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**LEGISLATIVE ASSEMBLY**

**PRINCE EDWARD ISLAND**

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**Motion No: 44**

**Year: 2004**

**VERBATIM TRANSCRIPT OF  
HOUSE COMMITTEE PROCEEDINGS**

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**COMMITTEE: STANDING COMMITTEE ON COMMUNITY AFFAIRS & ECONOMIC  
DEVELOPMENT**

**Tuesday, May 18, 2004**

**SUBJECT(S) BEFORE THE COMMITTEE:**

Organizational meeting re Motion # 44 - "A Thorough Review of the Freedom of Information and Protection of Privacy Act"

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**NOTE:**

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**MEMBERS PRESENT:** Wilfred Arsenault, Chair  
Hon. Jamie Ballem  
Hon. Philip Brown  
Helen MacDonald  
Eva Rodgerson  
Richard Brown  
Carolyn Bertram  
Wes MacAleer replacing Fred McCardle

**STAFF:** Marian Johnston (Committee Clerk)

**Standing Committee on Community Affairs and Economic Development**  
**Tuesday, May 18, 2004**  
**5:15 p.m.**

**Tape No. 1**

**Wilfred Arsenault (PC) Chair:** Good evening everyone. Welcome to the first meeting of this Standing Committee on Community Affairs and Economic Development.

I believe Eva Rodgeron sits on this committee as well and she will be here momentarily. Also Fred McCardle is here represented today by Mr. Wes MacAleer and I believe a letter is on file to authorize this replacement.

I guess the first item is, that I would to bring up before we go on to the adoption of the agenda is there is a perception that there might be a conflict here with the minister being at this table and I would like perhaps him to tell us a few words about that.

**Richard Brown (L):** I don't mind.

**Hon. Jamie Ballem (PC):** Thank you, Mr. Chair. Based on the information and the direction that this committee was given by the legislature, and the specific task to deal with, I feel that as Minister Responsible for the Freedom of Information and *Privacy Protection Act* that I would be in a conflict. I understand that I was appointed by the Committee on Committees but when it comes to a specific issue, and what I would request is that I excuse myself, and Mr. Chair, if you could write a letter to the Premier and ask him to name a replacement for me while this issue is being dealt with.

**Wilfred Arsenault (PC) Chair:** Any objection to this?

**Richard Brown (L):** Mr. Chair I don't mind - I think it's great to have the minister on the committee when it's reviewing legislation and the minister can hear first hand from the people about this legislation. So I have no problem with the minister staying on the committee. From this side of the floor we are not going to bring up any conflict.

**Hon. Jamie Ballem (PC):** The issue that, I guess that we deal with, is no different than the agriculture minister does not sit on the Agriculture

Committee. The fact that we could be presenting from our department, whether it's the minister or someone from the department presenting—and I expect that will happen—I think it would be in conflict.

**Wilfred Arsenault (PC) Chair:** Well, honourable member, if that's your wish, we will find a replacement for you.

**Richard Brown(L):** It's a different (Indistinct).

**Hon. Philip Brown (PC):** You had a different Commissionaire.

**Richard Brown (L):** Okay.

**Wilfred Arsenault(PC) Chair:** Honourable members, there is a proposed, I guess there is no motion.

**Hon. Philip Brown (PC):** There wasn't a motion.

**Marian Johnston (Committee Clerk):** No. Members can be substituted in at any time. He's free to get a substitute for himself for any meetings.

**Hon. Philip Brown (PC):** What we were suggesting in this case it will be a permanent substitute while we're dealing with this matter. So the person wouldn't need a letter each time.

**Hon. Jamie Ballem (PC):** Okay. (Minister withdrew from meeting)

**Richard Brown (L):** Who's the permanent substitute?

**Hon. Philip Brown (PC):** The appointments are made by the Premier.

**Richard Brown (L):** No. The Committee on Committees.

**Hon. Philip Brown (PC):** Or the Committee on Committees. They were adopted by the Committee

on Committees but the substitute is named by the leader and the papers are signed by the leader so we'll - I guess the issue for the committee is do we want to deal with a permanent substitute or a regular substitute? Obviously the minister withdrew at this time, so I think it's prudent to move ahead and get a permanent substitute. Whereas we all miss meetings because of schedule conflicts, but the minister is not going to be back while we deal with this agenda unless he appears before us as a witness.

**Wilfred Arsenault (PC) Chair** Is there a general consensus on that?

**Committee Members:** Yes.

**Wilfred Arsenault (PC) Chair:** In that case we will move on to Item No. 2. As you can see, honourable members, there is a proposed agenda in front of us.

**Richard Brown(L):** We don't have any resolutions. We approve it.

**Wilfred Arsenault (PC) Chair:** Okay. Do we have consensus that the agenda move along as is?

**Committee Members:** Yes.

**Wilfred Arsenault (PC) Chair:** Very good. Now Item No. 3 - discussion of steps, of next steps. I guess it's a question of this situation being the case where we would invite the general public, groups, organizations and so forth to come forward to bring submissions to this committee, i.e., in person, written submissions forwarded to us. I guess at this point we have to decide as to when we would want to do this. As in, we also want to meet enter sessionally obviously after we adjourn this session. We traditionally come back to the House around, sometime maybe the first part of November maybe the middle, but we will - there is a motion as far as No. 4 is concerned to meet inter-sessionally. But as far as the next steps are concerned, would - is there any preferences as to when we would proceed with the request for the submissions?

**Hon. Philip Brown (PC):** In terms of the time line, I think your committee is hoping to report something back to the legislature in the fall sitting.

**Wilfred Arsenault (PC) Chair:** Correct.

**Hon. Philip Brown (PC):** I think that's what we would all be aiming towards. So that traditionally begins in November. We do have to look at organizing a work plan between now and then. My personal opinion is that summer is not going to afford itself a very good opportunity to be working on this matter. I think September, October is probably better. However I would suggest that we should - it's only a suggestion - but if we make a public, like an advertisement in the paper that the committee is beginning to meet. I think that people should be given an opportunity to present a written presentations to the committee up until a certain date and then we could also encourage them to put their name on the list as possible witnesses.

But I don't know how you feel about it. But I don't think that people are going to be as interested in this in July and August as maybe the committee would like them to be. So we want to leave it where we can get a good cross section of people to come before the committee.

**Helen MacDonald (PC):** That certainly sounds good to me. We start maybe in September and October but if you could get something out during the summertime to let people know that this is coming forward and that perhaps the dates be published and maybe the first week of September, second week in September we get started on it. That would be . . .

**Wilfred Arsenault (PC) Chair:** There's a lot of concentration on getting school started in September, obviously.

**Helen MacDonald (PC)** Well, yes.

**Hon. Philip Brown (PC):** There are people that are very keen on these particular issues and they would start working on a submission right away and that's fine. That would be properly a written submission, I would suggest.

**Wilfred Arsenault (PC) Chair:** Mr. MacAleer?

**Wes MacAleer (PC):** Yes, Mr. Chairman I would think if I were a member of the committee which I am not, but a substitute, I would want to start with a body of knowledge or understanding of this process and I think that's best gained by bringing in for a presentation, first of all, the people who

run the act and number two, the Freedom of Information Commissionaire, the lady who is responsible for that, make a presentation as to how they see their role in what they do. I think I would want to be informed so that if you had public discussion or public presentations you would be in a position then maybe to present questions to the public that they may not of thought of or whatever. So I would say the beginning of this should be an informative session on the part of the committee.

**Eva Rodgeron (PC):** Right now I'm not sure myself how it's working.

**Wilfred Arsenault (PC) Chair:** When did we put this legislation through? Was it a year ago last spring? Or maybe it was a couple of years ago.

**Some Hon. Members:** (Indistinct) .

**Wilfred Arsenault (PC) Chair:** Couple of years ago.

**Hon. Philip Brown (PC):** No this is the third kind of - we are in line for a three year review.

**Wilfred Arsenault (PC) Chair:** Mr. Brown?

**Richard Brown(L):** Yes, Mr. Chairman, I have no problem with that. What I would like to try this time is maybe if the committee, or through yourself, prepare a package for people before they come in. Like you know, to say here's the act, here's when it was proclaimed, here's some statistics, you know, and then that way and to make that public and then people can come forward and say, okay, I've read your summary or some sort of rapport and we will comment on that. Instead of people just coming in fresh out of - I noticed like New Brunswick, for example, some of their committees they had them on the website and they'd have information there for people to go and look at and say okay that's what that committee is about. That interests me, I have some concern there.

I don't think, except for the special interest groups, they don't know how the committee structure really works. Really the committee is open for anybody that wants to come forward, lots of people come forward, but maybe let's try say this is your act, the *Freedom of Information Act*, is it working properly, if it is here are some statistics and to give them

some input so they can come and talk about it. Just try something that way.

If the commissionaire or the Freedom of Information Commission could put something together to say this is what other provinces do.

**Eva Rodgeron (PC):** See what they've seen.

**Richard Brown(L):** Yes, like a lot of people come here with nothing. I don't mean it that way. With nothing with no -

**Eva Rodgeron (PC):** Just background information, knowing what to expect.

**Richard Brown(L):** Yes.

**Wilfred Arsenault (PC) Chair:** Ms. Rodgeron?

**Eva Rodgeron (PC):** I was thinking on turn and maybe if we were putting an ad out about the the process saying there is an information package, it can be mailed out to you or you can pick it up or whatever way. If you wanted to do a written submission and wanted some information there is a package - or will be a package prepared for you or you can access us on the website. Whatever avenues there is. I think that's a good idea. I like Wes's suggestion too and both of them were good.

**Wilfred Arsenault (PC) Chair:** Mr. MacAleer?

**Wes MacAleer (PC):** Yes, I think one of the challenges that you are going to have as a committee is that the *Freedom of Information and Privacy Act* is, just like the motions says, it's a tool to promote openness and transparency in government and what you hopefully will not run into but I fear that you will is that the committee will become or appear to be a depository for everything that's wrong with whatever it is that people have a problem with in government and will miss, you know, the point which is that really what we are here to discuss is the process or the instrument that people will use to solve their problems and not to try for the committee to solve that particular problem on that particular issue.

**Eva Rodgeron (PC):** The process.

**Wes MacAleer (PC):** Yes, it's the process that - and that's a reasonably academic or intellectual exercise so it's going to be difficult for the

committee to keep this exercise on track. You know, keep it at the level where we will be discussing a conceptual concept as opposed to concrete problems that people may have, whether it's social, political or whatever.

**Hon. Philip Brown (PC):** Okay, I really agree with your suggestion that we as committee members and we should have Karen Rose in and we should have the people that are - I'd like to know how many inquiries or requests for information that the government is getting now. How do they base their requests and they have made some judgements already in relationship to the publishing of names and those types of things and - we want to know that to be able to look into that issue.

**Eva Rodgerson (PC):** That's something I know right now I don't really know how its working.

**Hon. Philip Brown (PC):** No, that's right. We don't know how it's working and . . .

**Carolyn Bertram (L):** But the question I ask is - the name of this committee is Community Affairs and Economic Development. This is very important. But does it - I know it's under the community department - but is this the right place to be discussing this, in this committee?

**Wilfred Arsenault (PC) Chair:** The right committee you mean?

**Carolyn Bertram (L):** Yes.

**Marian Johnston (Committee Clerk):** This committee is response for justice.

**Carolyn Bertram (L):** We are.

**Wilfred Arsenault (PC) Chair:** And the legislation itself does fall under justice as well, so.

**Carolyn Bertram (L):** I think we need to put a different name on our committee.

**Wilfred Arsenault (PC) Chair:** Good observation.

**Carolyn Bertram (L):** To me it doesn't - Community Affairs and Economic , to me it doesn't apply to justice issues.

**Hon. Philip Brown (PC):** We only have so many

committees to work with. And everything has to be somewhere.

**Marian Johnston (Committee Clerk):** This is actually laid out in the Rules of the Legislative Assembly that this committee is responsible for justice. It's a permanent order of reference.

**Hon. Philip Brown (PC):** Right.

**Wilfred Arsenault (PC) Chair:** As far as the name of the committee, perhaps it's something that the Committee on Committees could look at.

**Hon. Philip Brown (PC):** We had no where's else to put it. The Committee of Committees, the junk drawer. Everything goes there.

**Richard Brown(L):** Mr. Chairman, are we planning a resource? Under the Agriculture Committee we had a resource from government which was pretty good. They provided a lot of information to us and helped us out because this is really a legal issue. If we can streamline the system, and I think that's the intent of the committee, is to say look the Act is okay. We agree on the principles and that. But here's the streamline process that we can do here. Like I noticed other provinces across the country, they have an index of information so you can go and say look, why write up a *Freedom of Information*, it's on an index it's readily available, I don't have to go through the Freedom of Information. That way you save a lot of time there. And we should be looking at how other provinces are -

**Wilfred Arsenault (PC) Chair:** So do we have consensus around the table that we need, if we need information, we need to have presentations from resource people that can help us to . . .

**Eva Rodgerson (PC):** However Wes said, that's probably (Indistinct) .

**Carolyn Bertram (L):** Mr. Chair I would like to clarify that what I did say in terms of this committee dealing with such an issue as this. We have a Social Development Committee and to me justice should almost fall under the umbrella of the Social Development Committee and I think that needs for the next - to put forward to the Committee on Committees.

**Marian Johnston (Committee Clerk):** No.

Actually to the Rules Committee.

**Carolyn Bertram (L):** That would be that committee.

**Richard Brown (L):** That sounds better.

**Carolyn Bertram (L):** Because justice to me is Social Development. Anyway I think that's . . .

**Wilfred Arsenault (PC) Chair:** It's a good observation.

**Richard Brown(L):** We're not trying to put you out of a job.

**Wilfred Arsenault (PC) Chair:** Now do we have any consensus in any form as far as timing is concerned? Obviously I think before we start to receive these submissions from the public, we need to get some information so perhaps around the end of summer we could have a session of sorts. I know each one of you is going maybe take a bit of time off this summer, but can I suggest maybe towards the end of August that we have a session as far as picking up some knowledge is concerned.

Does the Clerk's office take it upon themselves to put the appropriate advertisements in the papers and so forth?

**Marian Johnston (Committee Clerk):** Well what we could do, Mr. Chairman, is we could come back here at the end of the summer, end of August, first part of September, with some resource information and look at a draft ad at that time.

**Wilfred Arsenault (PC) Chair:** Very good.

**Marian Johnston (Committee Clerk):** To be placed in the papers with some lead time for people to respond unless the committee wants to have sort of a lead up to this, to give the public more notice than that.

**Wilfred Arsenault (PC) Chair:** Mr. Brown?

**Richard Brown(L):** I agree. When the department - a document done up to issue to the public to say this committee is meeting, here's the resolution on the committee and here's some background information for people thinking of putting a

submission to the committee. Before we even advertise. We are reviewing the Act, there's an executive summary or a little report available to you besides the Act that will tell you in simple terms of what the intent of the Act is and what the procedures are and you as the public, you know, to come in and to say oh Section 21 of the Act is not good or bad. I'd like to hear people say well you know . . .

**Wilfred Arsenault (PC) Chair:** So we could ask the department to come up with . . .

**Richard Brown(L):** Or the Commissionaire.

**Wilfred Arsenault (PC) Chair:** . . . Commissionaire to come up with an information package available to the public and then we would put an ad in the paper to indicate that it's available upon request.

**Richard Brown(L):** Yes.

**Carolyn Bertram (L):** But the issue of , in terms of time, do you think the end of August is a little late? Should we not be meeting perhaps the first of August to get our heads around it a little bit.

**Hon. Philip Brown (PC):** I agree. I think we could even meet, I mean this is only the middle of May.

**Carolyn Bertram (L):** We are not expecting the public, this is us as a committee.

**Hon. Philip Brown (PC):** I'd like to advertise for written submissions. There is an office of (Indistinct) . I think if they don't have a briefing that they have now they certainly should be able to prepare one within a month.

**Wilfred Arsenault (PC) Chair:** Yes.

**Hon. Philip Brown (PC):** Some day before the end of June, we should get together and at that time we should be able to put an ad in the paper and invite written submissions and put a deadline for a certain period of time. I think we have to get together.

**Eva Rodgeron (PC):** Yes, we should do that early.

**Carolyn Bertram (L):** In June?

**Hon. Philip Brown (PC):** That would be my suggestion. There is six weeks until the first of July and we are only talking one day, right.

**Richard Brown (L):** Just to say, okay this is the report, this is the stuff, it looks great, go public. Do we have an agreement?

**Marian Johnston (Committee Clerk):** Can we just clarify? This is what my understanding is that you want. I'll contact Karen Rose and also the department, get an information package put together, bring it back to this committee at the end of June and also the Commissionaire and officials will make presentations to the committee at that time. Or is that later in the summer?

**Eva Rodgerson (PC):** I think it would be nice to have that all done.

**Hon. Philip Brown (PC):** Probably look at a two hour time frame where the Commissionaire and the officials from the office would come and they would know it's a two hour meeting, we would know it's a two hour meeting plus a little bit more, and then we would go forward from there. At that point after that meeting I think we'd be in a position to invite public submissions and we don't expect to have people come in the middle of summer, no.

**Marian Johnston (Committee Clerk):** Okay. So the ads will wait until after this meeting.

**Some Hon. Members:** Yes.

**Marian Johnston (Committee Clerk):** I understand. Thank you very much.

**Carolyn Bertram (L):** Mr. Chair?

**Wilfred Arsenault (PC):** Ms. Bertram.

**Carolyn Bertram (L):** I'm just wondering if it's at all possible for the committee with us, if it's not including the public in the month of June—because if the House closes, I'm going to be going back to teaching—if it's at all possible to meet after lunch? It'd be easier for me to take off the afternoon than if I take the morning, it's going to be difficult.

**Helen MacDonald (PC):** When is school finished?

**Carolyn Bertram (L):** School is over at 3:00 o'clock.

**Helen MacDonald (PC):** No, but the time of . . .

**Carolyn Bertram (L):** Oh, around the 28<sup>th</sup>.

**Helen MacDonald (PC) :** Around the 28<sup>th</sup>.

**Eva Rodgerson (PC):** But she suggested around the end of June, so what is the closest date near the end?

**Carolyn Bertram (L):** Oh, I don't know. It's just it's easier to take an afternoon of than to take the morning and have to go through the whole day. I don't like to take it off. (Indistinct)

**Wilfred Arsenault (PC) Chair:** I don't see any problem with . . .

**Hon. Philip Brown (PC):** Meeting in the afternoon - we could do that.

**Marian Johnston (Committee Clerk):** Is that to be a public meeting, Mr. Chairman?

**Wilfred Arsenault(PC) Chair:** No.

**Marian Johnston (Committee Clerk):** Will that be an in camera meeting?

**Wilfred Arsenault (PC) Chair:** I take it an in camera meeting.

**Some Hon. Members:** Yes.

**Marian Johnston (Committee Clerk):** In camera. Thank you very much.

**Wilfred Arsenault (PC) Chair:** Basically for information, our own personal information.

**Marian Johnston (Committee Clerk):** In camera. Excellent.

**Wilfred Arsenault (PC) Chair:** Very good. We will move on to the next point. It's No. 4 - a motion to seek permission to meet inter-sessionally.

**Richard Brown (L):** Do we need a motion if the House just adjourns?

**Marian Johnston (Committee Clerk):** No we do not. However the Clerk doesn't know whether we are adjourning or proroguing.

**Wilfred Arsenault (PC) Chair:** I guess I . . .

**Hon. Philip Brown (PC):** At this meeting we can make that motion?

**Marian Johnston (Committee Clerk):** Well we would need it, because of judging by today, I think the Chairman will have to report tomorrow to seek authorization if authorization is needed. Otherwise we cannot meet in June.

**Hon. Philip Brown (PC):** Okay, well I move that we seek permission to meet inter- sessionally.

**Wilfred Arsenault (PC) Chair:** Do we have a seconder?

**Unidentified Committee Member:** Second that.

**Wilfred Arsenault (PC) Chair:** Okay so any further discussion on the motion. All those in favour of the motion signify by saying Aye.

**Some Hon. Members:** Aye.

**Wilfred Arsenault (PC) Chair:** Contrary minded? Motion carried.

**Marian Johnston (Committee Clerk):** Thank you, Mr. Chair.

**Wilfred Arsenault (PC) Chair:** Next item No. 5 - motion to adopt interim report.

**Marian Johnston (Committee Clerk):** And again this sort of hinges on whether we adjourn or prorogue. The report is basically - by receiving the adoption of the report that is how we are seeking authorization to meet enter sessionally. So it's a vehicle to get to that point. And we will, of course, be reporting again in the fall.

**Wilfred Arsenault (PC) Chair:** So is there a motion to adopt the interim report?

**Eva Rodgerson (PC):** I move the report.

**Richard Brown(L):** I second it.

**Wilfred Arsenault (PC) Chair:** Okay.

**Marian Johnston (Committee Clerk):** I will make the one change to indicate that the Attorney General has withdrawn.

**Wilfred Arsenault (PC) Chair:** Very good point.

There is a mover and a seconder to the motion, is there any further discussion on the motion.

**Unidentified Committee Member:** Question.

**Wilfred Arsenault (PC) Chair:** Question has been called. All those in favour of the motion, signify by saying Aye.

**Committee Members:** Aye.

**Wilfred Arsenault (PC) Chair:** Contrary minded? Motion carried. No. 6 is . . .

**Richard Brown (L):** Okay, we have a resolution here we want to . . .(laughter)

**Hon. Philip Brown (PC):** (Indistinct) where the committee has their golf tournament.

**Wilfred Arsenault (PC) Chair:** Mind you, I didn't fall off my chair here. (Laughter) Golf tournament? Is the minister insinuating that he has free passes to (Indistinct) . Mr. MacAleer, a comment.

**Wes MacAleer (PC):** Oh, I think at this point we have completed our business. .

**Wilfred Arsenault (PC) Chair:** We have. That being done, I will take a motion for adjournment.

**Wes MacAleer (PC):** So moved.

**Wilfred Arsenault (PC):** Very good.