

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

FIRST INTERVENOR

AND:

MATTHEW BARTER, THE ACCESS TO INFORMATION
REQUESTER AND COMPLAINANT BEFORE THE
COMMISSIONER

SECOND INTERVENOR

AND:

GENESIS GROUP INC.

INTENDED THIRD INTERVENOR

INTERLOCUTORY APPLICATION
(Inter Partes)

SUMMARY OF CURRENT DOCUMENT	
Court File Number:	2024 01G 0937
Date of Filing of Document:	April 11, 2024
Name of Issuing Party or Person	J. Alexander Templeton and Catherine Hutchens of McInnes Cooper, on behalf of the Intended Third Intervenor, Genesis Group Inc.
Application to which Document being filed relates:	Originating Application (<i>Ex Parte</i>) of the Applicant pursuant to s. 50(2)(a) of the <i>Access to Information</i>

	<i>and Protection of Privacy Act, 2015, SNL 2015, c A-1.2 seeking a declaration that the Applicant is not required to comply with the recommendations of the Information and Privacy Commissioner of Newfoundland and Labrador.</i>
Statement of Purpose in filing:	To seek leave to intervene in the within proceeding and become a party hereto, pursuant to Rule 7.05(1)(a) of the <i>Rules of the Supreme Court</i> .

The Application of the Intended Third Intervenor, Genesis Group Inc. ("**Genesis**"), states as follows:

NATURE OF THE APPLICATION

1. Genesis seeks an Order, pursuant to Rule 7.05(1)(a) of the *Rules of Supreme Court, 1986*, that it be granted leave to intervene as a party in the Originating Application (*Ex Parte*) made by Memorial University of Newfoundland ("**Memorial**"), as represented by its President and Vice-Chancellor *Pro Tempore*, Neil Bose, in which Application Memorial seeks a declaration, pursuant to s. 50(2)(a) of the *Access to Information and Privacy Act, 2015*, SNL 2015, c A-1.2 ("**ATIPPA, 2015**"), that it is not required to comply with the recommendations of the First Intervenor, Information and Privacy Commissioner of Newfoundland and Labrador (the "**Commissioner**") made in Report A-2024-006 (the "**Report**").

PROCEDURAL HISTORY

2. In late 2023, the Second Intervenor, Matthew Barter ("**Barter**") made four access to information requests to Memorial regarding three corporations: Genesis, a corporation continued under the *Corporations Act*, RSNL 1990, c. C-36; C-Core, a corporation continued under the *Canada Not-for-profit Corporations Act*, SC 2009, c. 23; and Canadian Centre for Fisheries Innovation ("**CCFI**"), also a corporation continued under the *Canada Not-for-profit Corporations Act*. The requests were for the following information:
 - a. Bonuses/special payments paid to C-Core executives and bonuses paid to C-Core management employees from January 1, 2019 to October 23, 2023;
 - b. All bonuses and special payments paid to Genesis executives and all incentives paid to Genesis management employees from January 1, 2019 to October 23, 2023;
 - c. All vehicle allowances paid to Genesis executive management staff from January 1, 2019 to present; and
 - d. All vehicle allowances paid to CCFI executive and management staff from January 1, 2019 to November 2, 2023.

(collectively, the “**Information**” and/or “**Requests**”)

3. Memorial denied the Requests on the basis that it did not have custody or control of the information sought in the Requests per ss. 5 and 8 of *ATIPPA, 2015*. Memorial took the position that the Information was in the custody or control of C-Core, Genesis, and/or CCFI, respectively. Barter disagreed with this assessment and caused complaints to be filed with the Commissioner (the “**Complaints**”). The Commissioner proceeded to formal investigation of the Complaints under s. 44(4) of *ATIPPA, 2015*.
4. On February 8, 2024, the Commissioner, having completed the investigation, released the Report. In the Report, the Commissioner sided with Barter and found that Memorial had custody or control of the Information. Memorial disagrees with the Commissioner's finding and therefore seeks declaratory relief from this Honourable Court.
5. On February 16, 2024, Memorial commenced the within proceedings by filing an Originating Application (*Ex Parte*) in which it seeks a declaration pursuant to s. 50(2)(a) of *ATIPPA, 2015* that it is authorized to refuse the Requests on the basis that the Information is not within the custody or control of Memorial.
6. Genesis now seeks leave to intervene and be added as a party to the within proceeding pursuant to Rule 7.05(1)(a) of the *Rules of the Supreme Court, 1986*.

MATERIAL FACTS

7. Genesis seeks leave to intervene and be added as a party to the within proceedings, pursuant to Rule 7.05(1)(a), on the basis that Genesis has an interest in the subject matter of the within proceeding, which contemplates the custody and control of, and, ultimately, release to the public of, information regarding remuneration and/or benefits paid or given to Genesis employees.
8. Genesis is not only interested in the subject matter before this Court, which involves access to information requests about Genesis and its employees, but it is also positioned to be significantly impacted by this Honourable Court's decision with respect to whether Memorial is obligated to comply with the Report and release the Information.
9. Both the Report and the proceedings before this Court are fundamentally about who keeps and/or controls information about Genesis' expenses, specifically remuneration and

benefits paid to a small, easily identifiable group of employees, and whether such information is, or should be, available to the public.

10. The issue of whether Memorial, as a public body, has custody and/or control over information about Genesis is a matter of significant interest to Genesis. In the narrowest sense, Genesis will be forced to review and/or revise its employment contracts should information about individual employees' compensation be subject to public access. In a broader, and perhaps even more concerning sense, Genesis may have trouble conducting its core business, which includes attracting and providing support to promising technology start-ups, should information held by Genesis, including commercially sensitive information about these start-ups, be ruled subject to the public right of access under the *ATIPPA, 2015*.
11. In addition to having an interest in the subject matter of the within proceeding, Genesis is positioned to make a useful contribution to the proceeding. Genesis will be able to provide evidence regarding its information storage procedure/system, its management structure, its governance structure, and the extent to which information is shared, if at all, with Memorial. Such information will be helpful to this Honourable Court in determining whether Memorial has custody and control over the Information.
12. Genesis' participation in the proceeding will not unduly lengthen or delay the proceeding, nor impose an injustice or excessive burden on the parties. Genesis expects to provide its evidence to the Court via one witness/deponent. This will require one affidavit and oral testimony that would take, at most, a half day. This will not unduly lengthen the proceeding. By making the application to intervene at this early stage, before any hearing dates are set, Genesis can prepare its evidence well in advance of the hearing of the within matter and, therefore, no delays will be necessary.

OTHER PERTINENT INFORMATION

13. Genesis relies on Rule 7.05(1)(a) of the *Rules of Supreme Court, 1986*, which states:

Intervenor becoming a party

7.05. (1) Any person may, with leave of the court, intervene in a proceeding and become a party thereto if

(a) that person claims an interest in the subject matter of the proceeding, including any property seized or attached in the proceeding, whether as an incident to the relief claimed, enforcement of the order therein, or otherwise;

(b) that person's claim or defence and the proceeding have a question of law or fact in common; or

(c) that person has a right to intervene under a statute or rule.

(2) The application for leave to intervene shall be supported by an affidavit containing the grounds thereof and shall have attached thereto, when practical, a pleading setting forth the claim or defence for which intervention is sought.

(3) On the application, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the parties to the proceeding and it may grant such order as it thinks just.

RELIEF SOUGHT

14. Genesis repeats the foregoing and therefore seeks the following relief:

- a. An Order, pursuant to Rule 7.05(1)(a), granting Genesis leave to intervene as a party in the within proceeding.
- b. An Order that the style of cause of the within proceeding be amended to reflect the following:

2024 01G 0937

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GENERAL DIVISION**

BETWEEN:

**NEIL BOSE, THE PRESIDENT AND
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MEMORIAL UNIVERSITY OF NEWFOUNDLAND**

APPLICANT

AND:

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

FIRST INTERVENOR

AND:

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

SECOND INTERVENOR

AND:

GENESIS GROUP INC.

THIRD INTERVENOR

- c. An Order that there shall be no costs in the within Application.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 23rd day of April 2024.



**J. ALEXANDER TEMPLETON &
CATHERINE HUTCHENS**

McInnes Cooper

*Solicitors for the Intended Third
Intervenor*

Whose address for service is:
5th Floor, Baine Johnston Centre
10 Fort William Place
PO Box 5939
St. John's, NL A1C 5X4

**TO: Supreme Court of Newfoundland and Labrador
General Division
P.O. Box 937
309 Duckworth Street
St. John's, NL A1C 5M3**

**AND TO: Koren A. Thomson
Stewart McKelvey
Solicitors for Neil Bose, President and Vice-Chancellor, *Pro Tempore*
of Memorial University of Newfoundland
Suite 1100, Cabot Place
100 New Gower Street
St. John's, NL A1C 6K3**

AND TO:

Andrew A. Fitzgerald, KC
Learmouth, Boulos & Fitzgerald
Solicitors for the First Intervenor, Michael Harvey, in his capacity as
The Information and Privacy Commissioner of Newfoundland and Labrador
Suite 804, 140 Water Street
St. John's, NL A1C 5L4

AND TO:

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

ISSUED at St. John's, in the Province of Newfoundland and Labrador, this ____ day of
_____ 2024.

COURT OFFICER

2024 01G 0937

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
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AND:

GENESIS GROUP INC.

INTENDED THIRD INTERVENOR

AFFIDAVIT

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

1. I am Chair of the Board of Directors of Genesis Group Inc. ("**Genesis**"), the Intended Third Intervenor herein, and as such have personal knowledge of the matters herein deposed, except where otherwise stated to be based on information and belief, and I am authorized to give this Affidavit on behalf of Genesis.
2. Genesis is a not-for-profit support network designed to assist and encourage academics and others associated with Memorial University of Newfoundland ("**Memorial**") and the

local community in the commercialization of technological ideas, concepts and other forms of intellectual property, in order to create a culture of entrepreneurship and develop sustainable businesses to the benefit of Canada but with a primary focus on the Province of Newfoundland and Labrador.

3. Genesis fulfills its mission primarily through its flagship program, the Enterprise Program, which is a 3-year incubator program designed to help technology start-ups in growing their product and get to Product Market Fit. Through the Enterprise Program, and other subsequent programs, Genesis has supported over 500 start-ups and incubated 124 technology companies. These companies have gone on to secure almost one billion dollars in private investments and generate more than \$650 million in recurring annual revenues.
4. In late 2023, Genesis became aware that a member of the public made various access to information requests to Memorial, seeking, *inter alia*, records regarding bonuses, special payments, and vehicle allowances paid to Genesis executives and/or management employees (the "**Genesis Records**"). Memorial denied the requests. The matter proceeded to an investigation by the Information and Privacy Commissioner of Newfoundland and Labrador (the "**Commissioner**")
5. On February 8, 2023, the Commissioner released Report A-2024-006 (the "**Report**"). In the Report, the Commissioner found Memorial to have custody or control over the Genesis Records. The Commissioner recommended that Memorial conduct a search for the records requested, request any responsive records, as necessary, from C-Core, Genesis, and the Canadian Centre for Fisheries Innovation, and then provide its final response to the complainant. At no point in time did the Commissioner allow and/or invite Genesis to make representations to the Commissioner pursuant to s. 96(1) of *the Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c A-1.2 ("**ATIPPA, 2015**").
6. Genesis is aware that Memorial is seeking a declaration, pursuant to s. 50(2)(a) of *ATIPPA, 2015* that it is authorized to refuse the requests on the basis that the information sought therein is not within its custody or control, having received a copy of the Originating Application (*Ex Parte*) from counsel for Memorial.
7. Genesis, being the subject of the records requested, claims an interest in the subject matter of the within proceeding brought on by Memorial.

8. Genesis has a direct interest in the within Application as the information contained in the Genesis Requests relates directly to Genesis' expenses and the employment income and benefits paid to its employees.
9. Genesis also has a broader interest in the within Application given that the Commissioner has, in effect, made Genesis subject to *ATIPPA, 2015* by concluding that Memorial has custody or control over the Genesis Records. As an entity with distinct operational autonomy, characterized by its own Board of Directors, independent funding sources, and a unique legal and governance framework, Genesis has operated with the understanding that it falls outside the purview of *ATIPPA, 2015*, designed primarily for public bodies. A ruling affirming the Commissioner's fining would impose unprecedented statutory obligations on Genesis, potentially undermining the corporation's contractual freedoms and confidentiality agreements essential to its operations. Such a precedent could have far-reaching implications, not only for Genesis but for similar entities, thereby necessitating a careful judicial examination of this interpretation to ensure consistency with legislative intent and the protection of private enterprise within the public accountability framework.
10. As a private corporation, Genesis has the ability to govern itself as a commercial enterprise, uninhibited by the statutory obligations imposed on public bodies. This includes the ability to negotiate freely with third parties and to enter into contracts with innovation enterprises in a manner which promotes economic growth for the Province, while simultaneously protecting their proprietary and other interests from publication. To find that the Genesis Records are in the custody and control of Memorial and, more broadly, that Genesis is subject to *ATIPPA, 2015* would impede Genesis' ability to fulfill its purpose and do its work.
11. I have read and understood the foregoing Interlocutory Application (*Inter Partes*) and swear this Affidavit in support of the said Application.

AFFIRMED/SWORN TO before me at the City of St. John's, in the Province of Newfoundland and Labrador, this 22nd day of April, 2024:



COLLEEN O'BRIEN
A Commissioner for Oaths
in and for the Province of Newfoundland
and Labrador
Commission expires December 31, 2028



SHERRY WALSH

2024 01G 0937

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BETWEEN:

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APPLICANT

AND:

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FIRST INTERVENOR

AND:

**MATTHEW BARTER, THE ACCESS TO INFORMATION
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SECOND INTERVENOR

AND:

GENESIS GROUP INC.

INTENDED THIRD INTERVENOR

NOTICE TO RESPONDENTS

You are hereby notified that you must attend before a judge presiding in Chambers at the Courthouse at 309 Duckworth Street, St. John's, in the Province of Newfoundland and Labrador, on _____, the _____ day of _____, 2024, at _____ a.m./p.m. to set a date for the hearing of the Application in the above proceeding.

AND FURTHER TAKE NOTICE that the judge may make an order in favour of the Applicant 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 Neil Bose, President and Vice-Chancellor, *Pro Tempore*
of Memorial University of Newfoundland
Suite 1100, Cabot Place
100 New Gower Street
St. John's, NL A1C 6K3

AND TO: **Andrew A. Fitzgerald, KC**
Learmouth, Boulos & Fitzgerald
Solicitors for the First Intervenor, Michael Harvey, in his capacity as
The Information and Privacy Commissioner of Newfoundland and Labrador
Suite 804, 140 Water Street
St. John's, NL A1C 5L4

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

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SECOND INTERVENOR

AND:

GENESIS GROUP INC.

INTENDED THIRD INTERVENOR

ORDER

BEFORE the Honourable Justice _____;

UPON IT APPEARING that Genesis Group Inc., the Intended Intervenor, has made an Interlocutory Application (*Inter Partes*) pursuant to Rule 7.05(1)(a) of the *Rules of Supreme Court, 1986* seeking leave to intervene in the within proceeding;

AND UPON READING the Interlocutory Application (*Inter Partes*) of Genesis Group Inc., the Affidavit of Sherry Walsh, and other materials filed with the Court;

AND UPON HEARING J. Alexander Templeton and Catherine Hutchens, counsel for Genesis Group Inc. (the Intended Third Intervenor), Koren A. Thomson, counsel for the Applicant, Andrew

A. Fitzgerald, KC, counsel for the First Intervenor, and Matthew Barter, the self-represented Second Intervenor;

IT IS HEREBY ORDERED as follows:

1. **THAT** Genesis Group Inc. shall have leave to intervene in proceeding 2024 01G 0937 and shall become a party thereto, pursuant to Rule 7.05(1)(a) of the *Rules of the Supreme Court, 1986*;
2. **THAT** the style of cause of the within proceeding be amended to be:

2024 01G 0937

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
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BETWEEN:

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AND:

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FIRST INTERVENOR

AND:

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

SECOND INTERVENOR

AND:

GENESIS GROUP INC.

THIRD INTERVENOR

3. **THAT** there shall be no Order as to costs of the within Application.

DATED at St. John's, in the Province of Newfoundland and Labrador, the ____ day of _____, 2024.

Registrar/Registry Clerk

2024 01G 0937

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APPLICANT

AND:

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

FIRST INTERVENOR

AND:

MATTHEW BARTER, THE ACCESS TO INFORMATION
REQUESTER AND COMPLAINANT BEFORE THE
COMMISSIONER

SECOND INTERVENOR

AND:

GENESIS GROUP INC.

INTENDED THIRD INTERVENOR

CONSENT OF THE APPLICANT

I, Koren A. Thomson, counsel for the Applicant, consent to the Interlocutory Application (*Inter Partes*) of the Intended Third Intervenor, Genesis Group Inc., seeking leave to intervene in and be added as a party to the within proceeding, with no order as to costs.

Koren A. Thomson
Stewart McKelvey
Solicitors for the Applicant
Suite 1100, Cabot Place
100 New Gower Street
St. John's, NL A1C 6K3

2024 01G 0937

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FIRST INTERVENOR

AND:

MATTHEW BARTER, THE ACCESS TO INFORMATION
REQUESTER AND COMPLAINANT BEFORE THE
COMMISSIONER

SECOND INTERVENOR

AND:

GENESIS GROUP INC.

INTENDED THIRD INTERVENOR

CONSENT OF THE FIRST INTERVENOR

I, Andrew A. Fitzgerald, KC, counsel for the First Intervenor, consent to the Interlocutory Application (*Inter Partes*) of the Intended Intervenor, Genesis Group Inc., seeking leave to intervene in and be added as a party to the within proceeding, with no order as to costs.

Andrew A. Fitzgerald, KC
Learmouth, Boulos & Fitzgerald
Solicitors for the Intervenor
Suite 804, 140 Water Street
St. John's, NL A1C 5L4

2024 01G 0937

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
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MICHAEL HARVEY, in his capacity as
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FIRST INTERVENOR

AND:

MATTHEW BARTER, THE ACCESS TO INFORMATION
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COMMISSIONER

SECOND INTERVENOR

AND:

GENESIS GROUP INC.

INTENDED THIRD INTERVENOR

CONSENT OF THE SECOND INTERVENOR

I, Matthew Barter, the self-represented Second Intervenor, consent to the Interlocutory Application (*Inter Partes*) of the Intended Third Intervenor, Genesis Group Inc., 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