

**2024 01G 0937**  
**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**  
**GENERAL DIVISION**

**BETWEEN:**

**NEIL BOSE, THE PRESIDENT AND VICE CHANCELLOR  
PRO TEMPORE OF MEMORIAL UNIVERSITY OF  
NEWFOUNDLAND**

**APPLICANT**

**AND:**

**MICHAEL HARVEY, in his capacity as THE  
INFORMATION AND PRIVACY COMMISSIONER OF  
NEWFOUNDLAND AND LABRADOR**

**INTERVENOR**

**AND:**

**MATTHEW BARTER, THE ACCESS TO INFORMATION  
REQUESTOR AND COMPLAINANT BEFORE THE  
COMMISSIONER**

**SECOND INTERVENOR**

**AND:**

**GENESIS GROUP INC.**

**INTENDED THIRD INTERVENOR**

**AND:**

**C-CORE**

**INTENDED FOURTH INTERVENOR**

**INTERLOCUTORY APPLICATION**  
***(Inter Partes)***

<b>SUMMARY OF CURRENT DOCUMENT</b>	
Court File Number(s):	2024 01G 0937
Date of Filing of Document:	April <del>25<sup>th</sup></del> 2024
Name of Filing Party or Person:	Intended Fourth Intervenor
Application to which Document being filed relates:	Application for a declaration pursuant to s.50(2) of the <i>Access to Information and Protection of Privacy Act</i> , 2015 SNL, 2015, c A-1.2
Statement of purpose in filing:	To seek Intervenor Status

**TO THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR, OR ONE OF THE JUSTICES THEREOF:**

The Application of the Intended Fourth Intervenor (“C-CORE”) says as follows:

**Nature of Application**

1. In accordance with Rule 7.05 of the *Rules of the Supreme Court, 1986*, C-CORE seeks the leave of this Honourable Court to intervene in the within proceeding.

**Procedural History**

2. The Applicant (“Memorial”) filed an Originating Application seeking a declaration pursuant to s.50(2)(a) of the *Access to Information and Protection of Privacy Act, 2015* (the “ATIPPA”) on February 16, 2024.
3. Memorial filed a Record with this Honourable Court on March 19, 2024.

**Material Facts**

4. Memorial is considered a “public body” to which the ATIPPA applies by virtue of s.2(x)(iii) and s.2(x)(vi).
5. Memorial is also considered a “public body” under the *Public Sector Compensation Transparency Act, RSNL 2015, c P-41.02* (the “PSCTA”).
6. C-CORE is an entity which Memorial identifies as a separately incorporated entity (a “SIE”). C-CORE is a distinct legal entity from Memorial and is a non-share capital corporation created under the federal *Canada Not-For-Profit Corporations Act, SC 2009, c. 23*, (the “Not-For-Profit Corporations Act”).
7. With respect to what constitutes a “public body” under the ATIPPA or the PSCTA, no provisions contained therein can be said to apply to a SIE in its own right.
8. Such further and other material facts as sworn to in the attached Affidavit of Paul Griffin, President & Chief Executive Officer of C-CORE.

***Rule 7.05(a): The Intended Fourth Intervenor has an interest in the Subject Matter of the Proceeding***

***Sufficiency of Interest***

9. The subject matter of the Memorial's Originating Application is the Information and Privacy Commissioner's (the "**Commissioner**") recommendation(s) that:
  - a. Memorial conduct a reasonable search for the records described in the four access to information requests that are addressed in the Commissioner's report (the "**Report**");
  - b. if necessary, request any responsive records from C-CORE, Genesis Group Inc., and the Canadian Centre for Fisheries Innovation; and
  - c. Memorial provide its final response to these requests to the Complainant within 30 business days of receipt of the Report.
10. These recommendations were based on a number of factual assumptions that the Commissioner made in reaching the conclusion that:
  - a. C-CORE was a part of Memorial; and
  - b. there was no doubt that Memorial has custody or control over the financial records sought by the Complainant.
11. Any decision of this Honourable Court in favour of the Memorial's ability to obtain the requested records from C-CORE based on the Commissioner's findings, as stated in paragraph 10, will have significant implications for the operation of C-CORE and would incorrectly characterize the relationship between the Memorial and C-CORE with respect to disclosure obligations created by virtue of the ATIPPA and the PSCTA.

12. C-CORE has an interest in determining its requirements under ATIPPA, notwithstanding the findings and recommendations from the Commissioner. Specifically, C-CORE has a legitimate interest in the interpretation of statutory provisions that are only applicable to public bodies regarding disclosure requirements as well as the factual assumptions made by the Commissioner in their Report that led to the determination that C-CORE is a part of Memorial.

#### *Useful Contribution*

13. C-CORE will contribute to the proceedings by providing relevant information regarding:
  - a. the nature and extent of the relationship between C-CORE and Memorial as it relates to Memorial's level of control over C-CORE; and
  - b. the nature of financial disclosure being sought by virtue of the ATIPPA request which are now, and have always been, in the sole custody and control of C-CORE.
14. As C-CORE is the only party with knowledge of its financial reporting obligations under applicable federal legislation, its input will be valuable to the Court in determining whether the requested records fall within the scope of public disclosure mandated by relevant legislation.

#### *Undue Delay*

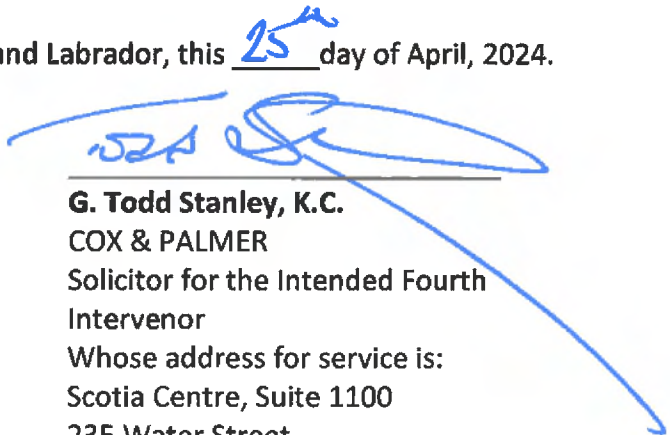
15. C-CORE's submissions will relate primarily to the nature of the relationship between C-CORE and Memorial; the interpretation of statutory provisions regarding the exclusion of C-CORE from disclosure requirements under relevant legislation; and C-CORE's status as an SIE.
16. C-CORE does not believe that its submissions will be duplicative of the Memorial's, as Memorial is seeking a declaration pursuant to s. 50(2)(a) of ATIPPA that they do not have to follow the recommendation(s) of the Commissioner, as the information sought in the ATIPPA requests is not within their custody or control.

17. The Commissioner's report contains a number of factual assumptions regarding the relationship between C-CORE and Memorial which include assumptions about C-CORE's financial operations. C-CORE's input and evidence of its financial operation will be necessary to correctly determine whether the requested financial disclosure is in the custody or control of Memorial and the extent of Memorial's obligation to disclose information which may be in their possession without notice being provided to C-CORE.
18. Therefore, C-CORE does not believe that its participation will unduly delay the proceedings, nor will their participation be burdensome, expensive, or otherwise prejudicial to the Parties involved.

### Relief Sought

19. C-CORE therefore seeks an Order:
- a. Pursuant to Rule 7.05 of the *Rules of the Supreme Court, 1986*, that they be granted leave to intervene in the within proceeding; and
  - b. That there shall be no costs on the within Application.

DATED St. John's, in the Province of Newfoundland and Labrador, this 25<sup>th</sup> day of April, 2024.



**G. Todd Stanley, K.C.**  
COX & PALMER  
Solicitor for the Intended Fourth  
Intervenor  
Whose address for service is:  
Scotia Centre, Suite 1100  
235 Water Street  
St. John's, NL A1C 1B6

**TO: Koren A. Thomson**  
STEWART MCKELVEY  
Solicitors for the Applicant  
*Whose address for service is:*  
Suite 1100, Cabot Place  
100 New Gower Street  
P.O. Box 5038  
St. John's, NL A1C 5V3

**TO: Andrew A. Fitzgerald, K.C.**  
**LEARMONTH, BOULOS & FITZGERALD**  
Solicitors for the First Intervenor  
*Whose address for service is:*  
Suite 804, TD Building  
140 Water Street  
St. John's, NL A1C 5L7

**TO: Matthew Barter**  
The Second Intervenor  
47 Patrick's Path  
Torbay, NL A1K 1J8

**TO: THE SUPREME COURT OF NEWFOUNDLAND  
AND LABRADOR**  
General Division  
309 Duckworth Street  
P.O. Box 937  
St. John's, NL A1C 5M3

**ISSUED** at the City of St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_ day  
of \_\_\_\_\_, 2024.

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**BETWEEN:**

**NEIL BOSE, THE PRESIDENT AND VICE CHANCELLOR  
PRO TEMPORE OF MEMORIAL UNIVERSITY OF  
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**APPLICANT**

**AND:**

**MICHAEL HARVEY, in his capacity as THE  
INFORMATION AND PRIVACY COMMISSIONER OF  
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**INTERVENOR**

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REQUESTOR AND COMPLAINANT BEFORE THE  
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**SECOND INTERVENOR**

**AND:**

**GENESIS GROUP INC.**

**INTENDED THIRD INTERVENOR**

**AND:**

**C-CORE**

**INTENDED FOURTH INTERVENOR**

**AFFIDAVIT**

<b>SUMMARY OF CURRENT DOCUMENT</b>	
Court File Number(s):	2024 01G 0937
Date of Filing of Document:	April <del>15</del> , 2024
Name of Filing Party or Person:	Intended Fourth Intervenor
Application to which Document being filed relates:	Application of the Applicant seeking a declaration pursuant to s.50(2) of the <i>Access to Information and Protection of Privacy Act</i> , 2015 SNL, 2015, c A-1.2
Statement of purpose in filing:	To seek Intervenor Status


I, Paul Griffin, of the City of St. John's, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. That I am the President & Chief Executive Officer of, C-CORE, the Intended Fourth Intervenor in the within proceeding.

2. That I have read and understand the foregoing Application.
3. That the facts contained in the Application are true. I make this statement in accordance with the knowledge I have obtained in the course of handling this matter for the Intended Fourth Intervenor.
4. That I provide the following additional information in support of the within Application.
5. That C-CORE is a not-for-profit corporation incorporated under the *Canada Not-For-Profit Corporations Act*, SC 2009, c. 23.
6. That the President of Memorial is the sole member of C-CORE and, by virtue of the *Not-For-Profit Corporations Act*, receives a copy of C-CORE's corporate financial statements as mandated by that legislation.
7. That C-CORE's revenues are generated entirely from externally obtained funding; it does not receive any funding through Memorial; and the only public funding it receives is through research and other federal and provincial funding programs.
8. That Memorial has access to C-CORE records beyond those which are mandated by the *Not-For-Profit Corporations Act* by virtue of the use of a shared accounting software, "Banner", and Memorial's administration of accounting services for C-CORE.
9. That C-CORE maintains sole ownership and control of all records that are not required to be disclosed to its members by applicable legislation, including those records requested by the Complainant.
10. That I have read the Commissioner's Report and verily believe that the conclusions reached therein are based on incorrect factual assumptions by the Commissioner regarding the relationship between Memorial and C-CORE with respect to the requested records.

11. That this Affidavit is sworn in support of the Application by the Intended Fourth Intervenor seeking an Order pursuant to Rule 7.05 of the *Rules of the Supreme Court, 1986*, to be granted leave to intervene in the within proceeding.

**SWORN TO** before me, at the City )  
of St. John's, in the Province of )  
Newfoundland and Labrador, )  
this 25<sup>th</sup> day of April, 2024 )  
)  
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\_\_\_\_\_  
Barrister, NL.

  
\_\_\_\_\_  
PAUL GRIFFIN

**2024 01G 0937**  
**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**  
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**SECOND INTERVENOR**

**AND:**

**GENESIS GROUP INC.**

**INTENDED THIRD INTERVENOR**

**AND:**

**C-CORE**

**INTENDED FOURTH INTERVENOR**

**NOTICE TO RESPONDENT(S)**

You are hereby notified that you must attend before a judge presiding in chambers at the Courthouse at \_\_\_\_\_, Newfoundland and Labrador, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_:\_\_\_\_\_

- for the hearing
- to set a date for the hearing

of the application in the above noted matter.

**AND FURTHER TAKE NOTICE** that the judge may make an order in favour of the Applicant (the Intended Intervenor herein) in your absence and without further notice unless you or your solicitor appear at the time and place noted above.

**TO: Koren A. Thomson**  
STEWART MCKELVEY  
Solicitors for the Applicant  
*Whose address for service is:*  
Suite 1100, Cabot Place  
100 New Gower Street  
P.O. Box 5038  
St. John's, NL A1C 5V3

**TO: Andrew A. Fitzgerald, K.C.**  
LEARMONTH, BOULOS & FITZGERALD  
Solicitors for the First Intervenor  
*Whose address for service is:*  
Suite 804, TD Building  
140 Water Street  
St. John's, NL A1C 5L7

**TO: Matthew Barter**  
The Second Intervenor  
47 Patrick's Path  
Torbay, NL A1K 1J8

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**SECOND INTERVENOR**

**AND:**

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**INTENDED THIRD INTERVENOR**

**AND:**

**C-CORE**

**INTENDED FOURTH INTERVENOR**

**ORDER**

Before the Honourable Justice \_\_\_\_\_, of the Supreme Court of Newfoundland and Labrador.

**UPON IT APPEARING** that C-CORE, the Intended Fourth Intervenor, has made an Interlocutory Application pursuant to Rule 7.05 of the *Rules of Supreme Court, 1986*, seeking leave to intervene in the within proceeding;

**AND UPON READING** the Interlocutory Application of C-CORE and the Affidavit of Paul Griffin;

**AND UPON HEARING** G. Todd Stanley K.C., Solicitor for the Intended Fourth Intervenor, Koren A. Thomson, Solicitor for the Applicant, Andrew A. Fitzgerald, K.C., counsel for the First Intervenor, and Matthew Barter, the self-represented Second Intervenor;

**IT IS ORDERED THAT:**

1. C-CORE shall have leave to intervene in the proceeding 2024 01G 0937 and shall become a party thereto, pursuant to Rule 7.05 of the *Rules of Supreme Court, 1986*.
2. There shall be no order as to costs.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_ day of \_\_\_\_\_,  
2024

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**INTERVENOR**

**AND:**

**MATTHEW BARTER, THE ACCESS TO INFORMATION  
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COMMISSIONER**

**SECOND INTERVENOR**

**AND:**

**GENESIS GROUP INC.**

**INTENDED THIRD INTERVENOR**

**AND:**

**C-CORE**

**INTENDED FOURTH INTERVENOR**

**CONSENT OF THE APPLICANT**

I, Koren A. Thomson, counsel for the Applicant, consent to the Interlocutory Application of the Intended Fourth Intervenor, C-CORE, seeking leave to intervene in and be added as a party to the within proceeding, with no order as to costs.

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**Koren A. Thomson**  
STEWART MCKELVEY  
Solicitors for the Applicant  
*Whose address for service is:*  
Suite 1100, Cabot Place  
100 New Gower Street  
P.O. Box 5038  
St. John's, NL A1C 5V3

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**SECOND INTERVENOR**

**AND:**

**GENESIS GROUP INC.**

**INTENDED THIRD INTERVENOR**

**AND:**

**C-CORE**

**INTENDED FOURTH INTERVENOR**

**CONSENT OF THE FIRST INTERVENOR**

I, Andrew A. Fitzgerald, K.C., counsel for the First Intervenor, consent to the Interlocutory Application of the Intended Fourth Intervenor, C-CORE, seeking leave to intervene in and be added as a party to the within proceeding, with no order as to costs.

---

**Andrew A. Fitzgerald, K.C.**  
LEARMONTH, BOULOS &  
FITZGERALD  
Solicitors for the First Intervenor  
*Whose address for service is:*  
Suite 804, TD Building  
140 Water Street  
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**INTERVENOR**

**AND:**

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REQUESTOR AND COMPLAINANT BEFORE THE  
COMMISSIONER**

**SECOND INTERVENOR**

**AND:**

**GENESIS GROUP INC.**

**INTENDED THIRD INTERVENOR**

**AND:**

**C-CORE**

**INTENDED FOURTH INTERVENOR**

**CONSENT OF THE SECOND INTERVENOR**

I, Mathew Barter, the self-represented Second Intervenor, consent to the Interlocutory Application of the Intended Fourth Intervenor, C-CORE, seeking leave to intervene in and be added as a party to the within proceeding, with no order as to costs.

---

**Matthew Barter**  
The Second Intervenor  
47 Patrick's Path  
Torbay, NL A1K 1J8