Title: Tuesday, April 20, 2004 Private Bills Committee
Date: 04/04/20
Time: 8:35 a.m.
[Ms Graham in the chair]

The Chair: Well, good morning, ladies and gentlemen. We've got a full morning ahead of us, so I'd like to call this meeting to order.

You have had circulated to you our proposed agenda for today. Unless there are any changes proposed, I would entertain a motion to adopt that agenda as circulated. So moved by Mr. Maskell. All in favour, please say aye.

Hon. Members: Aye.

The Chair: Any opposed, please say no. Our agenda is approved then.

You also have circulated to you the minutes from our last meeting before the Easter break, that of March 30, 2004. I would entertain a motion to approve those minutes unless there are any additions or changes proposed. Okay; Mr. VanderBurg so moves. All in favour, please say aye.

Hon. Members: Aye.

The Chair: Any opposed, please say no. Our minutes are adopted then.

Are there any matters that members wish to raise before we commence our first hearing? All right. We'll proceed, then, to our hearing on Bill Pr. 4, Northwest Bible College Amendment Act, 2004. This is a bill which proposes that the 1986 incorporating statute for Northwest Bible College, being the Northwest Bible College Act, 1986, chapter 43, be amended to effect a change in the name of the private Christian college located in Edmonton to Vanguard College.

We have, I believe, four witnesses here today, and I'll ask Parliamentary Counsel to call them in.

[Mr. Clark, Mr. Reesor, and Mr. Toogood were sworn in]

The Chair: Good morning, gentlemen. Please be seated.

My name is Marlene Graham. I am the chair of this committee, and we welcome you to the hearing on your bill, Pr. 4, before our committee. Before we get underway this morning, I'd like all of the members of our all-party committee to introduce themselves to you.

[The following members introduced themselves: Rev. Abbott, Mr. Bonner, Mr. Goudreau, Mr. Jacobs, Mr. Johnson, Ms Kryczka, Mr. Lord, Mr. Maskell, Dr. Massey, Mr. McClelland, Mr. Ouellette, Dr. Pannu, Mr. Rathgeber, Mr. Snelgrove, Mr. VanderBurg, Mr. Vandermeer]

Mr. Friedel: I'm the MLA for Peace River. I'm not actually on the committee. I'm here as a guest.

The Chair: Thank you, everyone.

I will just put on the record that Mr. Masyk is the sponsor of this bill. I don't believe he's coming today.

We also have assisting our committee this morning Ms Shannon Dean, Parliamentary Counsel, and Ms Florence Marston, our administrative assistant.

I won't take long, but I will just put on the record very briefly the purpose of our hearings and the process that we will follow today and subsequently. The purpose of today's hearing, of course, is to allow you as petitioners and counsel and representatives of petitioners to describe the contents of the bill that you are proposing and give the reasons why the bill should be adopted. It will also allow an opportunity for members of the committee to ask questions of witnesses and to hear from other interested parties, and we of course have a representative from Alberta Learning here today. So it's to give other interested parties an opportunity to be heard on the matter.

Once we have heard all of the evidence, which is given under oath – all witnesses are sworn in – it is proposed that we meet next week to deliberate on the evidence, and we have available to us three options. We can either recommend to the Legislative Assembly that the bill proceed as presented, that it proceed with amendment, or that it not proceed. Assuming that we recommend that the bill proceed as is or as amended, then it will go through the typical stages of a bill: be read a second time, go through Committee of the Whole, receive third reading, and then receive Royal Assent and come into effect either then or upon proclamation.

Would there be any questions before we proceed? All right. I'll then call upon Mr. Toogood, counsel for the petitioner, to present your case today.

Mr. Toogood: Thank you, ma'am. This amendment arises because of the desire of the Northwest Bible College to change its name. I will ask Dale Reesor to give a description for you of the college's activities and the background of the college and the future of the college under a new name should the Legislative Assembly allow this to occur through passing the bill.

I do want to make one small comment beforehand, just to express our thanks for the committee's and the Legislature's indulgence with respect to some changes that you made to timelines so that this could go forward in a timely fashion. We appreciate that.

Now, Mr. Reesor, if you would proceed.

Mr. Reesor: Good morning. Again, thank you for giving us an opportunity to present today. Northwest Bible College has operated continuously in Alberta for the last 57 years; this coming weekend is our 57th commencement. We have 220 students that we train primarily for pastoral leadership, but we also train for music leadership, youth work, and intercultural studies.

We really have four reasons why we want to change the name of our college from Northwest Bible College to Vanguard College. I guess the first is really a desire to modernize our name. Our constituency has felt that Northwest Bible College has served us. Our graduates now are wanting to take their degrees and do things where we really feel that a more modern name will serve them better.

Secondly, we're pleased to say that in the middle of July this summer we are relocating from downtown to the old H.A. Gray school, which is just south of the Yellowhead. It's just a gorgeous building, so it's a good opportunity for us to change name. We're transitioning location, so transitioning name is a good thing, I think, at the same time.

A couple of years ago we started a branch campus in Calgary. Northwest is very geographic specific, and our constituency in Calgary is saying: we would rather have a name that is less geographical and represents more who we are as opposed to where we are. Vanguard we feel does that as well.

8:45

The process that we followed I think really invited broad participation from across our constituency. Our president initiated several focus groups and heard from across the province. Six names emerged, and Vanguard was presented at our district conference just a month ago, and it was soundly received by the constituency.

I guess that is very briefly sort of the rationale and a little bit of what we do as a college.

The Chair: Thank you. Does that complete your presentation this morning?

Mr. Reesor: That's all that I have, yes.

The Chair: Questions, then, from members?

Ms Kryczka: I'm just curious. Have you had any input from the alumni of your college, Northwest? I mean, if you have a certificate or a degree that says that this was from Northwest College, is there any kind of disconnect for them because of the change of name?

Mr. Reesor: The focus groups reached across faculty and staff, current students, stakeholders in our constituency, and certainly alumni. The number one concern that we had, I think, was well addressed. When you have a Christian college with the word "bible" in the name and suddenly in the new name "bible" is not there, the question came: are you not going to be a Christian college any longer? So that was the number one concern, and we addressed that by saying that we're going to continue doing what we're doing, just under a different banner.

The district conference, as I mentioned, is filled with alumni, and the vote was resoundingly in favour of changing the name.

The Chair: Before I take any more questions, I think I will call on Mr. Archie Clark, who is from Alberta Learning, just so that we can have on the record the position of Alberta Learning. Mr. Clark.

Mr. Clark: Thank you very much for the opportunity to speak here this morning. We're here today to talk about a wording change to what is proposed, but before I specifically talk about that, just some background as far as why we are having this discussion today.

The Post-secondary Learning Act that was proclaimed in March continues the traditional exclusion of divinity programs from approval from the government. As such, we have no concern about Northwest Bible College continuing to offer the programs they're offering. We also have no concern about the change of name that they're proposing.

Our suggestion as far as a wording change is under section 6 of the proposed act. It says, "The College may grant academic degrees in divinity." Our concern is with the use of the word "academic" in that wording. The reason we're saying that is because under the program approval regulation that's part of the Post-secondary Learning Act, we have defined that a degree in divinity must be given a name that distinguishes it from an academic degree that is granted by an institution that has been approved under the act. So what we are suggesting, which still meets, I believe, the requirements of Northwest and certainly meets the needs of the new Post-secondary Learning Act, is that that section be changed to, "The College may grant degrees in divinity" and take out any reference to the word "academic" there.

Basically, that's our submission and our suggestion. Thank you.

The Chair: Thank you for that, Mr. Clark.

Perhaps I would ask Mr. Toogood and Professor Reesor if that amendment as proposed by Alberta Learning is acceptable to you.

Mr. Toogood: Yes. We have had discussions with Alberta Learning with respect to the rationale for why they've made this request, and upon review of the new legislation that Mr. Clark referred to, we understand and have no objection to that alteration.

The Chair: Thank you for that.

All right. Carrying on then, Mr. Rathgeber.

Mr. Rathgeber: Thank you, Chair, that was my question.

The Chair: That was your question. All right.

Rev. Abbott.

Rev. Abbott: Thank you, Madam Chair. Just a question, I guess more out of curiosity, and that is the meaning behind the name "Vanguard." Where did that come from, and what does that mean?

Mr. Reesor: Well, "vanguard," just a layman's definition, is: the best and the brightest leading the way. We really feel that that typifies where we want to take our grads into the future. The best out in front heading on.

Rev. Abbott: Excellent. Thank you.

The Chair: Mr. Toogood, just so we have it on the record, you might want to comment about the due diligence that you've undertaken. I know that this information has been circulated to members, but it might be helpful to just have it on the record.

Mr. Toogood: Sure. With respect to investigating the name, we did NUANS name searches to identify the use of the word "Vanguard" by various other entities or declarations of trade names, that sort of thing. We found three areas of interest. The college was aware of Vanguard University of Southern California and had communication with them and were satisfied that there were no issues with Vanguard University of Southern California.

There were two other not-for-profit organizations that we investigated, one based in Ontario, one based in British Columbia. We contacted both organizations and found that the one organization in Ontario, Vanguard Ministries, had no issues with this.

The organization based in Vancouver was more difficult to contact and didn't seem to be active. We reviewed their filings with the Canada revenue agency. They are a registered charity, but their filings were not current and indicated no activity.

Certainly, within Alberta there was no educational institution using the name Vanguard.

So I was satisfied to give my opinion to the Northwest Bible College that their use of this name would not give rise to problems in the future with people bringing litigation to prevent them from using the name.

The Chair: Thanks for that explanation.

I also note that you have provided us with the resolution of your board of directors authorizing the proposed name change.

Mr. Toogood: That's correct.

The Chair: That was last month?

Mr. Toogood: There were two resolutions provided to you. One was of the board of directors of Northwest Bible College, and I believe it was in November that they had their meeting at which they approved this name change. Then the resolution also went to a meeting of the membership of Northwest Bible College, and that happened at a district conference of the Pentecostal Assemblies of Canada at which the membership of this entity also had their membership meeting and at which time they approved it as well. So both certified resolutions have been provided to you.

The Chair: Thank you very much.

Are there any final questions from members of the committee? Seeing none, then this hearing is concluded.

Gentlemen, thank you very much for your attendance here and for your presentation.

Mr. Toogood: Thank you.

The Chair: We will be, as I mentioned, meeting next Tuesday and deliberating on this matter, and we will advise you of our decision very soon thereafter. Thank you very much.

We'll proceed to the next matter on our agenda, being Pr. 5, the Brooklynn Hannah George Rewega Right of Civil Action Act. This is a petition from a minor, Brooklynn Rewega, by her father, Doug Rewega, for a private bill that will provide a legislative exception to the general rule of maternal tort immunity for prenatal wrongful conduct. Mr. Friedel is the sponsor of this bill and is present today.

I will now call upon Parliamentary Counsel to invite in our witnesses, and she may want to make some comments in advance of that.

8:55

Ms Dean: Thank you, Madam Chair. I won't reiterate my report, because that has been circulated to members of the committee, but I would just like to expand on two things. First, as the chair pointed out, this bill will grant Brooklynn Rewega a right of civil action against her mother for injuries sustained in utero as a result of a single vehicle accident on December 31, 2000. The effect of this bill will be an exception to the current state of the law, and it will be an exception with respect to this petitioner only. The current state of the law is outlined in a 1999 Supreme Court of Canada decision called Dobson, which clarifies that there is immunity for mothers for wrongful prenatal conduct.

Again, just to highlight for the members of the committee what are two significant issues in this matter. First, as noted in my report, there is ongoing litigation right now with respect to this accident. There are three actions that I'm aware of.

Secondly, an issue for the committee to consider in recommending this bill or not recommending this bill is whether this is the appropriate legislative vehicle for this issue to be addressed. You have been provided a copy of the United Kingdom legislation that addresses this issue, and it is in the form of a public statute, not a private act.

So I just raise that. Committee members may wish to question or comment further when the petitioners are present.

Thank you. Those are my comments.

The Chair: Thank you, Ms Dean.

Would there be any questions from members before we call in the petitioners and witnesses? All right. Please proceed then.

[Ms Corbett, Ms Saccomani, and Mr. Steed were sworn in]

The Chair: Welcome, everyone.

I think we are still waiting for Mr. Rewega, but perhaps we can get underway with some preliminary matters. My name is Marlene Graham. I am the chair of the Standing Committee on Private Bills. Before we get underway, I'd like to introduce our membership to you, so we will go around the table.

Mr. Friedel is the sponsor of Pr. 5 and is present this morning.

[The following members introduced themselves: Rev. Abbott, Mr. Bonner, Mr. Friedel, Mr. Goudreau, Mr. Jacobs, Mr. Johnson, Ms Kryczka, Mr. Lord, Mr. Maskell, Dr. Massey, Mr. McClelland, Mr. Ouellette, Dr. Pannu, Mr. Pham, Mr. Rathgeber, Mr. Snelgrove, Mr. VanderBurg, and Mr. Vandermeer]

The Chair: Assisting our committee this morning we have Parliamentary Counsel Ms Shannon Dean to my left, and our administrative assistant to my right, Ms Florence Marston.

I think it would be helpful, Ms Saccomani, if you would introduce yourself and other members of your party here this morning. I'll call on Mr. Steed after that. Go ahead.

Ms Saccomani: Good morning, Madam Chair and everyone. My name is Rosanna Saccomani. I'm a lawyer, and this is my client Doug Rewega. Behind us all the way from Rainbow Lake, which I understand is at least nine hours from here, is Doug's father, George Rewega; the lovely Lisa Rewega; Tina Rewega. These are the grandparents, the maternal grandparents. The star of the show is Brooklynn Rewega; she's seated in her grandmother's arms. Then there's Mike Rewega, the brother to the Rewegas, and my associate Elizabeth Tatchyn.

The Chair: All right. Thank you.

Ms Saccomani: Am I speaking loud enough? I don't know if everybody heard me.

The Chair: You know, I think actually your voice would carry better if you wanted to remain seated.

I'll now call on Ms Corbett.

Ms Corbett: Thank you, Madam Chair. My name is Sandra Corbett. I'm a lawyer at Parlee McLaws. My involvement in this matter is that I'm acting on behalf of the defendants, Lisa, George, and Tina Rewega, in a civil action that's been commenced on behalf of the infant Brooklynn by her next friend and father, Doug Rewega.

Mr. Steed: I'm Nolan Steed, with the Department of Justice.

9:05

The Chair: All right. Thank you for attending here today.

Before we get underway, Parliamentary Counsel will now swear in Mr. Rewega, so we'll take a moment to do that.

[Mr. D. Rewega was sworn in]

The Chair: Ms Saccomani, I don't know whether you were able to hear my description in the previous hearing about the procedure that we follow.

Ms Saccomani: Yes, I did.

The Chair: Oh, you did. So I won't find it necessary to repeat that then. We'll call on you, then, to begin the petitioner's presentation.

Ms Saccomani: Thank you so much. I know that this is a very unusual application, and I so much appreciate on behalf of the Rewega family the opportunity to be here today and to ask you to really think outside the box. I think all of us when we come to any particular job and after we've been in that job for quite a while are used to the way things are done, and that's the way they're done. But they're not always done in a certain way, and there's nothing that I can see in the rules and regulations regarding private bills that ties your hands here today. So I'm asking you to think outside the box, to listen carefully to everything that we have to say.

All of you, I believe, came to public office with one goal in mind, and that was to make a difference. All of you come from across the province. You represent the ordinary Albertan, and you're here in the Legislature sacrificing for your families, for your communities because you're here, because you want to do something for the ordinary, average Albertan. Brooklynn Rewega is an ordinary, average Albertan with extraordinary needs, extraordinary challenges. We're here today in a situation that is not of the ordinary; it is an extraordinary situation. But I believe with all my heart that you have the power to find in her favour today and to recommend this bill.

So before we get into all of the legal comments – and I have many to make – I would like to first ask Doug to describe a typical day in the Rewega household. Doug and Lisa have been married for a very long time. They are committed to each other, and they are committed to their child Brooklynn. She is the centre of their life, as any child is in any family. But given her special needs, you will hear that Brooklynn is cared for around the clock. They live in Rainbow Lake. There's a population of 1,500 up there. They have a clinic. The doctor visits three times a week.

Lisa herself has severe injuries as a result of this accident. She's on heavy medication for pain control. She's had surgeries. She was in hospital eight months after this accident occurred. The child went home before she did. The child went home three weeks afterwards.

Tina Rewega, the mother-in-law, the paternal grandmother, gave up her job at a hospital so she should could help this family raise their child, and that's very unusual. There are not too many mothers-in-law who will take an early retirement to help care for a child.

Anyway, before I get carried away with all the facts, I'm going to let Doug tell you a little bit about the family dynamics in Rainbow Lake in the Rewega household.

Mr. Rewega: Good morning. Thank you for hearing us today.

Every day is unusual in itself. It may start at 3 a.m.; it may start at 7. Typically, we try to run a routine with our daughter. She's very needy. We have around-the-clock staff that we keep positioned, monitored through the evening. We do allow our staff to actually – you know, they rest when she does, and pretty much every waking moment they spend is with her when she is active.

We run a small oil field company in Rainbow Lake, which is fairly time demanding on my part. I don't have a whole lot of time, as much as I would like, to be able to spend at home. My day consists of an early morning rising, usually returning late in the evening, if at all.

We maintain a young girl who has grown attached to Brooklynn who exercises her on a regular daily basis for three hours. One hour in the morning consists of basically stretching, body rub, kind of to try and loosen her muscles up. The rest of the afternoon is spent in a facility that we built to, I guess, further her development both mentally and physically. We try to make her day as stress free as possible. She cannot fend for herself. Everything we do is her concern. She requires feeding, bathing, changing, things of this nature. She'll be three this year, actually on the 24th of this month, and it's a very rigorous and demanding schedule.

Ms Saccomani: Just for your information Brooklynn is blind. She suffers from brain damage, and she has cerebral palsy. She has eight to 10 seizures a day. They never know when those seizures are going to come on, and that's why they need round-the-clock care, because someone has to be holding her. She has no use of her hands. She cannot stand. She is usually carried and lifted throughout the day.

Doug was telling me that they have this young girl that helps them because Lisa – if you had a child like that in a home, you could literally not do anything else. You can't cook; you can't clean. And because of Lisa's own physical demands, they need this extra help, and the grandmother comes in to spell off the young girl they have that helps with the family household.

Doug was telling me yesterday that they have some help from Aids to Daily Living. That service provides a small percentage of what their actual costs are. For example, you were telling me about a special standing device that costs $2,400. That's one of, you know, hundreds of examples. Aids to Daily Living had to consider it. The Rewegas had to really fight for it, and they received finally, after months of petitioning, $400 towards the cost of a $2,400 chair. It's not a chair, but could you explain what that device is for?

Mr. Rewega: It allows her to stand in a free position supporting her own weight, which is critical in developing bone mass for her and muscle tension as well. It's a wonderful device. I'd go to the end of the world for her. It doesn't really matter, that fact of it.

Ms Saccomani: She has a special wheelchair right now. Aids to Daily Living again contribute towards it. They give an allowance; the Rewegas paid for the balance. Doug was telling me last night that she's growing at a faster rate than most children her age. Now, she's only three – she'll be three in four days – but she's got the body size of a five year old and she's outpacing the wheelchair accommodations, so they're going to be having to change wheelchairs at a faster rate than what is allowed under Aids to Daily Living, for example.

You were saying that you don't travel very much with Brooklynn because with the vehicle that you have, there have to be many special modifications made to it. While they carry her right now, soon she'll be at a weight where she cannot be carried and she needs a special lifting device, and then they're going to need a special vehicle. You know, we're talking about costs in the thousands and thousands of dollars.

Was there anything else you wanted to add, Doug?

Mr. Rewega: A million things. Just, I guess, that it started out, you know, as a rather simple day. My wife on her way to church in High Level, actually met with family members on a beautiful morning type of deal, and I get a phone call at approximately 11:50 in the morning that changed our life.

The Chair: Thank you for telling us about it. Did you want to add anything else, Mr. Rewega?

9:15

Mr. Rewega: I guess just to say that this will require a lot of attention over the years to come. It's very strenuous emotionally and physically and financially. I work a hundred hours a week. If I could work more, I would, you know, to try and help out however I can, which means a lot of time away from home.

Ms Saccomani: When Doug Rewega came to see me after the accident to see if there was any help available to the family, it was shortly before the second-year anniversary of this accident. As Doug mentioned, the accident occurred on December 31, when Lisa was on her way to church. When the accident occurred, Lisa's body was thrown through the windshield. The truck that she was driving belonged to Doug's parents. They're a very close family. The family was visiting for the Christmas holidays. Lisa was thrown from the vehicle. She lay in the ditch for quite a while until a passing motorist came upon her. Eventually STARS ambulance was

called, and she was taken to the Royal Alexandra hospital. They didn't believe that she would make it because of all the internal damage that had been done in the accident. Lisa spent eight months at the Glenrose rehabilitating. They thought she'd never walk again. When she was released from the hospital, Lisa was in a wheelchair.

Brooklynn was born prematurely on April 24. When she was born, the doctors did not understand the significance – they weren't aware at the time that she was blind, but over the months to come they realized the extent of her injuries. While Lisa lay in the field, the oxygen supply to her child was cut off or affected, and that's what caused the brain damage, that's what caused the cerebral palsy, and that's what caused the blindness.

What then occurred is that Tina Rewega, the mother-in-law, took a leave of absence from her work as a hospital attendant in Hay River. They got a place at Edmonton House, where Tina Rewega watched Brooklynn Rewega around the clock. Then they'd go to the hospital and visit the mom, and then Doug would fly down to Edmonton. That was their life for the better part of a year.

Before the second anniversary of the accident – because in our law you have two years from the date of an accident to sue. I've been doing this work for 20 years, and this is the first case of its kind that I have ever handled, and I do lots of fatal accident work; I do lots of serious personal injury work.

Laws are made in two ways. They're made in the building across the street where you people sit every day, and they're made by our courts, and in conjunction with those two bodies, that's how we make the laws, as you well know. In 1933 the Supreme Court of Canada in the Montreal Tramways case held that a baby, an unborn child, could sue for injuries sustained in the womb, providing that it was born, against any third party. That was in 1933.

It was not until a decision I think in 1999 which involved a young mother who was abusing alcohol and drugs and sniffing glue every day, that this issue came before the courts again. In that case, the mother's family went to social services and said: our daughter has had five children before this child; they're all heavily medicated; they're all severely disabled because of the glue sniffing. The Queen's Bench in Winnipeg granted an order apprehending the mother so that she could not continue to abuse drugs while she was carrying the child. Now, the courts in that case ruled that that was a contravention of the mother's personal liberty, that she could do what she wanted to her body while she was pregnant, and that no one could say anything because it was an infringement of her constitutional rights. I think you probably are all aware of that.

The next case that came to the Supreme Court of Canada was the Ryan Dobson case. Ryan, like Brooklynn, was born prematurely when his mother was driving a vehicle negligently; she had a big accident on a highway that was her fault. This child was born prematurely, and this child was born with severe cerebral palsy. His condition is not unlike Brooklynn's. They hired a lawyer. The owner of that vehicle was the dad. But the lawyers decided not to sue the father; they decided just to sue the mother.

Now, people who are not used to insurance work or the laws go: well, isn't that odd, for a family member to sue another family member? I explain it in this way. We as a society have determined that insurance is fundamental to the way we live. We as a society have said that we're going to have an insurance industry, we're going to pay premiums, and in the event of a catastrophic injury we will be able to have some measure of financial compensation to put us in the shoes that we were in before this occurred. So, for example, if any one of you have a house fire today while you're here and your family is at home, if your child is playing with matches or your wife leaves the stove on or for whatever reason your house burns down, you pray to God that you have insurance because your insurance will put you into the position you would have been but for the fire.

A car accident is the same thing. When you drive a vehicle, you have to have insurance. We as a society all pay into that insurance, and we pay into it because in the event of an accident the people who are victimized or who suffer a loss from that accident have a means of compensation. We say in the law that it puts us into the place that we would have been in but for the accident.

Now, in our law if Doug were driving his vehicle on that day and they were going to church as a family – and you should have been driving the vehicle that day; you should have been going to church, Doug, but it was Lisa who went on her own – we wouldn't be here. There wouldn't be this issue because the courts have said that that child, even though the child is in Lisa's womb, has a right to sue any third party. That was established in 1933. They would have an action against Doug or the grandparents or myself or anybody.

The difference in this case is that Lisa was driving the vehicle. Now, if Lisa had been driving the vehicle and driving the baby to the hospital because the baby was born at home and the baby is five minutes old when this accident occurred, we wouldn't be here. There is no issue. The only reason we have an issue is because the accident occurred before the baby was born.

Now, if this accident happened in the United Kingdom, we wouldn't be here. The United Kingdom in 1976 or '77 made some law. They said in 1977 in the Congenital Disabilities Act that a child cannot sue a mother for injuries sustained while in the womb unless it results from a car accident and there's motor vehicle insurance.

Now, this is not a court of law. In a court of law we can't tell the courts whether there's insurance or not; there's a rule about that. This is not a court of law, and we can tell you that there is insurance, and that's why we're here. We're talking about an action not against the paternal grandparents; we're talking about accessing a means of insurance. That's what this issue is about, and it's been identified very strongly in the brief submitted by the Department of Justice.

So when I filed the statement of claim on December 6, 2002, I was not aware that earlier that year the Supreme Court of Canada in the Dobson case had come up with this decision. I'd never read about it, never heard of it, and I dare to say that most of my colleagues would say the same thing. So it wasn't well publicized. It's not a matter affecting very many people. If it did, we would have all heard about it.

But the fact of the matter is that we issued a claim on December 6, 2002. The insurance companies contacted us right away. They said that they'd be putting their lawyers on it. I then heard from my friend Ms Corbett, who said to me: I'd like to see all your medical documentation, and we're looking at the case. But it was our understanding that we had a case, that we did not have this issue. I was not aware of Dobson.

Seven months later I received a letter by courier from Ms Corbett saying: "Lo and behold, here's the Dobson case. The Dobson case says that you cannot sue the mother, so we will accept a discontinuance of action," meaning: you go to the courthouse and you file a withdrawal of your action, and we'll each go our separate ways.

Well, when I read the Dobson case – I mean, I'd never heard of it, and I was shocked. But when I read it through – and I read it through because it's a very long decision – I realized that we possibly do have a case. We do have a window of opportunity because in our case Lisa Rewega was named but we also named the registered owners. I believe I have a novel argument that's never been argued in the courts before, and we do have a small window of opportunity. It's a small window, and I'll get more into that. But I want to discuss the Dobson decision first because if you're going to be told what the Dobson decision says by anybody making representations here, you should know what it says.

9:25

The Dobson decision had an eight-court panel. Six were in favour of dismissing the child's case, and two were in favour of granting the child's case. Ryan Dobson went to the trial level first in Halifax. Remember, there are several levels of court. The trial level is the first level. They won there. The court at the trial level said: we find in favour of this child; this child has a right of action in this motor vehicle situation based on the fact that the mother owes a duty. That's how the law comes – when you're in an accident and you sue someone, it's because they have breached a duty to you. All right? They're driving too fast, they ran a stop sign, and they crashed into your car. That is a breach of the duty. So you establish that first, and once you've established liability, you go to the second stage: what have I suffered here?

In Dobson they won at the trial level; they won at the Court of Appeal level. So the insurance company appeals to the Supreme Court of Canada. The family did not appeal. They won the first two levels. The Supreme Court of Canada, a year before this accident occurred, in a split decision ruled – and I'm going to read three little passages to you because, as I said, the Department of Justice's summary about what that case says, I would submit, is not a fair summary of what that case says. It does say some things about what that case says, but it's not a fair summary, and I think if you're going to make this critical decision today affecting this family, you should know what the decision says.

The decision is written by two judges. The first one is Justice Cory. He is not the Chief Justice, but he is a very good judge and he writes for the majority. Five other judges endorse their consent. There are two judges, Justice Jack Major and Justice Bastarache, who write for the dissent. Justice Cory five times in this decision, not once but five times, makes reference to the fact that while we cannot entrench upon the rights of women to privacy, to autonomy, to self-control over their bodies, he does open the door to a legislative exception in motor vehicle accidents.

What the court establishes in this case is what we call the doctrine of prenatal maternal tort immunity. Prenatal because it happens before the baby is born. Maternal because it's an action against the mother. Tort because that's what we call this area of the law: a tort, a wrongdoing. Immunity because she's immune from action. So in 1999 for the first time in the history of Canadian legislation the court comes up with this doctrine of prenatal maternal tort immunity.

The issue here is not that we have a motor vehicle legislative exception. The difference between the majority and the minority is: who should create the motor vehicle exception to this doctrine? Should it be the courts? Now, the minority, Justice Major and Justice Bastarache, say: yes, the courts should do it; we don't need to go to the Legislature; we have the power to make that decision. I would humbly submit that the minority is the more reasoned and more logical approach. Justice Major on behalf of the minority said that, first of all, he disagrees with Justice Cory

> that sufficient policy concerns have been raised on the facts of this case to negative the child's right to sue in tort. The appellant Cynthia Dobson was already under a legal obligation to drive carefully. She owed a duty of care to passengers in her car and to other users of the highway, such as John Carter . . .

She had an accident with this John Carter.

> . . . the other motorist involved in the collision. If her negligent driving caused the collision, she will be liable to John Carter.
>
> In these circumstances, it would be unjustified to hold that the appellant should not be liable to her born alive child on the grounds that such liability would restrict her freedom of action. Her freedom of action in respect of her driving was already restricted by her duty of care [that she had] to [other] users of the highway. Hence, to acknowledge that the suffering of her born alive child, Ryan Dobson, was within the reasonably foreseeable ambit of the risk created by her negligent driving is hardly a limitation of her freedom of action. The appellant mother would not have had to take any further precautions, additional to those she was already legally obliged to take, in order to avoid liability to her born alive child.

The mother

> was not legally free to operate a motor vehicle without due care. She did not have the freedom to drive carelessly. . . The respondent child cannot take away from his mother a freedom she did not have.

The Chair: Ms Saccomani, I do have to interject here. We are under some time constraints. We do have two other parties to hear from. Some of our members do have to leave at or about 10 o'clock.

Ms Saccomani: All right. I'll try to wrap it up.

Anyway, to summarize what Justice Cory says: you can't take away a right that the woman didn't have in the first place, and that was that she can't drive negligently. But be that as it may, Justice Cory in his decision on five different occasions makes reference to the fact that a motor vehicle exception can be introduced by the Legislatures: "If the existence of motor vehicle insurance is to be relied upon as the basis of imposing a legal duty of care upon pregnant women, then this solution should be enacted by the Legislature." That's one example. Another example. He says, "Ultimately, only the legislature can create such a narrow and specific basis of tort liability" to limit maternal prenatal liability to cases of motor vehicle accident negligence and that "it may well be appropriate for a legislative body to create such an exception."

It goes on and on. This decision allows for a motor vehicle exception; it contemplates that. So for the Department of Justice to say that it might recognize a limited liability, although it could be unconstitutional, is not the case. Justice McLachlin, the Chief Justice, in fact describes such legislation as a laudable goal. A laudable goal.

Now, what do we have to do here today? You are concerned with the petition, with the petitioner's guide to private bills procedure. What do we have to satisfy? It says, according to this document, that

> a situation may arise that is unique and so exceptional that an application of the general laws of the province might be perceived to create a miscarriage of justice. The courts may have little room to manoeuvre in such cases.

We don't have a law in this province. There is a void, a vacuum, since the Dobson decision. The Dobson decision invites this Legislature to create such a law in a limited context; that is, in a motor vehicle situation. We have that extraordinary situation here, unlike what the Department of Justice says: that we're going to have a flood of other applications. I would invite an example to be given here today of any other such case as ours or any case where the people will circumvent the courts to get here as an appellate process.

9:35

The Department of Justice says that we can go to the Court of Appeal. Yes. I sent my friend – we were in front of the Court of Queen's Bench two months ago. A decision came from that body. We still don't have the order signed by my friend. She's had the order for some time. She's attached the order to her brief. If you look at her brief, my signature is on it; her signature is not. This is her order. She drafted it. She didn't like my order. I said: fine; we'll sign your order. It still isn't signed. The longer it takes to sign these documents, the more time that goes by. Justice delayed is justice denied.

Brooklynn Rewega needs help now. She doesn't need it in 10 years

from now. By the time we exhaust all levels of court, that type of time period goes by. In an ordinary case where you have a civil and serious injury, that takes five to six years. When you introduce an element such as this, a novel action, we will take five years at least in the courts to get through all of the avenues, so we're talking a period of 10 years.

I'm not asking you today – and the bill that you're being asked to propose does not award this child damages. We still have to go through the courts for another five years to assess what her needs are, and the courts will do that. All we're asking is that in light of the fact that there is a vacuum in the law, why not give this child this remedy in a unique, extraordinary, exceptional case? I understand from reading the Justice department brief that the law reform commission is now looking at this issue. I understand from speaking with the Department of Justice, with the minister's office, that as a result of our petition they are looking at it. I don't know how long that will take, but you've got to bear in mind that if a piece of legislation is eventually introduced, it may not help Brooklynn in any event, because when you pass legislation, it becomes effective from the date that it's passed or proclaimed or assented to. We're dealing with something that has occurred in the past, so unless the legislation is passed retroactively, that legislation will not assist Brooklynn Rewega.

I have a lot more to say, but I'm keeping the time in mind. Thank you.

The Chair: Thank you very much.

Ms Corbett, would you care to proceed?

Ms Corbett: Thank you, Madam Chair. There's absolutely no doubt that the circumstances of the case are extremely tragic and extremely unfortunate. I think, though, that the issue from our perspective and the issue that's before the standing committee is whether or not the bill that's proposed is an appropriate bill for a private bill as opposed to a public bill. I think that's really what the focus of the submissions was that I made in the written material that I provided, and I focused on those particular issues. I'm going to be very brief because I did provide some written submissions from our perspective.

The first issue is: has Ms Rewega exhausted her other potential legal remedies? She has not. There's litigation ongoing. As matters stand, the statement of claim has been struck against Lisa Rewega, the mother, and the statement of claim does stand at this point in time against George and Tina Rewega for vicarious liability, pursuant to the Highway Traffic Act, as owners. So we have not yet proceeded through all the steps in the litigation, and my submission would be that that particular aspect of matters that's identified in the parliamentary process documentation prepared by Parliamentary Counsel has not been satisfied, and that is that all other remedies have not yet been exhausted. That's the first point that I addressed in my written submissions.

The second point that I outlined and addressed in the written submissions was whether or not granting an exemption in this case to Ms Rewega, the child, would create problems in the context of public policy issues and other individuals in the population. Essentially, what's being sought here by way of this private bill is an exemption for this child to have a right of action against this child's mother. My submission on that is essentially that if an exemption is granted in this particular case, you're granting an exemption in circumstances where other members of the population and other citizens in this province don't have the same recourse and don't have the same exemption available to them. So you're creating a distinction between Ms Rewega and other children who are potentially injured in similar circumstances because we certainly don't know – and I'm not disagreeing with Ms Saccomani that there may or may not be others out there, but I think we can all conceive that it's certainly possible that there may be other circumstances where a child is injured in utero; for example, in the circumstances that are spoken to in Dobson of a mother drinking while she's pregnant, and on and on it goes. What you're being asked to do here is to create an exemption in circumstances where I think there are some significant public policy issues, and it's not necessarily appropriate to create that exemption in this particular case.

The final and I think the most significant point I would like to make is that this petition has been brought before the committee as a private bill. The issues that my friend has raised with respect to maternal tort liability are issues of very, very significant public policy concern. The way I sort of indicated it in my written submissions is that if you've read Dobson, the Supreme Court of Canada speaks throughout the entire case of the very significant public policy concerns.

For example, if a mother is up on a stepladder and she reaches for something and she accidentally falls and injures the fetus that she's carrying at the time, is that something that there's a tortious right of action for? If a mother has a glass of wine while she's pregnant and the child is born with fetal alcohol syndrome, is there tortious liability for that? And I'm not proposing to address those policy issues. I'm just using them as examples to raise how very significant those issues are. It's really my submission that if such a bill were to be contemplated, that sort of bill is a bill that should be brought through the minister's office and it should be brought in the public realm so that there's the usual consultation process with the parties affected.

For example, I think the Department of Justice has raised the issue with respect to how the insurance industry would be affected. I think that's an interesting point because Ms Saccomani has referred to the act in the United Kingdom wherein mothers are allowed to sue as a result of motor vehicle accident injuries. Well, first of all, that's a public act; it's not a private act. Second of all, there was a consultation process that's referred to in Dobson that was undertaken with the insurance industry, that was undertaken with all the usual parties that are I guess questioned or consulted with when the government is proposing to bring forward public legislation.

My friend also in her brief speaks to the policy issues and the public policy issues, and I think, again, that simply points to the inappropriateness of this bill proceeding as a private bill.

I guess my final submission is simply that this is not a bill, in our respectful submission, that ought to proceed as a private bill, primarily because of all of those public policy issues. Thank you.

The Chair: Thank you, Ms Corbett.

Mr. Steed, if you would.

Mr. Steed: Thank you. We have in place in Alberta a tort law that gives maternal tort immunity for prenatal wrongful conduct. That tort law has been established by the courts, and in our system we leave tort law to be developed by the courts until the Legislature varies that or dictates otherwise. It's clear that we have that tort law in place in Alberta. If the Legislature should wish to change that, that's entirely up to the Legislature. When you do that, you would be taking into account a number of different factors that would be very relevant.

This is an extremely interesting and I think significant issue when it comes to this issue of maternal tort immunity. You'd want to look at things like the impact on families of creating a maternal tort duty of care, the impact on the mother/child relationship, the impact on

the conduct and liberties of pregnant women. You'd want to consider the Charter of Rights. You would want to consider the duty of care that would be imposed, the specific nature of the duty of care, whether it would be different than the duty of care owed by other people. Along with that, you'd probably want to consider the impact on the insurance industry and the impact on insurance rates for individual Albertans.

A number of different things would need to be considered, but it can be done. There's no question that the Supreme Court of Canada made it very clear that the Legislature can address this issue. The issue here today is not whether you can do that. I think that's clearly open. The issue here today is whether it's appropriate to deal with this particular situation now as a private bill, and in doing that, I think you would want to consider the expectations that you might be creating for other people, that this might create expectations of the intervention by private bill in other tort situations, and whether that's where you want to go. If you choose to do that, that can be done as well, but I think you need to take that into consideration as you consider this situation.

9:45

I want to make it clear that the Supreme Court of Canada did a fairly thorough job. You might not agree with everything that they said, but they did a fairly thorough job of considering the issue. I want to just refer to one part of a paragraph to make it clear that they were very conscious of the impact that maternal liability would have on the mother/child relationship. Let me just read that if I might.

> Moreover, the imposition of tort liability in this context would carry psychological and emotional repercussions for a mother who is sued in tort by her newborn child. To impose tort liability on a mother for an unreasonable lapse of prenatal care could have devastating consequences for the future relationship between the mother and her born alive child.

Should the Legislature wish to consider it, it gives an illustration of the breadth of the issue you're going to have to look at. A very interesting issue. It raises some interesting issues for society, but they make it very clear that if society wishes to change the tort law that they have established, the Legislature can do that.

Thank you.

The Chair: Thank you very much.

Ms Saccomani: On the next page the court also says:

> It must be recognized that, although the appellant mother is in the legal position of defending this action, an award of damages in favour of the respondent [child] would greatly assist the [mother] and her husband with the financial requirements of caring for their severely disabled child. It is true that, in this particular case, the material interests of the mother and child are aligned, notwithstanding the fact that their legal relationship is adversarial.

I can tell you that this family's interests are aligned. They focus and work with this child as a family unit every day. As one author notes: if there is automobile insurance, allowing such suits does not make the mother and fetus or subsequently born child adversaries since the whole family benefits by allowing the child to recover.

Do not allow or consider all of these other examples about drug addiction or falling off the stepladder to cloud the issue that's before you, which is a motor vehicle exception. Yes, the Supreme Court of Canada reviewed all of those, and that's why they left the door open for legislation in this area.

I do want to say this: in terms of public policy, yes, this might have some public policy ramifications. But I've said: please give us one example where there'd be another such case other than this case. This is a rare, unique case, and according to the guidelines for petitions, in rare and unique circumstances you can and should consider a bill of this nature.

The Chair: Thank you.

Mr. Friedel, did you have any concluding comments?

Mr. Friedel: Yes, if I could. I'm not totally familiar with the procedure, but as the sponsor of the bill and as the MLA for this family I would like to make a couple of comments if I might, very briefly.

I've been helping Doug and Lisa with some of the medical problems that Lisa, who is the mother, has been having since the accident. At the time we didn't know that Brooklynn was going to have these severe problems, and as a new infant this was not obvious.

You heard the circumstances of the accident. Lisa was hospitalized until the baby was born, and that caused some additional medical problems for the mother because remedial surgery could not be performed until after the baby was born. This is causing some ongoing complications for Lisa and will likely do so for a long time.

I think the point here is that if the same accident occurred while the father or any other person was driving and the pregnant mother was a passenger, Brooklynn would be entitled to coverage by their insurance policy through litigation, as it would have to be dealt with. Since Lisa was driving, the family is now required to raise Brooklynn within their own means at, as you heard, considerably horrendous expense, and I'm aware of some that they haven't even mentioned here which are partly the circumstances of where they live in a relatively unique part of the province. But, you know, when you run a small business, you just can't sort of pack up and leave and hope that you might get a job that would allow you to raise your family someplace else, maybe a job that would do as his present business has done, which although small at least enables them to do what they need to do.

I believe the circumstance they're in right now is a very harsh situation, and it's not something we would normally expect a family to do. I mean, in Alberta we do cover a lot of these expenses, and you heard that Aids to Daily Living is helping them with some of them, but it's a fraction.

I'm attempting to assist the family through what I believe is at this point their only recourse. You did hear that a public bill might be passed, but it would be unlikely that it would be a retroactive kind of bill. It might help if a rare incident like this happened in the future, but very it's unlikely that we would pass one that would help Brooklynn. I did in fact speak to the Minister of Justice, and he hasn't ruled out the possibility that this might be brought in in the future, but he did advise me that it would be very unusual that it would be retroactive. So I believe this is the only fair recourse that this family has left.

I suppose you could expect that they could go through some years of litigation and might find something through a back door, but I emphasize the word "might," and I don't, as I said before, believe it's something that in this day and age we would expect a family to do in these circumstances.

I believe that there is a remote chance that you set some kind of precedent, but if that's what we're going to do, I think this is the right kind of case to set a precedent from, so I'm asking for your support in endorsing this bill to the Legislature.

The Chair: Thank you, Mr. Friedel.

We do have some questions from members. Mr. Rathgeber first.

Mr. Rathgeber: Thank you, Madam Chair, and thank you to counsel for your enlightening presentations.

I must tell you, Ms Saccomani, that I am somewhat troubled by this application for a number of reasons. First of all, I do not believe that this is your only recourse, and I want your comment on this. You have a valid statement of claim as against the owners of this motor vehicle, who are in this situation the paternal grandparents. There has been an application to strike out your statement of claim. That statement of claim has been struck out as against the mother only.

In what I would regard as a very reasoned judgment by Madam Justice Moreau, she has stated explicitly that it's a triable point of law whether or not the vicarious liability sections of section 181 of the Highway Traffic Act will in fact make the owners of that motor vehicle liable for the negligent acts of the driver. So until the defendants, until Ms Corbett, successfully has that portion of your claim struck out either by going to the Court of Appeal or after a trial, how can you argue that you have exhausted all your other courses of action?

Ms Saccomani: The argument that we're making under section 181 of the Highway Traffic Act that Lisa – you have to of course understand that Ms Corbett's application is to continue to strike. I mean, she's going to appeal, I would imagine, to the Court of Appeal that we have no cause of action. Then the master has suggested and we have agreed that there would probably be a Supreme Court of Canada application on this very preliminary issue.

If we're successful at the Supreme Court of Canada, which will take another three to four years, then we have to come back to trial. At trial we then have the issue: do we have a triable issue? If we have a triable issue, if the court rules in our favour, then the court will grant damages. If the court rules against us, then we're going to the Court of Appeal. Either way, whoever is successful is going to go to the Court of Appeal and possibly the Supreme Court of Canada. That's why I say it's 10 years from today in terms of exhausting our litigation.

Justice delayed is justice denied. Justice Sulyma struck a criminal action against a group of Asian drug lords because they had to wait two years for the courtroom to be built. She said: justice delayed is justice denied. So it's on that basis that I'm here before this committee. We still have to go through the courts to assess what her damages are, but at least we don't have to wait five years or more to determine that she even has a cause of action.

9:55

Mr. Rathgeber: Okay. So am I correct in assuming then that you have not exhausted all your recourses, but the one recourse that you have open to you is not convenient given the needs of this infant plaintiff? Is that a fair summation?

Ms Saccomani: No, it's not a fair submission. When you say it's not convenient . . .

Mr. Rathgeber: You're concerned about time delays.

Ms Saccomani: Well, I think 10 years in somebody's life is a lot of time. It's not a question of convenience, having to go to the corner store around the block or having to go to another city. We're talking about years of having to care for a child 24 hours a day, seven days a week. She has these seizures. She has to be watched constantly. That is a huge factor. It's not a question of convenience.

Mr. Rathgeber: We're not going to get into an argument. I just wanted to get your thoughts on that.

My second question is with respect to the Supreme Court of Canada's decision in Dobson, which I think is very much on point here. I have a concern with Justice Cory's majority decision when he states in your brief, paragraph 8, "It may well be that carefully considered legislation could create a fund to compensate children with prenatally inflicted injuries."

Ms Saccomani: Or, alternatively, motor vehicle legislation could be created to create a motor vehicle legislative exception. If you continue, the next sentence says that.

Mr. Rathgeber: "Alternatively, amendments to the motor vehicle insurance laws could achieve the same result in a more limited context." Don't both of those sentences refer to a public bill as the one that was passed by Westminster?

Ms Saccomani: Oh, I think so. What I'm trying to say is that a public bill is a considerable period of time and may well not help Brooklynn Rewega because of the retroactive nature of the bill. Dobson leaves the door open. It closes the door to falling off a stepladder, driving, drinking while you're pregnant. It closes the door to all of those things. It leaves the door open to motor vehicle legislative exception.

In this province we haven't considered that. None of you have had to consider this before. I mean, we've never thought of this, and because we've never thought of this, we have a void in our legislation that doesn't help this child. This child is a crack, the crack in the window – okay? – and we're trying to create a bill that will redress her special needs. It's unique and rare.

Mr. Rathgeber: One final quick one, Madam Chair. I put this out to any of the counsel; maybe they can help me. In the Dobson decision the infant plaintiff sued not only its mother; it sued in that case the father, who was the owner of that vehicle.

Ms Saccomani: It did not.

Mr. Rathgeber: Well, Justice Cory says: "The infant respondent, by his grandfather and litigation guardian, launched a tort claim against, inter alia, the appellant for damages he sustained." So what does inter alia refer to?

Ms Saccomani: I spoke with Anne MacAuley, the lawyer for the child. The mother was the only party sued in that case.

Mr. Rathgeber: So Justice Cory is wrong when he says that a claim was filed inter alia against the appellant?

Ms Saccomani: I can provide you with the document this afternoon, if you wish, to show that the mother was the only party sued.

Mr. Rathgeber: Ms Corbett, do you have anything to enlighten me on this point?

Ms Corbett: No. I'm not sure who was sued, but the only issue that was before the Supreme Court in this particular case was the issue of the mother's liability. I actually haven't made contact with counsel, so I'm not entirely sure. All I know is that the only issue that was put before the Supreme Court of Canada, because I think it was framed as a very specific point of law question, was: here are the facts; is there maternal tort liability for alleged negligent driving in Canada?

I apologize that I can't be of more help on that point.

Mr. Rathgeber: No. I understand that. The case deals with maternal tort liability, but in recitation of the facts the justice of the Supreme Court says that other people were sued at some point along the way.

Thank you, Madam Chair.

The Chair: Thank you. I have three members that wish to ask questions. Mr. Lord first.

Mr. Lord: Thank you, Madam Chair. Certainly, let me express my condolences to the family. This must have been a terrible trial for you.

I have really just two main questions to Ms Saccomani. I could probably ask them all day, but the first one is: is there no money whatsoever coming to the family now from the insurance company? No offers of settlement? No anything? They're just taking a position that they owe nothing?

Ms Saccomani: They have made a small offer of settlement.

Mr. Lord: Okay.

Ms Saccomani: I would say, though, that given the experience that I have in personal injury accidents, if you want to know what a child is entitled to and what the courts have applied in a case like this, when you prove liability – that is, A caused B's accident – the damages that are assessed in a situation like this are anywhere from $2 million to $4 million. The most recent case involved a young girl who became a paraplegic as a result of a high jumping accident in the school gymnasium, and she was awarded over $3 million. If you consider the cost of care for this child, $200,000 is small considering that she's three years old. There are expert reports that calculate the cost of care. Cost of care in this child's case is over a million and a half dollars.

Mr. Lord: Well, it just occurred to me that with all the legal fees and legal costs of going to the Supreme Court, being pragmatic, they would have made some sort of offer.

The second question that I'm wondering about is: if you continue with this route and if this committee in its wisdom decided to allow you to continue on this path, it seems to me that it would run into some fairly significant legal challenges, as well, going forward. I guess what I'm concerned about is raising the expectations of the family expensively, needlessly, and fruitlessly ultimately, because I'm not sure that this course of action would change anything or not be appealed or not just result in another legal merry-go-round in addition to all the other ones. Could you perhaps comment on that?

Ms Saccomani: Oh, I'd be pleased to. The way this bill is drafted would not result in a legal challenge because it's contemplated within the provisions of the Dobson case. Our courts would consider: does this case conflict with what the court has said in Dobson? I would strongly say absolutely not. It's in line with what the Dobson case says, which is that the Legislatures can create a motor vehicle exception to the general doctrine of prenatal maternal tort immunity.

Mr. Lord: So is it your expectation that if this committee allowed this, you would then almost instantly get a $3 million or $4 million settlement?

Ms Saccomani: Absolutely not. We would take another five years. It would still take five years. Each side gets the expert reports to say: what is this claim worth? We need to have expert reports to know what kind of nursing care this child is going to eventually need. Lisa is severely disabled herself. What is the child's life expectancy? All of that information has to be prepared through what we call economists' reports and all kinds of experts. They put the calculations together and then we argue about it, and that's why you have a trial.

I've had many cases over the last 20 years where we've had a car accident where a guy runs a red light, crashes into a mother, and kills the mother and child. We've been in court six, seven years. That's a straightforward case. The reason we've been in court for six or seven years is because the insurance industry – and I apologize, but this is my experience – is to deny, deny, and delay. I can tell you that in the case I just had where the mother and child died, a beautiful family, the offer that I made to the insurance company two years after the accident occurred was the offer they gave me the first day of trial six years later.

Mr. Lord: Well, I guess not to continue with the questions then, Madam Chair. Perhaps I could ask just one more, though. If you're saying that this process still leads to five years of delay, then what has changed?

Ms Saccomani: Five years. Another five years. We're seeking to save ourselves the five years of the preliminary legal wrangling. What we're saying is that if this bill is passed, we can then go to the merits of the case, which is: let's get the experts to assess what Brooklynn's needs are. Let them do the reports. Let them have their discoveries. That's going to take two years. Then they're going to say that they're going to need a 15-day trial. We're going to be on a trial list for another year after that. We get to trial, and then they may appeal because they don't like the judgment. Then there's another one or two years after that. That's what the average Albertan faces when they're in a catastrophic case. Monies are never paid overnight; I can tell you that. I've taken the oath today. The monies are never paid over overnight. You still have five years. I'm trying to save this child five years.

Mr. Lord: Thank you.

Thank you, Madam Chairman.

The Chair: Right. And I know the rest of the members will be brief in their questions.

Ms Saccomani: I'm sorry. I apologize. I know I'm long-winded.

The Chair: Mr. McClelland.

10:05

Mr. McClelland: Thank you very much, Madam Chair. I'd like to address my comments to Mr. Steed, if I may, with perhaps a broader response if it's deemed to be in order. This is a very, very difficult case for everyone involved, and I understand that. My mentor, who is now dead, told me one time in Yiddish – and I don't know how it goes, but he said to me: Ian, you must do what's right, not what's legal; there's a difference. It seems to me that in this case implications that Mr. Steed made reference to are also referred to in Pr. 5, in the litigation that came from the court in Dobson versus the respondent and the Canadian Abortion Rights Action League and all of the people involved. So the peripheral considerations I'm supposing at the Supreme Court level had to do as much with peripheral considerations such as fetal rights and abortion rights, et cetera, as they did with the injuries sustained to the mother, and that's why it's the third party.

My point is that if this has illustrated a catch-22 situation where people who have purchased insurance for the purpose of protection from catastrophic loss are denied access to that because of other considerations, then the law that should be providing for the innocent victim is in fact working against them. So if we need to make an exception, that's why we're here. The Legislature has the capacity to do what's right, while the court may be bound to do what's legal. So, yes, we may well be setting a precedent, but isn't that our purpose and isn't that our job?

Thank you.

Mr. Steed: Going back to the question of insurance – and perhaps Ms Corbett might want to comment more on this – you purchase insurance to cover certain eventualities based on the law that exists at the time the insurance was purchased and the time that the accident occurred. At the time the insurance was purchased and the accident occurred, the Supreme Court of Canada would say that the insurance company was not covering that kind of liability because that was not in the law.

So what we're doing if this bill were to be enacted – it can be done; you can reach back and change the law that existed at the time the accident occurred. Basically that's what's happening. You're reaching back, and you're saying that the law at that time is now going to be different. The understanding of the insurance company was that the law was one way. We're going to change it now, and the expectation will be different. Although, quite frankly, personally I have a difficult time talking about fairness in relation to insurance companies because I'm an individual as well, there is a certain element of fairness in relation to those who carry the insurance, who are going to be paying the insurance, what's fair to them as well. They entered into that understanding based on a certain nature of the law, and now the law is going to be changed retroactively.

Mr. Snelgrove: Was the mother or the registered owner of the vehicle charged or convicted of any offence as a result of this accident?

Ms Saccomani: Highway traffic offence?

Mr. Snelgrove: Any offence. The registered owner or the mother.

Ms Saccomani: No, they were not.

Mr. Snelgrove: There were no charges and no convictions?

Ms Saccomani: No.

Madam Chair, I just want to endorse what Mr. McClelland said about having the courage to do change in the right circumstances, and I would say that in terms of this insurance contract and what was purchased or what was understood at the time, as I said, when we issued the statement of claim, it took the insurance company lawyers seven months to tell us that we didn't have a case. This is novel.

This man has had the same insurance with the same company over X number of years, and it's not that this specific type of accident was contemplated. But, as I said, if this child was being driven to the hospital because the child was born at home and this accident happened one minute after the child's birth, there would be insurance coverage. It's a technical legal loophole that the insurance company is able to use in this particular case.

Mr. Pham: I have two very short questions. The first one is to Mr. Steed. The Dobson v. Dobson case was handed down in 1999. Since then until now there has been a five-year lapse time. Why hasn't the ministry moved in bringing in some kind of public bill to address this issue?

Mr. Steed: I don't know that tort reform has been something that's been looked at actively by the institute until now. I'm told that the institute is looking at tort reform, so we'll be looking at not only this kind of issue but others in the future.

On your question of why haven't we done it before, there hasn't been the call for it, quite frankly.

Mr. Pham: My second question is to Ms Corbett. I have heard again and again from the submission of Ms Saccomani that if the car was driven by the father, she wouldn't have need to be here today.

Ms Corbett: That's correct.

Mr. Pham: Just to help me understand the implication of this bill, if the car was in fact driven by the father, would it make any difference in your settlement to the family?

Ms Corbett: Well, you know, we're starting to talk about issues that – there are other issues in the litigation beyond the maternal tort liability issues. There are issues with respect to whether or not the injuries that Ms Rewega complains of were caused by the accident or were caused by other things. So I don't even want to get into those other issues, but there are other issues in that respect.

In terms of the settlement that the insurance company would be looking at, for example, if Mr. Rewega was the operator of the vehicle as opposed to Ms Rewega with the child as a fetus inside her, I think Ms Saccomani is correct in indicating that we would then be looking at gathering things like expert reports on causation and expert reports on the quantum of damages, all of that mitigated by whatever insurance limits Mr. Rewega chose at the time to put in place on his policy of insurance.

Although Ms Saccomani may have suggested to the committee earlier today that the claim may be worth $3 million or $4 million, if an individual is only carrying $1 million in insurance limits, then that is all that they have access to through the insurance which they purchased by payment of premiums as the owner or whatever of that vehicle. So if there's any claim or judgment in excess of insurance limits, then that claim or judgment is sought from the party who was underinsured.

You know, in these particular circumstances if we, for the sake of argument, say that Ms Rewega has a good cause of action against the grandparents – because there is still a viable cause of action against the grandparents, which I think Mr. Rathgeber pointed out to you. But if, for example, that judgment is awarded and, let's say, the judgment is $3 million or $4 million and the grandparents only had a million dollars, well, you know, the alternative then, I guess, to seek recourse from the judgment is to execute against the grandparents; i.e., seek that compensation against the grandparents.

I didn't have this opportunity, I think, when Mr. Steed spoke to Mr. McClelland's comments – you know, I realize that insurance companies garner little sympathy, and I appreciate that – but I do want to emphasize that when you pay your premiums, you pay for coverage that's in accordance with whatever the law is at the time. The difficulty that we're dealing with here is that there was no sort of maternal tort liability at the time that this insurance premium was collected, so you get into all of those issues. I just wanted to reiterate that, because I think Mr. Steed does make a good point on that particular issue.

Ms Saccomani: To add to that, the answer to your question is yes. They could sue the father, and that issue would not be raised. They're trying to strike the claim, but there is no claim. If the father was driving, they would not be bringing up that application.

Mr. Pham: Thank you.

The Chair: All right. I don't think that there are any other questions from members. I would as chair just ask for clarification on what I understood this submission to be: the state of the law in Canada and, therefore, in this province prior to Dobson in 1999 was that there wasn't a general rule providing for maternal tort immunity.

Ms Saccomani: That's correct. Interestingly enough, before this decision in Dobson the rule, based on the Ontario Court of Appeal in Dobson, was that you could sue the mother for prenatal injury sustained by the child. There wasn't any Supreme Court of Canada decision. It was the very first time.

The Chair: So there are, prior to 1999 in Dobson, reported cases of successful lawsuits where children have sued a mother in motor vehicle accident scenarios and obtained damages?

Ms Saccomani: Yes. The Dobson case is that case. When we speak to the rare and unique case, this is the rare and unique case. Dobson is the only case in Canada. So before the Supreme Court of Canada decision we had the Ontario Court of Appeal that gave the child the right to sue, and that decision was in 1995. So, yes, before the 1999 decision we had the 1995 decision of the Halifax Court of Appeal. There is no other decision in Canada at all touching on this type of situation. That's how rare this kind of case is.

10:15

The Chair: Ms Corbett and Mr. Steed, do you agree with that description of the law?

Mr. Steed: I'm not aware of any cases where the issue was the liability of the mother. I haven't done extensive research, but I'm not aware of any. I can't say that there are any prior to Dobson. There were cases quoted by the Supreme Court of Canada where the liability was in relation to a third party. There seem to be quite a few of those. But prior to that I don't recall the Supreme Court of Canada referring to any, so I doubt that there are any.

Ms Corbett: I concur with Mr. Steed on that point.

The Chair: So it wasn't a case that there was a common-law general rule providing for this?

Ms Saccomani: No. The Supreme Court of Canada created that common-law rule.

The Chair: Right. Then just one final, Mr. McClelland.

Mr. McClelland: If I may, Madam Chair, consider a comment that Ms Corbett made in response later, and that had to do with the premium purchasing. It seems to me that if the third party, the father, had been driving, the case would have been paid. Therefore, the premium would have to have been considered or implied for coverage for the unborn child. Whether the mother was driving or the father was driving doesn't really matter because the unborn child was the unborn child. If the father had been driving, you'd have a claim, so therefore the premium considered that eventuality. To suggest that because the law didn't specifically say that is, in my view, just specious.

Thank you.

The Chair: I don't know if Ms Corbett can really add anything further to what she's already said.

All right. I'm just going to call on Parliamentary Counsel if she has any final questions or comments.

Ms Dean: I just have one question for Ms Saccomani.

Ms Saccomani: I'm so popular today.

Ms Dean: You've referred to the state of the law in 1999, the Dobson decision, and I know that the chair directed some questions on this point, but just so I'm clear, are you aware of any cases, reported or not, where an infant has successfully sued a mother for prenatal wrongful conduct in connection with a motor vehicle accident?

Ms Saccomani: None. There are many cases where an infant sues the mother for injuries sustained in a car accident after the child's birth. We all do those cases.

Ms Dean: Thank you. That was my question.

The Chair: Thank you.

Ms Saccomani: Thank you for your patience. I'm sorry; I know that I went on and on. I'm very passionate about this. It's a privilege to represent this family; it's a beautiful family. I thank you very much for your patience in listening to me today.

The Chair: Well, no apologies are necessary. On behalf of all members of this committee, which is an all-party committee of the Legislature, I want to thank everyone who has attended here and helped us to understand the complexities of this case, the difficult facts, and the law that surrounds this matter. I can tell you that we will all do our very best to give this matter proper consideration. I think you can be assured of that.

Ms Saccomani: I have no doubt.

The Chair: Our plan is to meet next week, next Tuesday, to reflect and discuss this matter and, hopefully, make a decision, of which you will be notified as quickly as possible. So unless there's anything further, then, we'll conclude the hearing on Pr. 5. Thank you.

Ms Saccomani: Thank you so much.

The Chair: Could I have a motion to adjourn? Mr. Pham so moves. All in favour, please say aye.

Hon. Members: Aye.

The Chair: Any opposed, please say no.

We will see you next Tuesday, then, in this room at 9 a.m. That would be Tuesday, April 27, 9 a.m. Thanks everybody.

[The committee adjourned at 10:20 a.m.]