

Elements of Applications Requesting the Information and Privacy Commissioner, Province of Ontario, to Assist in Obtaining Access to Records Used in the Decisions by Cabinet to Terminate *The Northlander* and to Divest the Ontario Northland Transportation Commission

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and
Transport Action Canada***

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1. Background

At the request of Transport Action Ontario, the mission of the ONR-ONTC Research Task Force is to examine the studies done by the Government of Ontario through the Department of Northern Development and Mines, as well as any other agencies or agents of the Government of Ontario, and to present:

1. An inventory of the provided studies and other productions containing evidence, advisories, recommendations, opinions, analyses, etc., underlying the decisions made by Cabinet to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission.
2. An opinion as to the soundness of the research undertaken; and
3. An opinion as to the extent to which the decisions by Cabinet to terminate *The Northlander* and divest the Ontario Northland Transportation Commission are based upon, supported by, justified by, or are otherwise derived from methodologically sound research.

In order to compile materials for the first phase of the terms of reference, communications were sent to Rick Bartolucci, Minister, Ministry of Northern Development and Mines (MNDM), and to the candidates for the position of Leader, Liberal Party of Ontario, because the Liberal party formed the government when the decisions were made to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission.

The details about Research Task Force communications that were sent to R. Bartolucci, and to the Liberal party leadership candidates, E. Hoskins, G. Kennedy, G. Murray, S. Pupatello, C. Sousa, H. Takhar, and K. Wynne are contained in Interim Reports 2A, 2B, 2C, 2D, 2E, 2F, 2G, and 2H, respectively, which are posted on the Transport Action Canada, Transport Action Ontario, and Wellar Consulting Inc. websites.

The objective of the communications, as expressed in the first term of reference, was to obtain

“... studies and other productions containing evidence, advisories, recommendations, opinions, analyses, etc., underlying the decisions made by Cabinet to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission”.

The results of contacting the Minister and the leadership candidates are presented in the report, [Inventory of the Provided Studies and Other Productions Containing Evidence, Advisories, Recommendations, Opinions, Analyses, etc., Underlying the](#)

[Decisions Made by Cabinet to Terminate *The Northlander* and to Divest the Ontario Northland Transportation Commission.](#)

The concluding paragraph of that report contains the finding which is the basis of this report on elements for possible inclusion in applications to the Information and Privacy Commissioner, Province of Ontario, requesting assistance in obtaining the materials needed to undertake the ONR-ONTC Research Task Force mission:

“... the twenty (20) emails to Rick Bartolucci, Minister of Northern Development and Mines, and four (4) original and fourteen (14) copied emails to each of the candidates for the position of leader, Liberal Party of Ontario (Eric Hoskins, Gerard Kennedy, Glen Murray Sandra Pupatello, Charles Sousa, Harinder Tackar, and Kathleen Wynne), did not yield any information about, much less access to any study or any other production containing evidence, advisories, recommendations, opinions, analyses, etc., underlying the decisions made by Cabinet to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission.

Given, therefore, that multiple communications requesting details about and access to a body of public information, documents, etc., were totally unsuccessful, the scope of work of the ONR-ONTC Research Task Force has been expanded by adding this report which takes into account an apparent, severe case of “stonewalling” by one or more officials in one or more agencies of the Government of Ontario.

In the next several pages I identify several elements that Transport Action Canada, Transport Action Ontario, and other interested entities and individuals might wish to consider including in applications asking the Information and Privacy Commissioner, Province of Ontario, to assist in obtaining the requested details about, and access to studies and other productions used in the decisions made by Cabinet to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission.

It is emphasized that this is an add-on report to the original scope of work, and as a result it is appropriately construed as a preliminary investigation of this important topic. Time and resources permitting, a more detailed statement could be prepared. However, this report should be sufficient to “start the ball rolling”.

2. Elements of Applications Requesting the Information and Privacy Commissioner to Take Whatever Actions Are Necessary to Ensure that the Ministry of Northern Development and Mines and Other Provincial Agencies Provide Details About and Timely Access to Studies and Other Productions Used in Decisions to Terminate *The Northlander* and to Divest the Ontario Northland Transportation Commission

In this report, the elements of applications to the Information and Privacy Commissioner are derived from two sources, namely, Task Force reports completed to date, and a communication from Rick Bartolucci, Minister, Northern Development and Mines, which is date-stamped “JAN 14 2013”.

A. Task Force Reports as a Basis for Requesting the Commissioner to Assist In Obtaining Details About and Access to Studies and Productions

Interim Reports 2A to 2H contain the results of communications to Rick Bartolucci, Minister of Northern Development and Mines, as well as to five Liberal party leadership candidates (E. Hoskins, G. Murray, C. Sousa, H. Takhar, and K. Wynne) who were Ministers in Cabinet when the termination and divestment decisions were made, and two candidates (G. Kennedy, S. Pupatello) who were not in Cabinet at that time.

In addition to reports 2A to 2H, the report, Inventory of the Provided Studies and Other Productions Containing Evidence, Advisories, Recommendations, Opinions, Analyses, etc., Underlying the Decisions Made by Cabinet to Terminate *The Northlander* and to Divest the Ontario Northland Transportation Commission, overviews the total experience of asking Bartolucci *et al* for details about and access to the studies and other productions used in decisions to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission.

All the reports are posted on the Transport Action Canada and Transport Action Ontario websites, and they could be used as reference documents in communications with the Commissioner and members of staff.

The applications could take a variety of forms, such as, for example, requesting that the Commissioner implement or suggest an ***omnicompetent remedy*** enabling public access to all the studies and productions used in discussions or decisions associated with the disposition or termination of *The Northlander* and the disposition or divestment of the Ontario Northland Transportation Commission.

Or, the applications could refer to any of the thirteen regional impact assessment domains, or to the ONTC component described in [ONR-ONTC Research Task Force Interim Report 1: Requests for Details About and Access to Studies Behind the Decisions to Terminate *The Northlander* and Divest the Ontario Northland Transportation Commission](#), and make a specific request for access to records in one or more domains, or one or more aspects of the ONTC component.

For example, an application could ask for assistance in gaining access to all the records used to inform members of Cabinet as to *The Northlander's* passenger loadings by day, week, and month over the past fifty (50) years.

Or, as another example, the application could ask for assistance in gaining access to the records which were used to inform members of Cabinet as to the number and contents of freight cars which travelled the ONR track on a daily, weekly, and monthly basis over the past 50 years.

Further, advisories, recommendations, etc., to Cabinet in each of the 13 domains identified in the regional impact assessment would have been derived from records.

As a result, an application could begin by asking for assistance in obtaining details about the characteristics or attributes of records (files, folders, studies, other productions) used to inform members of Cabinet in one or more domains, such as financial, economic development, social, and environmental, and then asking for the records in order of interest.

The final comment about the Task Force reports is that the research design for this project includes creating a “paper trail” through emails and reports, with the intent that the paper trail serves several research purposes. A purpose of particular importance is to be able to analyse relationships rather than getting side-tracked by factoids, which is why being able to access all the records used in the decision process is central to the Research Task Force mission.

By way of brief explanation, the 13 domains in ONR-ONTC Research Task Force Interim Report 1: Requests for Details About and Access to Studies Behind the Decisions to Terminate *The Northlander* and Divest the Ontario Northland Transportation Commission can be represented by a 13x13 array, which can be the framework for documenting the extent to which the inter-domain relationships were described or explained to members of Cabinet who made the decisions to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission.

And, of course, the converse holds, that is, the array can be used to reveal or identify gaps, discrepancies, contradictions, weak links, etc., in the descriptions and explanations.

Applications to the Commissioner could be of a general, preliminary nature asking for assistance in obtaining “records” which describe how the Ministry of Northern Development and Mines, or other provincial agencies performed pair-wise, impact assessment analysis between each of the domains.

Or, as a more specific application, the Commissioner could be asked for assistance in obtaining access to all the records that describe the relationships between one domain and all the others under whatever assumptions or scenarios were presented to Cabinet as part of the deliberations involving the fate of *The Northlander* and the Ontario Northland Transportation Commission, respectively.

B. Communication from Rick Bartolucci, Minister, Northern Development and Mines, Date-stamped JAN 14 2013, as a Basis for Requesting the Commissioner to Assist In Obtaining Details About and Access to Studies and Productions

The only communication received to date from the office of Rick Bartolucci is presented on the next two pages. The correspondence is date-stamped “JAN 14 2013”, and there is no subject heading.

As can be seen, the communication from Mr. Bartolucci is a scanned document. From an information access perspective, the following comments appear to be pertinent as elements of applications seeking the assistance/intervention of the Information and Privacy Commissioner.

First, the opening paragraph grossly misrepresents the action and information requested in the emails sent to Mr. Bartolucci.

This could be misrepresentation by accident, or by design, or it could be yet another one of those so-called “honest mistakes”, but the end result is the same in any case.

That is, the action and information requested is not accurately represented in the opening paragraph, which means that any action taken or information provided is not likely to match the action or the information that was requested.

Indeed, dealing with any action taken or information provided that is not what was asked for is likely to be a wasteful consumption of Task Force time and resources, and further delay obtaining details about and access to the requested studies and productions.

Hon. Rick Bartolucci
Minister

Ministry of Northern Development
and Mines

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Toronto ON M7A 1W3
Tel: 416 327-0633
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L'hon. Rick Bartolucci
Ministre

Ministère du Développement du Nord
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MNDM4676MC-2012-1534

JAN 14 2013

Dr. Barry Wellar, MCIP
Distinguished Research Fellow
Transport Action Canada
wellarb@rogers.com

Dear Dr. Wellar:

Thank you for your online messages requesting the production of a wide range of reports and studies relating to the northern economy in general, and the Ontario Northland Transportation Commission (ONTC) specifically.

Moving forward with the divestment of the ONTC has been a well thought out and necessary decision. Our government has worked diligently to help the ONTC remain in service by investing more than \$430 million to support the agency since 2003. Unfortunately, the ONTC's reliance on government support has continued to grow and financial realities have forced us to pursue a new direction.

The government's decision to divest the ONTC resulted from growing unsustainable funding demands that put other northern priorities at risk, especially during this time of fiscal constraint. Given the current economic climate, this decision will allow our government to protect investments in areas that matter most to northerners, such as health care, education, northern highways and the Northern Ontario Heritage Fund Corporation (NOHFC).

We are committed to completing the divestment in a fair and transparent manner. At this time, the Ministry is working with ONTC and Infrastructure Ontario to prepare the sale of ONTC operations to the private sector. Ontera was the first of the ONTC business lines put up for sale in October 2012 and the pre-market stage is well underway for other ONTC business lines. Our goal in this divestment is to select buyers that will provide value to the taxpayer, stimulate the economy, maintain service levels and sustain jobs, to the extent possible.

.../2

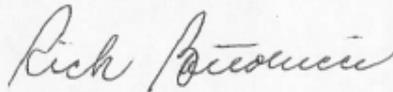
- 2- MNDM4676MC-2012-1534

For public reports on the ONTC and details on the divestment, please visit the Ministry's website at <http://www.mndm.gov.on.ca/en/northern-development/transportation-support/ontario-northland-transportation-commission> to review the information currently available online. In addition, you may also want to visit the ONTC website at <http://ontarionorthland.ca> to access historical information, such as Annual Reports, etc.

The ministry would be pleased to consider a more clear and focused request for information. As some of the information you are seeking may be better focused and sought through a Freedom of Information request, you may also wish to consider that process. Ontario's Ministry of Government Services provides general information and a directory of contacts at <http://www.mgs.gov.on.ca/en/infoaccessandprivacy/index.htm>.

Once again, thank you for sharing your interest in this issue.

Sincerely,



Rick Bartolucci, MPP, Sudbury
Minister

c: The Honourable Dalton McGuinty
Premier

Further, concerns arise regarding the frequency with which requests seeking information from MNDM are “misconstrued” as a means to negate answering the questions which are actually asked by members of the public.

I believe that readers who have encountered a similar problem of having questions or requests “misconstrued”, could productively mention those kinds of experiences for corroborative purposes in their applications.

Second, in response to emails sent to Bartolucci *et al*, and copied and forwarded to a number of individuals with an interest in the decisions by Cabinet to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission, I have been informed that a number of individuals received similar text from Mr. Bartolucci in response to inquiries which were significantly different from my very specific requests.

Moreover, it appears contents of the letter which I received, date-stamped “JAN 14 2013”, had been used in communications well before the Task Force commenced its mission.

Since it appears that there are both instances and perceptions that parts of the same letter were apparently used for multiple purposes, and were in circulation in advance of my emailed information requests, questions arise as to the integrity and the motives of officials in a Government of Ontario agency who seemingly send out a communication that these officials must surely know is irrelevant, and is most likely to be a time-wasting distraction rather than a source of requested information.

Insofar as an application to the Information and Privacy Commissioner is concerned, it is likely that an application which asks for the record, or perhaps more precisely, the file of communications to the Minister's office and the replies from the Minister's office with regard to matters involving *The Northlander* or the Ontario Northland Transportation Commission would be very informative.

And, I hasten to add, if the applicants so instruct that they want their correspondence to be part of an open file, or request that the remedy implemented or suggested by the Commissioner is focused on content, then there does not seem to be any reason for MNDM or any other party to bring privacy issues or concerns into play.

Third, the website URL which is contained in the document issued in the name of the Minister – File ID MNDM 4676MC-2012-1534 – is not easily accessible. Quite the contrary.

In brief, the URL is not provided as a clickable hyperlink that would automatically direct readers to the desired website via a single click.

Further, the text is not provided in a selectable format so that it can easily be copied and pasted in a web browser.

With regard to the reasons associated with this kind of perverse communication, three come to mind:

- Incompetence.
- Flawed agency communication procedures.
- A deliberate effort to impede access.

Regardless of who or what was responsible for the approach taken, however, the upshot is the same in all cases.

That is, the process of obtaining information is made overly onerous, and some citizens could be discouraged from attempting to review MNDM online materials due to the high degree of difficulty in achieving website access.

Anyone who experiences difficulty using the non-clickable and non-selectable URL in the letter of JAN 14 2013 to access the MNDM site, could use that problem as the basis of an application to the Commissioner.

Further, with regard to the URL element, readers who have experienced difficulty using an URL contained in an MNDM communication from the Minister or other official or other MNDM source, could submit an application in which the Commissioner is asked to review the situation and, if the complaints are found to be grounded, to instruct MNDM to modify its procedures accordingly, and immediately.

Fourth, the only apparent avenue available to access the website seems to require typing the lengthy URL directly into a web browser, which in this case appears to involve at least 100 keystrokes to manually enter the URL.

In my experience, including a number of years as a university professor, manually entering an URL of this length is a recipe for errors, and prompts the observation that the nature of the MNDM URL significantly contributes to making the task of accessing the site far more difficult than it should be, or needs to be.

An application could request that the Commissioner seek and make public an explanation from MNDM as to the reasons behind the URL logic at the agency, and could also request a list of complaints or expressions of concern from the public about problems using MNDM URLs to access the agency website for *Northlander* and ONTC materials.

Further, an application could request the Commissioner to consider issuing an order whereby MNDM is instructed to ensure that all communications include clickable links and, in those cases where clickable links are not possible, that a procedure be put in place to limit the manual entry requirements of an URL to, let us say, 17 characters.

And as a final comment about the accessibility problem, it cannot be over-emphasized that the MNDM website is “bought and paid for” with public money.

It surely follows, therefore, that as a matter of course all MNDM officials – elected and appointed – would take the necessary measures to ensure that communications to the public which involve accessing the MNDM website incorporate easy, straightforward instructions and means to access the site and all its contents.

Based on my experience, and communications from others, that level of performance and service is not presently in evidence at MNDM, and it has not been in evidence for a number of months.

It appears to be self-evident, therefore, that MNDM's information release procedures and practices are overdue – and perhaps long overdue – for a critical review by the Information and Privacy Commissioner.

An application to the Commissioner could request access to the Ministry's records in order to ascertain when MNDM reviewed its information release practices and procedures, and what it did as a result of the respective reviews.

In addition to the preceding observations regarding the communication dated JAN 14 2013, several more observations pertinent to applications to the Information and Privacy Commissioner are contained in an email sent January 15, 2013 to R. Bartolucci, and copied to D. McGuinty and the leadership candidates under the subject heading "Response from the Minister of Northern Development and Mines".

Sent: January-15-13 4:38 PM

To: 'NDMMINISTER@ontario.ca'; rbartolucci.mpp@liberal.ola.org; Rick Bartolucci; Laura.Blondeau@ontario.ca

Cc: 'dmcguinty.mpp.co@liberal.ola.org'; sandra@signup4sandra.ca; gk@gerardkennedy.ca; contact@kathleenwynne.ca; csousa.mpp.co@liberal.ola.org; ehoskins.mpp@liberal.ola.org; 'htakhar.mpp@liberal.ola.org'; A. Spacek ; L. Savory-Gordon ; D. Amoroso; D. Orazietti ; F.Gelinas ; FONOM; G. Bisson ; G. Courville ; G. Mayer ; H. Gow; J. Fratasi; J. Vanthof ; M. Lavigne ; M. Mantha ; M. Price ; M. Sigouin; P. Miasek ; P. Politis ; R. Mitchell; T. Turrutin; V. Fedeli; W. Mitchell; W. Wilcox

Subject: Response from the Minister of Northern Development and Mines

Rick Bartolucci, Minister
Northern Development and Mines

Dear Rick,

Thank you for the communication of January 14, 2013.

Upon examination, it appears that there has been a mix-up, and the letter sent to me is mis-directed.

Or, perhaps, whoever drafted the letter for you did not actually read my communications, or did not understand my communications to you.

In either event, your letter does not address any of the communications which I sent to you.

Rather, in my experience in the policy research field, the letter strikes me as being what is commonly referred to as a "blurb" or a "canned release" which, in this case, has nothing whatsoever to do with the multiple communications that I sent to you regarding my inquiries about evidence-based reasons behind the decisions to terminate *The Northlander* and divest the Ontario Northland Transportation Commission.

In my communications to you, each one is very specific as to the domain matter of interest and the time frames, and is fully consistent with the terms of reference used to conduct impact assessment investigations by researchers in a number of disciplines, as well as by auditors, commissioners, and others performing value for money and similar evaluations of public policy, program, and planning issues and decisions.

Having published several hundred articles along this line in learned journals and international conference proceedings, and having taught research methods courses at the undergraduate and graduate levels for some 30 years in Canada and the U.S., I am very confident that I know whereof I speak in these regards.

May I suggest, therefore, that you instruct whoever drafts your letters to me that he/she/they review my communications to you and then respond, in one-by-one fashion, separately, to each individual communication to you.

As for the level of expertise that you might want to call on to read the communications, and to prepare the requested responses, you and/or your officials might wish to begin with my publications posted on websites such as transport2000.ca, slideshare.net, and wellarconsulting.com. Those publications will point to several hundred more publications, many of which contributed to the content of communications to you, and are applicable to the analysis of study reports and bodies of evidence that I receive from you and/or your officials.

Again upon the examination of the communication of January 14, the research methods productions may be especially instructive for whoever prepares your correspondence to me.

By way of illustration, Rick, and recalling our teaching days, the communications sent to you are comparable to a comprehensive exam with a number of questions. In brief, I want an answer to each communication, and not a blurb that has nothing to do with the studies/evidence sought.

As for the FOI reference, I am astounded that it would appear in response to any of the communications that I sent you.

To put it simply, Rick, when members of the public ask for information which is paid for by the public, is the property of the public, is the essence of a matter of high, current public interest, and should be readily accessible in digital form (this is 2013, after all) then surely you, Premier McGuinty, all candidates for the position of Leader, Liberal Party of Ontario, and MPPs in every party for that matter, are agreed that the correct thing to do is to provide the full body of requested information in a timely manner.

That said, if you, Dalton McGuinty, and/or any of the leadership candidates have different views as to the operational meanings of accountability, transparency, openness, and democracy for that matter, then I invite you and/or them to inform me in that regard at the earliest moment so that I may pass that information on to interested parties.

Rick, I am very disappointed, as you may gather, with the treatment accorded my communications to you in the quest to obtain the studies/evidence behind the decisions by

Cabinet to terminate *The Northlander* and divest the Ontario Northland Transportation Commission.

You have a number of communications from me which are very specific in terms of what I am asking for, and if MNDM and/or another agency of the Government of Ontario has the requested studies/evidence, then in the interests of good, responsible, and responsive governance I again request that the studies/evidence be put on the “digital table” for all to see.

And, on the other hand, if the requested studies/evidence do not exist in whole or in part, then for the same reasons of good, responsible, and responsive governance I again request that explicit admissions be provided on an email-by-email response basis to make things perfectly clear to anyone who reads about ONR-ONTC Research Task Force communications this month, this year, or 10 or 20 years from now.

Sincerely,

Dr. Barry Wellar, MCIP
Distinguished Research Fellow
Transport Action Canada

To the date of this writing – January 27, 2013 – I have not received a response from R. Bartolucci, nor from any of the other politicians who are copied, that is, D. McGuinty, E. Hoskins, G. Kennedy, G. Murray, S. Pupatello, C. Sousa, H. Takhar, or K. Wynne.

Moreover, based on the record to date, it appears to be a vain hope that an informative response will be received any time soon from any of the persons named.

As a result, I draw on the email to R. Bartolucci to re-emphasize one application element, and to introduce a new one that could be included in applications to the Information and Privacy Commissioner for assistance in dealing with information access problems involving MNDM and *The Northlander* and ONTC files.

First, as part of the ONR-ONTC Research Task Force mission, it would be very instructive if we could ascertain via the MNDM website the dates and content of inquiries that MNDM or R. Bartolucci has received involving the decisions to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission, and the responses to those inquiries.

And, I hasten to add, again, with a focus on the content of communications there is no apparent reason to bring privacy issues or concerns into play, or to otherwise delay making the communications public, with emphasis (recalling the preceding discussion) on the records being readily accessible.

Since the likelihood of MNDM undertaking this initiative without serious prompting, it would no doubt be very helpful to have an application to the Commissioner which explores the possibility of the Commissioner undertaking the task of “persuading” MDMN to put the complete record of inquiries and responses online.

Further, and given the comments in the preceding section, it appears that MNDM needs to be explicitly instructed by the Commissioner, if this level of direction is permissible, that the inquiry-response record is to be complete, transparent, and readily accessible on the MNDM website.

Second, it has been my experience over many years, and the experience of many citizens with whom I am in contact, that references to the Freedom of Information (FOI) route are used with excessive, self-serving frequency by provincial government officials.

That is, many of these referrals or seemingly “friendly suggestions” are not only inappropriate, they are malevolent in that they are designed to delay, distract, run out the clock, wear down the inquirer, and otherwise avoid answering inquiries in a timely and pertinent manner.

I believe that it could be very informative in this regard if applications ask the Commissioner for assistance in obtaining online access to all Ministry of Northern Development and Mines communications which contain the terms “Freedom of Information”, “freedom of information”, or “FOI” in combination with one or more of the following terms: “Northlander”, “ONR”, “Ontario Northland Railway”, “ONTC”, and “Ontario Northland Transportation Commission”.

And, I expect, there are likely a number of citizens who, as a result of communications to or with R. Bartolucci, and/or MNDM officials, and/or other elected and appointed provincial government officials, have their own terms or phrases to add to the list of terms that have been given the “FOI treatment” on matters involving the termination and divestment decision processes and outcomes. Terms such as pensions, asset sell-off, asset-stripping, PPP, Ring of Fire, smelter, First Nations, and Northern Growth Plan are among those that come to mind.

I believe that applications to the Commissioner which include such terms would significantly contribute to improving information access attitudes and procedures at MNDM, beginning with providing easy, timely access to the studies and productions used in the decisions by Cabinet to terminate *The Northlander* and to divest the Ontario Northland Transportation Commission.