

Thank you for your invitation to submit an opinion about access to information in Newfoundland and Labrador as part of your consultation process.

My basis for doing so draws foremost upon my experience with filing access to information requests across Canada, particularly with the federal government, as part of my academic research.<sup>1</sup> Among other things, I have also published about the media in this province, in particular about open line radio; about public policy and government; about the House of Assembly; and about political communication in Canada. Prior to joining Memorial University of Newfoundland, I was a director of communications in a number of departments in the Government of Newfoundland and Labrador, and thus have some first-hand experience in media relations including limited experience with the adjudication of access to information requests. Finally, my preferred research methodology is depth interviews with political elites, and I have administered dozens of depth interviews with journalists, politicians and political strategists about the game of politics.

I have three opinions to express. First, I believe that due to the fragility of its democratic system of government that Newfoundland and Labrador must be a leader in freedom of information practices. Second, this imperative must be contextualized with the understanding that the Government of Newfoundland and Labrador does not exist to finance the provision of information to its critics. Finally, other Canadian governments practice pro-active access to information disclosure that the Government of Newfoundland and Labrador should follow, such as the online release of previously completed requests and the release of public opinion research data. I will briefly explain each of these opinions in turn.

**1. Newfoundland and Labrador must be a leader in freedom of information practices.**

Democratic government remains a developing concept throughout the world, including in Newfoundland and Labrador. This province has enviable public policy and democratic processes, such as peaceful elections and changes of government; a government that is a leader in looking after those in need; and the ability of individuals to pressure decision-makers via open line radio and social media. Nevertheless, political elites in Newfoundland and Labrador command a disproportionate level of power and influence compared with most other Canadian provinces. Generally speaking, this has historically included such characteristics as:

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<sup>1</sup> For instance, see Alex Marland. 2013. "Public opinion monitoring by provincial governments: The prevalence of open line radio in Newfoundland and Labrador." *Canadian Journal of Communication*, 38: 649-661.

- a legislative branch that does not sufficiently hold the government to account, for reasons that have included lopsided majority governments and weak oppositions, insufficient use of legislative committees, and an all-party culture of secrecy;
- an executive branch that is periodically led by populist premiers, whose perceived power creates a culture of fear in the public service and societal pressure for the media, interest groups, pundits and the general public to be onside;
- political parties that are often spread thin in their ability to recruit quality candidates, that are sometimes unwilling or unable to develop a robust election platform with well-researched public policy options, and which tend to operate with infrastructure that is outdated and underfinanced;
- a homogenous public sphere that features limited pluralistic debate, with a slant towards left-wing ideology and bursts of economic nationalism;
- a media that is under increasing financial pressure to sustain its already limited capacity to act as a fourth estate that holds political elites to account, and whose work is being supplemented by citizen journalists, all of whom operate in an increasingly fast-paced communications environment;
- government communications that are subject to a bombardment of requests for interviews and information in an ever-shortening news cycle, combined with a cacophony of social media, which is resulting in inoculation tactics (e.g., emailed responses in lieu of interviews) that are an increasingly common practice in Western liberal democracies; and,
- a general public that tends to place excessive demands on government, but which understandably expects that an increasing array of information be readily accessible on government websites.

Freedom of information has the potential to act as an important counterbalance to Newfoundland and Labrador's democratic fragilities. Requiring that the public service and their political masters be proactive, rather than reactive, in posting information online is an excellent institutional tool to hold the government to account. The proactive release of information can help ensure that a democratic government reflects the priorities of the citizens it represents. Not doing so is increasingly out of touch with public and media expectations that information should be available upon demand and online.

## **2. However, the Government of Newfoundland and Labrador does not exist to finance the provision of information to its critics.**

Opposition parties, the media, interest groups and other government critics use access to information to obtain evidence to improve their own position vis-à-vis their competitors, rather than purely in the democratic interest. There must be reasonable constraints on their demands. Otherwise, information that could present a public or private harm could be publicly discussed, and if requests are too frequent then the government will be required to divert excessive public funds to subsidize an insatiable appetite for information searches. Some principles to consider are:

- while it is important for a democratic government to be transparent, it is equally important for a government to withhold information when it is in the public interest to do so. Democratic realists recognize that there are times that some information is sensitive and confidential;

- the demands of opposition parties and media outlets, who want an array of information instantly and can be quick to label the government as anti-democratic otherwise, can be at odds with the ability of government to reasonably provide that information;
- applicants must be informed that public servants will only provide raw data if it exists and that the government is not required to perform unlimited data compilation, research or analysis without passing along the associated costs of original work;
- a nominal application 'nuisance fee' (say, \$5) is an important principle to require that applicants consider whether a request is really necessary and to reduce the drain on limited public resources, especially given how easy it can be to file an online request if there is no fee to do so and/or if an electronic payment system is adopted;
- the model used in some provincial jurisdictions whereby the deputy minister has the authority to waive some or all fees should be considered, as this reduces economic hardships for those who are not seeking to profit financially from the release of information;
- the model used in some provincial jurisdictions whereby the minister is required to sign a prepared cover letter releasing the information should be considered, because this will ensure that the departmental head and spokesperson will have an opportunity to be aware of what information is being released, although with a trade-off of potential delay; and,
- when the government completes an access to information request that concerns public information, it should only treat that completed request in confidence for a short time period – the same standards of non-secrecy that requestors place on government should apply to most completed requests.

### **3. Other Canadian governments practice pro-active access to information disclosure that the Government of Newfoundland and Labrador should follow.**

The Government of Newfoundland and Labrador's Open Data initiative is a positive undertaking that is in line with initiatives in other jurisdictions. Some ways that I believe the provincial government should be more pro-active with respect to information disclosure include:

- the Government of Canada, as part of its Open Data initiative and the *Access to Information Act*, is required to post online summaries of completed access to information requests within 30 days after the end of a month. These summaries can then be publicly viewed by anyone with Internet access to help them identify if they would like to request information that has already been compiled. The summaries are searchable via <http://data.gc.ca/eng/search/ati> and each month a new list is posted on each department's website. Requests for previously completed searches are processed in a timely and cost-efficient manner, presumably because they are stored electronically on a central database, and are not subject to the aforementioned 'nuisance fee';
- the Governments of Canada ([www.porr-rrop.gc.ca/index-e.html](http://www.porr-rrop.gc.ca/index-e.html)), Alberta (<http://alberta.ca/publicopinionotherresearch.cfm>) and Saskatchewan ([www.gov.sk.ca/polling-results](http://www.gov.sk.ca/polling-results)) routinely post public opinion polls on their websites after a brief delay, as part of a principle that opinion research that is paid for with public funds should be available to the public. This model should be followed in

Newfoundland and Labrador, where in the past such information has been treated as a cabinet confidence,<sup>2</sup> and where scientific opinion research remains a rare commodity; and,

- this model of proactive disclosure should extend to media monitoring transcripts, because the Government of Newfoundland and Labrador is unique in Canada in that it tends to spend more on transcripts than on scientific opinion research. The transcripts, which are paid for with public funds, should be publicly available online after a given time period as a condition of purchase from the transcribers.

Thank you for inviting me to express my opinion, and for your collective commitment towards improving the access to information process in Newfoundland and Labrador.

Sincerely



Section 30

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<sup>2</sup> For example, see Rob Antle. 2005. "Polling data stays secret." *The Telegram*. 29 June 2005: A1.