

**Title: Tuesday, May 2, 2006**      **Private Bills Committee**

Date: 06-05-02

Time: 8:34 a.m.

[Dr. Brown in the chair]

**The Chair:** Good morning, everyone. We'll call the meeting to order now that we have a quorum of members. The first item of business is the approval of the agenda as circulated. A motion? Mr. Prins. All in favour? That's carried.

The second item of business is approval of the minutes from the April 25 meeting. Did everyone have an opportunity to review those minutes? A motion? Mr. Mitzel. All in favour? Anyone opposed? That's carried.

Okay. Moving on to the deliberations on the three bills that we have remaining before us, the first bill is Pr. 1, the Burns Memorial Trust Amendment Act, 2006, and I'll ask Ms Dean to make a few comments on that.

**Ms Dean:** Thank you, Mr. Chair. Committee members will recall that there were no outstanding issues at the hearing with respect to Pr. 1, Burns Memorial Trust Amendment Act, 2006. Accordingly, the decision that's before the committee this morning is simply whether this bill should proceed or not proceed. Unless committee members have questions in connection with this bill, I will leave my comments at that.

**Mr. Liepert:** I move that the Standing Committee on Private Bills recommend to the Legislative Assembly that Bill Pr. 1, the Burns Memorial Trust Amendment Act, 2006, proceed.

**The Chair:** Any discussion? All in favour? Any opposed? Carried. Bill Pr. 2, the Mary Immaculate Hospital of Mundare Act. Ms Dean, would you care to comment on that one?

**Ms Dean:** Thank you, Mr. Chairman. There were a few issues raised at the hearing in connection with the Mary Immaculate Hospital of Mundare Act. As committee members recall, this is a repeal and replacement of the original statute. We did have attendance at that hearing by counsel from the Ministry of Health and Wellness. His concerns were in connection with section 9 of the bill, which provides an exemption from liability for the acts of the corporation for members, directors, and officers.

Before the committee discusses the issue, I thought I would highlight some general principles governing directors' and officers' liability under public legislation. Under the Business Corporations Act, and that's specifically section 122, directors and officers must "act honestly and in good faith with a view to the best interests of the corporation" in mind when exercising their powers and discharging their duties. They also must "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances." These duties also exist at common law.

Now, as discussed at the hearing, section 9 of this bill does not necessarily state that these duties do not apply to the corporation that's established under Pr. 2 as this provision deals only with the liability for the acts of the corporation rather than liability that directors and officers face for their own acts; however, the inclusion of this type of exemption may impact how the duties of directors and officers are interpreted.

It's also important to note that this exemption differs from how public corporations are treated with respect to the liability of directors and officers for certain matters such as unpaid wages for employees, offences under the Environmental Protection and Enhancement Act, nonpayment of GST, nonremittance of Canada

pension plan contributions, and employment insurance contributions.

I have discussed this matter with counsel for the petitioner, and she has provided written comments on this point. She makes three comments. First, she would like the committee to consider the bill as it is with the inclusion of section 9 as it currently reads because there is precedent for it, according to her, as it exists in the Misericordia private act and the Caritas Health Group Act. I did explain to her that the Ministry of Health and Wellness has voiced concerns with respect to the inclusion of directors, and her second point was that, well, if this is an issue for the committee, she's willing to have that struck from the bill. I went back to her and explained to her that the department's comments were critical of both directors and officers being included in this exemption, and at the end of the day she has agreed that if this is an issue for the committee, then her client is agreeable to directors and officers being excluded from that exemption provision in section 9. So that's the main issue with respect to Pr. 2.

8:40

There was another issue that came up at the committee in connection with section 3(2), and the concern expressed was that this was an unconstitutional provision. There has been no objection raised by the petitioner in terms of deleting that provision, so they are on board with respect to that. The issue today for the committee is that there is an amendment, that section 3 be amended by striking out subsection (2). That's the amendment that would address the constitutional matter, and that is attached to your report. The amendment is indicated as item A.

Item B is an amendment that would clarify that only members of the corporation are exempt from liability. So this removes directors and officers. Now, this is an issue for the committee to discuss further.

I'll leave my comments at that right now.

**The Chair:** We'll open the floor to comments or questions. Mr. Liepert.

**Mr. Liepert:** I'm not sure I understand this. How does this then differ from public legislation?

**The Chair:** Shannon, do you want to start off?

**Ms Dean:** Sure. In terms of public legislation, business corporations incorporated under the provincial Business Corporations Act are expressly liable with respect to unpaid wages for employees' CPP contributions, et cetera, so there is express legislation that renders directors and officers liable for those debts of the corporation. With respect to the duty of care that directors and officers owe to a corporation, that's with respect to their own acts. Although this bill doesn't say that directors and officers owe a duty of care to the corporation established under this act, it's my view that this duty does exist at common law.

**Mr. Liepert:** So we are saying that this legislation will mirror public legislation as it applies to duty of care only?

**The Chair:** It may not precisely do so, but in general terms there are principles. The public legislation has two main provisions in it. One is the obligation to act honestly and in good faith in the best interests of the corporation. The second arm of the obligation of a director under the Business Corporations Act of Alberta or Canada is the obligation to "exercise the care, diligence and skill that a reasonably prudent person would . . . in comparable circumstances." So that's

the due diligence branch of the obligation. While that stems from common law, my understanding is – and Ms Dean can correct me if I'm wrong – that that was enshrined into statute as a result of court cases.

I think that, actually, the legislation that we have right now goes a little bit beyond in terms of what we have in terms of the common law because it explicitly spells out those things about care, diligence, and skill that a reasonably prudent person would use in comparable circumstances. So it articulates specifically what the obligations of a director would be as the managing institution of the corporation.

**Mr. Liepert:** I guess my question is: under this amendment are we then saying that the directors of this foundation are not . . .

**The Chair:** Exempted. That they're not exempt. If the amendment proceeded, then we would say that they would be subject to common law application of their responsibilities to the corporation.

**Mr. Liepert:** The amendment will then make this legislation as it applies to responsibilities and duties of officers and directors consistent with the Business Corporations Act?

**The Chair:** Not exactly. It wouldn't be that high a standard, but it would be the standard of whatever the common law is at the present time because anybody incorporated under the Business Corporations Act of Alberta would have those explicit provisions of those two branches that I mentioned of good faith and acting in the best interests and exercising due diligence and so on. If we left it out entirely – that is, the exemption – then the common law would kick in, and that would dictate that there would be some responsibility to carry out your duties to the corporation to a certain standard.

**Ms Dean:** This amendment will not make this bill exactly the same as for directors and officers under the Business Corporations Act. In order to make the same standards apply, you would have to have a provision that would say that the duty of care under the Business Corporations Act extends to the directors and officers of this particular corporation. You would need a different amendment to do that.

**Mr. Agnihotri:** I have a question. In section 3(2) the corporation is restricted to Alberta but not restricted outside Alberta. Could you explain this one to me, please?

**Ms Dean:** Mr. Agnihotri, the proposal is that that provision be struck from the bill. It will be removed.

**Mr. Agnihotri:** Thank you. I wasn't at the last meeting, so I didn't know that.

**The Chair:** Further discussion on the issue of liability for officers and directors?

Just to remind committee members, members of a corporation or, in the case of a private corporation under the Business Corporations Act, shareholders are not liable in any event. That's a basic principle both at common law and in statutory law, that the shareholders or members of the corporation are not liable in any event. It's only directors and officers, who are the guiding minds and the controlling minds of the corporation, that have any liability at common law.

LeRoy.

**Mr. Johnson:** Yes. I have a motion. I'd move that the Standing

Committee on Private Bills recommend to the Legislative Assembly that Bill Pr. 2, Mary Immaculate Hospital of Mundare Act, proceed with the following amendment:

A Section 3 is amended by striking out subsection (2).

B Section 9 is struck out and the following is substituted:

9 The members of the corporation are not as members liable for any liability, act or default of the corporation.

**The Chair:** Discussion on the proposed amendment?

Are you ready for the question? All in favour? Anyone opposed? Carried unanimously.

Item 3 on your agenda for consideration this morning is Bill Pr. 3. This is the Edmonton Community Foundation Amendment Act, 2006.

**Ms Dean:** At the hearing there was some discussion regarding a term called sponsors, which is used in the bill. Sponsors was defined as an entity or a person donating more than a million dollars to the Edmonton Community Foundation. This concept is apparently no longer relevant to the governance of the foundation, so it would make sense that all references to sponsors in the act be removed. In the original bill there were some of the references removed, but there were a few others that had not been flagged.

So there is an amendment that has been drafted, and the petitioners are in agreement with this amendment. It's attached to the report, and it's two parts. The first part would amend section 2, and it would include a new clause which would strike out clause (f) in the main act, which is the definition of sponsors. The second amendment is a new section which would amend section 10(7) of the act to delete the words "or the Sponsors."

I provide this amendment to the committee for their consideration with respect to this bill.

8:50

**The Chair:** Any questions?

Could I have a motion, then, regarding the amendment? Mr. Liepert, are you prepared to make that motion?

**Mr. Liepert:** I'd move that the Standing Committee on Private Bills recommend to the Legislative Assembly that Bill Pr. 3, Edmonton Community Foundation Amendment Act, 2006, proceed with the following amendment. Section 2 is amended by adding the following clause after clause (b):

(c) by striking out clause (f).

The following is added after section 5:

5.1 Section 10(7) is amended by striking out "for the sponsors."

**The Chair:** Any discussion or questions regarding the proposed amendment? Hearing none, can I call the question then? All in favour? Anyone opposed? That's carried.

Any other business?

We do have the issue outstanding of the fees. Ms Dean and I have had a conversation regarding that. You'll remember that about a year ago, for those of you who were on the committee last year, we were recommending that the fee for an application for a private bill be increased from \$200 to \$500. That so far hasn't made any progress, so we've agreed that I would bring the matter up again to the caucus House leader. So unless there are any other comments on that, I'll leave it at that.

**Mr. Mitzel:** Mr. Chairman, we decided as an organization, as a group here, the committee, that we were going to have you ask for an increase in fees to \$500? I don't remember.

**The Chair:** The recommendation was that we would ask for an increase from \$200 to \$500. It hasn't been raised since 1916, was it? I believe it was 91 years, actually, was it?

**Ms Dean:** Yeah. If I can just supplement your comments, Mr. Chairman. As committee members know, the Standing Orders are where the fees are established. So although the committee has made its recommendation, the only way to give effect to the recommendation is to have a motion in the Assembly that will amend that Standing Order.

**The Chair:** Any further comments?  
Can I have a motion, then, to adjourn?

**Dr. Morton:** I move we adjourn.

**The Chair:** All in favour? Any opposed? Carried.

[The committee adjourned at 8:53 a.m.]

