

Alberta kids can sue for fetal injuries

New legislation targets mothers in auto crashes

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In a Canadian first, the Alberta government will introduce legislation this month to allow children to sue their mothers for automobile crash injuries they suffer while still in the womb.

The legislation is sure to raise questions about the rights of women and the fetus, and worries that it will open the door for mothers to someday be sued for other activities they pursue while pregnant, such as alcohol consumption or high-exertion sports.

But Alberta Justice Minister Ron Stevens said the legislation will be written narrowly enough to avoid these concerns. Legislation of this type already exists in the United Kingdom and law academics say it has not led to women's rights being questioned there.

"I'm absolutely clear that this legislation is focused on a particular circumstance and it will comply with the direction of the Supreme Court . . . and that it will not open the door to other cases," Stevens said Wednesday. "I have no intention of going there."

But New Democrat MLA Dave Eggen said this is an example of the Tories trying to appease Alberta's social conservatives, and the law will provide "a wedge for further action" in promoting the rights of the unborn and decreasing the rights of women.

The legislation may concern auto insurers and insurance premium payers as much as women's rights activists. The lawsuits will be limited to the amount of personal liability coverage the mother has. Mothers will not be held personally responsible for costs.

This move has been spurred by the case of Brooklynn Rewega, now four years old, and her family in northern Alberta's Rainbow Lake.



CREDIT: Shaughn Butts, CanWest News Service

Doug and Lisa Rewega hold their daughter Brooklynn, who was born blind and brain damaged.

Brooklynn's mother Lisa Rewega was driving to church on Dec. 31, 2000, when she lost control of the car. In the rollover, Lisa Rewega was thrown through the windshield. Brooklyn was born four months later blind, brain-damaged and with cerebral palsy. She suffers from seizures throughout the day and needs constant care. The family

believes her condition is a

result of the accident.

Lisa Rewega is considered to be at fault in the crash, but her family is unable to sue her and her insurance company for damages because of the 1999 Dobson decision at the Supreme Court that prevents children from making claims against their mothers for events that happened before they were born.

If Brooklynn's father Doug, or anyone else had been

driving, a claim could go ahead.

In a statement read Wednesday by their lawyer, Rosanna Saccomani, the Rewega family said they were "thrilled with the government's response" to their story.

In the Dobson decision, the court allowed some room for provinces to create legislation that would apply specifically to a woman who was at fault in a car crash and who had insurance coverage, Stevens said.

The government is also pursuing this line of legislation because auto insurance is mandatory for all drivers and the most common way unborn children are hurt is in vehicle accidents.

Stevens said he expects "very few" cases of this nature to come forward.

But the insurance industry believes the legislation may lead to a proliferation of lawsuits.

Jim Rivait, Alberta vice-president of the Insurance Bureau of Canada, said the government is passing this legislation because it moves responsibility for taking care of some disabled children from the government to the auto insurance industry.

The only reasons mothers can't be sued for other risky

activities they might engage in, he said, is because no insurance is available.

He said mothers -- and more specifically their insurance companies -- could be open to lawsuits that stem from something as small as a fender-bender if the child someday develops Attention Deficit Disorder.

"There's a cost to it and it's going to have to be factored into the costs of insurance," Rivait said.

Erin Nelson, an associate professor of health law and women's health at the University of Alberta, said some people will worry this will make women liable for any activity they undertake during pregnancy, but the narrow legislation in the U.K. has not had that ripple-effect. The legislation proposed by the Alberta government, she said, sounds as if it would be pretty limited.

"I don't like to say that I'm completely not worried, but I'm not sure if the same

concern exists if it is this carefully tailored," Nelson said.

Already, a lawsuit against a driver other than the mother can take place if a child is born with damage inflicted in the womb.

"After the child is born alive and has injuries, then the right crystallizes at that moment, and then the action can be brought," Nelson said.

"You could make the argument that it does allow the fetus to have some status, but it does not go so far as to allow the fetus to have absolute legal status."

For at least two years, Lisa and Doug Rewega have been lobbying the government for special legislation to allow Lisa to be sued by Brooklynn. The government's legislation on this issue will not be retroactive, but a committee of the Alberta legislature is still considering a private bill -- which is a bill specific to an individual circumstance -- for the Rewega case.

Government sources say it is likely to move on from committee stage and pass in the legislature this fall.

The Rewega's MLA, Frank Oberle, the Conservative member for Peace River, said the couple needs access to the courts to help pay for Brooklynn's care. "(The private bill) doesn't assign any blame, it doesn't award any money or anything else -- and the government can't do that, but we could give them access to the courts," Oberle said.

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