

24 May 2018

**Standing Committee on Communities, Land and Environment
Second Report of the Third Session Sixty-fifty General Assembly
Committee Activities**

Mr. Speaker and Members of the Legislative Assembly:

The Standing Committee on Communities, Land and Environment is charged with matters concerning municipal affairs and provincial planning, land and local governance, environment, water, forests, wildlife; and justice and public safety, intergovernmental affairs, Aboriginal affairs, Acadian and Francophone affairs, Status of Women, the PEI Human Rights Commission, charities and emergency measures.

Committee Membership

Kathleen Casey, Chair (District 14, Charlottetown-Lewis Point)
Peter Bevan-Baker (District 17, Kellys Cross-Cumberland)
Colin LaVie (District 1, Souris-Elmira)
Alan McIsaac (District 5, Vernon River-Stratford)
Hon. Pat Murphy (Minister of Rural and Regional Development; District 26, Alberton-Roseville)
Hal Perry (District 27, Tignish-Palmer Road)
Allen Roach (District 3, Montague-Kilmuir)
Bradley Trivers (District 18, Rustico-Emerald)

Former members of the committee:

Hon. Richard Brown (Minister of Communities, Land and Environment; District 12, Charlottetown-Victoria Park) (*until January 16, 2018*)
Hon. Heath MacDonald (Minister of Finance; District 16, Cornwall-Meadowbank) (*until January 16, 2018*)
Sidney MacEwen (District 7, Morell-Mermaid) (*until March 1, 2018*)

The following members served as a temporary member:

Darlene Compton (District 4, Belfast-Murray River)
S. Forrest (Bush) Dumville (District 15, West Royalty-Springvale)
Jamie Fox (District 19, Borden-Kinkora)
Alan McIsaac (District 5, Vernon River-Stratford)
Hon. Chris Palmer (Minister of Economic Development and Tourism; District 21, Summerside-Wilmot)

Committee Activities

Your committee met **7** times during the time frame covered by this report:

At its meeting of **July 27, 2017**, your committee received a briefing on Workers Compensation Board of Prince Edward Island; and heard from representatives from the Workers Compensation Board, Mr. Stuart Affleck, Chair of the Board of Directors; Ms. Luanne Gallant, CEO of the Workers Compensation Board; Ms. Kate Marshall, Director of Workplace Services; and from the Department of Workforce and

Advanced Learning, Ms. Constance Robinson, Director of Labour and Industrial Relations. Presenters provided an overview of the Board, how benefits are assessed, the appeals process, and included recent Prince Edward Island statistics.

Your committee met next on **September 21, 2017**, to receive a briefing on the policies and procedures on property taxes in the province from the Minister of Finance at the time, Hon. Allen Roach and Ms. Beth Gaudet, Provincial Tax Commissioner. An overview was provided, including information on applicable legislation, the land registry, property assessments and the property tax cycle.

On **October 5, 2017**, your committee continued its review of the *Freedom of Information and Protection of Privacy Act (FOIPP Act)*. Motion No. 50 (Calling for a review of the *Freedom of Information and Protection of Privacy Act*) was debated and passed unanimously on November 24, 2016. At this meeting, the Information and Privacy Commissioner for Prince Edward Island, Ms. Karen Rose, provided many recommendations for updates to PEI's *FOIPP Act*. The Commissioner advised that these recommendations are consistent with the legislation in Alberta, which the PEI Act is based.

At its next meeting on **October 26, 2017**, your committee received a briefing on building permits in the province from the Minister of Communities, Land and Environment at the time, Hon. Robert Mitchell, and Ms. Christine MacKinnon, Manager of Provincial Planning. The presenters highlighted the goals of land use planning, provided an overview of development density in the province, and the various processes involved.

Next, on **November 2, 2017**, your committee received two presentations relating to its mandate. First, Mr. Dave Pizio, Chairperson of the Community Improvement Committee for the Greenmount-Montrose Community, presented concerns of the effects of the new Municipal Government Act on rural communities. Next, the committee heard from the National Farmers Union District 1, Region 1; Mr. Doug Campbell and Mr. Reg Phalen presented on the topic of land speculation and real estate prices in the province. The presenters talked about the responsibility of the administration of the *Lands Protection Act*, and highlighted their concerns regarding the spirit of that law.

On **March 15, 2018**, your committee met again to consider the topic of land speculation and real estate prices in the province; and heard from representatives from the PEI Federation of Agriculture, Mr. David Mol, President; and Mr. Robert Godfrey, Executive Director. They provided an overview of farms and farmland in the province, and highlighted the increase in land values over the years. As part of their presentation, they discussed the potential to designate agricultural land as resource land, to create additional protections.

On **May 22, 2018**, your committee met to consider its report to the Legislative Assembly.

Recommendations

As a result of its deliberations, your committee is pleased to make several recommendations on various topics.

On the review of the *Freedom of Information and Protection of Privacy Act*, your committee makes the following recommendations for changes to the Act:

- 1) That municipalities, including municipal police services, be added as public bodies under the FOIPP Act.**

Your committee heard that while the new Municipal Government Act does require bylaws relating to the protection of privacy and freedom of information, there is actually no standard independent oversight required. For the province, the Information and Privacy Commissioner is the oversight to the provincial legislation. Currently, Prince Edward Island is the only province that does not cover municipalities. Additionally, collaborations among different services providers can pose a problem; for example, many programs combine the use of provincial and municipal entities. As such, your committee strongly urges government to incorporate municipalities under the provincial legislation; in doing so, your committee would also recommend that government consider a delayed statutory effect day, in order for municipalities to be fully prepared.

Your committee is aware that amendments to the *Freedom of Information and Protection of Privacy Act* were introduced to the Legislative Assembly of Prince Edward Island on this topic prior to the presentation of this report. Your committee felt it was important to include this recommendation, which the committee heard from the Information and Privacy Commissioner at its meeting on October 5, 2017.

2) That post-secondary educational institutions be added as public bodies under the FOIPP Act.

Your committee heard that the University of Prince Edward Island and Holland College both have internal policies, which your committee would like to commend; however, as with the municipalities, there is actually no standard independent oversight required. Currently, Prince Edward Island is the only province and territory that does not cover post-secondary educational institutions. As such, your committee strongly urges government to incorporate post-secondary educational institutions under the provincial legislation; in doing so, your committee would also recommend that government consider a delayed statutory effect day, in order for post-secondary educational institutions to be fully prepared.

Your committee would also like to note that a similar recommendation was presented to the Legislative Assembly in 2014 in the Standing Committee on Education and Innovation's First Report of the Fifth Session of the Sixty-fourth General Assembly.

Your committee is aware that amendments to the *Freedom of Information and Protection of Privacy Act* were introduced to the Legislative Assembly of Prince Edward Island on this topic, prior to the presentation of this report. Your committee felt it was important to include this recommendation, which the committee heard from the Information and Privacy Commissioner at its meeting on October 5, 2017.

3) That on the topic of claims to solicitor-client privilege, the FOIPP Act explicitly states that the Commissioner may require a public body to produce records that contain information over which solicitor-client privilege is claimed; and that solicitor-client privilege is not waived when the said records are provided to the Commissioner.

As explained at the meeting with the Information and Privacy Commissioner, it is difficult for the Commissioner to provide the oversight function if the public body refuses to produce the record. The recommendation relates to a recent Supreme Court of Canada ruling in Alberta related to the production of records over which solicitor-client privilege is claimed. From the Prince Edward

Island's Information and Privacy Commissioner at the committee's meeting on October 5, 2017 (page 146):

“So it says if your legislation is going to permit production to the commissioner of solicitor-client privileged information, it has to be clear, precise and unequivocal. It actually gave suggestions, and one of those were that it would have needed to say that solicitor-client privilege is not waived when the records are provided to the commissioner.”

As such, your committee would urge government to consider including very precise language in the FOIPP Act relating to solicitor-client privilege.

- 4) That sections 19, 20, 21, and 22 of the FOIPP Act, on the topic of discretionary exceptions to disclosure, be amended replacing “20 years” with “15 years”.**

Your committee heard that these sections are discretionary exceptions to disclosure, and include information relating to: intergovernmental relations, cabinet confidences, public body confidences and advice from officials. Your committee agrees that these are important exceptions; the underlying rationale for the time period is that with the passage of time, the harm that could be caused by the disclosure is lessened with time. By changing this time period from 20 years to 15 years, this would bring the province in line with the Alberta legislation.

- 5) That a periodic review of the FOIPP Act by a Standing Committee of the Legislative Assembly is established within the legislation for every six years.**

When the Act was first created, there was an initial review included in the legislation; however, a periodic review was not included. From the Information and Privacy Commissioner at the committee's meeting on October 5, 2017 (page 150):

“The reason, I think, a periodic review is important is because the freedom of information and protection of privacy issues are dynamic issues. Issues that are alive today may not have been issues that were alive five years ago in this area. I think that a review every six years embedded in the legislation is a good idea.”

The Commissioner, in her remarks, advises that six years is an appropriate length of time between reviews. Your committee would like to establish that a Standing Committee of the Legislative Assembly conduct the review, as the Information and Privacy Officer is an independent officer of the Legislative Assembly.

On other topics relating to the mandate of the committee, your committee makes the following recommendations:

- 6) That the Department of Communities, Land and Environment undertake a public consultation and review on the *Lands Protection Act, PEI*.**

Your committee heard from PEI representatives of the National Farmers Union and from the PEI Federation of Agriculture. Both groups expressed concerns regarding the spirit and intention of the *Lands Protection Act, PEI*, and your committee recommends that government undertake a review of this Act, to include public consultation across the Island.

7) That government consider and research ways to create a new designation for agriculture land as prime resource land, to ensure its protection under the *Lands Protection Act, PEI*.

Your committee believes that government should implement agriculture land-use planning in the province. In a report cited by the presenters, it was suggested that the federal government should be providing leadership for the country in regards to agricultural land-use planning; however, from the PEI Federation of Agriculture at the committee's meeting on March 15, 2018 (page 3):

“The PEIFA would argue that this leadership can be shown here on the Island by the provincial government. Deeming our agricultural land as resource land would send a message to potential buyers, developers and indeed sellers of this land that we want it to remain in agriculture unless a clear case for development is made.”

Your committee would encourage government to research ways that agricultural land can be protected, as it is an important resource for the province's primary industry.

Conclusion

Your committee thanks the organizations that met with it to provide information and advice in matters relating to the mandate of the Standing Committee on Communities, Land and Environment.

Respectfully submitted,

Kathleen Casey, MLA
Chair
Standing Committee on Communities, Land and Environment