

[Chairman: Mr. Musgrove]

[2:03 p.m.]

MR. CHAIRMAN: Could we call the meeting to order? We now have a quorum of 10 people. I think there were 11 who indicated they would be here, so there are probably some others coming. If we didn't have a quorum, we could still hold a meeting and make recommendations for the next meeting, but we couldn't vote on anything without 10 people being here. Also, we would not get paid.

I have read the minutes of the last meeting, and my recollection is that they are accurate. Now they will be printed, and you will get a copy of them. We will approve them at the next meeting, along with the minutes of this meeting.

Our mandate called for four meetings of this committee, and we must make a report on the second Monday of the fall session, which is October 29. This being the third of the four meetings, we will be required to have one more meeting before October 29. We will discuss a date later during the meeting.

At the last meeting, we decided that we would prioritize the pieces of legislation that were presented to us by the Institute of Law Research and Reform and would set priorities on them for discussion by the committee. At this time I will open the meeting for a discussion on the prioritization of the list that you have before you.

Mr. Hurlburt, would you have anything that you would like to bring to our attention at this time?

MR. HURLBURT: Mr. Chairman, I don't know whether my thoughts about priorities are likely to mean much to the committee. I have an inclination to suggest that the item that shows up as 2 on the list, Defences to Provincial Charges, might be a good thing for the committee to start with. I'm not sure that it's more urgent than some of the others, but I think it is something that's peculiarly for the Legislature and would be a useful thing to start with. I don't know how that strikes you.

Then I would almost be inclined to suggest Debt Collection Practices as No. 2. Again, it's a fairly policy-type thing, one of interest I think. At a fairly early stage, I'd like to work in the Guest Passenger Legislation. It's a short one; it's easy to deal with. By the time we got there, we would have had some discussion back and forth and would maybe see how we think; I don't know.

I'm not sure. Do you want me to talk that way, Mr. Chairman, or is that good enough?

MR. CHAIRMAN: In my perusal of the changes, personally I found there were several pieces of legislation that are now a fairly top priority in our Department of Social Services and Community Health and would be of assistance if changes were made. What I'm speaking of are the Status of Children, Consent of Minors to Health Care, Minors' Contracts, and Court Services — items 8 to 12. I don't know what the rest of the committee thinks, but to me they are four items that really are a combination of law and our social services department of Alberta.

MR. R. MOORE: Mr. Chairman, if you're still talking on the prioritization of these, I like the first two, and I'm glad Mr. Hurlburt emphasized them as being one

and two, regardless of what way they go. But I'd like to see the Builders' Lien Act up here. I think that is a priority item with us and should receive some priority attention. The Builders' Lien Act is way down at No. 15 now, but in the economic times we're in, we're getting a lot of interest in that and in some of the changes that should be coming in.

MR. PENGELLY: Mr. Chairman, I was going to mention that it would be my decision, too, to have Debt Collection Practices, Builders' Lien, Defences to Provincial Charges, and then the Guest Passenger Legislation: those four, in that order.

MR. BATIUK: Mr. Chairman, I think the Guest Passenger Legislation is very important — and we were told that it's a short one — for the fact that very many are not aware of their commitment with such cases until something happens. So I think it would be one of my top ones, too.

MR. CHAIRMAN: Are there any of these proposed pieces of legislation that anyone feels we shouldn't have to look at?

MR. CAMPBELL: Mr. Chairman, could I ask a question? Are we just going to prioritize? Do we just want the four to start with?

MR. CHAIRMAN: I think the idea is to indicate an order of priority but also to discuss whether or not some of these proposed pieces of legislation are of no interest or are something we don't need to discuss.

MR. CAMPBELL: Thank you very much. Would it be out of order to ask if Mr. Hurlburt could maybe give us a short explanation about numbers 11 and 12?

MR. HURLBURT: Is that in order, Mr. Chairman? Let's see. Dealing with . . . I'm sorry.

MR. CHAIRMAN: That is that he give us an estimation of how long it would take us to discuss this?

MR. CAMPBELL: No.

MR. HURLBURT: Oh, I see. I misunderstood.

MR. CAMPBELL: I apologize, Mr. Chairman. I would really like to know the scope of that, so I guess I'm out of order.

MR. CHAIRMAN: Without a brief on the scope of it, it's not easy to prioritize them. So maybe Mr. Hurlburt could give us . . .

MR. HURLBURT: Mr. Chairman, I would certainly agree with you that all of items 8 to 12 are, in our opinion, of very great importance. I hadn't put them at the head of my list, but not because they aren't important.

With regard to item 12, the subject matter is really illegitimacy: what about children who are born outside marriage? The basic point the report makes is that the present law really imposes a stigma on children who are born outside marriage, that it penalizes them legally, that this helps to penalize

them socially, that if there is any fault involved in an illegitimate birth it is certainly not the fault of the child, and that we think this situation should be corrected, both recognizing the child as a member of the family for all purposes and also trying to give the child the best chance to have two functioning parents rather than just one.

So the basic recommendation in the report is really that the law declare that a child born outside marriage is in just the same position as a child born of a marriage. I should say that Ontario has done that since our report came in — not because of our report. There are a good many complexities. That's the basic thrust of the report. It's quite substantial. I don't think it would necessarily take the committee a long time. It's more getting the basic ideas. Then there are all sorts of amendments to this and that, but they aren't fundamental.

The second one that was asked about — number 11, consent to health care, was it not? That is one where we think a problem is created for children, not so much by law as by the fact that the law isn't understood and it's difficult to apply. The law is based on the law of trespass to the person; that is, I am not allowed to touch you without your consent. If I do touch you without your consent, that's a battery and I can be sued for it.

When you get around to health care, the same thing applies. A doctor can't touch anybody without that person's consent. When you need health care you have to be touched; you may have to be carved up. The doctor must be able to touch the patient. Normally an adult can give consent. When you go to the doctor, you agree to the operation or what have you, to having your arm bound up in a splint or a bandage put on. If you agree to that, then that means the touching is legal. The law actually is that anybody of any age who understands the nature and consequences of a given medical treatment can consent to it, and that would include a minor, a child under 18. Unfortunately, number one, that's very difficult to apply. The doctor who wants to treat or is invited to treat a youngster looks at the youngster and says: is that youngster mature enough to understand what this is all about? If he's prepared to ask himself that question and give the answer "yes", then he can go ahead and treat. But he will always be afraid that later on down the road somebody will sue him and that some judge sitting in a courtroom with three days' of witnesses will decide the doctor was wrong. Therefore the doctor is going to be reluctant to treat the child without the parent's or somebody's consent.

In a fully functioning family, that's not really a problem. The family is living together, everybody is trustful and confident, and all that sort of thing. A child who is living with his parents, and it's a functioning family, isn't likely to have too much trouble, because families don't operate by law; they operate by family feeling. But in the course of looking into this, we concluded that there are many children who aren't at all members of functioning families or who aren't members of families that function well enough to see that the child will get the treatment the child needs. So we made a number of recommendations.

The first one is that the law declare that a 16-year-old have the power to consent to medical care. We also recommend that even under that age there

be certain kinds of medical care that a child could be entitled to consent to. The report becomes very controversial at that point, because there are certain kinds of health care that are wrapped up with all sorts of every emotional feeling you can find in the community. Two of those are contraception and abortion. Basically our report recommends that a child be able to consent to those. That doesn't represent a moral or legal judgment on those things. What it does say is that a child who doesn't have access to good parental advice should still be able to get medical treatment. That is one area that I think you would have to regard as controversial. We think we were right, but obviously that's a very difficult social policy matter.

I think that is a sum statement of those two reports, Mr. Chairman.

MR. COOK: Mr. Chairman, on a procedural item. I gather that the objective of the meeting this afternoon is to pick half a dozen or so reports so we can study them later and have the Legislature request us to study those. Could I suggest in a very arbitrary way that we simply take the top six reports, unless anybody here would like to add a report that particularly interests them. The reason I say that is that, none of us being lawyers, we could be here for 20 minutes on each report discussing the general idea and then have a further debate of an hour or two discussing what the members here have determined to be the crux of those reports and debating which ones are really important. I'm not sure that any one of us is really equipped to do that.

I wonder if I could move a motion that the committee prioritize the first six reports on the list provided for us today, plus any other reports that members of the committee want to add right now, and that that be our priority list for legislative changes.

MR. CHAIRMAN: Any discussion on that proposal?

MR. HURLBURT: Mr. Chairman, could I interject on this, if that's in order? I'm not sure how far the motion is intended to go. The one thing I would mention is the content of the resolution. In effect, the mandate is to report about those things that the committee thinks should be taken under consideration. I don't think the motion is intended to say that the other things aren't things the committee should ever enter upon. I would be rather sad if it were.

MR. CHAIRMAN: We should probably see if there are any of these issues that the committee feels we don't need to discuss.

MR. CLARK: Mr. Chairman, I suggest that I would like to have 16 put somewhere on the list. I don't think it's a high priority right now, but I would like to have that put on the list.

MR. CHAIRMAN: You'd have it as a priority?

MR. CLARK: Yes.

MR. CHAIRMAN: Would you like to see it changed from 16 to a higher priority?

MR. CLARK: If we're going to start from the top and come down, I would like it moved up a little bit.

MR. CHAIRMAN: There's been some discussion that 15 should be a fairly high priority, particularly in the present economy of the building trade.

MR. COOK: Mr. Chairman, on a procedural point. The motion that I presented would simply identify the first six as being the primary discussion points. It wouldn't exclude any others. I think it would also add any the committee wanted to consider in depth right away. Fifteen and 16 seem perfectly reasonable. So that would mean we'd have eight of the 17 as our short list for follow-up, not excluding any others.

MR. CLEGG: Mr. Chairman, I'd like to make a comment from a procedural point of view. The resolution under the authority of which this committee is now operating requests the committee to report back to the Assembly those reports which it feels the Assembly should refer back to it for detailed study. If this committee goes to the Assembly and says "we recommend that reports one to six be referred for detailed study", the committee will later meet on that topic — presuming the Assembly does make that reference, which I am sure it would do — but we would not have the authority to look at anything except those which we had identified at that stage. It is quite likely this committee will continue to operate for many sittings and many sessions, and other things could be referred to it later. But this committee can only look at such matters as are specifically referred to it by the Assembly. It doesn't have quite the free rein of investigation that Public Accounts does, for example. Therefore we will not be free to investigate those which we do not have referred to us specifically as a result of our recommendation, until we later go back with a further list.

MR. COOK: On a procedural point again. Could we then simply ask the Assembly to refer all 17 to us, and we will then make a determination, given time and resources, as to which ones will receive our priority attention?

MR. CHAIRMAN: There seems to be some question by the Institute of Law Research and Reform on whether or not 17 should be a priority.

MR. HURLBURT: May I make a comment?

MR. CHAIRMAN: Yes.

MR. HURLBURT: Actually I originally said that I didn't really think the committee was going to want to look at the ones from 13 to 17 — just exercising my judgment, which has nothing to do with what the committee is actually going to do. I would be very happy to have the committee look at any of them.

With regard to 13 and 14, the Uniform Evidence Act and the Uniform Sale of Goods Act, I would have to say that I think you would be wasting your time now. The reason is that Item 13, the Uniform Evidence Act, probably won't fly anywhere unless it flies in the federal Parliament first. I suppose they've got it in hand, if they ever have anything in hand down there. The Uniform Sale of Goods Act is a

very large piece of fairly technical law dealing with the sale of goods. It's not consumer legislation; it's more basic contract legislation. It probably won't fly anywhere unless Ontario decides to go along with it.

Maybe I should retract what I said. I would like to see this government press for either or both of those, but I rather think they're just an awful lot for you people to put on your plates for the value we're going to get out of them; that's all. My position is that I would be absolutely delighted if you wanted to look at them. I think you would probably wish you hadn't at this time. I'm sorry to say that.

With regard to the Builders' Lien Act, I'm also delighted to have that one advanced. I should point out that the institute's report about the Builders' Lien Act is really only about four fairly narrow bits of it. It isn't a report about the Builders' Lien Act as a whole. I believe there is some departmental activity going on with respect to the Builders' Lien Act as a whole. Again, I am very happy to have it come forward. However, these are four or maybe five small technical points. If the committee wants to take them on, that's splendid.

With regard to 16, I think that would be a splendid thing. I had said in my original thing that I thought it was too blindingly technical but, on thinking about it, it does have some policies that this committee might be interested in. You might find you'd stubbed your toe on it, but it's probably well worth while going ahead with.

I had said that Item 17, Application for Judicial Review, is technical legal procedure. On the other hand, it does have to do with seeing that somebody who wants to get a court review of an administrative action isn't stymied by a jungle of procedure. That might be something this committee would be interested in; I don't know.

MR. COOK: Mr. Chairman, I think we're still wrestling with the same problem in that we're going to need more information and a lengthier discussion on all these things for us to make a resolution. Could I withdraw my earlier motion and substitute another: that we ask the Legislative Assembly to direct all of the reports before us, save 13 and 14, and the committee will consider them in depth as time and resources permit?

MR. CHAIRMAN: Thank you. Discussion? Does the committee want to withdraw 13 and 14 from any discussion, or would they rather leave it on the paper and put it as a low priority?

MR. COOK: Mr. Chairman, I am willing to take the advice of Mr. Hurlburt that they are sufficiently muddled constitutionally and technically that we wouldn't be spending our time profitably at this time.

MR. CHAIRMAN: Thank you.

MR. R. MOORE: Could I get clarification of that motion? We're moving to take them all, with the exclusion of 13 and 14. Is that the decision?

MR. CHAIRMAN: We're going to place all of them except 13 and 14 on the order for discussion.

AN HON. MEMBER: Question.

MR. CHAIRMAN: All in favour? Opposed? Carried. Do we need to come up with some we should discuss at the next meeting? Mr. Clegg, would you like to explain?

MR. CLEGG: Mr. Chairman, in view of the fact that the committee has now resolved that it will recommend to the Assembly that all of these 17, with the exception of 13 and 14, be referred back to it for further study, the committee has essentially finished the tasks which have been assigned to it by the Assembly. All that is necessary now is that the committee make that report before the deadline. It can make it as soon as possible, as I recall. When the Assembly moves a motion to refer those things back to the committee, the committee can start on detailed study. There's nothing further to be done at this stage except to make the report.

MR. CHAIRMAN: So we don't need [inaudible] immediately.

MR. CLEGG: No.

MR. R. MOORE: Mr. Chairman, I move that we adjourn.

MR. CHAIRMAN: Agreed?

HON. MEMBERS: Agreed.

[The committee adjourned at 2:26 p.m.]