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

Thursday, November 4, 2004

SUBJECT(S) BEFORE THE COMMITTEE:

A thorough review of the Freedom of Information and Protection of Privacy Act.

NOTE:

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MEMBERS PRESENT: Wilfred Arsenault, Chair

Hon. Jamie Ballem

Hon. Philip Brown

Helen MacDonald

Eva Rodgerson

Richard Brown

Carolyn Bertram

Wayne Collins replacing Fred McCardle

GUESTS: Leo Broderick

Tony Reddin

STAFF: Marian Johnston (Committee Clerk)

Standing Committee on Community Affairs and Economic Development
Thursday, November 4, 2004
2:00 p.m.

Guests: Leo Broderick and Tony Reddin

Wilfred Arsenault (PC) (Chair): Good afternoon everyone. Welcome to this committee hearing. This afternoon, we are privileged to have a presentation by Mr. Leo Broderick and Mr. Tony Reddin. I believe both of which have made presentations in some way, shape or form to various Legislative committees. I know Mr. Reddin was here, I believe, maybe within the last couple of weeks, I believe. So we welcome you and we're going to--as a matter of fact, I believe, this is the only presentation we have today. You have indicated to the clerk that you have a presentation that will be of approximately half hour duration. So without further ado, gentlemen, the floor is yours.

Leo Broderick: Good, thank you very much. We don't have a written presentation but it's going to be oral and with a few suggestions and/or recommendations on how we could improve the legislation on access to information and the protection of privacy act on Prince Edward Island.

Wilfred Arsenault (PC) (Chair): Before, Mr. Broderick, if I could interrupt for one quick second, what we'll do here is if any of the committee members have questions, we will wait until the presentation is finished and then we'll follow with a question and answer period, if that's okay?

Leo Broderick: Good. We do have a number of points to make concerning the access to information. I guess the title is really, where is the name of that thing? *Freedom of Information and Protection of Privacy Act*. So we're really going to talk about maybe three issues, maybe four, depending on our time. But one of the very first things that we do want to talk about is the whole question of the accessibility by citizens to the public information and to some extent, what's being protected as private information.

We believe that we should have, in terms of the citizens having access to public information, there should be as much information as possible when people apply for access to that. I do know that people do have that right and it is entwined in this particular act. But what we are finding in terms of listening to people who have attempted to get

access, there are really two issues.

One of the issues is that they may pay up to 300 or 400 or even \$1,000 when they make application once they pay the \$5 fee. But the information that they receive is very limited because in the legislation, the rights of business usually is given priority and that much of the information that would be beneficial to community groups or even to individuals, and I'm talking about issues around the landfill and dumps and that kind of thing. The business interest is protected because when the commissioner or whoever does the job goes to find out if that information can be given to the public, it usually is excluded and that is under the regulation of third party. And I think there should be much more information available to citizens. Businesses should not necessarily have the absolute right to not have that information go to citizens or to community groups who request that information.

I know that there are some situations and they are outlined which probably are acceptable where the information isn't given. But the groups that I have spoken with have much information that they receive much of it is simply blacked out and anywhere it involves a third party. Now the person who makes the request is one party. The public body is the second party and that other third party could be—it usually isn't—in the cases that I'm referring to, the business interest. And for a variety of reasons, this act says that that information will not be available to the public or at the discretion of probably the commissioner. So I think in that area, we really need to scrutinize the act and have much more openness, much more information available to the public.

Now we do know of course, that information is the oxygen of democracy and if information is denied, individuals as citizens and groups, then certainly democracy is diminished. What we do know is that poor governments, bad governments are those governments that want to conduct their business in secret, and the more openness we can have and the more access to that information by the public, the better government that we should have. So that's the one area that we would like

more, I think, work on the act in terms of what we think should happen.

Do you want to say anything now?

Tony Reddin: I think, on that point, that the act favours those third parties very strongly and in our opinion, it should more favour the public interest. So that if the third party thinks that there's some of their interest that's been compromised, they should be obliged to show why that's comprised. If they want to do business with government, then they should expect that to be public information.

Leo Broderick: Good, thank you, and really to conclude on that, we are really advocating maximum disclosure, not limited disclosure and maximum disclosure would really be guided by the principal that the more information that government has is also information that the public should have. It should not simply be eliminated because public interest is there and individuals from the community want access to that. So the principal of maximum disclosure would really be what we advocate strongly and I think when we review this act, that's lacking.

Now another area that we were going to spend a little bit of time on and I think it's an important one and when I first saw the ad in the paper, that there was going to be a hearing on the public having an opportunity to comment on our access to information and privacy legislation in the province, I thought it was a good thing and I was really interested in coming and I spoke to Tony and we decided to come at the last minute. But one of the main issues that really bothered me was the US Patriot Act. Since we made the commitment to come, of course, this issue has really blown wide open in the Province of British Columbia and I knew that hearings were being held there on the impact of the US Patriot Act on Canadians.

Now this is the one thing that we really want to stress today because just last week, the British Columbian Privacy Commissioner issued his report after 500 individuals and/or groups made presentations to that office on the impact that the US Patriot Act would have on Canadians and Canadians' right to privacy. Now we do know what the US Patriot Act is all about. It has come about after 9/11. It really is one of George Bush's major interests and he is willing, as we have known, right around the world to sacrifice peoples' privacy and

human rights in the pursuit of what we would call violation of really, peoples' rights.

In British Columbia, what prompted this is that the government there was going to award five contracts to US firms that really, in terms of the information—these were information corporations that would really handle—very sensitive and private information belonging to Canadian citizens. And the commissioner did a review and they found that the commissioner's office that clearly the US Patriot Act will extend to all American firms, subsidiaries doing business in this country. And in this country, we have even at the federal government level, we have American firms handling very sensitive information on medical records, even collection of statistics and in British Columbia, they're ready to move to awarding contracts to American firms. Nova Scotia has a situation where there are American firms there handling rather sensitive information concerning health and even licensing motor vehicles.

What I think the Commissioner from British Columbia said is that legislation to protect the privacy of Canadians has to be looked at in every province and at the federal level and reinforced to ensure that the American Patriot Act does not extend its ugly hand into our privacy situations in this country.

Now I do know from personal experience that when you cross the border from here into the United States and on one occasion when I was going through the Houlton, Maine, I was stopped by the border and he asked who I was and I told him. So he went immediately in and he checked the license plate and when he put the license plate in his computer—these are the American people—every bit of information on me came up very, very quickly, information that I was shocked to find there.

Now, that's just one example and I know that in terms of our motor vehicle branch, all licenses, all license plates, numbers and so on, all of that is given to the Americans. I don't know how it gets there but I use it simply as an example that in terms of the American corporations then, coming in and handling sensitive information, that the US government through the FBI will have access.

So we are really recommending that based on the experience in British Columbia that we really need

to take a serious look at our legislation here, to ensure that information that is collected, even by government but particularly if there are American interests here through pharmaceutical companies, insurance companies, companies that sell data bases, that our information isn't simply siphoned off to the FBI. It can have serious repercussions on peoples' privacy rights.

Tony Reddin: I guess I just add that as far as our province, our provincial government needs to be careful of what contracts it gives for handling that information, that medical data or whatever it might be. That if it is an American company that handles it, then we need to be aware that that's the law, the Patriot Act of the United States obliges those companies to give that information to the FBI and what that implies for individuals, for the privacy and the implications if there's mistakes made in that information or someone makes a mistake as far as who a person is and what that could mean to a person.

So it's always the concern with a person's personal information not being protected. So there's the two sides to it, both that our government has to be careful what companies handle that personal data and also what American companies operate on PEI and what information they have. And to include in the act somehow to protect people from those sort of problems.

Leo Broderick: With the US Patriot Act, of course, individuals whose information is handed over, you never know and by law you're not supposed to know and can't know and people who hand over that information, the American subsidiary or I suppose a government agency that's really being contracted to do it, it can't reveal either. So we need serious, serious legislation to protect us against the US Patriot Act because regardless of what Paul Martin and a few others in this country want, we do not need further deep integration and it is an extremely serious issue.

People are talking about having zip lock North America, no border for trade, but lots of border requirements for people to pass through. But we're talking in the big picture here of further and further deep integration, same foreign policy, support for the military. We're recommending strongly that the government take a serious look at this particular act and look at what is happening in the province to see if in fact, there are American

interests here by way of American companies that would give this information to the American government through the FBI.

A third item that I think is important and that is it still deals with the issue of electronic privacy and protecting citizens against invasion by different groups that have really an interest in finding information, personal information, private information against citizens. I do know that when you use the Internet, every bit of information that you gain, every site that you access, all that can be tracked. It's really a word of caution and groups across the country are really saying to governments, we need legislation to ensure that the rights of citizens, as we become more and more used to electronic mail and so on, that our rights are protected.

I think the United States has made it very clear with its need to have as much information on citizens as possible that they insist in some cases to have certain, what they call a cookie, put in peoples' computers so that it keeps track of every bit of information that you deal with on your computer and it's a caution. I do know for example, in some workplaces in the province, because of computer programming and surveillance techniques that workers are tracked every second of the day, from the time they enter their workplace until the time that they leave. If they're away from their computer for three minutes, that's tabulated. If it's a washroom break, they maybe questioned that they took too long. I think really it's a serious issue and I think governments have a role to play to ensure that that kind of tracking system even in the workplace needs to be curtailed.

Do you want to comment on this one?

Tony Reddin: I guess the other part of that is with the internet privacy, that—and I don't know if it comes under provincial legislation or under the jurisdiction or even the interest of this committee—but it's so important again to protect peoples' privacy in terms of companies that would want that personal information and would abuse it basically. That's an important protection for people that when they're using the internet, it should be treated like a telephone generally that no one should be given access to that unless they have some special reason to have it.

Leo Broderick: And I think the final point because Tony has to leave at 2:30 is the question that we think that should be written into this act, is protection for whistle-blowers. Now individuals who release information on wrongdoing and those are the people that we call whistle-blowers, must be protected. And they should be protected from any legal, administrative, or employment-related sanctions for releasing information of wrongdoing. This is an extremely important issue.

We do know, for example, that in Health Canada, that three very significant scientists who released information to the public on some very serious issues, BGH, BSE and so on, were reprimanded over the years and the courts put them back on their job. But these three individuals, we do know and I did meet one of them over the last weekend in Winnipeg, Dr. Shiv Chopra, these three scientists, of course, have all been fired by the federal government for different reasons now of course. But everybody knows that the federal government simply got rid of them for revealing to the public some very critical public health issues.

It's I think, really incumbent upon governments to ensure that whistle-blowers who are prepared to report publicly on information that is so critical really to the lives of Canadians and to the public interest of Canadians should be protected and there's nothing in this province that protects a whistle-blower.

I was listening to this morning's story there about the inspectors in restaurants and they simply, you know, give a warning and it goes on for a year or two and you know, we could be being poisoned in our restaurants and yet no one is prepared to reveal who these or the restaurants are. I think that we have situations here in this province where whistle-blowers would certainly serve the public in a good way and we should protect the whistleblower. I use that example. It's probably a minor one but there's certainly more significant ones in the public domain here in Prince Edward Island when I think of, you know, health care, when I think of the school system. There are plenty of opportunities for people to blow the whistle. There is a great deal of corruption.

We think at the federal government level and I'm sure, you know, at the provincial level. Plus I think it makes the process more open and it may even, I think, make the situation of the patronage issue

in this province, certainly it might help to get rid of it as well. So I think as we look at the act and the regulations, these are the concerns that come to mind. I know that there are many more but I do want to stress again the costs are too much, I think in terms of public organizations that are there to serve the public good, non government organizations, community groups. That there should be much more leniency and I know the act does allow for fees to be waived and so on but I don't know how much of that is. But this act is relatively new. It's only, not quite two years in operation and it's certainly a good start to protect the privacy of Islanders and giving Islanders access to more public information. But I think we really need to do a lot of work on it. And I would say in conclusion that many more meetings that government has should be open to the public and the more open and the transparent government can be, less secrecy, the better our democracy is served.

Tony Reddin: Just in closing, I guess I'd come back to the importance for the public interest of the legislation and in particular some sort of protection for whistle-blowers as was mentioned, that people working in government that come across information that they know is important for the public to have. That's critical for them to be protected in their work and that example in Health Canada where those scientists were fired and then re-hired and then have been fired again and they're having to appeal it. That's the sort of situation that just shouldn't happen and it's very important to have legislation that protects people that way.

And I guess the final point is just how important it is to have the public involved in this discussion, I guess and the media, I would think should have a good bit of opinions and information to share with your committee. I'm surprised that they haven't formally presented to the committee but I would expect they would appreciate being consulted and any other way to consult with the public either through their website or through just further public consultation, I think would be very useful, and I thank you for your time today.

Wilfred Arsenault (PC) (Chair): Thank you very much, gentlemen. Two things, first of all, to provide equal opportunity for members to ask questions. I would ask that you raise your hand and I'll place you on the list in the order in which

you raise your hand. And secondly, I would ask that perhaps you direct, if you have questions for Mr. Reddin that you ask him the questions first because he's under a time restraint, so the floor is open for questions. Mr. Collins.

Wayne Collins(PC): Thank you, Mr. Chairman. For Mr. Reddin, you mentioned there in the conclusion of your remarks, you know, regarding the whistle-blowers protection. If someone in government has information that's, and I'm quoting you here, "important for the public to know". In who's opinion is it important for the public to know? I mean, are we talking here about someone in government who feels they have a *prima facie* case of corruption or fraud or legal wrongdoing? I mean, where do you draw the line between someone who has a dislike of government policy and practice and because of that they just don't agree with what government is doing as opposed to someone with a really legitimate concern. It seems to me it's something that has to be judged after the fact of disclosure.

Tony Reddin: I guess that's for your committee to work out, how you would put that in wording, into legislation. I mean the points good that it's not . . . you wouldn't simply say the public's right to know. But as you stated the situation there of fraud or corruption or perhaps environmental hazards that are not publicly known about. Those sort of situations, I think, would clearly be (indistinct)

Wayne Collins(PC): Do you see a danger though of it having the potential to become a kind of a free for all if it isn't . . . ?

Tony Reddin: No, I think you just have to word the legislation properly. Until you come up with the wording, then you could judge, you know, is this wording going to work or not. That's the only way you can handle that, I think.

Wayne Collins(PC): And I have a question for Mr. Broderick, if I may, while I have the floor. You were talking about going across the borders and that and I'm wondering what's wrong - I'm presuming there's a reciprocal arrangement here between countries in terms of license plate data - and my question would be what's so wrong with a country, whether it's Canada or the US, being able to have quick access to a computer data base to know who's knocking on their door and who wants

to come into their country. What's wrong with that?

Leo Broderick: There's nothing wrong with it other than the information that is there probably is rotten. It is incorrect information in which the individual who is knocking on the door does not have an opportunity to read what's there, doesn't have an opportunity to defend what's there and to have legal grounds to do anything about it. You do not know what information is there. You do not have access to the things, that's what's wrong.

Wayne Collins(PC): Were you permitted entrance at the Holton . . . ?

Leo Broderick: After 30 minutes interrogation I was.

Wayne Collins(PC): 30 minutes interrogation?

Leo Broderick: Yes, and not that pleasant, to tell you the truth. And I had no idea what they read. But what they did read should not, what was there or what should have been there, should never have been given any reason why I should not have been able to enter the country.

Wayne Collins(PC): But you don't know what was there?

Leo Broderick: No. But I know from what . . .

Wayne Collins(PC): How can you make that statement if you don't know what was there?

Leo Broderick: Because I know what I do, what they asked me.

Wilfred Arsenault (PC)Chair: Minister Ballem has a question.

Hon. Jamie Ballem (PC): Yes, I guess I'd just follow up on Wayne's question, if you don't know what was in the information how do you know it was wrong?

Leo Broderick: Well, I don't know what's in the information. All I know is that what's there would give them reason to talk to me for 30 minutes and I know from what I do and say and the activities that I'm involved in should not prevent me from entering the United States of America.

Hon. Jamie Ballem (PC): But that's your opinion.

Leo Broderick: That's my opinion.

Hon. Jamie Ballem (PC): Do you not think they have the sovereign right to determine who goes into their country and who doesn't?

Leo Broderick: Oh, absolutely they have a right. But the access to the information that they have should not be given to them by my country.

Hon. Jamie Ballem (PC): Who should give it to them?

Leo Broderick: Well, I don't think they should get the information if it's private and not . . . anything that's in the public venue is fine. But if it's information that could be private or maybe not even true and they have it, could be misinformation, there's no one there to substantiate whether it's accurate or not. Why should it be there? Why should there not be some means by which it can be challenged and ensured that the rights of citizens in this country are not violated. But my right, I have a right to travel as a Canadian.

Hon. Jamie Ballem (PC): Any place you want in Canada. But not in the US. If they say these are the rules.

Leo Broderick: No, we do have agreements in which citizens can move between countries. We have an agreement. In fact we have an agreement between our countries, for example, that there are only two now, that the United States doesn't, if you're going through it, you do not have to fingerprinted but they're even fingerprinting people who are Canadian citizens in violation of that agreement. I mean that's documented.

Hon. Jamie Ballem (PC): I guess go back and . . .

Leo Broderick: But surely you're not saying that the government in this country should be handing over information on citizens to the United States. Is that what you're saying.

Hon. Jamie Ballem (PC): No.

Leo Broderick: Good.

Hon. Jamie Ballem (PC): No, but you're saying you know whatever information they have is wrong because they asked you some questions.

Leo Broderick: No, I didn't say that.

Hon. Jamie Ballem (PC): Yes, that's exactly what you said. I just wanted to go over, Mr. Chair, if I could just a could just a couple of questions that I guess, going through your presentation seemed to be a recurring theme, is that you want different sets of rules depending on who's asking for the information. Like you don't want anything that has to do with a company that's doing business with government, absolutely nothing should be held back. It should be all made public. But then in the next breath you're saying that . . .

Leo Broderick: No, I didn't say that. I said there's some information that . . .

Hon. Jamie Ballem (PC): Your co-presenter made the comment that if a company is doing business with government that all that information should be made public. So you're suggesting . . .

Tony Reddin: No that they should expect it to be public unless . . .

Hon. Jamie Ballem (PC): If I could make, you know we could go back to the tape because I did make the notes when you said it. You said that if a company does business with government that information should be all public.

Tony Reddin: They should expect it to be.

Hon. Jamie Ballem (PC): So it should all be made public. But then in the next breath you're saying that they shouldn't have information from private, belonging to citizens because, you know, like it's not in the public good. It shouldn't be allowed to be made available. At what point do you stop? You know, where is the point that it's either public information or it's not and who's going to decide whether or not it should be made public? If I have a problem with my insurance and I want to find out what your driving record is because I think your insurance is forcing my insurance rates up should that be public?

Leo Broderick: We didn't say this. In terms of the collection of private information, that information can be collected and held

responsibility within Canadian jurisdictions. What we said with respect to sharing it . That that information should not be shared with the United States government through the US *Patriot Act*. That's what we're saying. We're not saying that information here that Canadians have and that's collected by Canadian authorities should not be shared within jurisdictions that would certainly be significant. We're not talking that. We were talking about giving that information, in fact the US *Patriot Act*, if it's an American business that's operating in this country, by the US *Patriot Act* it has a responsibility to give whatever it has, by that law. That's what we're saying. But sharing information here in terms of health and so on, within this country, we're not denying that information shouldn't be available. But it shouldn't be available to any one.

Hon. Jamie Ballem (PC): So if someone has a certain illness or disease that could put others at risk should that be made public?

Wilfred Arsenault (PC)Chair: Thank you, Mr. Reddin.

Tony Reddin: Sorry, I have to leave.

Leo Broderick: In terms, the name of the individual?

Hon. Jamie Ballem (PC): Yes.

Leo Broderick: I wouldn't think so. But this is not the issue here.

Hon. Jamie Ballem (PC): Sure it is. You brought it up in the first point that you made that information, you had trouble with the protection of privacy part of the act, and that information, if it involved a third party, that it should be made public and you used corporations because you were speaking of corporations at the time that people are spending three or four or \$500, \$1,000 and getting very little information. But then you said at what point and who makes the decision of what should be made public. We hear of cases in North America and in Europe where people have been charged with assault because they were HIV positive and they had unprotected sex without the other person knowing. So if someone is HIV positive should that be made public because I, as a citizen should . . .

Leo Broderick: No.

Hon. Jamie Ballem (PC): Why not? But isn't it the public's right to know (indistinct)?

Leo Broderick: But in the context in which I first made the comment, when the third party status, I'm referring to the third party, for example if I am looking for information - not on individuals - I'm looking for information on public projects. And when I request that information the legislation here says that third party information does not have to become available. This legislation, the things that you're talking about, this legislation allows it. It allows the sharing of information. It would prevent the individual's name being made public. If I have a certain disease and you want to make it public, my name public, you may try that and you may get away but I'm not sure if this act would allow it.

Hon. Jamie Ballem (PC): But that's what you want it to do. You want us to change the act so that we don't need third party approval for information to be made public. You talk about whistleblowers, that if there's a public safety issue. So if someone came in and applied to the Department of Health for the list of everyone on Prince Edward Island who's HIV positive . . .

Leo Broderick: No.

Hon. Jamie Ballem (PC): But you can't have it both ways, Leo. You're asking for things on one hand but you don't want it the other.

Leo Broderick: Well, anyway.

Hon. Jamie Ballem (PC): I just one more question if I could, Mr. Chair. You talked about more open government and I don't know if it was you or Tony who made the question and that the more open that government is in the discussions the better off we're all going to be. Do you think the televised First Minister's meeting was productive?

Leo Broderick: I think to some extent it was. But I think the back room deals were the deals that really we should still have access to. And I think, you know, that's the kind of thing that takes place behind closed doors. I'm not sure if Danny Williams agrees with that now but anyway, not that protective. Don't think so. I think it kind of ruined him actually.

Wilfred Arsenault (PC)Chair: Thank you. Are there further questions?

Leo Broderick: If they had stayed in the public venue they'd probably been better off.

Wilfred Arsenault (PC)Chair: Are there further questions?

Richard Brown (L): Yes.

Wilfred Arsenault (PC)Chair: Mr. Brown. Mr. Richard Brown.

Richard Brown (L): Thank you. Leo, you brought up a good point there on the Patriot Act, the US *Patriot Act*. So we have contracts or the government of PEI has contracts . . .

Leo Broderick: Well, I don't know if that's true. The Nova Scotia government does.

Richard Brown (L): We have contracts through EDS that did our health information systems. So you're saying that the company is compelled by the *Patriot Act* to . . .

Leo Broderick: If it's contracted by the FBI it will be compelled by law to reveal the information.

Richard Brown (L): Also then you're saying we cannot even make a law prohibiting EDS from giving that out.

Leo Broderick: Well, I think we can. I think that's what the BC privacy commissioner is saying, is that needs to be really addressed fairly quickly by the federal and provincial governments to ensure that we can put the limits on American subsidiaries in this country that they wouldn't give this information out . And we put hefty fines in place.

Richard Brown (L): But one of your recommendations is that we should review all contracts with US firms in order to . . .

Leo Broderick: Protect Island citizens, Islanders.

Richard Brown (L): . . . see what they're doing with their information. Okay. The whistle blower legislation - there was a comment made earlier here about, you know, people going out and

saying things in public - other whistle blower legislation has like a whistle blower commissioner where the person can go to the commissioner and say, look, this is being done wrong or something and the commissioner can decide whether. So you would say that the commissioner here, the freedom of information commissioner, if a civil servant or another public bodied person came to the commissioner and said this is being done or this information is produced by government and I think it should be made public, although no one has requested it to be made public, it should still be made public. So you're saying like someone within government, there's a report done for government, they'd could contact the commissioner and the commissioner could order the release of that report publicly.

Leo Broderick: Well, in terms of the whistle blower, that may be one way the whistle blower wants to work. But whistle blowers would usually act in response to what they have seen and have judged to be, in a fair assessment, that wrongdoing has already been committed. There's fraud or whatever you wish to call it and they're acting in good faith. They have a reason of a belief that the information which they hold is to be substantially true and wrong has been committed. And they then go public. And they should be protected if those criteria are there and there is some reason to believe them and maybe after investigation, you know, fraud or charges would be laid. But whistle blowers would not act because - the question that you asked Mr. Collins - that it would open the floodgates. If I made a charge that was erroneous and flippant and so on then I would not get that kind of protection because it would not have been in good faith, it would have been determined later, and really no substantial evidence.

Now when I refer to the three whistle blowers, I mean when you hear their story about Health Canada. We know now that they gave evidence publicly that was substantial, was serious and they acted in good faith. But they since have been fired for other reasons.

Wilfred Arsenault (PC)Chair: Mr. Brown, you have a question.

Hon. Philip Brown (PC): Yes, just kind of on the whole issue, Mr. Broderick, this is a balance, as you pointed out, between the freedom of

information and the protection of privacy and on Mr. Ballem's comments, it is a fine line. And whenever we go into that field of releasing, exposing information, then you're dealing with the people that are receiving the information but also who the information is about. And I guess the question I'd have, relative to your first point and then we'll have other questions, but relative to your first point, when departments deal with an enquiry about access to information what is given about the third party is what is seen to be relevant to the enquiry. And that's a judgement that the commissioner has to make. Sometimes people would like to find out all about a particular company, for example, just because they're curious on knowing. But if that information had nothing to do with the enquiry then should it be released?

Leo Broderick: Well, if the information about that company is included in whatever occurred in the inquiry I would say yes.

Hon. Philip Brown (PC): So if a company had background information explaining what the company did or some of its subsidiaries, some of its assets and some of all of this information, it was part of the description of the company but really had nothing to do with the piece of . . . we'll use, if you have an example I'd like, you know, it would be helpful if you could point it out to make us understand. Maybe you do have an example. But like how far do you go into the third party?

Leo Broderick: Well, I think in terms of some of the information that's been blocked out of the, you know, court proceedings, although that should be public record anyway and in reference to your other point there about corporate interest in subsidiaries, that should be all in the public record anyway. I mean in terms of, you look at a company's profile and they have to register in the public venue and so on. So that kind of information would be available in other sources.

Hon. Philip Brown (PC): So there would be no need of releasing it through this venue.

Leo Broderick: Well, I don't think people would be interested in getting it because you can get that information from some other source. I mean you can get a corporate profile of most companies and they're registered and so on and they usually acknowledge that. But I would think some of the

information is what they would do, for example, if there's going to be a dump placed or landfill, what's the agreement, how much they're getting paid, how much they're going to dump. All of that kind of stuff could be hidden from the public if a third party says, you know, I don't want it released. And I just think that we need to take another look at when someone applies for information, for *Freedom of Information and Protection of Privacy Act*, when they get their bundle - and they are advised through the regulations that some of the information is going to be taken out, I mean we know that - but when most of it's blacked out, I mean it raises questions. Like, what information is there that is being denied me that I think I should have.

Hon. Philip Brown (PC): But you're assuming that you know that there might be something there. Because . . .

Leo Broderick: Well, it's blocked out. They get the printout and it's page after page after page, there's lots there.

Hon. Philip Brown (PC): No, but when it's blocked out you don't know what was there. So, for example, if a company is providing a service to the government so we have to know, government decision makers have to know, have they the financial strength to deliver the service because this contract is worth X number of dollars, so are they a legitimate company so they may have to, their financial statements may be part of the package that allows government to make a good decision whether or not they can provide the service. But that information wouldn't be on their website and shouldn't be, I mean it's the confidential information of the company. You're not suggesting that that information shouldn't be blacked out?

Leo Broderick: Well, I would concede that maybe there are times when that kind of information, particular information, but I would say generally if the company has plans to do something in its proposal information that would be there that the public could use to have a better idea of what's going on a particular site, that that should be available. And I know there are times when, you know, governments can't reveal information. I mean we would recognize, you know, national security. This government, I mean the federal government if you were talking stuff

may not be able to reveal some information and the need to protect the privacy of individuals, health, records and so on. But generally speaking, you know, I think most people when they look at the *Freedom of Information and Protection of Privacy Act* and they apply to government for these - I mean it's only public institutions and they're adding a few groups each time - that they should be available.

Now, I'll use one example. You know, I think we should have access - I haven't tried - for the Atlantic Lottery Corporation. I mean the Prince Edward Island government is a shareholder. And it has a tremendous amount of information that it doesn't share with the public. And I think it should. And I don't think this legislation here would cover that if we could get it although I know in Ontario it's gone, it has gone to court and now the Ontario Lotteries has to reveal all that information because, you know, lottery corporations have a lot of information on gambling and the kinds of gambling, in terms of gambling patterns of the people who frequent and so on and there's a data base and so on. Groups have tried to get that material but they were refused under . . . they applied through the information act there but here in this province because it's an Atlantic one and the four shareholders, I'm not sure if we would get it but maybe one of you could be a whistle blower.

Wilfred Arsenault (PC)Chair: Mr. Collins, followed by Minister Ballem.

Wayne Collins(PC): Leo, as you know, I've long admired your passionate and dedicated interest in the public affairs of this province. I'm not surprised to see you here today presenting on this important issue. But I'd like to know, as far as I know this is the single, lone presentation to this committee. This was widely discussed in the Spring session of the Legislature and we made plans for this committee to do its work. It was advertised in the paper, all papers across Prince Edward Island, and I'd like to know why you think so few Islanders have come forward to express their views on the early performance of what is an important piece of legislation. How can this committee interpret that response?

Leo Broderick: Yes. I think when you read the ad in the paper you're not quite sure. This is a relatively new thing for Prince Edward Island. I mean it was talked in the Legislature but it only

was enacted in 2002. There's not a lot of information out there about this particular act and about the impact it could have on Islanders' lives. And I do know part of the commissioner's office is to do public education. And I know that there's been an attempt and probably a good attempt to have that but it's only a half time job I think and they may have one other person.

The resources are not there to, first of all, educate the public about the importance of access to information and privacy laws in the province. Most people know very little about it and unless you're really tuned in on a particular day, you see it in the paper and then it might be in two days time. That's it. And you kind of miss the opportunity to really take a look at that. And I think that's the reason. More public education on access to information, the need for the public to have access to information and the need for government to be more open and transparent. And I think you would have a lot of interest today in having people come out to talk about this because, you know, it's a fairly significant issue.

But I was prompted to come mostly because of the *US Patriot Act*. I knew it was coming down, I've been following the issue and I'm extremely concerned that, you know, this country is very quickly being merged as one with the United States. We're talking, you know, unification of the military. We're talking Star Wars and we're going to be joining the weaponization of space. We're talking about, you know, streamlining all our human rights legislation or the lack of it. I mean we are being moved very rapidly into a complete integration with the United States and I think that's extremely dangerous. And that's what prompted me to come because I wanted the legislators to be aware that what legislation we pass in this House will have significant impact on Islanders and we need to protect Islanders from having their privacy simply being handed over to the FBI.

Wilfred Arsenault (PC)Chair: Mr. Ballem?

Hon. Jamie Ballem (PC): I have a comment first and then a question. The comment, you know, you said when Wayne asked about why we only had one presenter. In the last two years we've had literally hundreds and hundreds of applications under the Act. Yet we only have one presenter.

Leo Broderick: Well, you've had a few.

Hon. Jamie Ballem (PC): I know when I asked our official in our department who's responsible for this piece of legislation, I asked him how many days a week that he spends on that because he's got other responsibilities, and he told me yesterday he spends three days a week just on FOIPP requests. So there is a lot of interest in the act when you go through over the last two years. But my question, and it comes back to . . .

Leo Broderick: May I just interrupt you though - and you're quite true - but look when I look at the statistics for the first year, you know, there's Agriculture and Forestry, request for access to information - 12. Applications for review - 0. Request for access to information Development and Technology - 17. Resolved or closed - 2. I mean there are more zeros than anything else. There's interest but the question may be that the lack of satisfaction, simply people have thrown up their arms, those that have applied.

Hon. Jamie Ballem (PC): I don't think people have thrown up their arms. If they had a real concern you would have thought they would have taken the opportunity to talk to the Legislature and make their views known publicly. I would have thought they would. But my question I was going to ask you, in the last year it came from one media outlet, they were upset with the fact that government didn't release individual public servant's specific salaries. Do you think that public information should be made available?

Leo Broderick: I would say that, and I know that in terms of the Worker's Compensation Board was one issue, because that was refused.

Hon. Jamie Ballem (PC): No, I'm talking very specifically from the Eastern Graphic. They wanted every public servant's specific salary to be made public.

Leo Broderick: No, I think that information need not be made public. Now, I do think though that the categories of salary and everything else should be made public. Now if, in fact, an outlet does have access to that and decides to publish it then I have no problem with that. But in terms of, you know, taking people's names off the list and giving the categories and their salaries I think that's fair because the information that's important there is not the person who's getting the salary but is what the government is paying in terms of the various

classifications and the various jobs in the province.

Hon. Jamie Ballem (PC): But as a taxpayer shouldn't I have the right to know what my employees are getting paid on an individual basis? Because we all, as public servants, we all work for the public and it is taxpayer's money and I'm using the arguments that were given by the *Graphic*, that why shouldn't we know specifically what my deputy minister makes for a salary.

Leo Broderick: Well I think at that level . . .

Hon. Jamie Ballem (PC): You can't split hairs.

Leo Broderick: Yes, you can. Absolutely you can. Absolutely.

Hon. Jamie Ballem (PC): Should we be making individual teacher's salaries public or doctors, doctor's billings? Why shouldn't we make doctor's billings public?

Richard Brown (L): I agree with that.

Leo Broderick: Doctor's billings. I think it's important for the public to know the range, for example, if there are four doctors or five making, you know, \$600,000. I don't think it's possible (indistinct).

Hon. Jamie Ballem (PC): No but if a corporation, which most fee for service doctors are, when that corporation bills government what's the difference between that corporation and a contractor?

Leo Broderick: There may not be much difference.

Hon. Jamie Ballem (PC): So you agree that doctor's billings should be made public then.

Leo Broderick: I don't say we need to publish their names but I do think, well I think, you know, the access and the right to privacy is certainly important. And if an individual who's employed with government feels that, you know, my privacy is being violated by the publishing of my salary then I think the public interest is not necessarily served by publishing the name. But the public interest is served if we have, you know, 85 doctors and they're all making, you know, \$250 to \$350,000 and that's serving the public interest. Now when we get to the members of the

Legislative Assembly then we have another set of rules. (Laughter)

Hon. Jamie Ballem (PC): What's the difference though between a private company, that small family owned business that's doing a little bit of work with government, why should all of their, every detail of their contract be made public but yet that corporation that happens to be a health professional, their contract isn't.

Leo Broderick: Well, I don't say that corporation, small business, all the details in terms of the access to information. When we're talking about third party, and I think that's what you're referring to, it's in the context of the issue that's being dealt with by government and that information is critical. That's what should be made available to those who are asking for that information. I don't think it would be essential to, you know, have all the list of employees and their wages and so on. But certainly it's important that we know what wages are being paid by private sector employees and I think it's important and we need to push the minimum wage up. I mean those kinds of things, but to name them I don't think it serves the public interest.

Wilfred Arsenault (PC)Chair: Thank you very much. Richard, you have another question.

Richard Brown (L): I know for myself I don't mind my salary being made public because I'm worth every penny I get.

Hon. Jamie Ballem (PC): That would have to go to the commissioner. (Laughter)

Richard Brown (L): Whether I'm worth it or not? No, but and Leo's point about the salaries of people being made public. I know in terms of corporations that trade on the stock market the salaries of the decision makers have to be made public because in that instance they're saying they're saying they're protecting the public right because if this guy is getting an exorbitant salary and he's making the decisions of the corporation is he making it for his salary or is he making it for the shareholders of the corporation. So personally I don't mind anybody . . . like I think Ontario has it on their website . . . anybody over \$100,000, their salary is made public. Anybody in a decision making capacity, in order for the public to know how much are we paying them and is the pay

making the decision, altering the decision. I guess that's what they're saying. I think government should have the same rules they require corporations to have in terms of publishing salaries of their CEOs, their top people, in order to ensure that are they making the decision for the public or are they making the decision for their salary. I have no problem with that. Do you agree with that?

Leo Broderick: Oh, I agree with you. I think a CEO's salary should be made public and so on. But anyway . . .

Wilfred Arsenault (PC)Chair: I believe Minister Brown has a question as well.

Hon. Philip Brown (PC): Just a couple of points and you can kind of deal with them after I make them I guess, Leo, would be fairer to everyone but one of the things you referred to relative to the decision making I have, probably it's just a personal observation, but there was a recent news story about the average sound byte in American television has gone from 42 seconds down to eight seconds. And so when we talk about, and you were asked the question about the First Minister's Meeting, should it have all been in public, I guess I'm concerned that there is some who like to suggest that decisions that are made not in public are decisions that are made outside of the interest of the public. There seems to be almost that innuendo to that statement and I think it's necessary to have open and frank discussion in the context of the discussion between the participants of the discussion. I think that's part of democracy and that's healthy.

And sometimes even in a setting like this if we feel that every statement that we might make here today could be repeated at 6:00 o'clock this evening in a half a second clip or half a minute clip you tend to have to be very conscious of things that are said. So I don't believe that it is necessarily healthy for democracy to have every discussion made in public because of that.

And I also think that the public is suffering in some ways from information overload. I personally felt that the national broadcasters spent an awful lot of time in the last week and a half in talking about the American election. I didn't have to turn on, I have access to the American networks if I wanted to see the American election on and I didn't think I

needed extended coverage and, you know, the anchor coming from Pennsylvania one night and Boston the next and I had some trouble with that. I turned it on to watch the news and not necessarily the American election but I guess that became the news. So that was one comment that I think there is value in that.

The other thing is you mentioned the whole area of electronic mediums and the sharing of information through electronic mediums and I guess the public should be wary in this regard that the fact of the matter is that when you send an email or you do something over the internet there's a server involved and in order for that information to be transmitted to a server you have no guarantee that it is now your private, if I send you an email there's no guarantee that you are the only one that will ever see that email. So there is an education here, isn't there? That has basically become a very public medium and the protection, I know there's security devices built into that system but I'm not sure that they're completely foolproof at this point and I'm wondering how could this legislation address any of that or is it user beware?

Leo Broderick: No, I don't think it's buyer beware. I think that there needs to be an examination of how governments can ensure that electronic communication does not end up with most people's private information being accessible by everyone. And I think we need to look at that. And also, I mean, conversely is that governments, you know, even those particularly in the public employ - I mean when I look at the system that we have where every public area is wired - is that I have concern about public employees. I mean the information that is gained by employers and even private. But I think we need to take a look at that.

But I think I want to stress that in terms of the US government and its *Patriot Act*, if we have an internet provider that's American connection here and they're contacted, by law they have to provide all access to the internet, to the email. They turn it over and they have it all. And there's no questions asked. They must do it. So those are the kinds of things that I think we need to be very cognizant of and when we have legislation that we ensure that if we find that there are infractions, a law is being broken, that there are serious, serious repercussions.

And you know, when you take membership or pay

a fee for a server you don't expect that all your transactions, everything that you transmit, everything that you access will in fact be handed over to companies and governments. You don't expect that but that's what's happening. That's what's happening and I think we need to be protected and governments need to work together to ensure that our privacy is protected. And that's not to mean that you don't protect people if they're committing crimes but access to that information is questionable, how one gets it. You know, illegal tapping and so on, it's sanctioned. Still doesn't stop it but we need to be aware of it.

Wilfred Arsenault (PC)Chair: Mr. Broderick, I thank you very much. Appreciate, on behalf of the committee, I can tell you we appreciate the input that you've had. We appreciate the thoughts that you've shared with us and I realize that you did not have a written presentation but recordings are taken of every bit of discussion that was held here today and the input from this hearing obviously will play a role into the decisions taken by this committee. So again, thank you very much.

Leo Broderick: Thank you very much.

Wilfred Arsenault (PC)Chair: Now, we will carry on with the rest of our meeting. As you're aware we had just the one presentation and the item no. 3 on the agenda is the discussion of the next steps so the floor is open.

Hon. Philip Brown (PC): We met with the commissionaire and had a good overview of how the act is utilized to date. Is there other people or interests that we may, that we've overlooked in talking to? We've asked for the public. We've talked to the commissionaire.

Wilfred Arsenault (PC)Chair: Personally I think Mr. Broderick had an excellent point. He pointed out that this act has been legislated, I believe, less than two years ago. And some requests have been made for information but then again perhaps maybe two years is not a long time for a community or a province to be fully comfortable with the act, fully comfortable with the process and maybe there should be some mechanism in place or maybe we should look at perhaps being open to reviewing this act on a fairly regular basis, whether that be every two years or every X number of years. I think that could be up for discussion.

Richard Brown (L): Mr. Chairman.

Wilfred Arsenault (PC)Chair: Mr. Brown.

Richard Brown (L): Thank you, Sir. I'd like to call, I guess there's a provincial coordinator, Leonard Cusack, who is the provincial coordinator of *Freedom of Information*. I'd like to hear, have him before the committee and ask him some questions, you know, from his point of view. And possibly to have the commissionaire, the information commissionaire back because her first presentation was in private and I think we should have an opportunity to hear from her in a public forum. She made some excellent comments in private that I think she should be able to make some recommendations to this committee of improvements to the act publicly. I'd like to see that happen. You know, to have her back in a public forum and to have Leonard Cusack, who is the provincial coordinator of this act as I understand, before the committee. I have some questions concerning, you know, when a request comes in to a department, you know, is a minister getting the person who's requesting the information. You know, is the political totally involved in the process of decimating that information, you know, and how far. Like the other provinces or the federal legislation or other provinces I understand that the name of the person requesting the information is between the coordinator and the person requesting the information. Political staff doesn't know who's asking for the information. I'm not saying it's happening here but it could. From different people and from different bodies you get different answers.

Wilfred Arsenault (PC)Chair: Mr. Brown?

Hon. Philip Brown (PC): I guess just on that, I'm wondering, Mr. Brown, I know we had the transcripts of Ms. Rose's presentation to us. If there was questions, because obviously it's only us a members of the committee that can ask her questions. Like, rather than invite her back we could certainly make the transcripts available to the public or maybe they're already.

Marian Johnston (Committee Clerk): That was an in camera transcript.

Hon. Philip Brown (PC): Oh, it's an in camera. So there's no way to do that. So if we have

questions that weren't answered or you would like to see her answer those questions. I would question whether it would be useful but me and my namesake generally have differences of opinions so this may be . . . (Laughter). On the other comment it may be useful to have Mr. Cusack here.

Wilfred Arsenault (PC)Chair: Any other? Minister Ballem.

Hon. Jamie Ballem (PC): Just a comment on what Richard said about having Karen Rose back. I think she takes her role . . . I wasn't part of this committee when she was here before but since my responsibilities have changed I'm no longer in a conflict and I'm back on it . . .

Richard Brown (L): Glad to have you back.

Hon. Jamie Ballem (PC): Thank you. I know you are. But I know that Ms. Rose takes her job very seriously as an independent commissionaire and if she had recommendations to make on the operations of the act she would have made them to this committee and I guess one of the challenges that I have, and I'm not disputing the fact that the public should have access to as much information as possible, but I guess I'll put it in context for us in political life. It would be extremely difficult for us to have a frank discussion at caucus if we thought that it was being recorded and, you know, everything was made public. I think it would put the commissionaire in a tough position because she is supposed to be totally independent. She's offering a very frank opinion to this committee of what she thinks should be recommended to the Legislature as her voice. We're supposed to be her voice to the Legislature. I don't see any benefit of having, you know, her back so that we can go through the same thing again publicly. I don't have a problem with Mr. Cusack coming forward because as a coordinator maybe he's going to be able to say here's things that I think should be changed in the act to make it more operationally more effective.

But one point, and to answer your questions, do I see the FOIPP requests that come into our department? No, I don't. But why shouldn't I know if I wanted to who's asking for information. Why shouldn't I have the freedom of that information just the same as everybody else?

Wilfred Arsenault (PC)Chair: Any other comments? Mr. Brown.

Richard Brown (L): The commissionaire came in and made a presentation to us and made some recommendations. And that was in private. I guess we could call that protected information. But if that's in our report that these recommendations were made by the commissionaire are we breaching the confidence of the in camera meeting? No?

Hon. Jamie Ballem (PC): I wouldn't think we would, Mr. Chair, because we've had a lot of, we have access to other information. I mean you may bring something forward that you have researched from other provinces. The clerk may come back with information. This is generally in committees, that just because it wasn't presented publicly doesn't mean that we're identifying a specific source. Mr. Broderick and Mr. Reddin made a number of recommendations. When the committee makes its report to the Legislature it doesn't say the commissionaire said we should do this. The committee will deliberate on the information that is presented to them and will make a report to the House of how we're going to deal with it.

I think that there was a number of things that Ms. Rose would have had in the discussion, again not being here I'm just assuming, that issues she would have brought up that were discussed at the committee level that will never go anywhere beyond this discussion because it was partly background, partly information that we said, okay that's nice but it's not going to be part of our report. I think we'll achieve the same result by incorporating what this committee wants based on the information we've received.

Wilfred Arsenault (PC)Chair: If I remember correctly the Commissionaire, as far as the commissionaire's presentation was concerned, she was inquiring about the need of specific clarifications around some of the certain areas in the act. That was mainly her concern. That was the gist of her presentation.

Richard Brown (L): Like I wouldn't mind her report, I have no problem with her with the commissionaire's report including recommendations for improving legislation as I don't have any problem with any other person

that's covered by legislation, you know, Crown Corporations or something, that recommendations are coming from, Executive Directors.

Hon. Jamie Ballem (PC): That could be part, Mr. Chair, of our report. I mean that's a good suggestion that in our report we say the commissionaire doesn't have to but can we encourage, say that it's our opinion that the commissionaire should put in their report where she thinks improvements could be made to the act.

I mean any time, the point that Mr. Broderick made and Mr. Chair you made it as well, the fact that the act is less than two years old, operationally it's less than two years old. I know from the people in the departments that I've been involved in when they're dealing with it they're getting better at doing it. They're quicker, they know the process that they're going to go through, they're trying their best to get information out, you know, respond to requests as quickly as they. So it's a learning process and I'm sure the Mr. Cusack will be able to . . . maybe he'll have some thing for us to say that if this was changed in the act would this make it more efficient. Could be. But you know, again that's why I think most of us agree that let's have him in and hear what he has to say.

Wilfred Arsenault (PC)Chair: So committee members, is there appetite around the table to invite the coordinator to make a presentation? Okay, so we seem to have general agreement on that. Very good. In that case we'll send the invitation out and we'll have to I guess at this point decide on a date for a next meeting. Any suggestions?

Helen MacDonald (PC): How available is Mr. Cusack? Is he available at all times? Or would we have to go to him first and find out.

Wilfred Arsenault (PC)Chair: If I can suggest a date, November 9th, Tuesday afternoon.

Hon. Philip Brown (PC): Tuesday coming?

Wilfred Arsenault (PC)Chair: Yes, Tuesday afternoon.

Marian Johnston (Committee Clerk): What time would be good for the committee?

Hon. Jamie Ballem (PC): Well I'm just looking at, we've got, Cabinet meets in the morning, rule of

thumb you don't book anything in on Tuesday until later in the afternoon because we're never sure how long the agenda is going to go.

Wilfred Arsenault (PC)Chair: Fine. Can we live with later in the afternoon?

Eva Rodgerson (PC): Are we, a lot of us down here for Wednesday?

Marian Johnston (Committee Clerk): There is a Public Accounts meeting Wednesday afternoon. You've got Wednesday morning, it's free.

Hon. Jamie Ballem (PC): Change that
(indistinct)

Marian Johnston (Committee Clerk): I do actually have guests coming to that meeting and they're booked.

Wilfred Arsenault (PC)Chair: Okay, later Tuesday afternoon as in 3:00 o'clock or somewhere in that vicinity. Can we live with that?

Marian Johnston (Committee Clerk): Okay.

Wilfred Arsenault (PC)Chair: Terrific.

Hon. Philip Brown (PC): We wouldn't be looking at any more than an hour.

Wilfred Arsenault (PC)Chair: Oh, max. Very good. In that case I would be looking for a motion for adjournment.

Hon. Philip Brown (PC): So moved.

Wilfred Arsenault (PC)Chair: Meeting adjourned. Thank you.