

From: [Quinlan, Krista](#)
To: dbrowne@bfma-law.com
Cc: [G. John Samms](#); [Jarvis, Carolyn](#)
Subject: Correspondence re Terms of Reference Clarification
Date: Saturday, May 3, 2025 1:38:47 PM
Attachments: [Dennis Browne.pdf](#)

Dennis,

Please see the attached correspondence, following from our discussions in recent weeks. I encourage you to follow up with John Samms should you have any further questions.

On a separate note, I am leaving my role as Clerk of the Executive Council to become the Chair of the Public Service Commission, effective today. I have enjoyed working with you over the past months and wish you and your Panel success with your tasks. I expect that a new Clerk will be appointed in the very near term. In the interim period, John will be able to get instructions from the team in Cabinet Secretariat.

Warm regards,
Krista

Krista Quinlan | Clerk of the Executive Council and Secretary to Cabinet
Office of the Executive Council

Confederation Building, East Block • P.O. Box 8700, St. John's, NL, Canada • A1B 4J6
t +1 709 729 2853 • m +1 709 728 7629 • e KristaQuinlan@gov.nl.ca • www.gov.nl.ca



Government of Newfoundland and Labrador
Executive Council
Clerk of the Executive Council
and Secretary to Cabinet

May 2, 2025

Dennis Browne, K.C.
Consumer Advocate
Chair of the Independent Churchill River Negotiation Oversight Panel

Dear Mr. Browne,

I understand from you that the Independent Churchill River Negotiation Oversight Panel (the "**Panel**") is seeking clarification on its Terms of Reference, particularly as it pertains to reconciling any perceived conflicts between the "Objectives", "Accountability" and "Responsibility" provisions therein.

I am pleased to provide the requested clarification; but first, allow me to express how appreciative the Government of Newfoundland and Labrador is for the Panel's assistance to date. There is no question that your oversight role will assist Cabinet in making informed decisions in the public interest.

OVERVIEW

The Panel's job is oversight - it is not to become integrated in the negotiation process. The Panel is deliberately distinct from the negotiation such that the Panel is completely independent from the Province's negotiating team, Newfoundland and Labrador Hydro and its advisors, as well as the Government of Newfoundland and Labrador and its advisors. The Cabinet expects to receive the benefit of the Panel's advice with the comfort that it is unencumbered by any reasonable possibility of groupthink, bias, or strategic misrepresentation. The Panel will review information flowing from the negotiation process, and present information to Cabinet that Cabinet can use to understand whether the legally binding agreements ("**Definitive Agreements**") are consistent with the Memorandum of Understanding ("**MOU**") dated December 12, 2024.

The Panel is an additional layer in addition to existing oversight and accountability mechanisms employed by the Government of Newfoundland and Labrador, complete with independent legal advice, a unanimous shareholder declaration, and various formal reporting and accountability relationships.

THE MANDATE

The Mandate, as set out in the Terms of Reference, begins with the MOU and ends with the Definitive Agreements. The Panel's Mandate is therefore to begin by studying the MOU and end by providing advice on its comparison of the MOU with the Definitive Agreements. The Terms of Reference state that the Panel is to provide "reliable and transparent oversight". The Accountability and Responsibility provisions provide greater detail as to "how" that "reliable and transparent oversight" is to be provided.

The oversight is reliable because the Panel is empowered to review and analyze information directly germane to the meaning and intent of the Memorandum of Understanding, such that the Panel can reliably measure the extent to which it is reflected in the Definitive Agreements. The oversight is transparent because it is presented to Cabinet unfiltered, and then to the public filtered only in the public interest as it relates to maintaining confidentiality over privileged information, commercially

sensitive information, or other information that could harm Government of Newfoundland and Labrador's position in the negotiations.

ACCOUNTABILITY TO CABINET IN DELIVERING MANDATE

Insofar as the Accountability provision is concerned, the Panel is accountable to Cabinet in terms of reporting on the manifestation of the MOU's terms in the Definitive Agreements. In this way, to the extent that the Panel flags that certain MOU terms are not reflected in the envisaged Definitive Agreements, Cabinet expects the Panel advise it accordingly. The Panel's advice to Cabinet could alter Cabinet's direction to Newfoundland and Labrador Hydro and/or the Negotiation Team on the contents of the Definitive Agreements – this is the extent through which the Panel reviews the progress to Definitive Agreements as contemplated in the Mandate. The "Accountability" provision links back to the defined term of "Negotiations", which is defined as "ongoing negotiations process in respect of new contracts and developments with Hydro-Quebec" (emphasis added). As such, the Panel is accountable for ensuring that any new contracts, or any new development projects, are consistent with those envisaged in the MOU.

RESPONSIBILITIES IN DELIVERING MANDATE

The "Responsibility" provision, when read together with the paramount Mandate provision, means:

- To assist Cabinet by way of advice in ensuring accountability of any negotiators as well as Newfoundland and Labrador Hydro in meeting their mandates (as reflected in the MOU and the Unanimous Shareholder's Declaration) to negotiate Definitive Agreements that reflect the terms of the MOU; and,
- To review and analyze the information provided by the negotiation team and/or Newfoundland and Labrador Hydro and their independent advisors and experts such that the Panel fully understands the terms of the MOU and therefore can meaningfully assess whether those terms are reflected in the Definitive Agreements.

TERM SHEETS

During our meeting dated April 30, 2025, you raised the question of whether the Panel should review and opine upon certain Term Sheets that Newfoundland and Labrador Hydro and Hydro Quebec may informally agree upon with a view to incorporating those high-level terms into the Definitive Agreements. The Panel will have access to those term sheets following the conclusion of the Negotiation Team's substantive negotiations with Hydro-Quebec as part of its review of the progress to Definitive Agreements; however, any involvement by the Panel while those are being negotiated is out of scope.

The purpose of the Panel is to oversee the product of the processes that existed at the time of signing the MOU without integration such that Cabinet will benefit from the Panel's completely independent advice before it decides whether to enter into Definitive Agreements. We must collectively take measures to avoid blurring the lines between advisory and oversight. In our view, involvement of the Panel in the Term Sheets negotiation process is an inappropriate level of integration with not only the negotiation team, but it also inserts the Panel into the pre-existing oversight role by core government and its own advisors over the activities of Newfoundland and Labrador Hydro.

In the interest of transparency, each Term Sheet contains the following language:

Nothing in this Term Sheet is intended, nor should it be construed to be legally binding on the Parties with respect to the matters set forth herein. Terms proposed in this Term Sheet may

be interrelated to issues under negotiation in other Term Sheets – this Term Sheet therefore remains subject to revision by the Parties at any time during the negotiation of the other Term Sheets and the other Definitive Agreements, and is intended solely to facilitate discussions. Only provisions contained in the [Definitive Agreement] shall be legally binding upon the Parties. Nor is this Term Sheet intended to, and does not purport to, summarize all the terms, conditions, and other provisions that would be contained in the [Definitive Agreement], which shall be subject to negotiation, execution and delivery, each in form and substance satisfactory to each Party.

This language makes clear that nothing in the Term Sheets are legally binding and that they will not be “set in stone” at any juncture in the negotiations. As such, they are not “new contracts and developments with Hydro-Quebec” as referred to in the Mandate. Those “new contracts” will be the Definitive Agreements, which Cabinet expects the Panel to opine upon before it decides to enter them in a legally binding manner.

CONCLUSION

I hope this is of assistance in clarifying that the Panel's mandate should be your chief consideration in interpreting the Terms of Reference. We would be happy to make our legal counsel available to you to discuss this matter further.

Sincerely,

A handwritten signature in cursive script, reading "Krista Quinlan".

KRISTA QUINLAN