November 22, 2005 **2005-007**

NEWFOUNDLAND AND LABRADOR

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT 2005-007

Intergovernmental Affairs Secretariat

Summary: The Applicant applied under the *Access to Information and Protection of Privacy Act* (*ATIPPA*) for access to a series of video tapes produced by Newfoundland and Labrador's Royal Commission on Renewing and Strengthening Our Place in Canada (the Royal Commission). Intergovernmental Affairs Secretariat (IGA) denied access to these tapes, claiming that a significant portion of the tapes contained personal information as defined by the *ATIPPA* and was protected under section 30(1). They did, however, offer to provide a transcript of the tapes with the personal information appropriately severed. The Applicant argued that the information should not be considered personal information and, in any event, should not be protected because the Royal Commission was established under the *Public Inquiries Act* and all information associated with it should be publicly available. The Commissioner found that the records at issue are subject to the *ATIPPA* and he agreed with IGA that much of the information in the records is personal information and is protected by section 30(1) of the *ATIPPA*.

Statutes Cited: *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, as am, ss. 2(o), 5(1)(a) and (b), 30(1), 30(2)(a), (b) and (d), 46, 47(1)(a) and (c), 49(2), 50, 60; *Freedom of Information and Protection of Privacy Act,* R.S.B.C. 1996, c. 165, ss. 3(1)(a) and (b); *Public Inquiries Act*, R.S.N.L. 1990, c. P-38, as am; *Canadian Charter of Rights and Freedoms*, Schedule B to the *Constitution Act*, 1982; *Defamation Act*, R.S.N.L 1990, c. D-3, as am.

Authorities Cited: *Beno v. Canada (Somalia Inquiry Commission)*, 146 D.L.R. (4th) 708, 1997 CarswellNat 688, (eC); *Canada (Attorney General) v. Canada (Commissioner of the Inquiry on the Blood System)*, 151 D.L.R. (4th) 1, 1997 CarswellNat 1387, (eC); *Minister of National Revenue v. Coopers &*

Lybrand, 92 D.L.R. (3d) 1, 1978 CarswellNat 257 (eC); Newfoundland and Labrador OIPC Reports 2005-005

Other Resources Cited:

Administrative Law, A Treatise, 2nd ed., Volume 1, Carswell: Toronto, Calgary, Vancouver, 1985; *Principles of Administrative Law,* 4th ed., Thomson Carswell: Ontario, 2004; Freedom of Information and Protection of Privacy Policy and Procedures Manual, Volume 1, Ministry of Labour and Citizens' Services, Government of British Columbia.

I BACKGROUND

[1] I believe it would be useful to first provide a brief description of the Royal Commission on Renewing and Strengthening Our Place in Canada (the Royal Commission). The Royal Commission was established in April 2002 under authority of the *Public Inquiries Act*. Three Commissioners were appointed and were tasked with analyzing Newfoundland and Labrador's strengths and weaknesses and making recommendations to create prosperity and self reliance. The Royal Commission was also given specific areas to examine, all of which are set out in the Commission's Terms of Reference. The Terms of Reference also set out a three phase process: 1) research phase, 2) roundtable consultation phase and 3) formal public consultation phase. The completed report of the Royal Commission was submitted to government on 30 June 2003. The Report and the Terms of Reference are available on the Internet at www.gov.nl.ca/royalcomm, or from the Office of the Queen's Printer, Confederation Building, St. John's, Newfoundland and Labrador.

[2] Phase two of the Royal Commission's mandate involved a series of roundtable consultations on selected issues. Meetings were held with identified groups of individuals with specific knowledge or experience in a particular area. One of these meetings was referred to as the "Roundtable on Expectations of Confederation," and involved a discussion with a number of individuals who had been young adults during the time of Confederation in 1949. The intent of this meeting was to discuss the controversy surrounding Newfoundland and Labrador's union with Canada.

[3] On or about 4 March 2005 the Applicant requested access to the video recordings of the Expectations Roundtable of the Royal Commission. He submitted his request to Intergovernmental Affairs Secretariat (IGA). IGA responded in a letter dated 4 March 2005 and provided the Applicant with summary notes that had been provided to all participants of the Expectations Roundtable, as well as a shorter summary which appeared in the Royal Commission's final report.

[4] The Applicant responded in a letter to IGA requesting the actual tape recordings. This letter was undated but was received by IGA on 13 April 2005. In response, IGA forwarded a second

letter to the Applicant, dated 29 April 2005, denying him access to the recordings in accordance with section 30(1) of the *Access to Information and Protection of Privacy Act (ATIPPA*):

> *After careful consideration of your request, I must advise that the Access to Information and Protection of Privacy Act (ATIPP) Act prohibits the release of these tapes to you…the information contained on the tapes includes personal information of third parties (mainly, the personal views and recollections of the other participants). Under the ATIPP Act, this personal information cannot be released.*

IGA also informed the Applicant that the information could be released with the consent of all third parties.

[5] On 22 July 2005 the Applicant filed a Request for Review with this Office, under the *ATIPPA*. The Applicant asked me to review the decision of the Department to deny access and to recommend that "…either an audiotape or stenographic transcript" be disclosed. The Department was notified of this Request for Review in correspondence dated 28 July 2005, and was asked to provide the appropriate documentation and a complete copy of the responsive records for our review. Given that the responsive records were video recordings, arrangements were made for this Office to view the tapes on 30 August and 31 August 2005.

[6] In accordance with section 46 of the *ATIPPA,* officials with my Office met with the Applicant and with IGA in an attempt to resolve this Review by informal means. During this process IGA offered to provide the Applicant with a transcription of the recordings, subject to the appropriate fees, with all personal information severed. The Applicant was also given the option of seeking the consent of the individuals who participated in the roundtable discussions to have their personal information released to the Applicant. The Applicant indicated that neither of these options was satisfactory and maintained that he was entitled to the tapes in their entirety. As a result, the file was referred to the formal investigation stage on 22 September 2005. The Department and the Applicant were invited to submit written representations to this Office in support of their position, as per section 47(1)(a) and (c) of the *ATIPPA*:

> *47. (1) During an investigation, the commissioner shall give the following persons an opportunity to make representations:*

> ***(a) the person requesting the review;***
>
> *(b) a third party who was notified under section 28 or would have been notified had the head intended to give access; and*
>
> ***(c) another person the commissioner considers appropriate.***

II PUBLIC BODY SUBMISSION

[7] IGA submits that the information in question is considered personal information in accordance with the *ATIPPA.* As such, they are obligated by the legislation not to release such information. IGA submits that they "…consulted widely in an effort to find a means to release the information, in whole or in part…," but maintain that the language of the *ATIPPA* is clear with respect to its mandatory requirement that public bodies not disclose personal information, except in certain defined situations. IGA also reiterates its offer to provide the Applicant with the information as long as he has the permission of the affected parties or to provide him with a severed transcript of the records. They note that neither of these offers was accepted by the Applicant. Under these circumstances, IGA has no further discretion to release the information in question.

[8] IGA also references section 5 of the *ATIPPA*, which sets out the application of the legislation. IGA specifically refers to section 5(1)(a) which excludes Court records from the application of the *ATIPPA.* IGA maintains, however, that the records in question are not Court records and as such are not excluded from the *Act.*

III APPLICANT'S SUBMISSION

[9] In correspondence dated 7 October 2005, the Applicant submits that the Royal Commission was established under the *Public Inquiries Act* and, as such, all proceedings of the Commission are available to the public. The Applicant specifically references section 3 of the *Public Inquiries Act*, which provides in part:

> *3. (1) The commissioner or commissioners shall have the same power to enforce the attendance of witnesses and to compel them to give evidence that is vested in a court of law in civil cases; and a false statement made by the witness on oath or affirmation shall be an offence punishable in the same manner as perjury.*

[10] The Applicant argues, therefore, that any statement or evidence given to the Royal Commission is done so in the same manner as if it were given in a Court of law in a civil case. Since all Court proceedings are open to the public in accordance with the *Charter of Rights and Freedoms*, the Applicant takes the position that withholding this information would be contrary to the *Public Inquiries Act* and to the *Charter of Rights and Freedoms*.

[11] In comparing the Royal Commission to a civil court case, the Applicant argues that because evidence given in an open Court is not "personal information" under the *ATIPPA*, there can be no expectation of "protection of privacy" with respect to the records responsive to his request.

[12] The Applicant also submits that the Round Table discussions of the Royal Commission are considered a "public meeting" in accordance with the *Defamation Act* and, as such, no action in defamation would lie against a person making a statement before the Royal Commission.

IV DISCUSSION

[13] The discussion will revolve around two questions: 1) Are the responsive records subject to the *ATIPPA* and, if so, 2) have they been appropriately withheld by IGA? If the first question is answered in the negative it will not be necessary to deal with the second question. If however the records are deemed to fall under the application of the legislation, I will then determine whether or not the Applicant is entitled to have access to them.

Are the responsive records subject to the *ATIPPA*?

[14] Section 5(1) of the *ATIPPA* sets out a number of records that do not fall under the application of the legislation. Sections 5(1)(a) and (b) are relevant to the case at hand:

> *5. (1) This Act applies to all records in the custody of or under the control of a public body but does not apply to*
>
> *(a) a record in a court file, a record of a judge of the Trial Division, Court of Appeal, or Provincial Court, a judicial administration record or a record relating to support services provided to the judges of those courts;*
>
> *(b) a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity;…*

[15] In his submission the Applicant is arguing that the records of the Royal Commission are to be treated the same as the records of the Court and, as such, are available to the public under the *Charter of Rights and Freedoms*. If I were to accept such an argument it would stand to reason that the responsive records are exempt from the *ATIPPA* in accordance with section 5(1)(a). However, for reasons specified below, I do not accept that the records of the Royal Commission are exempt from the *ATIPPA* nor do I accept that the records should be publicly available under the *Charter* as Court records.

[16] While I agree that section 3 of the *Public Inquiries Act* allows for the attendance of witnesses and the giving of evidence as if in a court of law in a civil case, I do not agree that the responsive records should be treated the same as Court records for the purposes of the *ATIPPA*. The Federal Court of Appeal has established a clear distinction between public inquiries and the Courts. In *Beno v. Canada (Somalia Inquiry Commission)*, 146 D.L.R. (4th) 708, 1997 CarswellNat 688, (eC), at paragraph 23, the Court said:

> *23 It is clear from his reasons for judgment that the judge of first instance assimilated Commissioners to judges. Both, in his view, exercise "trial like functions." That is clearly wrong. A public inquiry is not equivalent to a civil or criminal trial (see Canada (Attorney General) v. Canada (Commissioner of the Inquiry on the Blood System) [now reported at (1997), 142 D.L.R. (4th) 237 (Fed. C.A.)] January 17, 1997, Court File Number A-600-96 at paragraphs 36, 73; Greyeyes v. British Columbia (1993), 78 B.C.L.R. (2d) 80 (B.C.S.C. [In Chambers]) at 88; Di Iorio v. Montreal Jail, [1978] 1 S.C.R. 152 (S.C.C.), at 201; Bortolotti v. Ontario (Ministry of Housing) (1977), 15 O.R. (2d) 617 (Ont. C.A.) at 623-4); Shulman, Re, [1967] 2 O.R. 375 (Ont. C.A.) at 378). In a trial, the judge sits as an adjudicator, and it is the responsibility of the parties alone to present the evidence. In an inquiry, the commissioners are endowed with wide-ranging investigative powers to fulfil their investigative mandate (Phillips v. Nova*

> *Scotia (Commissioner, Public Inquiries Act), [1995] 2 S.C.R. 97 (S.C.C.), at 138). The rules of evidence and procedure are therefore considerably less strict for an inquiry than for a court. Judges determine rights as between parties; the Commission can only "inquire" and "report" (see Irvine v. Canada (Restrictive Trade Practices Commission), [1987] 1 S.C.R. 181 (S.C.C), at 231; Greyeyes, supra at 88). Judges may impose monetary or penal sanctions; the only potential consequence of an adverse finding by the Somalia Inquiry is that reputations could be tarnished (see Phillips, supra at 163, per Cory J.; Krever, supra at paragraph 29; Greyeyes, ibid at 87).*

[17] The Supreme Court of Canada has also commented on the nature and role of inquiry commissions and in so doing, has quoted and supported the position of the Federal Court of Appeal in *Beno*. In *Canada (Attorney General) v. Canada (Commissioner of the Inquiry on the Blood System)*, 151 D.L.R. (4th) 1, 1997 CarswellNat 1387, (eC), at paragraph 34, Cory, J. said:

> *34 A commission of inquiry is neither a criminal trial nor a civil action for the determination of liability. It cannot establish either criminal culpability or civil responsibility for damages. Rather, an inquiry is an investigation into an issue, event, or series of events. The findings of a commissioner relating to that investigation are simply findings of fact and statements of opinion reached by the commissioner at the end of the inquiry. They are unconnected to normal legal criteria. They are based upon and flow from a procedure which is not bound by the evidentiary or procedural rules of a courtroom. There are no legal consequences attached to the determinations of a commissioner. They are not enforceable and do not bind courts considering the same subject matter. The nature of an inquiry and its limited consequences were correctly set out in Beno v. Canada (Somalia Inquiry Commission) (1997), 146 D.L.R. (4th) 708 (Fed. C.A.), at pp. 716-17…*

[18] I believe the Courts have quite clearly stated that an inquiry falls significantly short of the structure and authority of a judicial proceeding and must not be given the same status as a Court. I do not accept, therefore, that section 5(1)(a) of the *ATIPPA* applies in this circumstance. Having reached this conclusion, I also do not accept that the right to a "fair and public hearing" entrenched in the *Charter of Rights and Freedoms* is meant to capture a commission such as the Royal Commission on renewing and strengthening Newfoundland and Labrador's place within the Canadian Confederation.

[19] Having rejected the application of section 5(1)(a), I must now consider section 5(1)(b). Application of this section hinges on the term "judicial or quasi-judicial capacity," and whether or not the Royal Commission was acting in such a capacity. If so, any note, communication or draft decision of the Commission falls outside the scope of the *ATIPPA* and, consequently, falls outside the jurisdiction of this Office. If I find that the Royal Commission was not acting in a judicial or quasi-judicial capacity the responsive records clearly fall within my jurisdiction and I must apply the appropriate provisions of the *ATIPPA* accordingly.

[20] In dealing with this issue I would first turn to the Supreme Court of Canada. In *Minister of National Revenue v. Coopers & Lybrand*, 92 D.L.R. (3d) 1, 1978 CarswellNat 257 (eC), the Supreme Court of Canada set out a criteria for determining whether a matter is judicial or quasi-judicial. At paragraphs 14 to 16, Dickson, J. said:

> *14 It is possible, I think, to formulate several criteria for determining whether a decision or order is one required by law to be made on a judicial or quasi-judicial basis. The list is not intended to be exhaustive.*
>
> > *(1) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?*
> >
> > *(2) Does the decision or order directly or indirectly affect the rights and obligations of persons?*
> >
> > *(3) Is the adversary process involved?*
> >
> > *(4) Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?*
>
> *15 These are all factors to be weighed and evaluated, no one of which is necessarily determinative. Thus, as to (1), the absence of express language mandating a hearing does not necessarily preclude a duty to afford a hearing at common law. As to (2), the nature and severity of the manner, if any, in which individual rights are affected, and whether or not the decision or order is final, will be important, but the fact that rights are affected does not necessarily carry with it an obligation to act judicially. In Howarth v National Parole Board, [1976] 1 S.C.R. 453, a majority of this Court rejected the notion of a right to natural justice in a parole suspension and revocation situation. See also*

> *Martineau and Butters v Matsqui Institution Inmate Disciplinary Board, [1978] 1 S.C.R. 118.*
>
> *16 In more general terms, one must have regard to the subject matter of the power, the nature of the issue to be decided, and the importance of the determination upon those directly or indirectly affected thereby: see Durayappah v. Fernando, [1967] 2 A.C. 337. The more important the issue and the more serious the sanctions, the stronger the claim that the power be subject in its exercise to judicial or quasi-judicial process.*

[21] It is also useful to refer to *Administrative Law, A Treatise* (2nd ed., Volume 1, Carswell: Toronto, 1985). At pages 73 to 78 authors René Dussault and Louis Borgeat describe consultative committees and commissions of inquiry:

> *As their name indicates, these committees and commissions have the responsibility of providing government with recommendations that it may need to direct its policies and which it is unable to draw upon from within its own ranks. Although, strictly speaking, they are not administrative agencies, since they have no decision-making power, the indispensable role which they play alongside the Cabinet, both as privileged sources of information and advice, justifies them being considered in a general study of administrative structures….*
>
> *Established by commission under the Great Seal, by virtue of a general or special Act, [commissions of inquiry] have functions which may vary according to the subject matter of the inquiry. There are two major categories of commissions of inquiry which are recognized.* ***On the one hand, there are those of a generally quasi-judicial character which are responsible for examining the conduct of public officer or of a given sector of the central or decentralized administration; they are usually established following a particular event or a set of circumstances. On the other hand, there are also those which allow the government to obtain the views of the population and of interested groups on a question of administrative, economic or social policy or in a comprehensive field of the State's activities****. The official role of these commissions is to research and to formulate a global policy for an entire sector of activities; but they are also used simply to prepare the way for a policy which has been determined in advance, or to resolve a political or social controversy, to forestall eventual popular pressure or even to delay the Cabinet's analysis of a problem of relative urgency….*
>
> (Emphasis added)

[22] On reading the Royal Commission's Terms of Reference, it is clear that it falls within the latter category described by Dussault and Borgeat and, as such, lacks a quasi-judicial character.

[23] More recently, David Jones, Q.C. and Anne de Villars, Q.C., in *Principles of Administrative Law* (4th ed., Thomson Carswell: Scarborough, 2004), state that the recent development of "duty to be fair" has significantly narrowed the gap between quasi-judicial powers and powers that are merely administrative in nature. However, they still maintain an important distinction between a decision-making and non-decision making function. At pages 90 and 91 the authors state:

> *…Although it was previously thought that no procedural safeguards were required for the exercise of merely administrative powers, administrative law has now developed the "duty to be fair" in the method used to exercise even a merely administrative power. Accordingly, the distinction between quasi-judicial and merely administrative powers has become much less important.* ***Nevertheless, it is probably accurate to state that the further one moves from the judicial model of decision-making, the less are the procedural requirements involved in adopting a "fair" procedure for the exercise of a statutory power delegated to someone who is not a judge****.*
>
> (Emphasis added)

[24] I also looked to a number of definitions of "judicial or quasi-judicial capacity." Although I am not bound by it, I found that the most useful definition, and the one that most accurately reflects the above-noted references, was provided by the Government of British Columbia in its Freedom of Information and Protection of Privacy Policy and Procedures Manual, Volume 1, available at http://www.mser.gov.bc.ca/privacyaccess/manual/toc.htm. In Part 1, Section 3 of this Manual "judicial or quasi-judicial capacity" is described as follows:

> *Generally, quasi-judicial boards and tribunals are under a duty to act in accordance with the rules of natural justice (Dictionary of Canadian Law). A person is acting in "****judicial or quasi****-judicial capacity" if he or she is required to:*
>
> - *investigate facts, hear all parties to the matters at issue, weigh evidence or draw conclusions as a basis for their action;*
> - *exercise discretion of a judicial nature; and*

- *render a decision following the consideration of the issues rather than simply making a recommendation.*

(Emphasis in original)

I should note that sections 3(1)(a) and (b) of the British Columbia *Freedom of Information and Protection of Privacy Act* are, in all material respects, the same as sections 5(1)(a) and (b) of the *ATIPPA*, respectively.

[25] I believe it to be clear from the Supreme Court of Canada and the textual descriptions that a judicial or quasi-judicial proceeding involves significant judicial power, including the power to make a finding of guilt or innocence, to impose sanctions or to award remedies. Key to this process is the ability to render a decision or an order. Such a process is to be distinguished from a proceeding with a mandate to investigate or to inquire into a matter and to issue recommendations in response to this investigation or inquiry. This latter process is more administrative in nature as opposed to judicial.

[26] To determine the extent of the Royal Commission's mandate and power one must look to its Terms of Reference, as referred to in paragraph 1 of this Report. The Terms of Reference ordered that "…the Commissioners undertake a critical analysis of our strengths and weaknesses and make recommendations as to how best to achieve prosperity and self reliance." In the course of making these recommendations, the Terms of Reference also ordered that "…the Commissioners specifically examine and report on…" a number of particular issues. The words "analysis" and "examine" and the explicit reference to the making of recommendations are clearly indicative of a purely administrative function. There is nothing in the Terms of Reference that would have given the Royal Commission the ability to determine guilt or innocence, impose sanctions, or to render a decision. The Royal Commission was simply tasked with examining and analyzing issues and making recommendations to government, which is exactly what the final report has done. As such, it is my opinion that the Royal Commission is sufficiently removed from the judicial model of decision-making, as described by Jones and de Villars, so as to clearly remove it from the classification of judicial or quasi-judicial capacity. In further support of this position, the description of "judicial or quasi-judicial capacity" in the British Columbia Policy

and Procedures Manual explicitly states that a person who is tasked with simply making recommendations is not acting in a judicial or quasi-judicial capacity.

[27] Based on the established jurisprudence in this area and the explicit language of the Royal Commission's Terms of Reference, it is my opinion that the Royal Commission was not acting in a judicial or quasi-judicial capacity and, as such, the records are not exempt from the *ATIPPA* under the authority of section 5(1)(b). Having rejected the application of both section 5(1)(a) and 5(1)(b), I have concluded that the records at issue are subject to the *ATIPPA.* I must now look to the Applicant's right to have access to these records.

Have the responsive records been appropriately withheld by IGA?

[28] IGA has denied access to these records in accordance with section 30(1). This is a mandatory exception which protects personal information:

> *30. (1) The head of a public body shall refuse to disclose personal information to an applicant.*

[29] Personal information is defined in section 2(o):

> *2. In this Act*
>
> *(o) "personal information" means recorded information about an identifiable individual, including*
>
> *(i) the individual's name, address or telephone number,*
>
> *(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,*
>
> *(iii) the individual's age, sex, sexual orientation, marital status or family status,*
>
> *(iv) an identifying number, symbol or other particular assigned to the individual,*
>
> *(v) the individual's fingerprints, blood type or inheritable characteristics,*

> *(vi) information about the individual's health care status or history, including a physical or mental disability,*
>
> *(vii) information about the individual's educational, financial, criminal or employment status or history,*
>
> *(viii) the opinions of a person about the individual, and*
>
> *(ix) the individual's personal views or opinions;*

[30] Having reviewed the video recordings, this Office is satisfied that a significant portion of the information contained therein is personal information as contemplated by the *ATIPPA.* In addition to the personal information of the participants themselves, the tapes contain a number of references to specific individuals not in attendance. It is also important to note that the primary purpose of this roundtable discussion was to elicit the views and opinions of a select group of individuals. Such views and opinions are clearly considered personal information for the purposes of section 30(1).

[31] As I indicated earlier, section 30(1) is a mandatory exception and, as such, there is no discretion on the part of a public body nor is there a harms test to be applied. I spoke to this point in my Report 2005-005:

> *It is noted that [section 30(1)] of the ATIPPA does not include a harms test. Unlike some other jurisdictions, there is no test of reasonableness when dealing with the release of personal information. In the absence of any discretion, a public body simply has to determine if information meets the definition set out in section 2(o) and, if so, they must not release it….*

[32] I should note at this point that IGA has offered to provide the Applicant with a severed transcript of the recordings, subject to the appropriate fees, which would include all information that is not considered personal information of an individual and is not protected by another exception in the *ATIPPA.* In addition, IGA informed the Applicant that they would provide him with the personal information of any participant who provides written consent to do so. Section 30(2) of the legislation provides for this by establishing specific exceptions to the protection provided by section 30(1):

> *30. (2) Subsection (1) does not apply where*
>
> *(a) the applicant is the individual to whom the information relates;*
>
> *(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;…*

The Applicant did not accept either of these options. I believe, however, that IGA's offer is reasonable and in accordance with the legislation.

[33] Section 30(2) also allows for the release of personal information in response to an access request where an Act or regulation authorizes it:

> *30. (2) Subsection (1) does not apply where*
>
> *(d) an Act or regulation of the province or Canada authorizes the disclosure;…*

In the absence of any express provision in the *Public Inquiries Act* authorizing release of information, it is my opinion that section 30(2)(d) does not apply to the case at hand.

[34] With respect to the Applicant's reference to the *Defamation Act*, I fail to see the relevance of this statute to this Review. The Applicant suggests that I adopt the definition of "public meeting" in the *Defamation Act* and apply it to the responsive records. With all due respect, my Review involves the interpretation and application of the *ATIPPA* and I see no reason to consider whether the roundtable discussions were considered a "public meeting" in accordance with the *Defamation Act*. While this definition may be pertinent to an action in defamation, it is not relevant here. I do note that the roundtable consultation phase of the Royal Commission, as described in the Terms of Reference, is separate and distinct from the public consultation phase. I believe this to be an intentional process of separating "closed meetings" from "public meetings."

V CONCLUSION

[35] I have concluded that the records to which the Applicant is seeking access are not exempt from the *ATIPPA* under authority of section 5. The Courts, including the Supreme Court of Canada, have clearly distinguished between a Court proceeding and an inquiry tasked with gathering information, analyzing that information and making recommendations. Similarly, judicial and quasi-judicial proceedings have been clearly defined and, in my opinion, do not include proceedings with a mandate as specified in the Terms of Reference of this Royal Commission.

[36] On reviewing the records, I have determined that they contain a significant amount of personal information as defined in section 2 of the *ATIPPA* and protected by section 30(1). Given the mandatory nature of section 30(1), I have concluded that IGA has appropriately applied the legislation and has properly withheld the information in accordance with section 30(1). I have further concluded that IGA has provided reasonable alternatives to the Applicant and that these alternatives are in accordance with the legislation.

[37] Having found that IGA acted appropriately, it is not necessary for me to make a recommendation in this circumstance. Accordingly, I hereby notify the Applicant, in accordance with section 49(2) of the *ATIPPA*, that he has a right to appeal the decision of IGA to the Supreme Court of Newfoundland and Labrador Trial Division in accordance with section 60. The Applicant must file this appeal within 30 days after receiving a decision of the head of IGA as per paragraph 38 of this Report.

[38] Under authority of section 50 of the *ATIPPA*, I direct the head of IGA to write to this Office and to the Applicant within 15 days after receiving this report to indicate IGA's final decision with respect to this Report.

[39] Dated at St. John's, in the Province of Newfoundland and Labrador, this 22th day of November, 2005.

Philip Wall
Information and Privacy Commissioner
Newfoundland and Labrador