

March 29, 2006

Second Reading of Apology Act, 2006

Second Reading debates

Hon. W. Oppal: This bill is designed to promote the early and effective resolution of disputes by removing concerns about the legal impact of an apology. It has long been uncertain in the legal field as to what the legal effects of an apology are or have been. It has been held by some people or found by some people or is the opinion of some people that the rendering of an apology after a particular incident — after a motor vehicle accident, for instance — denotes an admission of liability on the part of the person who's rendering the apology. Courts have been somewhat inconsistent and uncertain as to how evidence of apologies ought to be interpreted, and this bill clarifies that.

It embodies principles recommended by various people. In particular I want to thank the hon. member for Vancouver-Burrard, whose very thoughtful private member's bill raised the public profile and raised the concerns and apprised the public about the value of an apology in the settlement of disputes. As well, I want to commend the many conscientious persons in the Attorney General's ministry who were ultimately responsible for the drafting of the act, but the hon. member for Vancouver-Burrard stimulated, by his energy, considerable discussion. I believe it enhanced the level of our consultation, resulting in an improved bill.

In addition, I would also like to credit the recent report entitled *The Power of an Apology: Removing the Legal Barriers* released by the Ombudsman, Howard Kushner, in which he recommends that public agencies should be able to say, "I'm sorry for what happened," without fear of any legal consequences. His report strengthened our resolve that enabling apologies would promote healing and reconciliation. Our bill reflects this input and is modelled on successful legislation in other jurisdictions.

I want to digress for a minute, in that there are other parts of the world in which the concept of an apology without an accompanying liability has been recognized. The Truth and Reconciliation Commission in South Africa is a perfect example of where an apology has taken place. A commission was established, and there was evidence of mass apologies without rendering anybody legally liable or legally responsible. It's a form of cleansing, and it's an effective form of resolving disputes.

In the early 1990s I was the head of a royal commission on policing in this province. We heard from numerous people who came before us during the course of the inquiry who told us that if an erring officer or an erring official had come forward with an explanation as to his or her actions, they would not have proceeded further with the matter.

I recall one evening in particular. We had a public hearing being conducted in the city of Vancouver, and two young women came before us. They were standing on Commercial Drive on a nice September evening. As they were standing there, two motor vehicles came to a grinding halt in front of them, and a number of men in jean jackets and wearing jeans jumped out of the vehicles and pointed guns at them and said: "Police! Get down on the ground." They immediately complied with the demands, and they went down on the pavement. Then the police said: "Stand up. Stand up." They stood up in compliance with the demands of the men who were there.

It became apparent to the attending officers that there was a case of mistaken identity. Both women obviously were distraught by that time. They laid a complaint. They came before our commission of inquiry and told of this horrendous incident that took place that traumatized both of them. Interestingly enough, each said that had the police at that time said they were

sorry, that it was a case of a mistaken identity and that they were on the wrong street, nothing further would have been done.

[S. Hammell in the chair.]

Here was a case where the circumstances of the particular incident were particularly acute, particularly serious, in that they resulted in emotional trauma being inflicted upon two innocent citizens. They were quite prepared to forgive the officers in light of the fact that it was an honest mistake made.

I forgot to state that when it became apparent that there was a mistaken identity, one of the officers said: "Shake it off. This is something you can tell your grandkids about." That ended the incident, and it started a whole chain reaction wherein the women complained. Much damage was occasioned to the reputation of the officers, and all of that was needless.

It is with those types of incidents in mind that the government sought this direction in enacting this legislation. As we become more knowledgeable about the ways of avoiding litigation, in finding alternative ways to resolve disputes, it's becoming increasingly clear that a simple apology can go a long way towards resolution of a dispute.

Most reasonable people who are aggrieved in most circumstances will listen carefully to the aggrieved party, will listen carefully to the offending party and will accept an apology. Often it will not result in any form of litigation or any form of legal proceedings, be it at an administrative tribunal or in a court of law. Often an injured person simply wants an explanation and an apology as to what happened to them. However, if an apology is not made at an early and an appropriate stage, positions can become entrenched. Protracted, costly and often difficult litigation can occur.

I was just apprised of an incident that took place here in the city of Victoria earlier this month. A Supreme Court trial was held. It involved two citizens — neighbours. One neighbour had apparently cut down trees that belonged to his neighbour. The act was wrongful. The matter ended up in the Supreme Court of British Columbia. Eventually a finding of liability was made, and a damage award was made in favour of the plaintiff against the defendant.

Interestingly enough, Mr. Justice Macaulay, who heard the case, stated in his reasons that the plaintiff, the aggrieved party, had said that he would not have pursued the matter through the courts had the offending party taken the time to apologize. We see that over and over again, particularly in disputes involving neighbours — disputes that are innocuous at their inception but that eventually can build up and build up and result in litigation. Lo and behold, oftentimes they end up in the Supreme Court. That is not a satisfactory way of resolving disputes in a civilized society.

For those reasons, this particular legislation is particularly constructive. It's particularly proactive. It is beneficial legislation that will be of assistance in resolving disputes for years to come in this province.

In 2002, hospitals at the University of Michigan health system encouraged their doctors to apologize for mistakes. That suggestion made by the health authority at the University of Michigan has resulted in a significant drop in medical malpractice lawsuits, and notices of intent to sue dropped significantly. In 2001 there were 262 lawsuits involving doctors in that jurisdiction. That number dropped to 130 by virtue of the directive, or the suggestion, to apologize.

There is no question at all that the significant and drastic drop in the litigation numbers is attributable to this policy of apologizing. I should also add that it preserved a very vital doctor-patient relationship, in that the patient who received the apology from his or her doctor was in a position to resume relationships with that doctor.

This Apology Act embodied in this bill is similar to the broader form of apology legislation that was enacted in 2002 in New South Wales as a part of their Civil Liability Act in that state, but it's the first legislation of its kind to be introduced in Canada. There are a number of jurisdictions in the United States — a number of states in their civil liability procedures — that have enacted similar legislation. All of them report that there has been a drop in litigation. More importantly, there's been a drop in the amount of acrimony and the amount of disputes that take place between otherwise decent people.

For that reason, this legislation is well worth pursuing. Apology legislation will make it possible for people to express contrition or regret about their actions or the situation without having those statements used as evidence of legal responsibility. That really is the second salient part of this legislation: that evidence of an apology made at the scene of a particular incident is inadmissible in legal proceedings.

That goes a long way because in the past, I know from experience in the courtrooms in this province, often one party or another would attempt to elicit evidence regarding an apology that was made — an apology that may have been made, for various reasons, after a particular accident or particular incident. Often that resulted in a dispute regarding the admissibility of that evidence. Should that evidence be admitted? Is it relevant to any particular issue?

Often one party or another would argue that if one party or another apologized then that was relevant and probative evidence that would go to the question of liability. The thinking was: why else would a person apologize unless he or she was at fault? The argument went that you only apologized if you were in the wrong. This act, this legislation, would put to rest that type of faulty reasoning.

As members who have been in courtrooms... The hon. critic will know that people often render and proffer apologies because they're courteous, because they're genuinely concerned about the welfare of another person who may be hurt in an accident. But that doesn't necessarily mean that the person who offers the apology is accepting legal responsibility.

Specifically, I think that the Apology Act will allow individuals, corporations and governments to offer an apology by providing that an apology does not constitute an expressed or implied admission of liability. It will make apologies inadmissible in legal proceedings, including disputes between arbitrators at administrative tribunals, or in voiding an insurance contract. That's often a statutory condition in insurance policies, wherein the insurer will stipulate in an insurance policy that if the insured renders an apology, that will make void the policy. This addresses that issue as well.

Because so many disputes are now being resolved by way of alternative means — by ADR, by mediation, by arbitration, by conciliation — the Apology Act and the provisions of this legislation will be applicable to those forums of alternative dispute resolution involving administrative tribunals and other alternative forms of resolving disputes.

It will encourage people to be involved in natural, open and direct dialogue when an injury has occurred. It will also promote people to take responsibility for their actions. An

apology is much more about psychology, morality and culture than it often is about the law. Apologies are moral and humane acts that assist people who have been injured to heal and those who have caused injury to deal with the situation.

This legislation will ensure that the law does not create unnecessary impediments to the effective resolution of disputes or to the healing that is such an important part of this process. We are getting away from the acrimony and some of the negative parts of the adversarial process that embodies and is a part of our litigation process. This bill, this legislation, will address those concerns and will effectively assist in resolving disputes and assist in healing, assist in better relations between parties who have been involved in disputes.

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