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**Official Report
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(Hansard)**

Wednesday 23 March 2011

**Journal
des débats
(Hansard)**

Mercredi 23 mars 2011

**Standing Committee on
Regulations and Private Bills**

**Comité permanent des
règlements et des projets
de loi d'intérêt privé**

Chair: Michael Prue
Clerk: Katch Koch

Président : Michael Prue
Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

**COMITÉ PERMANENT DES
RÈGLEMENTS ET DES PROJETS DE LOI
D'INTÉRÊT PRIVÉ**

Wednesday 23 March 2011

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The committee met at 0902 in room 151.

ONTARIO BARBER ASSOCIATION ACT,
2011

Consideration of Bill Pr44, An Act respecting The Ontario Barber Association.

The Chair (Mr. Michael Prue): We'll call the meeting to order, a quorum now being present.

We have two items. The first one is a relatively quick item, and that has to do with the bill we discussed last time, Bill Pr44, An Act respecting The Ontario Barber Association. All of the votes were taken correctly, save and except the last one. If the members will remember, I asked, "Shall the bill not be reported?" There was some discussion about whether that was the right wording, and we ended up voting another way. So what I am required to do, and what the clerk has suggested, is that the Chair shall put the question, and the question must be, "Shall I report that Bill Pr44 be not reported to the House?"

I'm asking the members of the committee for their opinion on that. Shall I report that the bill, Bill Pr44, be not reported to the House? Is there agreement on that?

Mr. Paul Miller: Fine, Mr. Chairman. They didn't want it to go to the House, so certainly, I am agreed that you can tell them that they didn't want it to go to the House. That's fine.

The Chair (Mr. Michael Prue): Mr. Rinaldi.

Mr. Lou Rinaldi: No, that's fine—answer my question; I'm ready.

The Chair (Mr. Michael Prue): It's just that I could not report the last time, and so it has not been reported, what happened. What I have to say is—and I'll say it again—"Shall I report that Bill Pr44 be not reported to the House?" Does the committee agree?

Mr. Paul Miller: No.

Mr. Lou Rinaldi: Mr. Chair, just for clarification—I'm a bit confused with what you just read.

The Chair (Mr. Michael Prue): All right. I will read the clerk's entire message. I didn't think it was necessary, but here it is, the entire message from the clerk's department:

"Bill Pr44, An Act respecting The Ontario Barber Association

"Bill Pr44 is still before the committee because at its last meeting the committee voted not to report the bill to

the House. The committee has an obligation to report to the House. SO 110(c) states: 'A standing or select committee to which a bill has been referred by the House shall be empowered to report the same with or without amendments or to report that the bill be not reported.' If all the sections of the bill have been defeated, as is the case with Bill Pr44, the Chair must put the question, 'Shall I report that the bill be not reported?' The Chair shall put the question, 'Shall I report that Bill Pr44 be not reported to the House?'"

So that's the way we should have dealt with it. We did not, in the end, use that sentence.

Interjections.

The Chair (Mr. Michael Prue): All right. I've had a request that we put this to a vote—

Mr. Paul Miller: Can I have a recorded vote, please?

The Chair (Mr. Michael Prue): And on a recorded vote. Shall I report that Bill Pr44 be not reported to the House?

Ayes

Craitor, Leal, Rinaldi, Ruprecht.

Nays

Paul Miller, Murdoch.

The Chair (Mr. Michael Prue): Then it will be not be reported to the House, as per the vote. That's the end of that item.

BAHRAM & HAMID INC. ACT, 2011

Consideration of Bill Pr42, An Act to revive Bahram & Hamid Inc.

The Chair (Mr. Michael Prue): We go on to the next item, which is Bill Pr42, An Act to revive Bahram & Hamid Inc. The floor is now Mr. Zimmer's.

If we could have, Mr. Zimmer, you recognize the gentlemen that are there with you so that Hansard has a recording of their names.

Mr. David Zimmer: My name is David Zimmer, MPP. I'm the sponsor of this private bill.

Mr. Paul Hancock: My name is Paul Hancock. I'm the lawyer for the applicants. Bahram Eshghi Mog-

haddam is here today, and Hamid Vahabi Eshghi Ali is supposed to be here today but is possibly caught up in traffic. We're willing to proceed without him being present.

Mr. Anton Katz: My name is Anton Katz. I'm the lawyer for the respondents.

The Chair (Mr. Michael Prue): You cannot be here at this time. Are you with the respondents as well, sir? If you would please have a seat behind, you will be called after.

Mr. Anton Katz: I'm sorry.

Interjection.

The Chair (Mr. Michael Prue): No, I'm going to follow the rules here.

Are there any other applicants, Mr. Zimmer?

Mr. David Zimmer: No.

The Chair (Mr. Michael Prue): I don't want respondents.

Mr. David Zimmer: No.

The Chair (Mr. Michael Prue): No? Okay.

Mr. David Zimmer: There are too many lawyers here. That's how they do it in the court; they all line up at once, all with their meters running.

The Chair (Mr. Michael Prue): Mr. Zimmer, the floor is yours.

Mr. David Zimmer: I'm going to ask the solicitor for the applicants to speak to the matter.

The Chair (Mr. Michael Prue): Sir, the floor is yours.

Mr. Paul Hancock: Essentially, this bill is intended to revive a corporation, Bahram & Hamid Inc., that was voluntarily dissolved after litigation began by the applicants here. At the time, the applicants were not aware of the legal ramifications of what would occur if the corporation was dissolved.

We're seeking this relief on a number of grounds. The main concern here is that if the litigation proceeds without the corporation being revived, there's a chance that any award to the plaintiffs will go to the crown. There are three other plaintiffs, but there's a possibility that if the judge finds that only the corporation is entitled to relief, then it would escheat to the crown and essentially, it would be a pyrrhic victory.

The other issue, in essence—and I know that my friend is going to make submissions later, but the litigation has ground to a standstill, pending revival. In essence—

Mr. Tony Ruprecht: Pending the what?

Mr. Paul Hancock: Revival of the corporation. I have produced a summary of what's happened, but essentially—and my friend's an officer of the court, so he can address that as well—they're refusing to proceed, even though there are three other plaintiffs, until this is revived.

0910

In essence, if the standing committee decides to put this over, consider this longer or whatnot, the plaintiffs will be spinning their wheels in not only the Legislature but also the courts.

Mr. Bahram is here on an entrepreneurial visa from Iran. He's required, under law, to own one third of a qualifying corporation, and he needs the money to invest into that corporation to fulfill his obligations. He's here with his wife and his two children. All we're asking for is essentially to have a chance to at least have his day in court.

This is essentially—my submission is that this is a stall tactic to make the applicants settle. We're making the application under the Arthur Wishart Act; it's a great act. We just want our day in court. At the end of the day, if the defendants are correct, well, they get costs and that's the end of it. We just want our opportunity to have our day in court. That's essentially why we're seeking that this corporation be revived.

Mr. David Zimmer: If I might add, just to sort of distil what the counsel has said, there's potential and ongoing litigation under way. That litigation cannot continue because the company was dissolved. The application today is to reinstate the company so that litigation can continue. I take, and we take, no position on the merits of the litigation; the court will sort that out, whatever the answer there is. This is just to enable the company to be revived so that they can continue as a party to the proceedings. Thank you.

The Chair (Mr. Michael Prue): Okay. I thank you, gentlemen. Are there any other interested parties?

Interjection.

The Chair (Mr. Michael Prue): It is now your turn.

Mr. Bill Murdoch: Do we get to ask questions?

The Chair (Mr. Michael Prue): No, you get to do that in a moment. Okay, just so people know, we ask the interested parties, then the parliamentary assistant, and then questions.

Interested parties?

Mr. Anton Katz: Okay. My name is Anton Katz. I'm the lawyer for the respondents. The respondents are Sam Davis, Warren Smagaren, Michele Lown, 2082100 Ontario Inc. and another numbered company. We are here to speak to this bill.

As a preliminary matter, I would point out that I don't entirely accept my friend's recitation of events, the suggestion that we have somehow blocked their action in the courts. I think it's very clear that my friend and I have agreed in the courts to hold the court action in abeyance. That's an agreement. It's not something that has been resisted; it has been agreed to. So to characterize the respondents' actions as being consistent with stall tactics is not fair, in my submission. We've agreed to hold the action in abeyance. I don't think any adverse inference should be drawn based on that.

I have brought my articling student here today. I'd like to invite him to say a few words about this as well.

The Chair (Mr. Michael Prue): For the record, if you could give your name so we can—

Mr. Anton Katz: Sorry. My name is Anton Katz. My articling student is Grant Wagman.

The Chair (Mr. Michael Prue): Mr. Wagman, the floor is yours.

Mr. Grant Wagman: Thank you very much. I serve as an articling student under joint articles of clerkship for two principals: Derek Lee, member of Parliament, Scarborough–Rouge River, and Anton Katz, barrister and solicitor, who represents the individuals who are opposed to this private bill before you today.

We have a number of objections to the private bill. Having perused the authorities on the subject matter, when this committee sits, it sits according to the long-held traditions passed down hundreds of years now by the Commons House of the High Court of Parliament from the United Kingdom, and this is a branch thereof. This deals with a private bill. Private bills have their ancient origin in petitioners submitting a petition to the King in Council for redress on equitable grounds. We believe that the grounds here today are not equitable.

This committee sits in two capacities. It sits in a judicial capacity and it sits in a legislative capacity. For a private bill to be passed, it must meet two tests. From a judicial standpoint, the committee weighs the interests between the two parties. From a legislative standpoint, it weighs the interests of public policy. We submit that, on both counts, it fails. But in any event, on either count, the bill fails. We shall be addressing both issues today.

We also have concerns with the way the bill is framed. Having looked at the private bills that have been dealt with by this committee in the past 20 years, this bill stands apart from those that have been dealt with by the committee.

If one looks at the private bills from the last 20 years, there are a couple of bills where legal proceedings were involved. Virtually all other bills were due to an inadvertence by individuals, such as a failure to file a document or where a board of directors has fallen under the minimum number. They were acts of omission. In this particular instance, we take note that the person who dissolved the corporation, in doing so, filed a document required to be filed by regulation. The document has seven sections on less than one and a half pages and it requires a statement that there are no proceedings pending in any court against the corporation, and when that was filed, that statement was false. It was not a mere omission of inadvertence; it was, at the very least, an act of negligence or wilful blindness and possibly fraud.

In attending before a private bill committee, or a Court of Chancery, for that matter—this is an offshoot of the Court of Chancery—there is what is known as the clean hands doctrine: A person applying for relief comes to the court or the committee with clean hands; they have not committed an act which, so to speak, dirties their hands. In this case, we submit that they have by filing a false document.

If this bill passes and these proceedings are placed in transcripts or on the Internet for members of Ontario and, in that regard, all of the world to see, this bill stands for the proposition that not only is ignorance of the law an excuse, but that negligence and wilful blindness is an excuse and filing a false document with the government is an excuse. Come before the Legislature to cure those

defects—no problem. Is that the precedent that this committee wants to put forward? I would suggest no.

The counsel who is representing those in favour of the bill has noted a number of things that I just quickly want to address: The proponent of the bill was not aware of the legal ramifications; that he came to Canada on an entrepreneur visa; and that he is required to run a business. Yes, he did come on an entrepreneur visa, which under federal law means—he submitted this to the government of Canada, certified it, and the government investigated and accepted the evidence that he came here with at least \$300,000 to invest in a business and that in the previous five years he had at least two years of experience managing a business.

0920

At the time of the dissolution, he had both legal counsel and an accountant. He chose, wilfully, not to consult his legal counsel or his accountant on an important business matter of dissolving the corporation. We submit that that is more than just inadvertence; that that is negligence, and this committee should not clean up that negligence. That would not be appropriate for public policy.

We also note that counsel has indicated that the plaintiffs desire their day in court; that there's no other way that this matter can come before the court. That is not true. The Business Corporations Act specifically indicates that where there is a dissolved corporation, proceedings may continue. There is no need for this bill. It is, in fact, premature. The appropriate timing, if it is to be approved by the committee, would be if the lawsuit was successful, not prior to that. The bill is premature.

We also have a concern with the preamble. We would note there have been, in the last 20 years, a couple of cases where there have been corporations that were dissolved and were seeking revival and there was mention of legal proceedings, but in those situations—for example, one of the most recent, October 27, 2010, Pr41, An Act to revive Tonum Ltd., the preamble specified that “the applicant represents that the corporation was dissolved without considering the fact that the corporation was a plaintiff...” That is not what is submitted in the private bill before you. At the very least, we submit that in a private bill the preamble must include all of the relevant facts. A private bill, unlike a public bill, requires a preamble, and the preamble is required to set out all of the salient facts. If the committee is going to approve the private bill, we submit that it should be in proper form.

We would also note private bill Pr2, Grand Avenue Holdings Ltd. Act from April 9, 2008. The applicants represent that the filings were done without knowledge that an action was pending against the corporation. In this case, the proponents of the bill also indicate that it was done without knowledge. But, factually speaking, a notice from the objectors to this bill—a notice had been given on February 16, 2010, with a statement of defence and a counterclaim, and it wasn't until March 12, 2010, that the proponents of the bill dissolved the corporation. Either they were aware or they were wilfully blind in taking no notice of that. And not only that, but sub-

missions from counsel indicate that he did not become aware until August 2010 that the corporation had dissolved, and then, still, no notice was given to Mr. Katz until October 2010—the delay of not giving any notice. We submit that that’s unreasonable. We submit that the delays were on the part of the proponents and that they were according to either wilful blindness or negligence at best, or intent.

We would make mention that the Speaker of the Legislative Assembly ruled in 1991 that the House and its committees are governed not only by the standing orders and the traditions of the House, but the traditions of parliamentary bodies in Canada and throughout the Commonwealth. We take note of David McGee’s book, *Parliamentary Practice in New Zealand*. Mr. McGee served as the Clerk of the House for more than 20 years. He is also a Queen’s Counsel. He makes it clear in his book: “An important requirement is that the preamble must deal expressly with a point which will be prominent in the consideration of the committee to which the bill is referred: that is, whether its objects could be attained otherwise than by legislation. If they could be, the preamble must state why legislation is preferred.”

As I indicated a few moments ago, section 236 of the Business Corporations Act does permit another avenue, and this bill makes no mention of that—

Mr. Michael Prue: Sir, before you go on ahead, it’s customary we give a few minutes. I don’t know how long your presentation is. Certainly in my 10 years here, I have never heard such a detailed presentation in opposition, so I just want to clarify how long this might be.

Mr. Grant Wagman: In light of the intimation made by the Chair, I will wrap up fairly quickly in, say, a minute or two.

The Chair (Mr. Michael Prue): Proceed, and thank you.

Mr. Grant Wagman: We submit, then, that public policy would not be addressed. If we allow this to pass, it would stand as a precedent for the future. If that precedent would be a bad precedent, it would invite—possibly opening the floodgates—people to request revival under this type of situation, which we think is wrong.

However, if the committee does decide to pass this bill, we ask that the preamble state the truth, and that is that the applicants represent that the filing was done without knowledge that an action was pending, that it was done without knowledge—I’m sorry; I meant to refer to the Tonum bill—without considering the fact that the corporation was a plaintiff, without considering the fact that there were proceedings against the proponents of the bill and having filed a false document with the government. We ask that the committee amend the preamble to so reflect the truth. Thank you.

The Chair (Mr. Michael Prue): Thank you. First, we deal with the parliamentary assistant. Are there any comments from the government?

Mr. Lou Rinaldi: Sure. I guess this is one of those days when I’m happy I’m not a lawyer—no offence to anybody on that end of the table.

We’re aware there are legal proceedings, and that’s an issue, frankly, that this side of the House is not a party to. We don’t want to be involved in that because I think it’s the worst thing we could do.

As far as your comments about the legitimacy or the legality of the private bill before us, as far as content, I truly trust that staff from committee and legal staff from government have reviewed this. I take their good judgment to accept what they’ve allowed to go forward. I just want to make that clear.

0930

Mr. Tony Ruprecht: And the Chair.

Mr. Lou Rinaldi: And the Chair as well. The Chair has a role to play in this.

Having said that, I’m just going to say that, as I said a minute ago, we certainly don’t want to get involved in the legal ramification between the two parties. That’s a totally separate issue, and both the Ministry of Finance and the Ministry of Government Services have no objection to dealing with this particular bill before us. We will be supporting it.

The Chair (Mr. Michael Prue): We’ve heard now from the parliamentary assistant. It is now time for questions. Mr. Miller.

Mr. Paul Miller: I’m obviously a little concerned with this. The government stands up on a regular basis in the House and says, “We cannot talk about this because it has legal ramifications,” and now in committee it seems to have changed. I personally think that this should be cleared up by the courts before it comes before us. I don’t want to be responsible for putting either the plaintiff or the respondent in a position where this would have given them an advantage to their situation.

Regardless, I am not privy to all the inside information, but I’m very uncomfortable passing a bill when there’s things going on in the court. As you’ve pointed out, the stalling tactic, if that’s what you want to call it—if that’s true or not; I’m not a lawyer either—but I’m certainly uncomfortable with the government’s decision that they’ve just made. I personally would feel much better if this was—we shouldn’t be dealing with a legal matter at this committee. You gave us a great history lesson there for quite a while on what this committee’s supposed to do—thank you very much—but the bottom line is, anything in the courts is to be dealt with in the courts, in my humble opinion.

So I will not be supporting this bill in its present form, because—

The Chair (Mr. Michael Prue): This is not the time for debate. This is a time for asking questions. Mr. Murdoch, do you have questions?

Mr. Bill Murdoch: Yes, I do. First of all, I do have faith in our staff and that things would be done right. I’m just wondering—there were a lot of, I would think, accusations made there about this. Would it not be better to have somebody in our legal department maybe explain them to us, or—

The Chair (Mr. Michael Prue): We have a lawyer here, if you have a question.

Mr. Bill Murdoch: Well, if you want. I didn't know whether you wanted to put them on the—or if they want to come back and report. But I really don't understand all that. There was a lot of lawyer mumbo-jumbo there, and I really don't understand it all. So maybe our lawyer, because I trust the people we have working for us, most of the time—not all of the time, but most of the time I do—I mean the whole bureaucracy. Could you maybe explain some of that, then?

Ms. Susan Klein: Okay—

The Chair (Mr. Michael Prue): Mr. Rinaldi?

Mr. Lou Rinaldi: Sorry, just a quick comment to Mr. Murdoch. I have no problem with our legal people explaining, but in the last sitting this committee had a briefing on the technical issue of this. It was done in a closed session because it involved—and I just want to make that clear, that that did happen.

Mr. Bill Murdoch: Did we have this information, though, when you had your private meeting?

The Chair (Mr. Michael Prue): No, I think not. It was on the technicality of us having the authority to hear this particular case, and nothing was decided. I think it's important that this be done in the open.

Please, if you would advise the committee members?

Ms. Susan Klein: I think I can speak to about three points that were raised. One is that this isn't like other private bills you've seen reviving corporations. Mr. Wagman pointed out a couple that we've seen recently. One was in 2001, when the applicant was involved in litigation and the corporation had been dissolved and they needed to be revived. So we've done this before.

It's also very similar to the very many private bills that this committee has seen and carried and the House has passed that revive corporations because they need to deal with property that was left in the corporation's name before it was dissolved.

If you look at the form that the corporation files with the government when they file their articles of dissolution, it's got a few statements in it. It's a preprinted form, and one is that there's no proceedings in any court pending against the corporation. Another is that the corporation has distributed all its property; there's nothing left.

Nonetheless, we see numerous corporations come here, saying, "Oops, we still have property in our name. I know we dissolved this voluntarily. We didn't even check that off." The statement is in there saying, "All our property has been distributed," but they don't.

The individuals who run the corporations, their lawyers, their accountants, everybody slips up, makes mistakes. Whether it's negligence, ignorance, a little bit of sloppiness, these are the people who come before this committee and ask for some recourse. They can't revive the corporation under the administrative rules under the general law. They can't go under the Business Corporations Act and get themselves revived. Many, many, many corporations that are dissolved do get revived that way: They just go back to the counter at the Ministry of Government Services and say, "Please revive us. We failed to

file this. We made a mistake and now we'd like to be revived," and they do.

The ones that come here do not have recourse under the public law. The statute doesn't allow them to be revived administratively, so they come here asking for a benefit, asking for a favour. They've all made mistakes, and this committee usually gives them what they need.

A second point: He talked about unclean hands, coming to committee with dirty hands, and you don't give somebody a benefit if they come to the committee with dirty hands. I always keep that doctrine in mind when I'm looking at these. I don't think I've ever, in 20 years of being counsel to this committee, had to come to you and say, "This corporation is coming to you with dirty hands."

The example I keep in mind is something like a corporation that runs a bawdy house, something like that, a slum landlord. You get objectors coming saying, "This is a terrible landlord. They do this, that and the other." Then, you might say to that applicant, "You know what? You're coming to this committee with dirty hands and we're not going to give you what you're asking." I think a misfiling of articles of dissolution falls far short of meeting that dirty hands doctrine.

The third point: Mr. Wagman was talking about the content of the preamble and asking to modify the preamble. All private bills have preambles; it sets out the facts so that the committee can see what the background is. Certainly the practice here is not that you have to have every single fact in there. You have to have sufficient facts to let you know what the case is. In this case, the facts are stated, that the corporation was voluntarily dissolved; the applicants would like to revive in order to continue legal proceedings. That's sufficient. To add to that, "And we made a big mistake when we filed and we were negligent" is not really necessary for you to know, and we don't—you've seen tons of these private acts come before you, and none of them go into that kind of detail about the cause of their mistakes.

I think those are the main points I wanted to speak to. If you have specific questions—

The Chair (Mr. Michael Prue): Questions? Mr. Miller?

Mr. Paul Miller: With all due respect to legal counsel, I disagree. I think that when you come before this committee, the Chairman says, "Is there anyone who has a problem with this? Please come forward at this point and discuss it." There's a problem. We usually move ahead if there's no problem, but once again there is a big problem here, because if we are giving advantage to either party by moving this ahead or giving them a legal "up" in the court process, then I think we're part of that system, and I don't think that we should be judge and jury at this committee on what transpires in the courts. I think we should wait till the courts make a decision and then we do the right thing. I don't think that we're in a position today—and, with all due respect to the lawyer, were you aware of the ongoing litigation that you didn't put in the preamble?

0940

Interjection.

Mr. Paul Miller: No, I'm asking the lawyer. Were you aware of that?

Mr. Paul Hancock: I'm sorry?

Mr. Paul Miller: Were you aware of the litigation that was not—he said it was not mentioned in the preamble.

Mr. Paul Hancock: It is mentioned in the preamble, so I'm a little confused. He doesn't like the way it's worded, and, you know, I submit the preamble to legislative counsel to review. It says right in—I have the preamble right here. If it's not sufficient, then so be it. I know your point is, this is before the courts. One of the issues here is parliamentary privilege, and it's being asserted by the respondents where they're making submissions here that are different than what's in the court.

I can tell you that our position is this matter can proceed while it's still dissolved; their position is different. And if you do not pass this bill, you are giving a legal—well, it's my submission that there is going to be a legal advantage. It's not going to be a disadvantage to anyone; it's going to be an advantage to someone.

Mr. Paul Miller: I'd just interject for one last comment. Actually, you have answered my question, because we have a difference of opinion, we have a legality between two law firms that are in disagreement on the structure of the preamble, the content of the preamble. I'm not a lawyer, and I don't feel comfortable making a decision about something that is up in the air, so I will not be supporting this.

The Chair (Mr. Michael Prue): Now, I do have to tell all members that if you are not comfortable with the preamble and want to amend it, everything here can be amended by this committee. Members are so advised, that if you want to do that, that can be done.

Further questions? I have Mr. Ruprecht.

Mr. Tony Ruprecht: Thank you very much, Mr. Chair.

Since the sponsor is Mr. Zimmer, who also happens to be a lawyer, I'd like to hear from Mr. Zimmer what his opinion is on this matter.

Mr. Paul Miller: Mr. Chair, is that a conflict?

The Chair (Mr. Michael Prue): No. He is the sponsor; he is entitled to speak here. The question has been asked of Mr. Zimmer.

Mr. Paul Miller: But he's representing one side.

The Chair (Mr. Michael Prue): He's the sponsor; he's not counsel for the side. I don't know. This question is a difficult one, Mr. Ruprecht, but, Mr. Zimmer, go ahead.

Mr. David Zimmer: I know members have the briefing note that was prepared for this committee by the Clerk's office. To help sort things out in your minds, you might want to look at page 3 in the summary. It says:

"The standing orders of the Legislative Assembly prescribe a process by which applications for private

legislation may come before the assembly, and the preconditions that must be met....

"In the present case, the necessary conditions have been met. The application for this private legislation was perfected last fall and the bill was introduced" on such and such a date, "given first reading," and everything is in order.

Then at page 1, "In the present case involving Bill Pr42.... The matter before the committee is a simple request for corporate revival, similar to ones the committee has considered quite routinely." Here is the important point: "The facts and merits of the litigation" involving the two parties "are not part of the private bill application."

Then, further down in the opinion, "this"—referring to this dispute, if you will—"is a matter for the presiding judge in the litigation proceedings to decide."

All we're here for today is to say, "Revive the corporation." It goes back into the judicial system, and a judge will sort out all of the matters, including the matters raised by Mr. Miller, about who said what and who had dirty hands or who had clean hands—all of those things the judge will sort out, and the judge may decide in favour of the party to my right, he may decide in favour of the party to my left, or he may come up with some sort of hybrid solution. But the point is, this bill revives the corporation so the matter can go back before the courts and the judge can sort out all of these things.

Mr. Miller and other members of the committee can't sort out those allegations here. The party to the left has said, "These are the facts," and the party to my left said, "No, these are the facts." But how you sort out those facts is by hearing from the witnesses—what they have to say and what documents they have to present. It's the judge who will hear from the witnesses, pro and con, who will look at all the documents, and then make certain findings.

The Chair (Mr. Michael Prue): Mr. Murdoch.

Mr. Bill Murdoch: I just want to thank our counsel, because I understood what you were talking about. I've been here and I remember a lot of other bills just like this where we have revived because of certain things.

Mr. Ruprecht took the words out of my mouth. I wanted to ask Mr. Zimmer what he thought, since it was his bill, but I thought he did a very good job there. He said, "Some people are for it, some people are against it." He's with the people, so that was very good that you explained your part.

I think it's just like our other bills as far as the legality, and whether they go to court is not our business.

The Chair (Mr. Michael Prue): Mr. Miller.

Mr. Paul Miller: It was a nice presentation by Mr. Zimmer and I commend him on his content; however; I disagree.

If we're a committee making a decision on something we know nothing about and we're sending it back to the courts, what's the judge going to do? He'll shake his head and say, "Why would the parliamentary committee send this back to me without dealing with content or

making a decision on reviving a corporation, which may have a negative or positive effect on the respondent or the other person?" Why am I making a decision on something I know nothing about and sending it back to the courts? Why don't they make the decision in the courts, and then once they straighten out the corporation, then we say, "Okay, revive the corporation"?

I think we're putting the cart before the horse, and I certainly think that, once again, this committee is off-bounds here. So I can't support this.

The Chair (Mr. Michael Prue): Any other questions?

I believe that the legal counsel had another point that ought to be made.

Ms. Susan Klein: It was mostly the point that Mr. Zimmer covered really well; that I didn't address the question about the connection between this revival and the litigation.

The litigation is separate. There's no issue in litigation about whether or not the corporation exists, or whether the corporation is revived. All this committee does is give the corporation a life, and then it can proceed in the litigation—whatever. But if you don't revive it, then you could have a serious effect on the corporation. But its life doesn't affect the issues in the litigation.

Not recently—unfortunately, I've been doing this long enough—but in the late 1980s, there were a number of cases like this, where objectors came forward for corporate revival bills because there was litigation ongoing. The committee was advised in those days that the litigation was just a separate matter that you should not have to put your mind to at all. The revival of the corporation is separate.

If you listen to an objector in litigation, then you may find yourself not reviving a corporation where the other party in litigation objects to the revival, and reviving the corporation where the other party in litigation doesn't object to the revival. You're somehow being pushed and pulled simply by whether the litigants are in agreement to the corporation being revived or not. The litigation and the views of the parties in the litigation are not relevant to your question of whether it's appropriate to revive the corporation.

The Chair (Mr. Michael Prue): Mr. Miller again, and then Mr. Leal.

Mr. Paul Miller: One question to the legal counsel: So you're saying that the litigation and the revival of the corporation are two separate entities?

Ms. Susan Klein: Two separate activities, yes.

Mr. Paul Miller: Then why are they here? If they can't move ahead in court and say they're in stalemate—at least, one side says they're in stalemate. If that's the case, and they're separate issues, why are they here, if this isn't important?

Mr. Bill Murdoch: They get paid.

Mr. Paul Miller: They get paid? Well, okay. That's fair.

You're saying that they're two separate entities and it shouldn't affect whether we revive it or not?

Ms. Susan Klein: Right.

Mr. Paul Miller: Then why are they here objecting to the revival if it doesn't have an impact, litigation-wise? I'm confused with that.

Ms. Susan Klein: I'd have to ask them.

0950

Mr. Grant Wagman: May I address that?

Mr. Paul Miller: Yes, go ahead.

Mr. Grant Wagman: Two points: First, as quoted from the document, "The facts and merits of the litigation involving the two sides, per se, are not part of the private bill application." Mr. Chair, that's the purpose of the private bill. It's the only purpose of the private bill. If you will look at preambles from other private bills, you will see in the preambles things such as "for the purpose of dealing with the property of the corporation," or "for the purpose of reviving the corporation to carry on business," and so on.

The only purpose of the revival of this corporation, and it's also indicated in the compendium, is in respect of the legal proceedings.

It is the custom, when it comes to private bills, that royal assent is not granted until the end of the session. Even if this private bill was passed, it's not going to be receiving royal assent until June. There's no urgency to proceed on a bill that's premature.

We now have a fixed Election Act and a majority of one party in the House. There's no reason to believe that the House is going to dissolve before June and that there's an agenda set of proceedings of the House and the committee. This committee is going to continue until June.

But primarily, it's the issue of prematurity. The proponents of the bill can come before the committee at any time in the future for revival. It does not have to be now. We submit that it does have a direct impact on the case and that the only purpose of this bill, as stated in the preamble in the compendium, is in respect of legal proceedings.

The Chair (Mr. Michael Prue): I'm going to direct, since the question was asked of both sides—is there anything you want to add to this question?

Mr. David Zimmer: No.

The Chair (Mr. Michael Prue): Not to Mr. Zimmer; to the lawyer.

Mr. Paul Hancock: No. I think the compendium summarizes our position, and that's it.

Mr. Paul Miller: Let's call the question.

The Chair (Mr. Michael Prue): No, I can't. Mr. Leal is on the order paper to ask a question.

Mr. Jeff Leal: Mr. Chair, my question will be very quick. Ms. Klein, I appreciate the information you've provided. I guess, from my perspective, if we don't revive this corporation, then that could be seen as interfering with the litigation. Correct?

Ms. Susan Klein: I think so.

Mr. Jeff Leal: Exactly. That's where I come from: south-end Peterborough legalese. I appreciate your observation.

The Chair (Mr. Michael Prue): All right. Are there any further questions? All right, then.

Mr. Bill Murdoch: I'd ask for a recorded vote.

Mr. Paul Miller: Recorded vote.

The Chair (Mr. Michael Prue): Yes. Are the members ready to vote? I have to ask that question first. Are you ready to vote?

I have a request from Mr. Miller for a recorded vote. Do you want a recorded vote on everything, every section, every—

Mr. Paul Miller: Yes.

The Chair (Mr. Michael Prue): All right. We have a request for a recorded vote on all sections.

As I indicated earlier, if there are any amendments when we call the particular section or preamble, you have to indicate if you want to make an amendment.

All right. Going through Bill Pr42—if all members could take their seats. We're in the middle of a vote.

Shall section 1 carry? We're having a recorded vote on each section.

Ayes

Caplan, Craiton, Leal, Murdoch, Rinaldi, Ruprecht.

Nays

Paul Miller.

The Chair (Mr. Michael Prue): That would carry. Shall section 2 carry? We're on a recorded vote, because it has been requested.

Mr. Bill Murdoch: Same vote.

The Chair (Mr. Michael Prue): I heard "same vote."

Mr. David Caplan: Same vote.

The Chair (Mr. Michael Prue): Same vote. All right. Recorded, same vote. Carried.

Shall section 3 carry? Same vote?

Interjections: Same vote.

The Chair (Mr. Michael Prue): Same vote. Carried.

Shall the preamble carry? Same vote?

Interjections: Same vote.

The Chair (Mr. Michael Prue): Same vote. Carried.

Shall the title carry? Same vote?

Interjections: Same vote.

The Chair (Mr. Michael Prue): Same vote. Carried.

Shall the bill carry? Same vote?

Interjections: Same vote.

The Chair (Mr. Michael Prue): Same vote. Carried.

Shall I report the bill to the House?

Mr. Paul Miller: No.

The Chair (Mr. Michael Prue): I think I heard a no. This is the same vote?

Interjections: Same vote.

The Chair (Mr. Michael Prue): Same vote. The bill is carried.

Mr. Bill Murdoch: Meeting adjourned?

The Chair (Mr. Michael Prue): No, I do believe there was one other item, but the clerk hasn't seen it, so perhaps it will be on the next agenda, I think. I will give a copy to the clerk. It was sent to me. The agenda item is probably for receipt, but I think all members should see it. It's dated March 15 and it is from Philip Kaye, manager of legislative research.

Is there any other item that anyone else wants to bring before committee?

Interjection: No.

The Chair (Mr. Michael Prue): Seeing none, meeting adjourned.

The committee adjourned at 0955.

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