

**Title: Tuesday, March 9, 2004 Private Bills Committee**

Date: 04/03/09

Time: 9:02 a.m.

[Ms Graham in the chair]

**The Chair:** Well, everyone, it is 9 o'clock, so I think we'll get underway. Once again I'd like to welcome you all – members, staff, staff of *Hansard* as well – to this organizational meeting of the Standing Committee on Private Bills for the Fourth Session of the 25th Legislature. That's kind of a mouthful, but that's where we're at.

You know, you think you've seen it all or heard it all, but Mr. Pham, just before we got started, raised an issue that we might all be interested in; that is, if you attend a meeting of a standing committee, does that count you as being present for the entire day, including your presence in the Legislature? Well, that's maybe something for you to pursue, Mr. Pham, and report back to the committee on in due course.

It's good to see everyone in good humour and fine form, and it just seems like yesterday that we convened to deal with our petitions. We have a few more this session, as you will have noted from a review of your documents circulated by the clerk.

First off, though, I will ask you to look at the agenda, which is in your materials, and unless there are any additions or changes to it, I'll seek a motion adopting that agenda as circulated.

**Mr. Goudreau:** I'll move approval.

**The Chair:** Mr. Goudreau moves that the agenda be approved as circulated. All in favour, please say aye.

**Hon. Members:** Aye.

**The Chair:** Any opposed, please say no. The agenda is adopted.

We also need to address our last committee meeting minutes, dating back to April 15, 2003. Those as well were circulated with your materials, and I would seek a motion adopting those unless there are some additions or changes.

**Mr. Maskell:** So moved.

**The Chair:** So moved by Mr. Maskell that the minutes be adopted. All in favour, please say aye.

**Hon. Members:** Aye.

**The Chair:** Any opposed, please say no. The minutes are adopted as circulated.

Now, all of you I think are very familiar with private bills, although I see that we do have one of the sponsors for Pr. 1, Mrs. Ady, who is present, so I will go over the purpose of private bills and sort of the procedure in a very summary way just to refresh our memories.

Private bills are like other legislation that comes before the Legislature in that once they are passed, they do become law and are enforceable. Just like any other bill they become an act. They are then legislation, the law of the province, and enforceable. But they are different in that they are not brought forward by government or by a private member, such as we all are.

We're all familiar with government bills and private members' bills, but a private bill is promoted by either an individual or an organization seeking some remedy or right that isn't otherwise available in the existing law. We have seen examples of this where groups such as private colleges will come forward seeking special

incorporation by private bill, perhaps if they are seeking special structure or special rights that aren't available, say, under the Business Corporations Act or the Societies Act or the Companies Act, to just give an example.

Another reason that an individual or a group might come forward seeking a private bill is if they are seeking an exemption to an existing piece of legislation, and we actually have an example of that this year with Pr. 5. It would only be in exceptional circumstances, I think, that our committee would see its way clear to grant an exemption because by so doing we affect the law that applies to everyone else, and generally private bills only have application to an organization or an individual or a small group of people. So that, generally, is an overview of the nature of a private bill.

The rules for how you would bring a private bill before this committee and before the Legislature are set out in our Standing Orders 84 to 101, and you approach these matters by filing a petition. You petition both the Lieutenant Governor and the Assembly, and you must advertise in the *Gazette* and must advertise twice in a newspaper in the province. You must pay a \$200 filing fee, and you have certain time deadlines to comply with. Once having received the petitions, they are presented to the Legislature, which I did I believe yesterday.

Today we will be reviewing the petitions, and I will be reporting to the Assembly and seeking the Assembly's concurrence in whether we decide that they comply or not. Once the Legislature has heard our report and referred the petitions back to the committee, we then hold hearings, as you know. We'll decide on the schedule of our hearings today.

Once we hear evidence from the petitioners and any other interested parties, we then have the responsibility of deciding whether the petitions should proceed, proceed with amendments, or not proceed, and then that is reported back to the Legislature. Then the bills, if they do proceed, go through the normal stages of first reading, second reading, Committee of the Whole, third reading, and then receive Royal Assent.

Parliamentary Counsel, have I missed anything that we should review?

**Ms Dean:** The only thing I would add is that the private bills themselves will be drafted and introduced in the Assembly before the hearing of the petitioners, and I anticipate that this year that will happen within the next week or so.

**9:10**

**The Chair:** All right. Thank you very much. Any questions thus far?

We have Mrs. Ady here. She is the sponsor of Pr. 1. I think what we'll do now is just go through each one of the petitions and determine what it is seeking and whether or not it is in compliance with the Standing Orders.

First off we have Pr. 1, St. Mary's College Amendment Act, 2004, Mrs. Ady the sponsor. Here we have the petitioner, being St. Mary's College, seeking a private bill to amend its 1986 incorporating statute, which is the St. Mary's College Act, *Statutes of Alberta*, 1986. What is being sought is:

- a provision that will grant St. Mary's College the rights, powers, privileges and immunities of a natural person;
- the power to grant degrees, diplomas and certificates in fields taught at or in connection with the College;
- the ability to change the name of the College; and
- clarification that the College is not affiliated with the University of Calgary.

I'm reading from the report of Parliamentary Counsel that you have, and you might want to read along. As you can see, the petitioner has

fulfilled all of the requirements of the Standing Orders.

The background to this amendment act is that the Private Colleges Accreditation Board has recommended to the Minister of Learning that St. Mary's College be authorized to grant degrees independent of the University of Calgary and has also recommended that the college be allowed to use "university" in its name. Accordingly, this is why it is requesting the right to allow it to change its name.

All of the Standing Orders have been complied with, and we have received one letter of objection from Bill Lucey, who identifies himself as belonging to the Confederation of Regions political party of Alberta. He states that he is opposed to the bill, and he will be notified of the hearing should we proceed to that stage.

Anything you would like to add, Ms Dean?

**Ms Dean:** No, I don't have anything further to add, unless Mrs. Ady would like to comment.

**Mrs. Ady:** Just that, you know, they're a private college, and they have already been offering these courses and were well down the road in their process with the PCAB when the legal department here at government level encountered a small clause that created difficulty, and that's why they've decided to go this route. They are going under this Private Colleges Accreditation Board, but they found that with their attachment to the U of C that had to be severed in order for them to go forward. It's a lot of legal language that I don't understand. In fact, what they're trying to do is get the ability to give diplomas at the end of this year to students that are already taking courses because they thought that this was something that had been accomplished and then late in the process discovered this piece of the legislation that they needed to have changed, so that's why they're here.

**The Chair:** Was there anything else that you wanted to speak to?

**Mrs. Ady:** Well, yes, there is actually. Because of the nature of the fact that students are currently in their courses and in the spring will be hopefully convocating, I was hoping that I could see if we could move this process along through the Legislature, you know, as timely as possible just because, obviously, convocations are in the spring. We're going to be going well into the spring, and if it was, let's say, at the back end of May before we make decisions, there would be kids who wouldn't be graduating. I don't know if that is possible. That's why I came this morning, to see if there was anything that we could do to get this up in front of a hearing of your committee as soon as possible.

**The Chair:** Right. Do you have any dates as to when the convocation at the college will be?

**Mrs. Ady:** I just spoke to the president of the college, actually, and he's also written a letter to me just expressing why he needs this to be expedited if possible. He said that they have not scheduled the convocation yet, but typically they have their convocation at the end of April. Obviously, they won't be convocating if this doesn't go through because they won't have the legal right to offer a degree anyway. I would think that they're looking at the 1st of May as the convocation date at this point in time if possible.

**The Chair:** Yes, Mr. Pham.

**Mr. Pham:** Thank you. I just have a quick question. If they need this private bill in order to grant degrees, then why did they accept the students before they had the right to grant degrees to those students?

**Mrs. Ady:** A very good question. They had been told by the Department of Learning and by this organization that they applied to that there would be no difficulty. They thought they had the degree-granting status virtually complete when they began this semester, and they didn't encounter the difficulty until they were partway into the semester. That's why.

**Mr. Pham:** What is the length of the program? Is it a four-year program, a two-year program?

**Mrs. Ady:** Well, they were offering a two-year program. They extended that to a three-year program in English and I think in science. I'm not sure of all the different courses that they extended it to, but initially they were just offering two-year degrees.

**Ms Kryczka:** I'd like to pursue Hung's questioning a little bit more on the misunderstanding, I guess, of that thinking. Does the Minister of Learning support this now?

**Mrs. Ady:** We actually met with Lyle six months or so ago, and he's very supportive of it. He's in agreement with it. You haven't seen the material, obviously, and this isn't the time to argue the case, but also the president of the U of C is supportive of it as well.

**Ms Kryczka:** My question specifically was going to be: which degrees? Do they specialize more in the arts, or is it basic arts and science, or is it education?

**Mrs. Ady:** At this point in time I didn't really come prepared to argue the merits of it.

**Ms Kryczka:** I just wanted information.

**Mrs. Ady:** Mostly I think that right now they're offering an English and a science degree. They're very small still. They have not gotten very large. Mostly they're just offering a science and an English degree.

**Ms Kryczka:** So it would be a BSc and a BA?

**Mrs. Ady:** I don't want to say specifically. I can't answer that question.

**Ms Kryczka:** I just don't have a sense . . .

**Mrs. Ady:** It's in here. It's saying it right here: bachelor of arts with a major in English.

**Ms Kryczka:** Oh, okay.

**The Chair:** We are tending to get into the merits, all right.

You'll probably notice that we've got a proposed hearing schedule, and we're proposing that the first three petitions be heard on March 30. That would include Pr. 1. Assuming that everything was done in a straightforward manner, there is the option, certainly, of the committee deliberating on that matter that day rather than taking it through to the 27th. There's also the option of dealing with it on the 20th of April, which would be our second date for hearing the balance of the petitions, having heard your request there.

We've got another on the speakers list, but on this point, Mr. Snelgrove.

**Mr. Snelgrove:** Madam Chair, does it make a difference when we

deal with a bill if it's not law until it's proclaimed by the Lieutenant Governor? Would it make a difference? I mean, if the bill is not in effect until it's proclaimed, then no matter what time we deal with it in the legislative schedule, it wouldn't really be law.

**The Chair:** I'll let Ms Dean speak to that.

**Ms Dean:** Typically, private acts come into force on royal assent. Now, it would depend when royal assent is scheduled, and as you know, sometimes royal assent is scheduled a couple of times during a sitting. Again, it's out of our hands exactly when that would occur.

**Mr. Snelgrove:** But we know that it couldn't be before May 8 or 9 because of time for the budget. With the minister apparently announcing that the 24th is the start, then we cannot get this done before at least into the second week of May.

**The Chair:** Well, I'm not sure that follows. We just don't know the dates for royal assent.

**Mr. Snelgrove:** We could deal with the bill, but it wouldn't be law – would it? – until the Lieutenant Governor says: you're all done; go home.

**Ms Dean:** Yes, but sometimes royal assent occurs a couple of times throughout a sitting, not necessarily at the end of a sitting.

**Mr. Snelgrove:** Oh, okay. I'm sorry. Sure.

**The Chair:** All right.

Mr. Goudreau, did you have something?

**Mr. Goudreau:** Well, that was my question. It was one of clarification. I was wondering if we were going to debate the merits of the bill today. If we are, then I've got a series of questions. If not, I'll wait till we do debate it. I thought today was just for introduction of this thing.

9:20

**The Chair:** Yes, it is. We wouldn't be holding the hearing today because we haven't notified everyone. So what I'm saying is that we're suggesting that the first hearing date be March 30; right?

Mr. Lord?

**Mr. Lord:** Yes. Thank you, Madam Chairman. I guess the only question I'd want to ask at this point is that I'm a little unclear what the precedent set would be in relation to, for example, Mount Royal College trying to also get university degree-granting status. You know, I'm just not really clear on how this works, how a college with 400 students would be granted the right to be a university when Mount Royal College with 15,000 students is not going to be allowed to be or at least at this point. So, you know, how exactly all of this works in terms of accreditation and becoming a university would be the sort of clarification I would need to make a decision on this bill.

**The Chair:** I think that's a very good question. Today, you know, we're not holding the hearing, but I do believe that we will be getting representatives here from the Learning department and perhaps the accreditation board as well.

**Mr. Lord:** Okay. If we have someone that could sort of explain the background and the legal basis for this application at the hearing, that would be sufficient for me.

**The Chair:** Who will we be inviting? The Department of Learning in any event.

**Ms Dean:** Yeah. You may recall last year that we had a representative from the private colleges branch within the Department of Learning here in attendance. Now, if the committee is interested in having somebody else specifically, I'd be happy to undertake to send a request for that particular individual or representative to appear, but the practice in the past for this type of petition has been for the Department of Learning to send over one or two officials.

**Mr. Lord:** Well, I'd be happy as long as there's someone that can explain this process and what's different with this application than Mount Royal College, for example.

**The Chair:** That would be the plan.

**Mr. Lord:** Thank you.

**The Chair:** Mr. VanderBurg?

**Mr. VanderBurg:** Yeah. I have no problem with hearing this on March 30. Is there a reason that we couldn't do it a week earlier? Is there an advertising period that's needed before we move this up? I see that they've done all their required advertising. You know, all of the background is done.

**The Chair:** I think that's certainly a possibility.

**Mr. VanderBurg:** Well, you know, if there's an opportunity for the students to have this opportunity this spring, I'd like to give them that opportunity, and if it means coming here a week earlier than March 30, I have no objection to that. We're here anyway.

**The Chair:** I'm just going to confer with Ms Dean to see if that's going to help us in the whole scheme of things.

Well, everybody, I think that was actually a good suggestion and maybe quite a workable one proposed by Mr. VanderBurg, that we hold the first three hearings on the 23rd, and perhaps we could use the 30th to deliberate on those matters. There are certain reasons why the final two petitions need to be delayed for hearing until April 20. Because they're deficient in advertising, assuming that we do proceed with them, they will need that much time to get their advertising done. What I would suggest is that we return to that when we fix the schedule of hearings later on this morning. At this point we're still going through the petitions to review them for their compliance with the Standing Orders, but that looks very workable. Thank you for that.

**Ms Dean:** If I can just request, Mrs. Ady, that you provide a copy of that letter from the president of St. Mary's College. Unfortunately, when we set this proposed schedule, I was unaware of those timelines, and we certainly would have taken them into account when setting the proposed schedule of hearings. So it would be appreciated if you could provide that to me.

**Mrs. Ady:** Yes, I can provide it, and I'd just like to thank the committee for the special consideration. I'll try and be better prepared when I come back to actually present. So thank you very much for consideration today.

**Ms Kryczka:** Do they have flexibility at their end also, or have they already booked a location, et cetera, et cetera?

**Mrs. Ady:** They're actually waiting to hear from us. Obviously, they don't have the legal right to do anything.

**Ms Kryczka:** I mean, the U of C has their spring convocation in June.

**Mrs. Ady:** Yes, and he's indicating that they could. They're really just waiting to see from the work that we do here.

**Ms Kryczka:** So we don't need to take total responsibility for juggling schedules, et cetera. I mean, there is some responsibility, maybe, at their end too.

**Mrs. Ady:** I think they would be very flexible. I do. You know, it's something that they're asking for.

**The Chair:** Well, I think that's a good point. Judging by the time that our session is normally over, in the spring would probably be a good bet. Maybe not plan the convocation until after that.

**Mrs. Ady:** Oh, they won't be. Trust me.

**The Chair:** All right. That's good.

Moving on to Pr. 2, which is the Sisters of Charity of St. Louis of Medicine Hat Act Repeal Act, sponsor Mr. Bonner. The two petitioners here are Sister Ann Murtagh and Sister Mary Anne Mulvihill, both of the city of Calgary, who are petitioning that this act, the Sisters of Charity of St. Louis of Medicine Hat Act, be repealed on the basis that there is already a congregation established under the name Sisters of Charity of St. Louis of Calgary, which is governing the operation of both congregations of the Sisters of Charity of St. Louis, and both have similar purposes and objects. They advise that there is no need to continue the corporate existence of the Medicine Hat congregation. All requirements of the Standing Orders have been complied with.

Any questions on that one? Mr. Lord.

**Mr. Lord:** Yes. Thank you, Madam Chairman. I guess the question that I'm wondering about is that under the Business Corporations Act any corporations that do not file continuance documents on a timely basis are struck from the record and discontinued automatically without any action required. I'm wondering why that wouldn't apply in this case, and if it doesn't, why not? Perhaps we should review our acts and make sure that organizations like this – it's up to them to file continuance documents if they want to continue as opposed to having to do it this way, where they have to file to discontinue.

**The Chair:** Well, I would just remind you that this organization was incorporated by private bill. This is the Private Bills Committee, and private bills are legislation. Unless there was a provision in their incorporation document that said that the legislation would come to an end, like a sunset clause or something, it's on the books until it's repealed, so that's why they have to apply to repeal the legislation.

**Mr. Lord:** I understand why they're applying, because apparently that's the way our laws work now. I guess I'm just making a case for bringing some congruence to our laws, as opposed to putting the onus on applicants to have to come in and repeal.

**The Chair:** I think we're missing each other on this. It's just like the Insurance Act, for example. It doesn't just expire. It has to be repealed if we're going to replace it or get rid of it.

**Mr. Lord:** Okay. It's only a minor point anyway.

9:30

**The Chair:** Well, it's quite a major point, but maybe we can talk about it later.

Any other questions?

All right. We'll move on to Pr. 3, the Living Faith Bible College Act, sponsored by Mr. Marz. In this case the petitioners are requesting a private bill to incorporate a private college to be known as the Living Faith Bible College to be located near Caroline, Alberta. There are eight petitioners, and the petitioners have indicated that there's already an entity currently operating as the Living Faith Bible College, operated since 1971 by another organization, but they are seeking to incorporate this as a distinct entity. I'm not really clear if there's a connection or not. Are you, Ms Dean? There must be.

**Ms Dean:** The petitioners filed a number of background documents in connection with the history of the organization. To be honest, I haven't had a chance to review all of them. I think this is an organization that may have roots in the United States. Again, I can't provide an in-depth response because I simply haven't had the time to review them.

**Mr. McClelland:** Well, I think we should have clarity on this before it moves forward. If there's already an entity existent since 1971 and somebody else is moving in . . .

**The Chair:** That's very germane, I'm sure. Yes.

**Mr. McClelland:** So we should determine whether or not that's the case before it goes any further.

**The Chair:** Well, I would say this. They have fulfilled the requirements of the Standing Orders, so they're entitled to a hearing. But that's certainly a very important question.

**Mr. McClelland:** So they're entitled to go forward.

**Rev. Abbott:** I'm actually familiar with this Living Faith Bible College, and I'm quite sure they're a stand-alone entity. They may have a similar name to other colleges, but that's fairly common. I'm pretty sure that they're stand alone. They're not associated with the other college of the same name.

**The Chair:** Is that right?

**Rev. Abbott:** Yeah. It's like having a St. Margaret's Catholic church; there are hundreds of them. Living Faith Bible College is a common name.

**The Chair:** That having been raised, I think we should ask for more information on that point, and we will do so.

All right. If there's nothing else, then we'll move on to Pr. 4, Northwest Bible College Amendment Act, 2004, sponsored by Mr. Masyk. What is being sought here by the Bible college is to amend its incorporating statute, Northwest Bible College Act, *Statutes of Alberta* 1986, chapter 43, to give effect to a change in name. They want to change it to Vanguard College. The Northwest Bible College is a private Christian college located in Edmonton.

There isn't compliance at this point with the Standing Orders in that the advertising requirements have not been fulfilled, but we have been advised by the petitioner that newspaper advertising will occur

in the first two weeks in March and in the *Alberta Gazette* by March 31, so the petitioners' counsel has requested of this committee that the advertising deadlines be extended. We have done this before, so there's certainly precedence for it.

I think there was an explanation provided by counsel as to why it wasn't realized that they had to seek, number one, a private bill for this name change. I think they had done a corporate search and determined that originally the college was incorporated as a society. Am I correct, Ms Dean?

**Ms Dean:** Yes, you are.

**The Chair:** What happened next?

**Ms Dean:** I think they found that it was struck from the register for failure to file, similar to what Mr. Lord was talking about, but then I think what was not known to the petitioners' counsel was that there was a private act that was given approval, too, in 1986 to establish it that way. I guess there was just some confusion with respect to the corporate status of this entity, which led to the delay in the advertising.

**The Chair:** You know, one would have to assume that perhaps the officials of the college itself maybe were not completely aware, first, of the status and therefore weren't able to instruct their lawyers as to what needed to happen.

Any discussion on whether or not this committee would like to move that we grant the waiver relative to advertising?

**Hon. Members:** Agreed.

**The Chair:** Okay. All right. Mr. Pham, you want to make the motion?

**Mr. Pham:** Sure.

**The Chair:** We'll give you the proposed motion then.

**Mr. Pham:** Madam Chair, I move that in respect of the petition received for Bill Pr. 4, Northwest Bible College Amendment Act, 2004, the committee recommend to the Assembly that Standing Order 89(1)(b) be waived subject to the condition that the committee be provided with confirmation that advertising has been completed before the committee hears the petitioner.

**The Chair:** Thank you, Mr. Pham.

All in favour of Mr. Pham's motion, please say aye.

**Hon. Members:** Aye.

**The Chair:** Any opposed, please say no. That motion is carried. Thank you very much.

All right. Moving on to our final petition then, Bill Pr. 5, which is the petition of Brooklynn Rewega, an infant, by her legal guardian and father, Doug Rewega. The petition here is seeking a legislative exception to the general rule in our law that there be maternal tort immunity for prenatal wrongful conduct.

The reason cited for this request is to allow for litigation to be commenced against the infant's mother for certain injuries sustained in a single-vehicle accident that occurred on December 31, 2000, before the birth of the child. I think the child was born prematurely. I might be getting confused with other cases I've read on this, but

the child, Brooklynn Rewega, was born subsequent to the motor vehicle accident and, it is alleged, has certain injuries as a result of the previous motor vehicle accident. So the draft bill is proposing that the infant be granted a right of civil action against her mother for those injuries sustained in the accident.

The petitioner has not met the *Alberta Gazette* advertising requirement in the Standing Orders, but the petitioner's counsel advised us that this will occur on March 15. So we need to consider whether or not we wish to grant a waiver in this instance subject to the petitioner complying with that requisite advertising prior to our hearing into the matter. We are also waiting to find out who the name of the insurer is. This would be the insurer of the vehicle that was being driven, I believe, who counsel for the petitioner advises would most likely have an objection to the granting of this petition.

I have just last night in the House read this lengthy decision from the Supreme Court of Canada which sets out the current state of the law, which is that there is no right of civil action in this instance. So that's where we are.

Yes, Mr. McClelland.

**Mr. McClelland:** Thank you, Madam Chairman. As much as I'd love to go down this road on this – it's a fascinating debate – I'm wondering if it's appropriate that this should come in as a private bill, because the introductory comments from counsel indicate that it has to do with an individual or a corporation. This is a question of a public nature which would bring into question the common good rather than individual good, so for that reason I don't think it's appropriate to come into the Legislature as a private bill.

**The Chair:** Well, that is an obvious and very legitimate comment. As to whether or not the petitioner has a right to come before this committee is another question, I think.

**Mr. McClelland:** So they automatically have the right?

**The Chair:** Well, Ms Dean, would you like to comment on that question?

9:40

**Ms Dean:** I think the issue as to whether this is appropriate to be brought forward as a private bill or as a public bill is a matter that should be debated when you hear from the petitioner.

**Rev. Abbott:** My question was going to be if there is any precedence, for example, in any other provinces. If there isn't, by adopting or passing this bill, would it set a precedent in giving the unborn some rights?

**The Chair:** Well, you know, we are not a court, so it wouldn't be a legal precedent. We've got the Supreme Court of Canada saying one thing, at least the way I read it, and I presume that others would come to the same conclusion. If we did grant the petition, then it would be giving an exception to one infant that wasn't available to, you know, all other infants in similar circumstances in the province of Alberta, so giving a special right. That's Mr. McClelland's point: should we be doing that when, you know, we've got a law of general application? Is it proper to give an exception to give special rights just to one infant?

Mr. Lord.

**Mr. Lord:** Thanks, Madam Chairman. I guess the question that's in my mind is that it's pretty clear to me that a decision on this, if it were favourable, would have profound implications socially, legally.

We could see thousands of similar petitions before this committee in short order, I would suspect. I would be very worried about getting into this without major legal arguments being put before this committee on both the pro and the con sides and some real experts in law advising us on this, because I do not feel that I have the qualifications to fully understand all the legal implications that could come out of a decision like this. So I'm wondering: if this committee goes ahead, would we be provided with those sorts of legal opinions as to the possible and probable implications of any outcome this committee would come to?

**The Chair:** Yes, we will. I venture to say that the government of Alberta through the Justice department has the largest law firm in the province, and I do believe we will have good advice coming from the Justice department plus our own Parliamentary Counsel.

**Ms Dean:** Certainly, Mr. Lord, as part of the normal course during this procedure I do prepare a Parliamentary Counsel report associated with any private bill that comes before this committee, and if there are questions that may affect public policy in connection with a certain department, for example the Department of Justice, we ask the minister for attendance by those officials. So I would anticipate that that would occur in this case.

**Mr. Lord:** Thank you.

**Ms Kryczka:** I don't know anything other than what is on this paper about this case, but I think that the concern is: do we allow them to make a presentation to this committee and then go from there, or do we shut the doors now? Is that really the question right at the moment?

**The Chair:** Well, it is insofar as in order for the matter to proceed further, this committee would need to provide a waiver of the advertising requirement.

**Ms Kryczka:** That's, I guess, somewhat basic, but the implications of us hearing this and getting into this kind of scenario is what I hear my colleagues questioning. I thought I heard Shannon say that we could do that. Did you say that we may hear from them? Are you advising us that it's okay for them to present if we decide to approve the waiver?

**Ms Dean:** Yes.

**The Chair:** You know, any individual or group can come forward and petition the Legislature because we're sort of the court of last resort, so to speak. So as long as there has been compliance with the Standing Orders or, you know, we grant a waiver if there isn't complete compliance, then the petitioners are entitled to have a hearing before this committee. Then we have to, you know, weigh what we hear against the public policy considerations, the law.

**Ms Kryczka:** It's not time to make that decision yet.

**The Chair:** Yeah, but that's our job. That's our responsibility. So, you know, insofar as we've granted a waiver to others and most recently Bill Pr. 4, I guess I would think that it's a technical thing.

**Ms Kryczka:** I would like to move that we grant them the waiver.

**The Chair:** Okay. I think there's a speaking list, but I'll certainly entertain that later.

**Mr. Pham:** Madam Chair, having heard the concerns from all the committee members, even though they are very valid concerns, I think the question as you put it is whether we are prepared to waive the advertisement requirements so that the petitioner can come in front of the committee and make their presentation, and after they make the presentation, then we as committee members can decide whether we pass the bill or not. Having said that, I think that we should give these people the right to appear in front of the committee because they have gone through a lot of expense to get to this point, and once we hear them, then we can make a decision based on that.

**The Chair:** Thank you, Mr. Pham.

**Mr. Lord:** If I could just speak on that. Earlier in this meeting there were good explanations made of why the delay had occurred and why we should grant that waiver. I haven't heard in this case why there were any delays made nor that this is such a timely matter that it couldn't be heard at a later date, properly advertised. I would suspect that on such an important decision there may well come criticism that this was a little bit of an ambush or a little bit of, you know, drop it in at the last possible moment before people with opinions opposed could organize and intervene, et cetera. So I would be concerned about granting a waiver in this case if there wasn't some absolutely compelling reason both why it was timely and why it was delayed.

**The Chair:** Fair question. I've just had reference to a memo from counsel for the petitioner, and perhaps I can read it into the record. It's a memo to the office of Legislative Counsel from Rosanna Saccomani dated March 3, 2004, re *Alberta Gazette* advertisement. The memo reads:

The placement of the ad in the *Alberta Gazette* regarding this Bill will appear in the issue published on March 15th, 2004. This is the earliest date we were able to arrange given that the notice of a Private Bill deadline did not come to my attention until the early part of February. Unfortunately, I have never considered the route of a Private Bill until I read a Notice in the *Edmonton Journal* in early February which made reference to the March 3rd, 2004 deadline. I then began to explore this option and concluded that it would be appropriate. This exercise has been a learning experience and as such, mistakes are made along the way.

We have tried to address the advertising issue by advertising in both local papers at significant cost to our client. As well, all materials submitted under cover of our letter of March 3rd, 2004 are being concurrently provided to the lawyers for the motor vehicle insurers involved in the Rewega accident. We expect that this single party would be the only voice of dissent on this issue. As notice has been directly provided to this third party, there is no prejudice suffered by the delay of the *Alberta Gazette* ad.

Accordingly, your extension of this requirement would be greatly appreciated.

Thank you kindly.

That is actually in your binders under a tab file.

**Mr. Lord:** I also had another question, because you mentioned you have a Supreme Court decision that would be against what this bill is asking for. Do we actually have a right to grant some sort of exception to the rule when the Supreme Court has decided that that would not apply? Is that the basis of that decision?

**The Chair:** The case I was referring to was *Dobson and Dobson*. It's a 1995 decision, and I think it's the leading case in the area. As to your question, "Do we as this standing committee have the right to grant an exception?" I believe that we do, but whether we should or not is the question.

9:50

**Mr. Lord:** We do have the right to grant an exception to a Supreme Court decision?

**The Chair:** I believe we do.

**Mr. Lord:** It's very interesting.

**Ms Dean:** It's not to say that that private bill, if it were to become law, wouldn't be challenged under the Charter. Okay?

**Mr. Snelgrove:** You know, I think I'm kind of like Ian. I would love to have this debate on the broader issue that is here, but quite honestly I don't know how we could give someone I think a false opportunity to challenge federal statutes. If that were the case, we would have the gun people here tomorrow.

If we could set aside federal law or the definition of an unborn child or a fetus's rights, you will never be able to – you know, even in our petitioner's guide it says that you can't if the ramifications would create a serious public policy issue. Well, I would think that giving rights to an unborn would be considered very serious policy. I don't know where the balance comes when you allow someone a hearing when they have no possible chance of moving forward.

**The Chair:** Keeping in mind, however, that the petitioner in this case does have legal counsel.

**Mr. Snelgrove:** Lawyers will take anything you give them for money, and they will challenge whatever there is without question of your chances of success.

**The Chair:** Well, Mr. Snelgrove, that might be your experience, but that's not the ethics of the profession that I'm proud to be a part of. So I don't think that that is fair comment at all, and I don't think that's at all fair to say.

**Mr. Snelgrove:** On the other side, whether they have a lawyer or not is irrelevant.

**The Chair:** Well, you know, with respect to you – and I know you want to do the right thing here – I think we're prejudging the case. We haven't even heard all of the evidence that the petitioner wants to put forward. For all we know, maybe there are real exceptional circumstances that might convince us that an exception should be granted in this case. I mean, all we know is a summary in a paragraph.

I think what we really have to be concerned with here is: has the petitioner come before us in the proper way? There is one fault here. Are we prepared to grant a waiver to cure that fault and hear them out? All of the things that you are talking about I think are fair in deliberation, and we'll have that opportunity, all of us, to deliberate. This is why we, this committee, are here. When there is no other relief anywhere else, this is like the court of last resort. So if people want to come before us, even if the chances aren't very good in our opinion or maybe in their opinion as well, I think they are entitled to do that. I know they are entitled to do that.

Rev. Abbott.

**Rev. Abbott:** Thanks, Madam Chair. I was just going to say that you had mentioned earlier in the case you cited, *Dobson vs. Dobson*, that it was a similar case. I think it's important to realize that every case is unique and, as you mentioned, special and has various circumstances. So I would be prepared to move that we waive the advertising requirements to at least hear the case.

**The Chair:** Okay. That's fine. I know Ms Kryczka was prepared to do that.

**Rev. Abbott:** Oh, I'm sorry. She can go ahead. That's fine. Go ahead, Karen.

**Mr. Lord:** Could I ask one last question?

**The Chair:** Yes, Mr. Lord.

**Mr. Lord:** If I could just ask one further question. If we grant this waiver, could that not be used against the applicant in the future as a reason for appealing whatever decision this group made or if there were to be some objection to it? The concern that I have is that it would be used by opponents of the applicant as a reason why this should not move forward. I don't know if that's a valid legal concern or not, but if you let this go ahead without all the i's being dotted and the t's being crossed, would that not possibly harm the applicant going forward?

**The Chair:** Well, I'll let Ms Dean comment on this as well, but we are entitled to make motions to grant exemptions to the application of our standing rules. So this committee can do that and then make that recommendation to the Legislature, which I will be doing. If the Legislature doesn't agree with it, then I guess that's the end of it. So I would say, in answer to your question, that there is a procedure that we are following that shouldn't give any of those that would attack the case a legitimate argument. Do you agree, Ms Dean?

**Ms Dean:** I'm sorry. I did not hear the question.

**Mr. Lord:** The concern that I was raising was that if this case is brought forward without all the due diligence, proper and timely documentation, and, you know, i's dotted and t's crossed, would not that form some ammunition for the opposition to the applicant to claim that they were not given due notice properly, that this was an unfair application, that it got special consideration it shouldn't have that others didn't get, et cetera, et cetera, and be used as a basis of opposition?

**Ms Dean:** I think you raise some good points, Mr. Lord, keeping in mind that the only deficiency in connection with this petition is the *Alberta Gazette* advertising. They have advertised in the *Edmonton Journal* and the *Edmonton Sun*, so there's just one deficiency. There are not a whole host of deficiencies. I mean, the committee has in recent memory in previous Legislatures granted waivers where the petitions hadn't even been received in our office by the deadline. So it's sort of a sliding scale as to the seriousness of the breach, and this is not a huge deficiency in the material.

**Mr. Lord:** Okay. Thank you.

**The Chair:** I would just add this, Mr. Lord. If this defect existed and this committee didn't take note of it and do anything about it and proceeded and, say, granted the exemption sought in the petition, then I would say that your argument would certainly be applicable. But the Standing Orders in Standing Order 94(3) do address this situation, where it says:

When a petition for a private Bill does not comply with Standing Orders 85 to 89, or is otherwise defective, the committee is to make a recommendation to the Assembly regarding the disposition of the petition.

So it was anticipated that there might be instances where there would be defects that we would have to address.

**Mr. Lord:** I just thought I'd raise the issue.

**The Chair:** It's a good point. It's a very good point.

**Mr. Lord:** There's the legal case and then there's the court of public opinion and the media, and I can just see a headline that, you know, this bill which could have profound implications went forward even though it hadn't been properly advertised. That would be kind of the headline. So I raise the issue.

**Dr. Pannu:** Madam Chair, I have similar concerns about proceeding with it. The bill really speaks to matters of considerable gravity, and when we are considering granting exemption from advertising requirements, the gravity of the matter as embodied in the bill must be a major consideration. We can't simply say that Standing Order so and so anticipates that there may be some defects that can be adjusted by the Legislature.

I think we are a committee; we have certain responsibilities and obligations to weigh all the factors before we can decide to grant any exemptions. I would be very concerned if we proceeded, in light of what we know this bill is trying to accomplish, to grant exemption on the very basic requirements for such private bills, which is that advertising should be done in such and such places and such and such time.

There's no reason to rush on this. I don't understand. No case has been made to me why this committee should feel that it must rush along with a decision on this bill. So given that there's no argument for rushing with this bill, given the fact that the matters that the bill deals with are of considerable gravity, given that the Supreme Court of Canada has made a decision on a similar case which gives us some guidance on what we need to do, I think it would be imprudent to proceed with any rush. I think we need to at least make sure that the basic requirements with respect to advertising are met before we proceed.

10:00

**The Chair:** Well, thank you for your comments, Dr. Pannu. I don't know if you were here, but we did grant a waiver in Pr. 4 to do with advertising, and there is precedent in this committee for doing that when the deficiency is of a technical nature.

I would just make this comment about your argument, that because it is a serious issue at the heart of the petition, we should apply different principles to the granting of a technical waiver, when maybe on the previous bill it was to change the name of a private college. I think we're mixing, you know, improper considerations here. We will have an opportunity to hear the evidence and weigh out the pros and cons of making the decision one way or the other, but to try and avoid hearing it for a technical reason I don't think is the right approach.

**Mr. Pham:** Madam Chair, having heard all of the arguments back and forth on whether we should waive the advertisement requirement or not, I think it's very important for us to put a motion forward. Then we can vote on it. Those who want to waive it can vote yes, those who don't want to waive it can vote no, and then we could proceed based on this. It is just a technical point, as you mentioned.

**The Chair:** Yes, and we'll go there next.

Mr. Snelgrove had a final comment.

**Mr. Snelgrove:** I have no problem with waiving the advertising things. I just need to know the definition of infant because that gets to the crux of it. I've been having an interesting conversation with

Ms Dean. I guess if the question is, "Are we redefining an infant?" then whose legislative responsibility is it to say whether that unborn child is an infant or not? Is that a provincial right or a federal right or responsibility? If it's federal, then it clearly says in our rules that you have to appeal to the federal Parliament. This gets to the crux of: who is a baby? So I hope that counsel can have that for us when this comes forward because that has to be determined, I think, before you move on past this, but I have no objection to waiving the advertising notice.

**The Chair:** Okay. I appreciate your comments, and I know Parliamentary Counsel will try and get material that will answer that question.

Ms Kryczka, back to you.

**Ms Kryczka:** I move that

in respect to Pr. 5, the petition received for a private act that will grant an exception to the law that provides for maternal tort immunity for prenatal wrongful conduct, the committee recommend to the Assembly that Standing Order 89(1)(b) be waived subject to the condition that the committee be provided with confirmation that advertising has been completed before the committee hears the petitioner.

**The Chair:** Thank you, Ms Kryczka.

All in favour of that motion, please say aye.

**Some Hon. Members:** Aye.

**The Chair:** Any opposed, please say no.

**Some Hon. Members:** No.

**An Hon. Member:** Can we be recorded?

**The Chair:** Okay. Well, we'll have, I guess, a hand vote then.

[For the motion: Rev. Abbott, Mr. Bonner, Ms Kryczka, Dr. Massey, Mr. Pham, Mr. Snelgrove, Mr. Vandermeer]

[Against the motion: Mr. Johnson, Mr. Lord, Mr. Maskell, Mr. McClelland, Dr. Pannu, Mr. VanderBurg]

**The Chair:** The motion is carried.

**Ms Kryczka:** Madam Chair, do you vote in the event of a tie?

**The Chair:** Yes.

**Ms Kryczka:** Okay.

**The Chair:** Are you asking me how I would have voted?

**Ms Kryczka:** No. I just thought I would clarify that right now.

**The Chair:** I know that we have some members that need to leave, but we should set the schedule for the hearings. It appears at the front of the binder. You've got the list of the private bill petitions, so if you could just reverse that. We had proposed that Pr. 1, Pr. 2, and Pr. 3 be heard March 30 at 8:30, followed by Pr. 4 and Pr. 5 on April 20, with deliberation and decision on April 27, 2004. Based on the suggestion of Mr. VanderBurg, which I think is a good one, to accommodate Pr. 1, we can move the hearings on those first three bills to Tuesday, March 23, with deliberation to take place on March



30, 2004, and then leave April 20 and April 27 as proposed. Does that meet with the committee's approval? All in favour of that proposal, say aye.

**Hon. Members:** Agreed.

**The Chair:** Any opposed, say no. Okay. That will be our schedule. The hearings will commence at 8:30 a.m. in this room, and when we meet for deliberation, we will meet at 9 o'clock.

**Ms Marston:** I'll circulate a revised schedule.

**The Chair:** A revised schedule will be circulated.  
Is there any other business for us this morning? Mr. VanderBurg.

**Mr. VanderBurg:** On item 7, Other Business, the fees that we charge, \$200. I'm chairman of the Fees and Charges Review Committee, and I'm just wondering if we've reviewed our fees to make sure that we are recovering our cost.

**The Chair:** Well, I don't know the answer to that.

**Mr. VanderBurg:** I'd suggest that we do.

**The Chair:** All right.  
Ms Dean, would you take that under your wing?

**Ms Dean:** We'll undertake that.

**The Chair:** Thank you for that.  
All right. Anyone care to move that we adjourn?

**Rev. Abbott:** So moved.

**The Chair:** All in favour, please say aye.

**Hon. Members:** Aye.

**The Chair:** Any opposed, please say no.  
We're adjourned.

[The committee adjourned at 10:07 a.m.]

