

9:04 a.m.

Tuesday, April 27, 2004

[Ms Graham in the chair]

**The Chair:** Well, good morning, ladies and gentlemen. I would like to call this meeting of the Standing Committee on Private Bills to order. We are here this morning for deliberation and decision on bills Pr. 4 and Pr. 5.

I note that we have members of the media including, it would appear, a camera. This is somewhat unusual for us, and we haven't had a particular request by anyone to be present, but our Standing Orders do provide for same at the discretion of the chair. Unless there are any strenuous objections from any members of the committee, it would be my direction that all media may remain in the room for the extent of the hearing.

That said, then I would ask members to peruse the agenda, which was circulated to you, and unless there are any additions or changes necessary, I would entertain a motion to adopt that agenda as circulated.

**Rev. Abbott:** I so move.

**The Chair:** So moved by Rev. Abbott. All in favour, please say aye.

**Hon. Members:** Aye.

**The Chair:** Any opposed, please say no. That motion is carried.

You also had circulated to you the minutes from our last meeting, being Tuesday, April 20, 2004. Again, unless there are any errors, omissions, or changes, I would entertain a motion to adopt the minutes as circulated. So moved by Mr. Bonner. All in favour, please say aye.

**Hon. Members:** Aye.

**The Chair:** Any opposed, please say no. That motion is carried.

Before we get underway, I would just like to put on the record that we have present with us today our colleagues Mr. Friedel, who is the sponsor of Pr. 5, as well as Mrs. Jablonski, who is interested in these proceedings, but would be noting that neither member will be in a position to vote on any decision that we might make today. Thank you for being here.

We will deal with the private bills in chronological order, so that would take us, then, firstly to Bill Pr. 4, Northwest Bible College Amendment Act, 2004, sponsored by Mr. Masyk. It would be my intention to just in a summary fashion describe the bill, the evidence that we heard, and the matters that we must consider.

This private bill would amend the 1986 incorporating statute for Northwest Bible College, being the Northwest Bible College Act, 1986, chapter 43, *Statutes of Alberta*, and would give effect to a change in name of the college to Vanguard College.

We heard that Northwest Bible College is a private Christian college located in the city of Edmonton, has been operating continuously in the province for the last 57 years, and grants degrees in divinity. The reasons given by the petitioner for wanting the name change included the desire to modernize the name of the college, and now that there is a branch campus in Calgary, it was felt that a less geographically specific name would be more appropriate. There's also an intent to relocate the Edmonton campus, and it would provide an opportunity with the new location to have a new name. Also, the polling of stakeholders and others interested in the college resulted in a very favourable view of this new name.

As per the Parliamentary Counsel report that was provided to us,

there are two matters that the committee must take into consideration. That is, has this change been duly authorized by the board of directors of the college? Yes, we had provided to the committee a certified copy of the board resolution from February of this year. The second consideration was whether the proper due diligence had been undertaken relative to determining whether the interests of any third party would be affected by use of the name Vanguard College. We were provided with a copy of a NUANS search report, which I believe was Canada-wide, looking at other names similar to Vanguard College. As a result of that, together with the lawyer's opinion letter, it suggested that there would be no third parties adversely affected.

9:10

We heard from the Department of Learning as a potentially affected department. A representative appeared at the hearing and advised that there was no objection to the name change by the Department of Learning as the new Post-secondary Learning Act continues the traditional exclusion of divinity programs from the approval requirements of the act for academic programs. At the same time the department representative did suggest an amendment to section 6 of the 1986 incorporating act which would remove the word "academic" in the description of degrees in divinity. This was called for because of the new regulation under the new Post-secondary Learning Act, entitled the new program approval regulation, and it requires that degrees of divinity be given a name that distinguishes them from academic degrees which are granted by institutions approved under the act. The petitioner consented on the record to this suggested amendment.

So I believe that gives us an overview of this matter, and I would open the floor to discussion or motion on this matter.

**Mr. Snelgrove:** Madam Chair, I move that the Standing Committee on Private Bills recommend to the Legislative Assembly that Bill Pr. 4, Northwest Bible College Amendment Act, 2004, proceed with the following amendment. The following is added after section 5: section 6 is amended by striking out "academic."

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

Mr. Snelgrove has made the motion and put it on the record. Is there any discussion? [interjection] Yes, Dr. Pannu.

**Dr. Pannu:** "Question," I said. Let's vote on it.

**The Chair:** Oh, sorry. All right. There being no discussion, then I will call the question. All in favour of the motion as put by Mr. Snelgrove, please say aye.

**Hon. Members:** Aye.

**The Chair:** Are there any members opposed? The motion is carried. We will report to the Assembly this afternoon on Pr. 4.

We will now move on to Bill Pr. 5, being the Brooklynn Hannah George Rewega Right of Civil Action Act, sponsored by Mr. Friedel. Prior to going into a summary of the bill and the evidence that we heard, I'll do it in a similar format to that which I did on Pr. 4.

I would like to acknowledge on behalf of all members of the committee the presentations that were received by this committee from counsel for the petitioners, for other parties involved: Ms Corbett, Mr. Steed on behalf of the Department of Justice, Mr. Friedel as sponsor, and of course Mr. Rewega, father of the infant petitioner.

This private bill has as its purpose to provide a legislative exception to the common law that provides maternal tort immunity for prenatal wrongful conduct, and in this case it would then allow for litigation to be commenced or continued against the infant petitioner's mother for injuries allegedly sustained in a motor vehicle accident while the mother was pregnant with the infant petitioner.

In brief, the facts that this committee heard in support of the private bill are that the infant petitioner, Brooklynn Rewega, by her next friend and father, Doug Rewega, has commenced an action in the Court of Queen's Bench of Alberta for injuries, losses, and damages allegedly sustained by the infant petitioner as a result of a single motor vehicle accident which occurred December 31 in the year 2000. The statement of claim in this matter that I just referred to was filed with the court on December 5, 2002.

At the time of the accident the infant petitioner was in utero and was subsequently born on April 24, 2001. Her mother, Lisa Rewega, was driving a vehicle owned by the infant petitioner's paternal grandparents, George and Tina Rewega. The infant petitioner's mother and grandparents are named as defendants in the civil action I have described.

We were told that the infant petitioner suffers from a number of cognitive and physical disabilities which allegedly arise from the accident. We were told that she requires round-the-clock medical care, treatment, and assistance in practically everything that she does and that she will likely require this level of care for the rest of her life.

On January 29, 2004, Madam Justice Moreau of the Court of Queen's Bench of Alberta struck out the infant petitioner's action against her mother, Lisa Rewega, based on the 1999 Supreme Court of Canada decision in *Dobson and Dobson*. This committee was told and we do accept that this case represents the law in Canada and, therefore, the law in Alberta. It is that an infant may not sue his or her mother for injuries suffered before birth for any reason, certainly including a motor vehicle accident such as this, caused by the negligence of the mother. The decision in that case was a 6-2 decision.

The court, as it was described to us, while it defined the common law, did leave open the possibility of contrary legislation providing for a limited exception for motor vehicle accident injuries provided the exception was carefully defined. An example of such legislation was described to the committee. There is such legislation in the United Kingdom. It is public legislation and has general application to the public at large.

In arriving at the decision in *Dobson and Dobson*, the court made a conscious policy choice to preserve the special relationship between mother and child in the interests of society as a whole but, as I said, did leave open the possibility for a Legislature to bring forward legislation, which to date, as far as we know, has only been in the form of public legislation.

That said, I will try and articulate what I believe the issue should be for the committee to keep in mind in addressing this matter. The first would be that given that the purpose of a private bill is to provide a remedy where no other remedy exists, the question, then, for this committee is: has the infant petitioner exhausted all of the remedies available to her to this point in time including those available through the court process? Second, given that a private bill relates to the affairs of an individual or a group of individuals or a body as distinguished from the public at large or a government bill, which deals with public policy which is of general application, the question is whether a private bill is the appropriate legislative remedy or means for addressing this matter.

9:20

I will attempt, again quite briefly, to summarize what I understood to be the positions of counsel that presented to this committee.

Counsel for the infant petitioner, Ms Saccomani, who of course spoke in support of the private bill, argued that this private bill would fill a void in provincial legislation. She relied on excerpts from the *Dobson* decision, suggesting that the Legislature is the appropriate forum for public policy concerns, and the example that she cited was the public, or government, bill from the United Kingdom which provides for the motor vehicle exception.

She went on to say that the circumstances in the *Rewega* case are very unique, and as such it is unlikely that there would be other persons finding themselves in a similar circumstance and thus argued that the private bill requirement had been met. On the point as to whether all other remedies had been exhausted, her submission was that to exhaust all levels of court remedies would take too long – she suggested perhaps 10 years – compared with an estimated five years if this particular private bill were passed and gave her client a right of action against her mother.

Moving on, then, to counsel for Lisa Rewega and Tina and George Rewega, who was Ms Sandra Corbett, who was not supportive of the bill proceeding. She argued that the petitioner had not exhausted all the remedies available, as an appeal can still be brought to the Court of Appeal of Alberta and to the Supreme Court of Canada on the action that was struck, plus there is ongoing litigation still in place involving the grandparents, Mr. and Mrs. George Rewega. She also went on to say that it was her view that this bill deals with significant public policy and social policy concerns and therefore a private bill is an inappropriate remedy.

We also heard from counsel for the Department of Justice, Mr. Nolan Steed, QC, who commented as well that in his view not all remedies had been exhausted in the litigation process and that if this private bill were to be granted, it could send a message to others that the Legislature is an alternative appeal process in the litigation process. He also commented that the policy issues raised in this matter are numerous and would have an effect on other parties and institutions and that therefore it is not appropriate to proceed by way of private bill. He did talk about the *Dobson* case and did acknowledge that the court in its majority decision had left open certainly the possibility for the Legislature to carve out legislative exception for motor vehicle accidents, but he believed that the appropriate type of legislation would be public legislation.

Parliamentary Counsel, Ms Shannon Dean, QC . . .

**Ms Dean:** I'm not a QC.

**The Chair:** Well, it's not that you don't deserve it; maybe next time. She's a very good lawyer, and I think of her as a QC.

Parliamentary Counsel pointed out to the committee the points that had been raised by other counsel. Because there still is the subsisting action against two other defendants, the owners of the vehicle, the petitioner has not exhausted all other avenues of relief. It was also her view that any legislation in this area should take the form of a public act, applying to the public at large, rather than being in the form of a private bill, creating a special right of action for one individual.

I'm sure I have not been able to cover all of the nuances that were expressed to us in terms of the evidence, but I believe that is a fairly comprehensive overview. I would also like to state on the record, which is already on the record, I guess, from our *Hansard* transcript from last week, a question that was put to Mr. Steed, representing the Department of Justice – I believe it was put to him by Mr. Snelgrove – questioning whether the government was doing any work in the area of tort reform and whether there had been any consideration given to legislation in this area. It was Mr. Steed's response that he had been advised that tort reform is being looked at by the institute

– I believe he would be referring to the Alberta Law Reform Institute – and that this type of question that we’re faced with here would most likely be looked at in the context of that. If that work were done, I’m sure it would be of great benefit to this committee.

With those remarks, then, I would open the floor to discussion by the members. Yes, Mr. VanderBurg.

**Mr. VanderBurg:** Thank you, Madam Chair. Unlike most of the faith-based decisions that we’ve made at the Standing Committee on Private Bills, whether it be St. Mary’s College or Living Faith College or Northwest Bible College or some of the others that we’ve dealt with in the past year, Pr. 5 is quite different and has some broad ramifications I believe. I am very uncomfortable. Unlike the decisions we made in Pr. 4 and others where, you know, you get the presentation one week and the next week you make the decision, Pr. 5 is quite different from all of those.

Given that, I’ll get the discussion going. I’ll move that the Standing Committee on Private Bills defer consideration of Pr. 5, Brooklynn Hannah George Rewega Right of Civil Action Act, to the fall 2004 sitting of the Legislature.

So I’d like to defer consideration, Madam Chair.

**The Chair:** All right.

**Mr. VanderBurg:** I think that you’ve laid out the reasons why. I mean, I don’t have to repeat all those things over and over again, but it’s quite unlike any decision that we’ve made in Pr. 4 and others and others the last sitting and the sitting before.

**The Chair:** Well, yes, I well appreciate that and thank you for your motion.

You’ve all heard that. I see that there is certainly some discussion. Dr. Pannu.

**Dr. Pannu:** Thank you, Madam Chair. I’d certainly like to speak to the motion before us, but in order to do that, I need to lay out some arguments with respect to my position on Bill Pr. 5, so with your permission I’ll proceed.

I know that all of us, the members of this committee, have had time to give very serious thought to the arguments made to us by the presenters at our meeting last week. I want to thank all of those presenters as well as the written advice that we got from our Parliamentary Counsel and from Mr. Steed from the Department of Justice.

That being said, I wish to begin by offering my best wishes to the Rewega family, who appeared before the committee last week. Raising a child with severe disabilities is an enormous challenge for any family, and my heart goes out to them. As a society we have a responsibility to assist families like the Rewegas, raising disabled children, to ensure that the appropriate supports, including financial supports, are available to them. As a legislator I must ensure that all families, including the Rewega family, who are confronted with these very serious difficulties have the financial supports needed to properly care for a severely disabled child.

9:30

I have decided after careful consideration that I can’t support Bill Pr. 5. I’ll briefly outline the reasons why. As noted in the submission of the Department of Justice and as noted by our own Parliamentary Counsel, first and foremost, the Private Bills Committee is the wrong forum for dealing with this matter. As noted in their submissions, private bills generally affect only the people or institutions named in them. These bills do not seek to amend public acts or affect public policy. Clearly, the amount of provincial and

national media attention that has been garnered by the Rewega case and the presence even today of the media in this room attest to the fact that there are profound public policy implications should this committee decide to proceed with Bill Pr. 5.

In my view, it’s not appropriate for the issues raised by Pr. 5 to be dealt with by way of a private bill. This committee is not being asked to support a public statute setting out rules whereby a fetus could bring a legal action against a mother who was at fault in a motor vehicle accident. What this committee is being petitioned to do is to set aside the existing common law principle that a legal duty of care cannot be imposed on a pregnant woman towards her fetus or subsequently born child. What the committee is being petitioned about raises a whole host of vital public policy issues such as women’s reproductive rights, regulation of pregnancy and reproduction, the right of state to have control over a woman’s body, et cetera. Moreover, through Bill Pr. 5 the committee is being asked to give one party a legal advantage in an ongoing civil litigation to the legal detriment of the other party in the case, again in the absence of a public statute governing such matters.

As the Department of Justice noted in its submission, the purpose of a private bill is to provide a remedy where no other remedy exists. The parties have not exhausted all of the options available to them in the litigation process.

I think the Department of Justice’s contention, that the decision to proceed with this private bill as a private bill may lead civil litigants to see the Alberta Legislature as an alternative appeals process, is a well-grounded one. Nor can I accept the contention of the Rewega legal counsel that this is a unique case. It is a fact that pregnant mothers get involved in motor vehicle accidents. While such cases may not be common, they are certainly far from unique. The very fact that a similar set of circumstances in the Dobson versus Dobson case led the Supreme Court of Canada to rule in 1999 disallowing what’s being sought in Pr. 5 proves that the circumstances of the Rewega case are not unique. Should we grant the petition being sought through Pr. 5, it’s very likely that the Private Bills Committee can look forward to petitions from other Albertans who will be requesting that the committee set aside both this existing common law principle and perhaps others.

Setting aside the common law principle will also have legal ramifications for the automobile insurance industry. Pregnant women may find it more difficult to obtain or maintain their liability coverage should an insurance company fear that they’ll be liable not only for compensation to the mother but, in addition, for injuries caused to her fetus.

Nor is it the job of this committee to retry the Dobson versus Dobson case, on which the Supreme Court ruled as recently as five years ago. Whether we agree or disagree with the court’s decision in this particular matter is beside the point. What’s important is that the Supreme Court and the courts generally are the appropriate bodies to adjudicate these issues, not the Private Bills Committee of this Legislative Assembly. While the Supreme Court left the door slightly ajar for the federal Parliament and provincial Legislatures to make limited exceptions in the case of motor vehicle accidents, such a public statute should be adopted only after extensive review, extensive public discussion, and very careful scrutiny of its numerous implications.

I for one would only consider supporting a public statute if I could be absolutely certain that it did not in any way interfere with the rights of women to seek safe legal abortions earlier in pregnancy. Any such statute would also have to meet many other safeguards set out by the Supreme Court in the Dobson versus Dobson decision. Such safeguards include not exerting state control over the personal behaviours and choices of pregnant women and not creating legal

conflict between pregnant women and others purporting to represent the best interests of their fetuses.

A recent decision by the Texas Court of Appeals, Madam Chair, says that its conclusion, that no legal duty is owed by a pregnant woman to her fetus, is compelled by

the unique relationship between a mother and her fetus, and . . . the inherent differences between imposing a duty on entirely separate individuals and imposing the same duty on a person biologically joined to the injured party.

The citation from the Texas Court of Appeals is contained in an excellent article by Erin Nelson, assistant professor in the Faculty of Law at the University of Alberta, in the 2000 edition of the *Supreme Court Law Review*. I would encourage members of this committee to read this excellent article. In the article's conclusion, Professor Nelson outlines possible alternatives that would accomplish the objective of ensuring that children such as Baby Rewega who suffer from prenatal injuries in automobile accidents are fairly provided for without undermining the reproductive rights of women.

For all of the above reasons and despite my deep sympathy for the Rewega family – and I must say that I was most moved last Tuesday to see the baby when the family was here, her parents and grandparents all here – I can't support the remedy being sought through Bill Pr. 5. I strongly urge all committee members to follow the advice of the Department of Justice and of our Parliamentary Counsel, thereby saying no to this request.

Now to the motion to defer. Because of the reasons I've given, I think this committee should simply acknowledge that the matters raised by this petition before us are of such vital significance with respect to public policy issues that we should acknowledge that the consideration of the issues implied in this bill fall outside the purview of this committee, and therefore we should simply express our inability to deal with it.

I'm totally in agreement with the members of the committee in seeing that the government and the Department of Justice perhaps look at the matter closely and come forward with a piece of legislation that will provide remedies in cases such as these. In the case of Baby Rewega, if it is necessary to create a special fund, for example, to do this, I think that would be in my view a preferred route than taking action that might put in question the fundamental rights of women and mothers.

Thank you.

**The Chair:** Thank you for your thoughts, Dr. Pannu.

I'll move on to Mr. McClelland.

**Mr. McClelland:** Thank you very much, Madam Chair. Well, as Leonard Cohen said in his song: it's the crack that lets the light in. The Supreme Court definitely envisioned light getting in on this subject. If we look at the litigants in the Dobson versus Dobson decision, it wasn't strictly the mother and the unborn child. The Abortion Rights Action League and other people were involved in it: the Catholic Group for Health, Justice and Life; the Evangelical Fellowship of Canada. So there are all kinds of other interests at play in this Dobson decision. What we are considering – and the Supreme Court clearly indicates that we have the opportunity, the right, and perhaps even the obligation to consider the injury to an unborn child while in the womb as a result of an automobile action. Whether there's negligence involved or not is not the question, but the opportunity is clearly given to consider that as a distinct and separate issue.

**9:40**

Our situation, in my view, is to make sure that we get the horse before the cart. By delaying this, ensuring that we have public

legislation that covers exactly this narrowly defined circumstance, we can then revisit this and make sure that our decision is congruent with the public policy decision that's made. So we force the public policy decision, we ensure that that is done, and then we can revisit this and ensure that the right thing is done considering the Supreme Court decision in Dobson versus Dobson, because it seems, at least to me, that the Supreme Court envisioned this potential, and we would then follow the precedent set in the Westminster Parliament.

Thank you.

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

Mr. Lord, followed by Rev. Abbott.

**Mr. Lord:** Thank you, Madam Chairman. I think just by our own intellect, let alone the presence of the media and the comments that we've heard this morning and the comments we've heard in the last presentations, it's very clear that this issue would have significant public policy impact, and therefore by definition it may not be appropriately put before this committee. However, having said that, it is before the committee, and we have to deal with it. In my mind, it certainly requires some very, very serious thought as to how we should proceed with this, so I'm going to be supporting the motion by my colleague that we at a minimum defer this to the fall. I mean, even subsequent to our last meeting I have come up with several pages of questions of my own that I would like some answers to before I would make a decision. I think it's premature for anyone to take a position at this point unless they've done thorough research on this.

Personally, I would like to hear from some more legal experts and perhaps from the public, perhaps from my constituents. You know, over the summer I certainly would be looking forward to getting some comments from them as to how they think this should proceed. I do have a question in that regard. I'm wondering if we members of the committee can make written submissions to our Parliamentary Counsel, because I would like to get answers to the questions that I've come up with. Further to that, will this committee be taking any sort of other submissions in addition to what we've already taken, and will this committee be taking any public submissions in that regard? I'm wondering if there's anyone that could answer that question.

Beyond that, I'll certainly be supporting the motion that we defer a decision on this to allow for further study and input over the summer and come back in the fall and decide how to proceed with this.

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

I'm not prejudging the matter, but perhaps once we've had the vote on the motion that's on the floor, there would then be an opportunity to look at what other kinds of steps this committee would like to take or information that it would like to seek out prior to reconvening in the fall. Okay. So we could revisit that.

I'll now call on Rev. Abbott, followed by Mr. Pham.

**Rev. Abbott:** Thank you, Madam Chair, and thank you for that great summary. I think it's important for the committee members to note that what you gave was a summary of a summary because, as you know, we were very limited for time last week, and as the Member for Calgary-Currie just said, there is a lot more information that we need to gain here.

I definitely support the motion from the hon. Member for Whitecourt-St. Anne. I feel that it would be very timely for the government to look at this in the form of a public bill. I do have one question, which you can maybe answer a little bit later, and that is:

if we do deal with this as a public bill through a government bill, would it affect this case at all, or would we still need to make a decision on Bill Pr. 5?

The other thing I'd like to say is that with regard to Bill Pr. 5 I agree with the motion where it says to defer to the fall, because we cannot defer this any longer than the fall, I believe. We can't continue to defer this indefinitely. Ms Saccomani talked about the importance of time with regard to helping little Brooklyn. These families need to get on with their lives, so they do need a decision to be made. I think that's very important, and I agree with my colleague from Edmonton-Rutherford that there are many public policy implications here.

I wholeheartedly disagree with the Member for Edmonton-Strathcona, and in fact I don't believe that it was appropriate to bring up the public policy at this time because we are debating a deferral motion; we are not speaking to the bill directly. In fact, if the member were to look at the Winnipeg case, the Supreme Court invites and almost begs the Legislatures to make some legislation with regard to rights for unborn children. So there's certainly a lot more there that we have not looked at.

I guess what I'm trying to say is that I support the motion to defer, but I do hope that we will get more information and be able to come to a decision on this. Thank you.

**The Chair:** Thank you for your comments.

Mr. Pham.

**Mr. Pham:** Thank you, Madam Chair. This is a very interesting private bill. Over the years that I have been a member of this committee, never before has a bill that is so important for an individual also had strong implications for other people. The motion before us is a good one because it defers the important decision until the fall.

When I look at this bill, this bill is a very cumbersome way and a very cumbersome attempt by their lawyer to get justice for her client. If the insurance company and the victim had been able to reach a deal, then I don't think that we would need to bring this kind of bill in front of us. I hope that by delaying the passing of the bill or by delaying the discussion of the bill until the Ministry of Justice has had a chance to review this issue in a wider domain, it doesn't send the wrong message to the insurance company that they should continue to not deal with this issue in an expedient manner. I do hope that between now and the fall the two parties can reach an agreement and somehow save us from all this headache.

When I look at this, obviously the Dobson and Dobson case did make a very clear exception for automobile accidents. Since the decision was handed down in 1999, the federal Parliament and the provincial Legislatures have failed to act. Even at a later date if we can bring in a public bill to deal with this issue, this still doesn't address this particular case.

I listened very carefully to the submission from the lawyer of the insurance company. On one hand, she claimed that the victim has not exhausted all the remedies that are available, but on the other hand they continued to strike this motion when the victim tried to bring the issue in front of the court. So that in itself is a conflict to me, because if you are saying that, well, the defendant has other remedies, then you should let them proceed with that and you shouldn't try to stop them from seeking those remedies. So I think that is double-talk from the insurance company.

A very important note that I observe is that even though this has wide implications for other people as well, it is not the intention of the victim to bring in a bill to affect other people. They only care about this particular case, and we cannot fault them for that.

I wholeheartedly agree with the lawyer of the victim that justice

delayed is justice denied. I hope that the insurance company people, when they read *Hansard*, take notice of this, because I am a firm believer of not wasting the time of the court, not wasting the time of the Legislature. This bill should never have been needed in the first place, and I hope that the insurance company and the lawyers of the victim will do everything that they can to settle this thing before the fall, when the thing comes back. That's really my hope. Also, I'm hoping that the Ministry of Justice will be able to review all the matters related to this case and bring in a good public policy that deals with exceptions for automobile accidents for pregnant women and their children.

Thank you.

9:50

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

I'll now call on Mr. Rathgeber, followed by Dr. Massey, and that will then complete my speakers list. Mr. Friedel will sum up.

**Mr. Rathgeber:** Thank you, Madam Chair. As I indicated last week when we heard submissions on this matter, I am deeply troubled by this application, but upon further reflection I have come to the conclusion that my trouble is based not so much on that this application lacks merit but more on that I believe it is premature. I agree with almost everything that I've heard around this table. I certainly am going to be voting in favour of Mr. VanderBurg's motion to defer this, for the following reasons.

The two-pronged test for a private bill, as I understand it, is that no other remedy could possibly exist. On that first branch, Madam Chair, I believe that this application would fail because there is a live action presently against the defendant grandparents and vehicle owners, George and Tina Rewega, but at some point that potential remedy might be extinguished. We don't know, and I cannot prejudge that. The larger concern that I have is the public policy issues that invariably will be raised by this application, and in that regard I agree with much of what was outlined by Dr. Pannu, not that I agree with his conclusions. But the very fact that those arguments can be made confirms for me that public policy issues tangential to this application will be raised.

I've read the Dobson decision a number of times now, and I do agree with the counsel for the applicant that it did invite the Legislature to intervene on these matters, but I submitted last week and I continue to believe that nowhere did the Supreme Court of Canada invite a private bill to be brought. In fact, my understanding of the Dobson decision is that subsequent to the decision no private bill was thereafter brought by the plaintiff.

Clearly, what the Supreme Court of Canada was contemplating was a public bill, a public bill similar to the one that was brought in 1976 by the Westminster Parliament in London in the form of the Congenital Disability (Civil Liability) Act. I cannot read in Dobson that a private bill was contemplated. The reason that I believe the Supreme Court of Canada was contemplating Legislature intervention by means of a public bill was because of the broad public policy considerations that invariably are raised, and these include overriding the long-standing common law exception to tort immunity for pregnant women. This has been in the common law for as long as there's been common law, and to override the common law exception is a major public policy consideration.

Invariably that debate will raise the issue of the rights of the fetus versus the rights of pregnant women, and that is not an issue that we can resolve here at this table, nor ought we even attempt to. That is an issue that, if it can be resolved, has to be resolved only in a public forum regarding all members of the public, with applications made from interested parties on both sides of that debate.

The other public policy issue that we haven't touched on today but

which I think is equally important is the insurance ramifications of this type of application. There's a long-standing principle of common law that tort law should not be result oriented, or to state it more simply, it should not be based on the defendant's ability to pay. Standards of care and duties of care traditionally and I think properly are based on appropriate standards of conduct, whether you're operating a motor vehicle or whether you're walking down the street or whether you're using a firearm or whatever activity might be the subject of subsequent litigation. It's rare that these issues are resolved on the basis of one's ability to pay or the existence of insurance. Now, that's not to say that a Legislature cannot make an exception to that rule, as the British Parliament did in 1976, but again that raises public policy concerns that are beyond the mandate of this committee.

So for all of those reasons I believe that the application before us has merit. Certainly, it has the sympathy, I believe, of all members of this committee and the constituents that I have heard from in the last week since we heard submissions on this matter. However, I believe it is premature. I believe it is premature because there is an existing court action against the owners and because we have heard that the Minister of Justice and his department are studying this matter in a public context. So I support Mr. VanderBurg in that these matters should be deferred until we receive more advice on both of those issues.

Thank you, Madam Chairman.

**The Chair:** Thank you.

I will now call on Dr. Massey, followed by Mr. Vandermeer, and we'll conclude with Mr. Friedel.

**Dr. Massey:** Thank you, Madam Chairman. I'm inclined to support the motion to delay. I think if you put the motion in context, we were told by the lawyer for the Rewega family last week that were this private bill passed, it would cut down the litigation time from 10 to five years. It's a long, long time that we're dealing with, so a delay of a matter of months I don't think is going to be critical with respect to their case. But I would like to be clear: if we do delay it, what exactly is expected to happen? Will the review of the law be complete, and will there be a public bill proposed to the Legislature?

**The Chair:** Well, Dr. Massey, I don't think any of us here today can answer that question. I would expect that one of the steps that this committee would want to take would be to write to the Minister of Justice and invite him to certainly investigate this issue – I believe that work is underway – but, perhaps, you know, to step it up in view of the matter that is before this committee and the assistance that that work would provide to this committee in helping us to come to a decision when we reconvene in the fall. That's the best that I think I could say.

Is there anything you would care to add, Ms Dean?

**Dr. Massey:** Thanks. If that's going to happen, I think then it does make sense.

I would add for a footnote, Madam Chairman, that as emotional as last week was, that scene is played out in hundreds of homes across this province. Edmonton public alone has 120 of these children, so this is not a lone case. It's a struggle, a calamity that many families have had to deal with.

**The Chair:** You're speaking of children with serious disabilities that are facing them and their families?

**Dr. Massey:** Yes.

Thank you.

**The Chair:** Thank you.

Mr. Vandermeer.

**Mr. Vandermeer:** Thank you, Madam Chair. It would seem to me that there are many inconsistencies with our laws, one of them being that if the father would have been driving this vehicle, there would be compensation for the victims. One of the things that I don't understand and the reason that I'm going to be voting against this motion is that we need to move ahead. We are leaders, and we can have this debate in the Legislature. We're not necessarily making a decision here. We're just making the decision that we move ahead and we have the debate in the Legislature.

We are talking about a family that has been struggling for almost three years with this situation. To ask them to struggle for a longer period of time, in my opinion we're not thinking of the victims here, so I think that we should move on this. As Mr. Pham said, justice delayed is justice denied.

10:00

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

Mr. Friedel. Oh, I see that Dr. Pannu would like to speak. Maybe, Mr. Friedel, you could hold off till the end.

**Mr. Friedel:** I'll wait.

**The Chair:** Dr. Pannu.

**Dr. Pannu:** Madam Chair, thank you for the opportunity. I want to make a couple of comments. One of these has to do with a concern, perhaps, among some members of the committee that to turn this application down at this level at our committee would somehow prejudice the case even if the Department of Justice or the government accepts the advice of the committee and decides to bring forward legislation. I, frankly, am puzzled by this concern.

I think this committee has unanimously expressed its support for the need to provide necessary support for Baby Rewega. There's absolutely no doubt in my mind that all of us have one view with respect to the need for providing some relief and remedy, so for the committee to simply say that in light of the advice that it has received from the Department of Justice the committee is unable to deal with the matter doesn't mean that we seek no action. We can certainly recommend to the Minister of Justice and to the government of Alberta that it come forward with legislation that will cover this case.

The second point that I wanted to make is on Reverend Tony Abbott's concern about whether or not it was appropriate for me to bring forward earlier the matters related to public policy implicated by this application. Whether it's the written submission from the Department of Justice or the advice from our own Parliamentary Counsel or others, I think everyone acknowledges that there are public policy issues involved, and for us not to be able to speak to those or draw attention to those in my view would be failing in our duty. So I'm puzzled by the concern that my colleague from Drayton Valley-Calmar expressed on this.

Thank you.

**The Chair:** I guess we're all entitled to our opinions, but you will note that, you know, the chair certainly didn't cut you off in anything that you had to say, and I don't know, Reverend Abbott, that we really want to get into a debate over this because I don't think it's probably necessary.

I know some of our members do have to leave quite soon, so I'd like to call on Mr. Friedel to make concluding comments.

**Mr. Friedel:** Well, thank you, Madam Chair, for the opportunity as the mover of the bill to speak to it. I noted after last week's meeting the significant media attention and the significance of this bill compared to perhaps the one that was before it at the committee meeting. It certainly raised questions, and probably more questions than answers have come up in the past week. The debate around this table I think would indicate that.

If Mr. VanderBurg hadn't suggested or moved that the issue be tabled to the fall, I was in fact going to request that because I believe it's important, notwithstanding my firm conviction on helping the parents and the child on this issue, that decisions be made for the right reasons. In the midst of the kind of confusion that may have been raised around questions and perhaps the lack of answers, it's equally important that those issues are dealt with for the right reasons, and that typically would mean with full knowledge of the circumstances and all the information that's available to the committee. Even if the committee was to have endorsed this to the extent of allowing it to go to the Legislature, there's perhaps a month or less left in the spring sitting of the Legislature, and it's likely that many of those questions still would not have been answered.

I think this is the correct solution so that the committee members, the Department of Justice, the family, and legal people on all sides of the issue have the opportunity to weigh this over the summer and we have the opportunity to come back here in the fall with as many answers as are possible. At least at that time this committee and, depending on the outcome, the Legislature following it would have the opportunity to deal with it with the best possible information.

Having said that, I certainly support the motion to defer.

**The Chair:** Very good, Mr. Friedel.

Well, are you ready for the question?

**Hon. Members:** Question.

**The Chair:** All right. All in favour, then, of Mr. VanderBurg's motion to defer consideration of Bill Pr. 5 until the fall 2004 sitting of the Legislature, please say aye.

**Some Hon. Members:** Aye.

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

**Some Hon. Members:** No.

**The Chair:** All right. The motion is carried, and we will address this when we reconvene in the fall.

Yes, Mr. Lord. You want to renew your request?

**Mr. Lord:** Yes. I would like to, I guess, revert to my earlier questions. It's very clear to me that this application before us was intended to and has succeeded in taking this decision out of the court of justice and putting it into the court of public opinion, and that may or may not be appropriate.

I guess the concern I have is that we should be fully aware of the unintended consequences that may flow from a decision either way on this. In that regard I am again wondering: do we have a process by which members of this committee can perhaps submit written questions, then, to Parliamentary Counsel? Beyond that, are our constituents invited to put in submissions, or is that something that we would contemplate through a different process at a later date? Now that it sort of is in the court of public opinion, I'm sure that many people in the public would like to have their say on this.

**Ms Dean:** Certainly, Mr. Lord, I'd be happy to answer any questions that the members of the committee have in connection with this bill. In terms of what other submissions the committee wants to obtain before making its decision or over the break during the summer, that's a decision of the committee, and perhaps it should be decided today as to who the committee would like to hear from.

**The Chair:** Certainly, in that regard I think probably the main thing we need to do is to communicate with the Minister of Justice in view of what we already know, and of course the Minister of Justice is much better equipped to elicit public responses on this matter.

**Mr. Lord:** Madam Chairman, would you entertain a motion to that effect then: that this committee write to the Minister of Justice in regard to this issue to ask whether or not his department intends to pursue some sort of public process and perhaps some sort of government bill.

**The Chair:** I think that would probably address our needs. Any further discussion? Mr. McClelland.

**Mr. McClelland:** Yes, Madam Chair. I think we as members of the Legislature are free to inform ourselves on this subject in any manner that we see fit over the course of the summer, as are other members of the Legislature, and it's our responsibility to bring that informed consideration to debate.

Thank you.

**The Chair:** Yes.

*10:10*

**Mr. Snelgrove:** I agree with Mr. McClelland, and I want to add what Mr. Pham pointed out, that these people have never intended to make this, I believe, a broader public policy. As a committee studying their private bill, Pr. 5, that's what the committee is challenged with, and I agree that we have a right or an obligation as Members of the Legislative Assembly to work towards informing ourselves or our government of other ramifications that have arisen from this, but we should not intend to drag this bill down the road with that. This is a very separate, personal bill and shouldn't be used as a vehicle for anyone to either further their own issues or to deny them.

So I would hope that the committee would stay focused on the simple fact that we deal with Pr. 5 as a bill and that the other stuff operates outside of this committee.

Thank you.

**The Chair:** Thank you.

**Rev. Abbott:** Thank you very much, Lloyd. That's what I was going to say as well, that I feel there is an appropriate time to discuss the public policy implications around matters such as this, but this certainly is not it. That's the point that I was trying to make in my comments earlier. I look forward to that public policy discussion. In fact, I have some very strong views that I would like to bring forward on behalf of my constituents, but like I said, I don't believe it's right to do it at this time. So I do look forward to the future and the possible debate on this.

**The Chair:** Mr. Pham, followed by Mr. Rathgeber, followed by Mr. Goudreau.

**Mr. Pham:** Thank you. I agree wholeheartedly with the two previous speakers. Because this is a private bill, even though it has some public issues that are attached to it, we should separate the discussion out. I'm sure that you will write to the petitioner and the intervener informing them of our decision.

**The Chair:** Absolutely.

**Mr. Pham:** I would urge that in that letter you put in a clause urging them to settle the dispute. It doesn't have to come back to our table. I think that is what I want to see; that's what the family wants to see. We can certainly have the discussion on a public policy, but this private matter should be dealt with, ideally, at the negotiation table.

**The Chair:** Thank you.

Mr Rathgeber. All right; Mr. Goudreau.

**Mr. Goudreau:** Thank you very much, Madam Chairman. I think we've agreed today that it was, you know, a time to reflect and a time to think back about the implications of what was before us. I think it's our responsibility as individual members to inform ourselves, but I really feel that it is the responsibility of this committee to assure that the process follows through, that there is a certain process that's established, that in the event that the Justice department decides not to deal with it, it's not left out there hanging and we come back in the fall where we're not any further ahead than we are today. I really believe that it's our onus as a committee, then, to make sure that the process will be followed through somehow.

**The Chair:** Well, just on that point, I do appreciate what you're saying, but I do believe that for the Private Bills Committee to undertake a public process of enquiry on this matter of public policy would be beyond our normal mandate. I do think it's quite proper, though, for the committee to write to the Minister of Justice and make enquiries as to what the minister is doing and the status of that and the intentions of the government in this regard, which may well have an impact on what this committee might do or not do.

Mr. Lord.

**Mr. Lord:** Thank you, Madam Chairman. I put a motion earlier, and I've been listening carefully to my colleagues' comments here, and it appears to me that there is not an appetite for this committee to undertake any sort of public process to move this forward. So I concur with your assessment. I think it's appropriate for this committee to write to the minister and enquire whether or not his department would be undertaking such an initiative and perhaps request him to consider doing so if he hasn't been doing so already. I would like to put that motion before this committee, if I could, that this committee write to the minister and ask if he would consider bringing this decision . . .

**The Chair:** If the government has any intention of bringing forward.

**Mr. Lord:** Right.

. . . to clarify those intentions and perhaps encourage him to create a public process and perhaps look at a government bill coming forward in regard to this issue.

I'm sure our counsel can word that motion appropriately, the intent of the motion.

**The Chair:** I think we have the intent, the tenor of the motion.

**Mr. McClelland:** I'll second that motion.

**The Chair:** All right. Seconded by Mr. McClelland. All in favour, please say aye.

**Hon. Members:** Aye.

**The Chair:** Any opposed, please say no. The motion is carried.

Parliamentary Counsel will draft that. I'm sure it will be a very adequate letter, and I will sign it.

Any other business we need to address? Yes, Mr. Goudreau.

**Mr. Goudreau:** I was just going to move adjournment.

**The Chair:** Okay.

I would just say this before we leave. If there are other questions that members want to have answered, as best we can, Ms Dean will do so or we will endeavour to get that information before the committee.

I would just like to thank all committee members for their diligence this session and the serious attention that you paid to all of the matters that we heard. Of course, Pr. 5 was more demanding and challenging in a lot of ways because of its potential ramifications, and I thank you for your serious attention to this and all of the good thought that went into that and your very fair-minded approach to this because we all want to do the right thing and to not rush our decisions if we don't have to.

So that said, thank you to the *Hansard* staff, who have been with us all session. And Parliamentary Counsel, Ms Dean, and our parliamentary assistant, Ms Marston, thank you for your assistance.

If there is no other business, I'll then entertain Mr. Goudreau's motion to adjourn. All in favour, please say aye.

**Hon. Members:** Aye.

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

We'll see you in the fall.

[The committee adjourned at 10:17 a.m.]