

Title: Tuesday, November 22, 2005 Private Bills Committee

Date: 05/11/22

Time: 8:31 a.m.

[Dr. Brown in the chair]

The Chair: Good morning, everyone. We'll call the meeting to order. The agenda for today's meeting has been circulated with accompanying materials. Would someone like to move approval of the agenda?

Mr. Johnson: I so move.

The Chair: Mr. Johnson. All in favour? Carried.

The next item of business is the approval of the committee minutes from our last meeting of Tuesday, April 26, 2005. Those minutes have been circulated. Are there any errors or omissions? Hearing none, can I have a motion to approve the minutes as circulated?

Mr. Oberle: I so move.

The Chair: Mr. Oberle. All in favour? That's carried.

The next item of business is the Deliberations and Decision on Bill Pr. 4, Brooklynn Hannah George Rewega Right of Civil Action Act. As members are aware, there is a public bill which is now before the House. We have before us Bill Pr. 4 in a form which was originally presented to the committee, and the understanding, I think, was that if this bill was to be approved by the committee, it would move in concert with the public bill that is before the House.

I'm going to ask Shannon Dean to speak to some amendments, and then I'm going to ask Mr. Oberle to comment on that as the sponsor of the bill.

Mr. Oberle: Do I need to move it first?

Ms Dean: I'll just comment on the distribution and then you can move the amendment.

Before Mr. Oberle makes his motion with respect to the proposed amendment that was circulated to committee members, I just wanted to comment briefly on it. Last week I was given direction from the chair and the sponsor of the bill to bring forward amendments for the committee's consideration so that the scope of the private bill dealing with Brooklynn Rewega would not be broader than the scope of the bill currently before the House that's in the form of a public bill.

As committee members are well aware, the public bill did receive second reading last night. The limitations in that public bill are that the maximum amount of compensation is dictated by the maximum amount of the insurance policy that covers the mother. Also, there's another amendment that's required, and that deals with a fine point. It has to do with section 635 of the Insurance Act, and it just clarifies that if Brooklynn Rewega was successful and did get a judgment in her favour, the only way she can enforce that judgment is against the insurer. She can't enforce that judgment against the mother personally. Those were, I think, public policy concerns that were raised during the course of the hearings on this matter.

I'll leave it at that, Mr. Chair.

The Chair: Mr. Oberle, do you want to make your motion and then make some comments on it?

Mr. Oberle: Thank you, Mr. Chair. I'm honoured this morning to move that

the Standing Committee on Private Bills recommend to the Legisla-

tive Assembly that Bill Pr. 4, the Brooklynn Hannah George Rewega Right of Civil Action Act, proceed with the following amendment:

Bill Pr.4, Brooklynn Hannah George Rewega Right of Civil Action Act, is amended by adding the following after section 1. Limit of liability

2(1) Any compensation for injuries and losses under section 1 shall be limited to the amount of insurance money payable under contracts of automobile insurance indemnifying Elizabeth Hannah Rewega that Brooklynn Hannah Rewega may recover as a creditor under section 635 of the Insurance Act.

(2) Notwithstanding any other Act, a judgment against Elizabeth Hannah Rewega resulting from the right of civil action established by this Act may be enforced only under section 635 of the Insurance Act.

The Chair: Did you wish to make some comments on that regarding the petitioner's position on it?

Mr. Oberle: Yes. Thank you, Mr. Chair. The intent, as stated in the presentation here and by the Rewega family, has always been this and has always been that the private bill be consistent with the public bill that we're considering before the Legislature right now. Of course, the proponents here didn't have the benefit of the wording of the public bill at the time they submitted the private bill. They are, it's my understanding, completely in favour of this amendment. This was always the intention, and this makes the private bill consistent with the public bill.

It also makes it consistent with the Dobson ruling of the Supreme Court. The private bill now would be limited to the specific case of negligence in the operation of a motor vehicle and the compensation payable, if any, to be determined by the courts later, would be limited to the amount of insurance available to the mother. So that makes it entirely consistent with the public bill that we have before the House right now.

The Chair: For the information of committee members, the reason that it's necessary to proceed with the private bill right now is because the public bill does not provide for any element of retroactivity, of course, and this is an accident which occurred in the past. So what we're doing, if the committee decides to recommend this bill, would be to provide retroactivity, to provide a cause of action in this specific instance.

Further discussion on the motion?

Mr. Johnson: We refer to section 635 of the Insurance Act. I wonder, Ms Dean, if you could maybe just describe that to us or give us an idea of what's in 635.

Ms Dean: Sure. It's a fairly lengthy section, and it details, basically, how somebody who has rights against an insurance policy can proceed to enforce it. You know, I'd be happy to circulate copies of that provision. It is exactly the same provision that's referenced in the public bill. My advice with respect to that particular section comes from Department of Justice lawyers that were dealing with the drafting of the public bill, hence the parallel language in this bill.

Mr. Johnson: Thank you.

The Chair: Anyone else? Discussion? Are you ready for the question?

Mr. Eggen.

Mr. Eggen: Yes. As I had expressed to this committee before, in

the spring when we were looking at this individual case, my biggest concern – and it continues to be so today – is that this is not necessarily the most appropriate use of the Private Bills Committee. I think that it's more appropriate for cases such as these to go through the court system, and I don't want to see this committee being used to circumvent the court system or through the proper course of appeals.

The Chair: Mr. Oberle.

Mr. Oberle: Thank you. Thank you for your remarks, Mr. Eggen. The court system is not available in this case, of course, because of the Supreme Court ruling. The purpose of the private bills process as stated in our literature is to, first of all, seek "remedy where no other remedy exists." While certainly there are other issues and other suits surrounding this particular case, there is no remedy for the child with respect to the negligent driving of its mother. In that respect I would suggest that it is appropriate to use a private bills' process.

8:40

Also, the purpose of the private bills process is to address cases where the normal application of law would seem to create a miscarriage of justice. Again, I would suggest that that's not an inappropriate view of this particular case and of this particular private bill.

I understand that initially the bill was forwarded in the last session and then again this last spring, and on a stand-alone basis I think it was difficult for a lot of members. But now the government as moved as a matter of public policy that there will be an exemption to maternal tort immunity, and all we're asking is that this one case be brought into that public policy forum.

Thank you, Mr. Chair.

The Chair: Mr. Rodney, then Dr. Swann.

Mr. Rodney: Thank you, Mr. Chair. I know that last year we had a little experience with a private member's bill, and I understood that a private member's bill could not be brought back in another form in a government bill that would at least resemble the original private member's bill. I recognize that this is a private bill versus a private member's bill, and I'm just hoping more so for the record – I think I know the answer to this, but I don't want Mr. Oberle or this process to encounter any stumbling blocks. So is there any problem with this private bill being reflected in a public bill at this point?

The Chair: Mr. Oberle, do you want to respond?

Mr. Oberle: As much as they seem like they're the same, they're not at all the same. They cover the same policy area, but in Alberta the public bill covers everybody on a go-forward basis and not the Rewega family. This bill only addresses the Rewega family. They have entirely different topic areas. I believe that the issue you're talking about is that in the event that a private member's bill is defeated, the same topic area can't be brought forward in another bill. But these two bills are targeted at very different groups: one being the public from now on and one retroactively addressing just one family.

Mr. Rodney: Thank you. So they are consistent, but they address different groups. That takes care of the fact that both can be brought forward at this time. I just want to make sure that we have that on the record.

Thank you.

Dr. Swann: I'm curious to know whether in each case negligence has to be proven for the compensation to be provided.

Mr. Oberle: Yes, that's the case. It only addresses the negligent operation of a motor vehicle by the mother. Of course, negligent operation by anybody else: there already is a cause of action for that. Yes. It's restricted to negligence of the mother.

Dr. Swann: So natural factors – for example, an ice slick or a storm causing an accident – would not constitute maternal negligence.

Mr. Oberle: Well, it would be up to the courts to decide whether or not the driving was negligent. As hon. Minister Stevens pointed out in the Legislature last night, there's a huge body of litigation around this issue, just not the mothers. Other drivers are regularly sued for such things, and how to prove negligence or not, there's a wide body of precedent there.

Ms DeLong: Is there any reason why every child who has been injured prenatally in an automobile accident for the last 50 years wouldn't be coming forward to this group? Is there any reason why every one of them wouldn't be coming forward to us in the future?

Mr. Oberle: Well, the best information that we have is that there are no other cases out there. The Justice department certainly wasn't aware of any. That's all I can comment. I'm not aware. Certainly the Justice department has done a pretty thorough review. There are none before the courts. That's about all I can comment. I don't believe there are any cases out there. It's an extremely rare occurrence.

The Chair: Mr. Agnihotri.

Mr. Agnihotri: Thank you, Mr. Chairman. I just want to say that this private bill is not useful because we are dealing with a public bill in the Legislature. My firm belief is that this is a social problem and that the government is fully responsible. They've been dealing with this problem in the past, and in this case I have full sympathy with all parties.

You know, we must trust the women. I mean, women are givers. If we are here today, it's because of the mothers. I mean, lots of women won't take chances if we don't trust them. They sacrifice a lot. I'm just coming to my point, okay? Number one, we must trust the mothers. If we trust them, then half of the problem is solved.

Some people are comparing this case – they are giving, you know, some suggestions that this legislation already exists in England. I lived in England for 14 years. I know that socially they are very much aware. At one time, about maybe 25 years ago, they used to have so many facilities for pregnant women there. They even used to supply free milk and so many free medicines. We can't compare everything here in Alberta to England.

Again, I know that maybe some of my questions are not related to this private bill, may be related to the public bill; I'm not sure. But my concern is children with disabilities.

You know, if you open the door here in this private bill, it will affect the lawyers. They will play their games. They can give the evidence that, oh, wow, this case has been through the private bills in Alberta. They can give that reference, and it might help them in winning some other cases. We are opening the door for more and more litigation than in the past. We should be ready for that because it's a lawyers' game, okay? They can play with this. We should be very, very careful before we make a decision on this case.

Some women: their lifestyle is different. I know that 99.9 per cent

of women don't want to see their children hurt in any way. You can check the history. I mean, they are doing their best to raise their children. Even during the pregnancy they do their best. We should trust them. Some women's lifestyles are different than the average. If they smoke or if they drink or if they play games actively, yes, accidents can happen. In a car accident – everybody has insurance – if the other party doesn't have insurance, what do we do? We go through the – what's the department? – department of vehicles.

I still believe it's the responsibility of the government. By doing this, we are opening the door for some other children who have a disability. We should be very careful dealing with this one. I think that if we do something here, it will affect the other cases too.

That's all I have to say.

8:50

The Chair: Dr. Morton.

Dr. Morton: Yes. I'd like to answer Ms DeLong's question and by way of that also address the question of the appropriateness of a private bill in this case. Ms DeLong wondered whether or not there would be other cases like the Rewega case that this might open the door for. The answer is no, and the reason the answer is no is, of course, that prior to the Supreme Court decision in Dobson any child who was injured by the negligence of a parent, mother or father, in a car accident could sue. In the Dobson case the Dobson child won at trial, won on appeal, and it was only the Supreme Court of Canada that took away the right of the child subsequent to birth to sue a parent for negligence and an injury caused prior to birth.

Prior to the Dobson case every child who was in the position of Brooklynn Rewega had access to the courts precisely to recover damages for negligence by either parent. The Dobson Supreme Court case changed that. But the Supreme Court indicated that it was a public policy issue – it was a question of balancing the rights of children against the rights in this case of the mother – and left the door open and indeed invited provincial Legislatures to come in and strike that balance, which is what the government has done in its public bill. The appropriateness of the private bill, as Mr. Oberle has properly explained, is to simply address a hole in the law where the normal rule of law would leave a clear injustice.

Brooklynn Rewega had this right prior to the Dobson case. People in her position will have this subsequent to the public bill. In this private member's bill we're simply filling the hole and ensuring justice that would otherwise not be done.

The Chair: Mr. Oberle.

Mr. Oberle: Thank you, Mr. Chair. I would just like to make some remarks on Mr. Agnihotri's remarks. First of all, he said that we should trust women, and certainly we do. Accidents happen all the time. The Supreme Court was very clear that there's no standard of care that we can define for a mother. Should she be allowed to drink or smoke? Should she be allowed to stand on a ladder while she's pregnant? Women have freedom of choice, and society does trust them. They have a right to live their lives as they see fit and conduct themselves as they see fit. They do not have a right to negligently operate a motor vehicle. The Supreme Court ruling was very specific. There is a standard of care for all people that have the ability and can legally operate a motor vehicle. There's a clear standard of care, and if you breach that, you're negligent. That was the thrust of this case.

Your fear that this legislation could eventually extend through litigation into other areas: that is precisely why the Supreme Court refused to wade into this area and invited the Legislatures to do so, because the Legislature can set a firm wall beyond which we cannot go.

I'll quote from the Dobson case, paragraph 65. They're referring to the United Kingdom legislation. They say that "the legislation renders it impossible to argue by analogy that the duty of care should be extended to other tortious situations." It's restricted to car accidents.

With respect to your comments on whether this is a social responsibility and that the government should play a role here, nothing whatsoever in this bill or in the public bill affects any other area, such as the health act or any programs that the government has for handicapped children or anything else. That has nothing to do with it. I would suggest that the appropriate place for that debate might be when we're looking at amendments to the health act or other related legislation. It's not a part of this bill. This bill does not extinguish any programs.

Thank you, Mr. Chair.

Mr. Agnihotri: I think, in answer to your response, that we should educate more the women in these particular cases. Also, it's not fair with the other cases. I mean, this case came here, luckily, for interpretation, and we are dealing with this one. What about the other cases which happened before and they didn't raise their voices and they suffered a lot? What are we going to do with those cases?

Mr. Oberle: As Dr. Morton just pointed out, there are no other cases. Before the Dobson Supreme Court ruling, children had a cause of action against their mothers for negligent driving. That ruling was in 1999. In fact, in the case that spurred the Supreme Court ruling, the family won in the New Brunswick Court of Queen's Bench, I believe it was, and won on appeal as well before it went to the Supreme Court. There are no other cases, as Dr. Morton has so rightly pointed out.

With respect to other litigation about other car accidents and other third parties or other family members, there's not an issue here. This only relates to mothers, and it is restricted to that.

The Chair: Anyone further? Mr. Agnihotri, one final comment.

Mr. Agnihotri: What about the monitoring systems? Suppose we say okay. You know, we make a decision today. In the future how would we monitor the women, that this thing is genuine?

Mr. Oberle: Again, Mr. Agnihotri, these public and private bills relate only in the event of car accidents. In the event of a car accident there's an investigation and negligence is determined. The process is already there. It's just been removed for mothers. It's there for everybody else that operates a motor vehicle. This system is already in place. Other than that, there's nothing that relates in any other way to any standard of care for mothers, and there's no monitoring required. It has nothing to do with how mothers behave. It has to do with how they drive.

Mr. Eggen: I just have a couple questions. I appreciate Dr. Morton's clarity in describing the Supreme Court decision and its ramifications. My first question – perhaps, Counsel, if you or Dr. Morton could help me. Number one, I would be curious to know if previous to the Dobson ruling, which I believe was in '97 or '99 . . .

Mr. Oberle: Ninety-nine.

Mr. Eggen: Were there any cases, to anyone's knowledge, where there was litigation against the mother in similar circumstances? Number two, I would be curious to know if there was in the Supreme Court's ruling anything that suggested that they were encouraging

provincial Legislatures to move to fill in this perceived gap as a result of the Dobson ruling.

Ms Dean: In response to your first question, about litigation prior to the 1999 Supreme Court of Canada Dobson decision, I'm not aware of any, but I can't say that I conducted an exhaustive search on that particular point.

With respect to your second question, about the Supreme Court of Canada's decision and their discussion on the motor vehicle exception for maternal tort liability, yes, they did discuss that, and they did suggest in their ruling that that would be something that wouldn't necessarily contravene public policy and would not necessarily have Charter ramifications. So they did say that it was an area for provincial Legislatures to deal with.

The Chair: Is the committee ready to vote on the issue?

Dr. Morton: What was the date of the automobile accident involving the Rewegas?

Mr. Oberle: December 31, 2000.

9:00

Dr. Morton: In fact, wasn't the insurance company initially ready to make a settlement in the Rewega case until they became aware of the new, recent Dobson precedent created by the court?

Mr. Oberle: Yeah. It's my understanding that the insurance company initially assumed that they were liable and offered a settlement to begin with.

Dr. Morton: And their assumption was correct in the absence of the 1999 Dobson precedent, yeah.

The Chair: I think we've heard a full discussion on it. Unless anyone else who hasn't contributed wishes to make a comment, I'm going to call the question.

All in favour of the motion of Mr. Oberle to move this bill forward as amended and recommend it to the Legislature – is that the correct terminology?

Ms Dean: Recommend that the bill proceed with the amendment that's been circulated to the committee.

The Chair: Okay. Everyone in favour of recommending that Bill Pr. 4 as amended proceed to the Legislature, please signify by raising your hands. All opposed? One opposed. The motion is carried.

Any other business to come before the committee this morning?

Mr. Elsalhy, you had requested an item regarding the waiver of fees and charges. Do you wish to speak to that this morning?

Mr. Elsalhy: No, sir.

The Chair: Any other business?

I'll accept a motion to adjourn. Mr. Liepert. All in favour? It's carried.

Thank you.

[The committee adjourned at 9:02 a.m.]