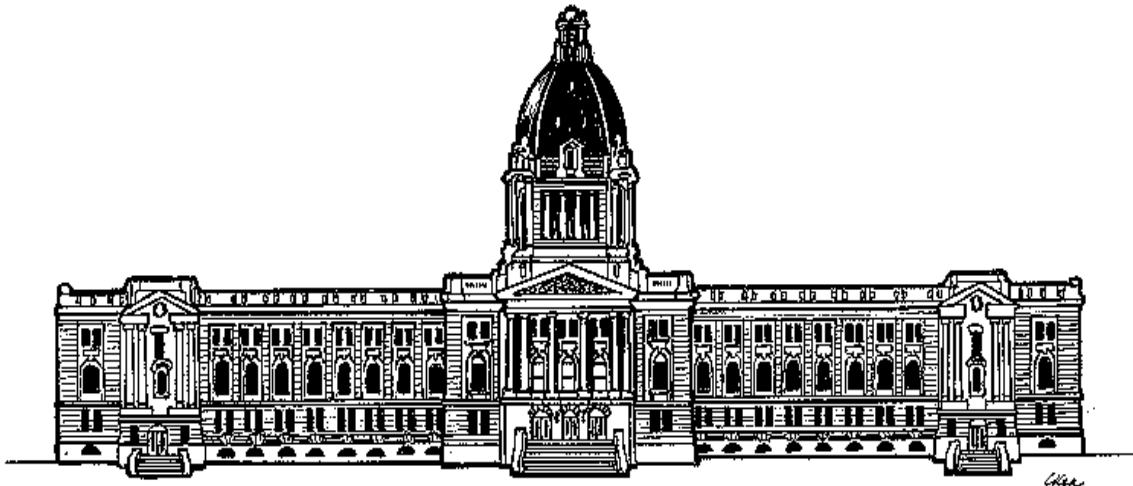




STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND INFRASTRUCTURE

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**STANDING COMMITTEE ON INTERGOVERNMENTAL
AFFAIRS AND INFRASTRUCTURE
2007**

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Regina Northeast

Ms. June Draude, Deputy Chair
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Wood River

Mr. Andy Iwanchuk
Saskatoon Fairview

Hon. Len Taylor
The Battlefords

Mr. Kim Trew
Regina Coronation Park

[The committee met at 10:00.]

**Bill No. 20 — The Gunshot and Stab Wounds
Mandatory Reporting Act**

Clause 1

The Chair: — Then I will draw to order the Standing Committee on Intergovernmental Affairs and Infrastructure. The item of business before the committee this morning is the consideration of Bill No. 20, an Act respecting the Mandatory Reporting of Gunshot and Stab Wounds. Mr. Minister, I believe you have an opening statement you wish to make.

Hon. Mr. Quennell: — Thank you, Mr. Chair, and members of the committee, for the invitation to return and discuss this Bill, now that I've had the opportunity to review the testimony that the committee has heard.

I believe it's been both the government's and the legislature's intention and the public expectation that when the victims of crime arrive at the province's emergency rooms, that violence and crime would as a rule be reported to the police. Based on what this committee has heard, those intentions and expectations are not being met, and the reporting of violence and crime presented to our province's emergency rooms may well be more the exception than the rule.

Section 27(4)(a) of The Health Information Protection Act reads, quote:

A trustee may disclose personal health information . . . without the consent of the subject individual . . . where the trustee believes, on reasonable grounds, that the disclosure will avoid or minimize a danger to the health or safety of any person;

Let me emphasize those clear and simple words: "avoid or minimize a danger to the health or safety of any person."

I submit the legislature's intent is clear and difficult to misinterpret. But in my respectful opinion, the legislature's clear intent has indeed been misinterpreted. On February 5, 2007, in testimony before the committee, Gary Dickson, Saskatchewan's Information and Privacy Commissioner interprets the HIPA [The Health Information Protection Act] provision as follows, quote:

. . . that provision certainly deals with the case of the fellow who comes in with a stab wound to the local hospital and is aggressive towards hospital staff. It certainly deals with the case where hospital staff have some basis to believe that the perpetrator is going to come back to the hospital to finish the job by further injuring the patient in the hospital.

He later goes on to say that, quote:

The purpose of that provision, I think, was to ensure that our health staff, people working in health care facilities, would not be put at risk because of some concern with privacy.

With all due respect to Mr. Dickson, the interpretation of the words "avoid or minimize a danger to the health or safety of any person" so as to limit the benefit of the provision to the safety of health care staff and perhaps patients while they are in the health care facility is unsupportable. The words of the legislation cannot reasonably bear that interpretation. The legislature clearly intended the words "any person" to apply to the general public as well. However it is Mr. Dickson's interpretation that shaped the response of the health care system to violent crime and as he reported to this committee, quote:

. . . we've been working for three years with health information trustees helping to give them some advice in terms of what this means.

It is clear from testimony before this committee that the leadership of the nursing profession has adopted Mr. Dickson's interpretation of the legislation. On February 6, 2007, Donna Brunskill, executive director of the Saskatchewan Registered Nurses Association, stated that, quote:

If nurses and doctors feel threatened for their own safety in a health facility their code of ethics enables them to report, as does HIPA, which is how we believe it should be.

This is not the result desired by the government. It is also not the result expected by the province's police. On February 6, 2007, Evan Bray, a corporal of the Regina Police Service and vice-president of the Saskatchewan Federation of Police Officers stated, quote:

. . . it is our experience that the doctors and nurses that we deal with want to co-operate. They do feel handcuffed by HIPA. There's no question about that. They, I don't think, totally understand what they can and can't do. I don't know that all the nurses in Regina understand section 27(4)(a) which says they may disclose to police. I don't know that they do.

Given the conflict between the clear wording of the provision and the interpretation by the Information and Privacy Commissioner and the SRNA [Saskatchewan Registered Nurses' Association], confusion on the part of frontline nurses is understandable. On February 5, 2007, Saskatoon police chief, Clive Weighill, stated, quote:

There seems to be a lot of confusion under The Health Information Protection Act. It does have areas in there that would allow reporting, but the health regions have consulted with the Privacy Commissioner. He has a view on how and what should be reported. I'm not even too sure what he's been saying to health practitioners, but it would seem that they feel they can't talk to the police. Whether there's any situation, they cannot talk to the police so that leads us to frustration where we do know someone has been shot or stabbed.

We still get lots of calls from the hospital emergency whether . . . they're supposed to report it or not because they think it should be reported. So we're attending to the scene. But when we get to the hospital, we're dealing with other staff who won't even tell us . . . there is somebody

there or where the patient is.

He goes on to say, quote; “You know it’s gotten really, it’s gotten almost silly. There’s no common sense.”

The government believes that violence, particularly violence with a weapon that causes injuries which require treatment at a hospital, should as a rule be reported to the police. I believe this is also the clear intent of the legislature as reflected in the clear words of section 27(4)(a) of HIPA. The legislation before the committee would require this reporting in the case of gunshot and stab wounds. After reviewing the testimony before this committee, I also believe passage of the legislation would have the additional and needed benefit of reasserting and clarifying the intent of the legislature in respect to injuries caused by violence in general.

I want to discuss the proposition made to this committee that if the legislation is not withdrawn — as it will not be — it should limit reporting to gunshot wounds only. Mr. Dickson stated, quote:

I note the Ontario emergency medicine section of the Ontario Medical Association was a strong advocate in Ontario for mandatory gunshot wound reporting. Interestingly though, the same . . . [Ontario Medical Association] opposed reporting injuries from stabbings, and they provided reasons for doing so.

He goes on to quote the Ontario Medical Association as follows, quote:

We specifically argued against reporting injuries from stabbings and beatings in our paper and provided several reasons, mainly . . . this type of behaviour is less lethal; a stray punch or knife will never come through the wall of a house and kill a man watching television with his wife and child as a stray bullet did in Toronto recently.

Frankly, I don’t understand the distinction drawn here between intended and unintended victims by the Ontario Medical Association. Victims of crime are still victims of crime, intended or not. Mr. Dickson goes on to state, quote:

We will be the only jurisdiction in all of Canada that requires health care facilities to disclose stabbing wounds. It extends the net, in my respectful submission, too wide, too far. It captures far too many minor, innocent injuries . . .

In Saskatchewan, the leading method in homicides once alternated from year to year among stabbings, shootings, and beatings. But from 1988-2004 inclusive, 17 years, stabbings led shootings as a method of homicide and, for all but three of these years, led beatings as the leading method of homicide. During these years, shootings never caused even 30 per cent of homicides in Saskatchewan, and stabbings were never the cause of less than 30 per cent of homicides.

To take as an example the snapshot year of 2003 in Canada, knives were more often present in most violent crimes than were firearms. In the case of sexual assault with a weapon, a firearm was present in 8.8 per cent of the incidents and a knife

in 42 per cent of the incidents — almost five times as many. In the case of aggravated assault, a firearm was present in 3 per cent of the incidents, and a knife was present in 27.2 per cent of the incidents — nine times as many. In the case of assault with a weapon causing bodily harm, a firearm was present in 3.1 per cent of the incidents, and a knife was present in 16.5 per cent of the incidents — over five times as many.

Much of the concern with the inclusion of stab wounds in the Bill arises from the anticipated result that more domestic assaults, what Mr. Dickson called in his testimony domestic incidents, will be reported to the police. In his original correspondence to me of November 13, 2006, Mr. Dickson states:

Wounds may result from a domestic altercation. If a woman defending herself with a letter opener or a kitchen knife stabs herself in the struggle, why make this a mandatory reporting obligation?

Briefly the answer to Mr. Dickson is this. The government does not believe a domestic assault resulting in an injury from a weapon should be expected to be treated as a private domestic incident but rather, in the words used in HIPA, as a danger to the health and safety of a person.

Mr. Chair, this is my defence of the Bill to criticisms raised by witnesses before this committee. The legislation is necessary to make the reporting of injuries caused by violence and particularly from the use of weapons the norm in Saskatchewan instead of discouraging that reporting, as currently appears to be the case.

I want to address four specific issues raised by discussion of the Bill. One, should health facilities other than hospitals be included as facilities in the legislation? Two, should the obligation to report reside with the facility, as is currently proposed, or with health care workers? Three, what types of stab wounds might be excluded from mandatory reporting, and what wounds or injuries other than gunshot or stab wounds might be included? And four, should limits on the information to be provided to police be expressly set out in the Bill?

In respect to whether facilities might be included, I am persuaded that health centres located in communities where there is not a hospital and that ordinarily provide emergency medical services should be included as facilities in the regulations. I am suggesting that the inclusion be made in regulation rather than within the Bill itself so that the government can respond relatively quickly if adjustments are necessary.

On the other hand, I would propose to exclude from the application of the Bill doctor’s offices and health centres and other health providers where emergency medical services are not ordinarily provided. I am persuaded, particularly by the argument made to the committee by the Saskatchewan Medical Association that the health of citizens being our overriding concern, there is no value in risking trust in the confidential doctor-patient relationship outside of the context where most gunshots and stab wounds are presented.

This is also part of my reasoning for maintaining the

government's position that the reports should be by the facility and not be health care professionals, including doctors. In this respect I thought Dr. Kendel's testimony on behalf of the College of Physicians and Surgeons, both in support of the Bill as a whole and in support of limiting the obligation to report of the health care facility, was highly persuasive.

In respect to what stab wounds might be excluded, I propose that all stab wounds that indicate an act of violence be reported except those where it's abundantly clear that the wounds were not inflicted by another person.

The current interpretation by the Information and Privacy Commissioner, the Saskatchewan Union of Nurses, and the Saskatchewan Registered Nurses Association of section 27(4)(a) of HIPA should caution us against providing too much room for the exercise of discretion in this area. Again the relevant definition is set out in the regulation. The government can adjust the legislation relatively quickly when circumstances change or when everyone has had more experience with the legislation.

I am not persuaded that we should now require similar reporting injuries caused by blunt instruments and physical force. To be clear, I want these injuries as a rule to be reported to the police. However, as the testimony before this committee establishes, this legislation — once put into effect — will require a significant change in attitude and practice in the province's emergency rooms. I believe that change in practice and attitude will result in more reporting of injuries caused by violence, not only gunshot and stab wounds. But I want to continue to respect the discretion of health care professionals regarding the reporting of such additional injuries if mandatory reporting is not necessary to achieve the end of ensuring most serious injuries caused by violence will be reported by our emergency health facilities. I therefore propose that we wait to see if the mandatory reporting of injuries of gunshot and stab wounds is necessary to achieve our desired goal.

Finally I propose that medical or health information about the injured individual as provided for expressly in the Bill be expressly excluded as information that can be prescribed by regulation, thereby preventing a government by regulation from requiring the provision of medical or health information to police.

This morning I'm tabling with the committee proposed House amendments that will make this clear in the Bill itself. Thank you for the opportunity to appear once again before this committee. I look forward to your questions.

The Chair: — Thank you, Mr. Minister. My apologies to the committee. I think in my haste upon opening the committee — I think it was because I wanted to hear the minister's speech once again — I forgot to bring to the attention of the committee that we have a couple of substitutions today. We have Ms. Crofford for Mr. Trew and Mr. Yates for Mr. Taylor. Ms. Draude.

Ms. Draude: — Thank you very much. I'd like to thank the minister and the various officials that have appeared. We would also like very much to thank all of the people that prepared submissions and made themselves available for questions from the committee members. We have heard from health care

professionals and from the Privacy Commissioner, who have presented strong and forceful opinions regarding the privacy of individuals that will be affected by this legislation as well as the health care providers that may be required to release information.

We are aware this Bill is really twofold: firstly the reporting requirement, but secondly the immunity that it grants to health care providers that provide the mandated information. We respect the position taken by these people and we value their input. We have tried to balance the rights of privacy of individuals in this province with the need to have violent crimes promptly reported and dealt with by the justice system.

We feel that this Bill, in spite of some flaws, will provide a necessary and significant tool for our police officers. We feel it is unacceptable to have a situation where a person arrives at a health care facility — who may not be just a victim of crime but also may be a perpetrator of related crimes — and to allow that individual's whereabouts and condition to go unreported. The need to start the criminal investigation process at the earliest possible time must be paramount and must rank ahead of some of individuals' rights.

This Bill is modelled after and is an expansion of similar Ontario legislation. We note that the Ontario legislation deals only with gunshot wounds. Gunshot wounds are easy to identify and reporting requirements with regard to gunshot wounds is not terribly onerous.

However in Saskatchewan the most frequent method of murder is by way of stabbing. And we are all too aware that the term stab wound is somewhat vague and unclear and lacks a precise legal or medical definition. We are also aware that the Act does not provide a statutory definition of the term stab wound. One of the presenting doctors indicated it would be best described as a puncture wound. Unfortunately puncture wounds are caused by a variety of accidental means. This would include stepping on a nail, in an automobile accident, it involves a puncture-type of injury, and a myriad of other accidental causes.

It is our hope that a protocol will be established between the health care agencies and the police to allow this overreporting to be dealt with in a prompt, summary manner. The other problem is that many injuries that are caused by violent or criminal actions will not be captured by this Bill. These would include blunt injury trauma such as those caused by a baseball bat or another type of club. It would also include physical beatings where no weapon is involved. However, and sadly, this is often how domestic violence occurs. And this is one of the unfortunate weaknesses of the Bill. It will not capture or address domestic violence that has become all too prevalent in our province.

In spite of reservations and concerns and weaknesses, we want to see this Bill brought into force and passed as quickly as possible. We know there are going to be regulations provided with this Bill and we offer some clarification and assistance if required. We expect that the legislature may soon be called upon to update and remedy issues with this Bill. And we want to go on record as being willing to deal with the changes as expeditiously as possible. Our police officers are the front line in our battle against violence and we want to give them every

possible tool to assist them. Thank you.

The Chair: — Thank you. Mr. Yates.

Mr. Yates: — Thank you very much, Mr. Chair. This is a piece of legislation that we have heard a great deal of conflicting testimony on, quite frankly, and conflicting opinions on. But this is a very significant piece of legislation. I think all members of the committee would agree that moves us down a path that all members of the committee wanted to move down.

It also does one very significant thing and I would like to thank the minister for taking the opportunity to clarify what the legislature's intent was on section 27(4)(a) of HIPA, health information protection Act. Unfortunately others have taken the opportunity to interpret our intent in what we as legislators intended to have this piece of legislation mean. This is an opportunity to correct that intention. And, Mr. Minister, I thank you as I'm sure all members of the committee do for taking the time to clarify what the intent of the legislature was on section 27(4)(a) of HIPA.

With that, I — like the members of the opposition — wish to see this pass as speedily as possible. And to all members, I want to thank you for the work that you put forward.

The Chair: — Ms. Draude.

Ms. Draude: — Thank you, Mr. Minister. I just have one question. You indicated that you were going to wait and you were hopeful that because of this legislation the reporting of injuries that were caused by blunt instruments may just happen sort of automatically or will start to happen. Do you have a timeline as to how long you're going to wait to see if the reporting actually does happen before you would actually put it into law?

Hon. Mr. Quennell: — No, I don't have a set timeline in mind. I think members of the committee, particularly members of the committee who have sat through all the testimony, know as well as I do that one of the values of this legislation . . . or I believe members of the committee who have sat through all the testimony that I've read may well agree with me that one of the values of this legislation is to make clear what the legislature's intent was around health information, the protection Act exemptions or exclusions that allowed for the providing of health information.

It's clear from what I've read and from meetings that I've had outside of the committee process that since The Health Information Protection Act came into place, there has been an interpretation of that provision that allowed for reporting to the police in these cases of violent crime, that on the ground had the effect that regional health authorities, for example, thought the safest route to take — maybe this is not entirely fair, but I think there's some evidence and this committee's heard it — the safest route to take is not to report except in the most highly exceptional circumstances.

We will have other opportunities in regulation clarifying what information can be provided pursuant to The Health Information Protection Act. But this legislation itself, the mandatory reporting of gunshot and stab wounds Bill, is an

opportunity to, as I said in my remarks, clarify and reassert what the legislature's intent is.

I expect, before this Bill is passed or proclaimed — it's because of the work of this committee which I think's been very useful — people working in the health care field, the people providing counsel to the health region authorities, leadership of the SRNA, will better understand, much better understand what the legislature's intent was in providing that provision that we've discussed this morning in The Health Information Protection Act. I expect that we will see, I hope to see, a relatively quick change of attitude and practice.

And so I would think if we do not see that, if we see either resistance to reporting stab wounds or really no change in reporting other wounds caused by violence, other than gunshot and stab wounds, within the next few months, that we would either be looking at amending of this legislation or regulations under HIPA or some other action on the part of the government or the legislature to again assert and clarify what I think is clearly the intent of all members of the legislature.

The Chair: — Thank you. Seeing no further questions, is the committee ready to deal with the clause by clause of the Bill? Thank you. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clause 2 agreed to.]

Clause 3

The Chair: — Clause 3, Mr. Yates.

Mr. Yates: — Thank you, Mr. Chair. I would move that we:

Amend Clause 3 of the printed Bill by striking out clause (1)(d).

The Chair: — Thank you. Committee in favour of the amendment? Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Clause 3 as amended, is that agreed?

Some Hon. Members: — Agreed.

[Clause 3 as amended agreed to.]

[Clauses 4 to 6 inclusive agreed to.]

Clause 7

The Chair: — Clause 7, Mr. Yates.

Mr. Yates: — Thank you, Mr. Chair. I would move that we:

Amend Clause 7 of the printed Bill by striking out clause (c).

The Chair: — Thank you. Is the committee in agreement with the amendment?

Some Hon. Members: — Agreed.

The Chair: — Clause 7, is that agreed?

Some Hon. Members: — Agreed.

[Clause 7 as amended agreed to.]

[Clause 8 agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: Bill No. 20, An Act respecting the Mandatory Reporting of Gunshot and Stab Wounds. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — I will invite a member to move the Bill with amendments.

Mr. Yates: — Thank you, Mr. Chair. I move we report the Bill with amendments.

The Chair: — Mr. Yates has moved that the Bill be reported with amendments. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Seeing no further business before the committee, I will declare the committee now stands adjourned. Thank you very much.

[The committee adjourned at 10:29.]