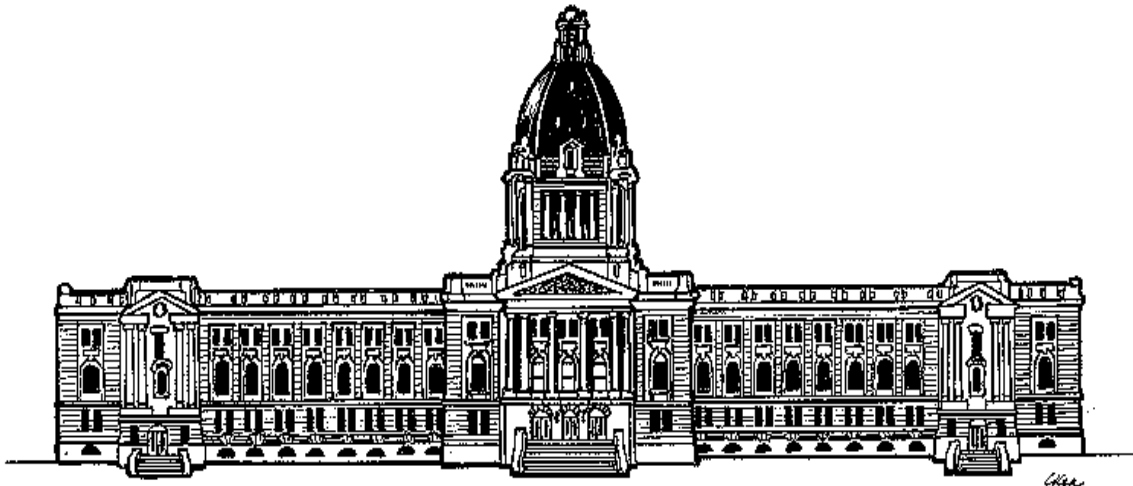




STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND INFRASTRUCTURE

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

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Hon. Len Taylor
The Battlefords

Mr. Kim Trew
Regina Coronation Park

**General Revenue Fund
Supplementary Estimates — March
Highways and Transportation
Vote 16**

Subvote (HI10)

The Chair: — Okay. We will convene the Committee of Intergovernmental Affairs and Infrastructure. The first item of business before the committee is the consideration of supplementary estimates for the Department of Highways and Transportation, vote 16, and that of course is found in the 2006-2007 Saskatchewan Provincial Budget Supplementary Estimates, March 2007, on page 9. Mr. Minister, if you will introduce your officials please.

Hon. Mr. Lautermilch: — I shall, Mr. Chairman. To my right is Terry Schmidt, the assistant deputy minister of operations division; to my left, John Law, who is the deputy minister; to his left, George Stamatinos, the assistant deputy minister of policy and programs division.

And at the table on the left side is Tim Kealey, director of corporate support branch, and to his right is Ted Stobbs, who is the assistant deputy minister of corporate services division.

The Chair: — Mr. Minister, do you have a statement of any kind at this time?

Hon. Mr. Lautermilch: — No, other than to say we've been before the committee before, and we are dealing with supplementary estimates. We have basically one item from within the Highways and Transportation budget, which is the winter maintenance. So I think that pretty much covers it.

The Chair: — Thank you, Mr. Minister. I just remind all the members of the committee that we're dealing with the supplementary estimates for the Department of Highways and Transportation, vote 16. That's the operation of transportation system (HI10) in the amount of 4.4.

An Hon. Member: — Agreed.

The Chair: — Thank you, Mr. Member of the committee. You're sort of a little bit ahead of schedule here. I recognize Mr. Weekes.

Mr. Weekes: — Thank you, Mr. Chair, and welcome to the minister and your officials. I have a few questions just to clarify a few things that were brought up in the last set of committee meetings, if you would indulge me.

The discussion was around travelling distance and things like that between section shops. My question is more towards the effective use of salt and chemical when it's being applied on the highway and also the technology that may be experimental or in use.

If you could clarify, is there a certain type or of asphalt or base — not base — or asphalt or pavement, I guess, which would be the same thing, that is used that is more, that would be more effective in the wintertime when you're applying certain

chemicals? And is there certain chemicals that would go on a different type of surface?

Mr. Schmidt: — Thank you, Mr. Speaker. I'll do my best to address that. As you mentioned there are several different surface types that we use in the department. One is the asphalt concrete surface and this is, the surface is typically . . . And the other type we use quite frequently is the seal coat on top of a granular surface. What we do find is they do react differently under different conditions in winter, and therefore they do require different treatment techniques.

For example, the asphalt concrete surfaces tend to be smoother, especially when they're newer pavements. As well the darker, black colour does also impact the way that the road responds to snow and wind and different things like that. So the seal coat aggregate surfaces tend to be more rough and coarse, and therefore they will have a little bit better traction in some type of winter events as well.

So we do use the same types of chemicals though in both services. We do use road salt for treating on both of them, and the difference will come in the application rates and the manner in which we apply them.

Some of the technologies we are using right now to assist in more effective road salt management — and this is reflected in our road salt management plan that we have developed to meet Environment Canada's requirements — is that we have what we call pre-wetting systems on some of our trucks. And they are then capable of carrying a tank that has liquid de-icing chemical in it and that liquid de-icing chemical is then injected right at the spinner where the road salt goes onto the road, and so it coats the road salt with this de-icing chemical.

And what that will do is a couple of things. One is because it is then wet, it will stick better on the road surface and it won't blow away in the wind as quick or be thrown off as quickly as the road from traffic. And the other thing it does is it speeds up the chemical reaction of the road salt by coating it with this de-icing chemical so it will react quicker and start working quicker to remove the ice. So we haven't got these on all of our fleet. We do in strategic locations, depending on the road types and the level of service that that section or those trucks are usually assigned to providing service to.

So in those locations of course then we will look at the type of treatments we do. We train our operators for winter snow and ice control based on best practices that we work with the Transportation Association of Canada to deliver that training. And then they will then use that training and their judgment and the resources to determine the, of course, the amount of material that they put down.

And we do have controlling boxes in each truck as well that they can control the rate of application for the salt based on so many kilograms per kilometre. And then they can adjust that based on whether they're treating thick ice or thin ice, whether they're treating frost pavement. The outside temperature and all those things come into play so that they're using the road salt most effectively for the different treatments.

So as I mentioned, the surface types do have different performance. They perform differently under different winter conditions. And then our crews with their experience and the technology and the resources they have and the training, will respond to the type of treatment that's needed based on the road surface type, based on the environmental conditions — and actually the forecast that's coming down too, that we work with Environment Canada to get to do what we would call a kind of pre-treating or anti-icing in some locations as well.

Mr. Weekes: — Thank you. Just one more on that topic. I believe in the past you have said or the minister's officials have said that I think the salt doesn't work below minus 6 degrees. I may be wrong in that. If you could just clarify the temperature range of where the salt works and also the de-icing solution. Does that allow for it to work at a colder temperature than just the salt?

Mr. Schmidt: — Thank you. I can provide a little more detailed information for that and, you know, I can reference you to our website. We have a couple of documents on our website that provide more information on that. We call it a fast facts for winter maintenance as well as a technical backgrounder.

And as you mentioned, the colder the temperature gets, the less effective road salt becomes and that's because the way things work with road salt is a chemical reaction occurs when the road salt comes in contact with the ice. That generates heat that then will melt the ice into a brine solution. And then that brine solution continues to melt the ice until such point in time it becomes so diluted that it, it just can't melt any more. So it either runs off the road or we plow it off with the slush or different things like that, or it evaporates off.

At temperatures below minus 6 degrees Celsius is when we start to find that road salt will lose its effectiveness. It still works, but what happens then is you just require more salt to remove the ice or break that bond of the ice in the pavement. So for example at minus 1 degree Celsius, 1 kilogram of salt will melt 46 kilograms of ice. But if that temperature drops down to minus 23, then it'll only melt 3.2 kilograms of ice. So you really start losing the effectiveness of the salt as it gets colder.

And that's why sometimes you'll see . . . You know, our operators are trained. And like I said, with the metering devices they have, they are then able to determine how much salt to put on to effectively melt that ice. And what that also means too is when it's very cold, in some conditions they will have to come and reapply a second coat because the brine solution will start melting. And then you'll sometimes see this happening in thick ice. You'll get little potholes that are melted and the rest hasn't melted because the brine has just lost its effectiveness, it's so cold. So they'll have to go reapply again another coat of salt on there to remove the ice.

And of course at some point in time it just becomes so cold — like minus 30, minus 40 — that it doesn't matter how much salt you apply, you've just lost the effectiveness. And there's no value in adding that salt because you're not removing the ice. So in those point in time we will revert to sanding and different techniques there to sand intersections, to sand curves, to sand some of the hazardous areas, until such a point in time when the temperature rises enough that it's more effective to use salt to

remove the ice.

Mr. Weekes: — Thank you very much for that. Just to move on to another topic. The last time we met, a discussion around how soon the snowplows will be out after a storm. And I believe in the first set was within six hours at the end of a storm, and then level 2 was within 12 hours, and level 3 is within 24 hours at the end of the storm. My question is around . . . I mean that's the target; that's what your department is shooting for.

I just want to know how often, or how often is that target not met, I guess, is what I'm referring to. And what are the, I guess, what is the process? And is there a consultation with the workers out on the snowplows about why the targets are not met or why they are met or that whole process? Could you elaborate a bit on that?

Mr. Law: — Thank you. We have had our current protocols with the standards that you referred to with respect to, were our three classifications in place, for essentially two winter seasons, and during that time frame I would say our expectation is that we're going to operate within standard going into each season.

We've set those in part with respect to our objectives around safety. But we've also tried to do them in the context from an engineering perspective and a technical specification perspective, what is a practical target for us to achieve.

There will be circumstances periodically . . . And we were just discussing that we probably would have to go back and see if we have any data on whether or not in the past two seasons since the standards have been in place, we have been unable to achieve that. Typically we talk about these on an exception basis. So where we've had problems or where we've had trouble meeting that standard, there would be discussion with our local staff.

I know in some of the consultations that I was involved with this past year, some of the front-line staff made a point of ensuring that we understood where they thought some of those were perhaps less practical than they had been when we laid the standard out.

So we don't have anything with us today that I could tell you that we didn't meet the standard two or three times. There will always be circumstances where mother nature may put us in a situation where we may, despite our best efforts, if the snowfall or the nature of the ice condition is such that we can't meet it . . . I'm not saying we can meet it every time, but our standards are set with the expectation that we will achieve those on a regular basis throughout the course of the winter.

We don't have information here today on whether or not we haven't achieved them, but we are in the process of sort of evaluating the system in relation to our ability to meet those targets now. And if there's anything we have by way of a record for these past two seasons, we would be pleased to provide that as a follow-up to your question.

Mr. Weekes: — Thank you. I appreciate that information and look forward to the information concerning that issue.

If I may, Mr. Chair, ask the minister. I asked you about the

situation of potential flooding in Asquith, and if you could just indulge me. There was a letter . . . I sent a letter to you and the RM [rural municipality] and the town. I was just wondering have you had . . . I don't believe I've received a reply to that situation. I'm just wanting to know if you've looked into that, and what is your decision as far as their concerns in Asquith? It's very relevant to the people there because they could be in a flooding situation in a matter of days.

Hon. Mr. Lautermilch: — Mr. Chairman, I am aware that the officials have met on an ongoing basis both with the town of Asquith and with the municipalities in that area. I'm also told that there has been some work planned for the spring that may in fact assist us in spring runoff issues. I think it's important to note that the department is working on a broader communication with the Department of Public Safety and other entities within government to broaden the communication to some of the communities who will in fact — in our opinion based on technical data that we've been able to put together — experience some runoff conditions that may be more difficult to manage.

I'm going to ask Mr. Law to comment on a more technical nature in terms of the work that has been done by the department and the work that continues moving forward.

Mr. Law: — Thank you, Minister. Just to reiterate what the minister said in relation to your specific inquiry, Mr. Weekes. We have had meetings with the community in relation to the installation of a new approach culvert that would hopefully assist in the circumstances of helping to alleviate the flooding risks that the community is up against. And we are working with them on that.

Part of our effort here that the minister alluded to is a program that we began last year with the Department of Corrections and Public Safety, that is responsible for emergency measures, where we deployed a number of our municipal engineers to assist RMs and some of the local communities in the assessment of damage and remediation efforts that could be undertaken with respect to culverts and bridges in various communities most dramatically affected by the flooding. That program is one that we will be reinstating this year along with a broader effort in support of doing remediation work in those areas where we expect we will have some severe conditions again this spring.

Mr. Weekes: — Thank you. I will pass that on to my constituent. I would like to move on to the topic of the SGEU [Saskatchewan Government and General Employees' Union] strike. My colleague asked a number of questions concerning that. I believe what . . . I believe the end result of this question as far as cost was that there was approximately \$100,000 less spent — call it a saving I guess — because of the strike. The department paid out \$75,000 in overtime to out-of-scope staff. A net difference of \$25,000 . . . or a net saving I guess to the taxpayer.

In Mr. Law's response he was going to give a written response as a follow-up. And I was just wondering, do you have that today or will that be forthcoming?

Mr. Law: — We've attempted . . . We haven't quite finished

. . . I think there were 11 or 12 specific follow-up items, Mr. Weekes, that we were bundling together for you, and we haven't finished them all. We have drafts that we've worked on for a good chunk of them. But we expect to have that done shortly, and we were planning to provide them together for you.

I can see whether or not we have that individual piece. But our effort was directed towards giving you a complete package in response to the questions that were raised in the first session.

Mr. Weekes: — Thank you. I'll look forward to that. Just a few more questions about the strike. I believe, listening to the media, there was at least one accident involving a snowplow that was being operated by an out-of-scope employee. Could you give the numbers of accidents that took place during the strike? And I guess the severity of those strikes and the cost and damages and those types of questions?

Hon. Mr. Lautermilch: — We don't have that information available for this set of estimates, but it's an answer that the department will put together and send to you, Mr. Weekes.

Mr. Weekes: — Thank you. One more item I'd like to move on to today. On Highway 11, there's some ridging being done in farmers' fields next to the highways. Could you . . . I understand that the department is paying farmers or contracted to do the snowplowing in fields to reduce the amount of snow that is blowing on the highway. Could you confirm that? And what is the program? What is the cost and the rate that is being paid to contractors or farmers?

Hon. Mr. Lautermilch: — Mr. Chairman, I am told that we don't have those numbers. We do do that kind of activity around the province. We can clarify for you the nature of that kind of a program.

Mr. Weekes: — Thank you, Mr. Minister, and thank you, Mr. Chair. That's all the questions I have today.

The Chair: — Seeing no further questions on the estimates of Department of Highways and Transportation, we will now deal with the . . . Do we have the estimates to vote up? The first item of business . . . The consideration of this committee will be for the supplementary estimates for the Department of Highways and Transportation, vote 16 in the amount of \$4,400,000. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: —

Resolved that there be granted to Her Majesty for the 12 months ending March 31, 2007, the following sums for Highways and Transportation, \$4,400,000.

Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — And I'll invite a member to move such. Mr. Trew. Thank you very much.

[Vote 16 agreed to.]

The Chair: — That concludes the business before the committee in regards to the supplementary estimates for the Department of Highways and Transportation. I'd like to thank the minister and his officials for being here and providing us with the information in such an eloquent way as they have.

Hon. Mr. Lautermilch: — And, Mr. Chairman, we would like to thank members of the committee.

The Chair: — The next item of business before the committee will be the consideration of supplementary estimates for the Department of Justice, which will take place in just a few moments. We'll just allow the officials to change places. So with that we'll just take a brief recess.

[The committee recessed for a period of time.]

**General Revenue Fund
Supplementary Estimates — March
Justice
Vote 3**

Subvotes (JU01), (JU03), (JU04), (JU05), and (JU08)

The Chair: — We'll reconvene the Standing Committee of Intergovernmental Affairs and Infrastructure. The business before the committee this afternoon is the consideration for supplementary estimates for the Department of Justice, vote 3 which can be found on page 10. Mr. Minister, I invite you to introduce your officials.

Hon. Mr. Quennell: — Thank you, Chair. Seated with me at the table to my left is Keith Laxdal, associate deputy minister finance and administration division. To my right Gord Sisson, director of administrative services; behind and for the availability to the committee if required is seated Rod Crook, assistant deputy minister courts and civil justice; Susan Amrud, executive director public law division; Murray Brown, executive director public prosecutions; Pat Thiele, director victims services, community justice division; Kylie Head, executive assistant to the deputy minister of Justice, and Linda Bogard, executive director of court services.

The Chair: — Thank you, Mr. Minister. If you have an opening statement now we'll entertain that.

Hon. Mr. Quennell: — Briefly, Chair, I would like to provide you with a brief overview of \$1.9 million in additional funding provided to the Department of Justice as supplementary estimates. Special warrant funding at \$1.9 million was required to offset the following expenditures: \$65,000 for overtime and additional staff to manage the implementation of the new payroll system, \$220,000 for the appointment of two full-time members to the Automobile Injury Appeal Commission. The appointment of the full-time members will serve to improve the timeliness of the commission's decisions. And \$1.615 million for costs associated with the tentative collective bargaining agreement with SGEU. This amount is distributed to the various organizations within Justice.

The special warrant for Justice does not include any costs related to the labour dispute with SGEU. Overall the costs associated with the strike in courts will be offset by salary

savings. And I look forward to answering your questions on the matters funded by the special warrant for \$1.9 million.

The Chair: — Thank you, Mr. Minister. Mr. Morgan.

Mr. Morgan: — Thank you. I'm going to sort of go at this a little bit in reverse order in this there is a \$220,000 amount that's for boards and commission, specific of the Automobile Injury Appeal Commission. Is that the salaries that are paid to the two new members?

Mr. Laxdal: — Yes, it is, Mr. Morgan. It included the salaries for the two new members for the bulk of the year and some relatively small start-up costs — furniture, computers, what have you.

Mr. Morgan: — Previously the board Chair had been Ann Phillips, who retired. What was her salary?

Mr. Laxdal: — Ms. Phillips receives a per diem. The per diem has recently been increased from 400 per day to 500.

Mr. Morgan: — Did she do this on a full-time base or close to full-time?

Mr. Laxdal: — Well no. She really did it on a per diem basis and was not in the office, for instance, five days a week. She would be in as required by hearings and decision writing responsibilities. If I may, Mr. Morgan, did you say the previous Chair? Because Ann Phillips continues as the Chair of the Automobile Injury Appeal Commission.

Mr. Morgan: — I assumed that the other two were replacements, but they're not. Is that correct then?

Mr. Laxdal: — They're not. They are additions to the commission.

Mr. Morgan: — And then the two new appointees, the salary will be in excess of \$100,000 each, I presume?

Mr. Laxdal: — That's correct.

Mr. Morgan: — And those are both full-time employees?

Mr. Laxdal: — That's correct.

Mr. Morgan: — One each in Saskatoon and Regina, is that the . . .

Mr. Laxdal: — That's also correct.

Mr. Morgan: — Did that require the opening of an office in Saskatoon?

Mr. Laxdal: — It required that the commission find space for the member in Saskatoon. We did not open a new office, and in fact through the assistance of court services were able to locate the Saskatoon member in the Provincial Court office in Saskatoon.

Mr. Morgan: — So there'll be ongoing rent expense?

Mr. Laxdal: — Yes, which will be part of the Provincial Court accommodation charges. Yes.

Mr. Morgan: — And that's not found in the \$220,000?

Mr. Laxdal: — Not specifically, sir.

Mr. Morgan: — How many people work in total in the two commission offices?

Mr. Laxdal: — There are a total of 16 members, two of which are per diem . . . pardon me, two of which are full-time. And the support staff has just increased. And I believe they're now at four, four FTEs [full time equivalent].

The Chair: — Ms. Draude.

Ms. Draude: — Thank you. Mr. Minister, I just have a couple of questions on the Automobile Injury Appeal Commission. You'd indicated that there was two more members added to improve the timeliness of the rulings. Could you tell me how long it was taking approximately before, and what you're hoping for?

Hon. Mr. Quennell: — I can give you some information and maybe some questions will arise from that. As of November 30, 2006, there were 56 cases where hearings were concluded and either the panel was waiting for additional information to be filed by the parties or written decisions had not been issued. By mid-March, the commission was able to reduce this number to 11 outstanding decisions. We believe that all the current outstanding decisions will be issued by the end of March, and future appeal hearings will result in decisions issued within 60 days of the hearing or final submission of evidence.

So we have now cut down the backlog from 56 to 11, expect to cut it to zero within weeks, and then thereafter have decisions within 60 days of the hearing which was, I think, the original hope.

Ms. Draude: — So will it take as many members as you have now to keep the backlog from continuing to climb?

Hon. Mr. Quennell: — The full-time appointments I believe are until August and September of 2009, and I expect a review of what the requirements for commission membership can be made at that time.

Ms. Draude: — Thank you.

Mr. Morgan: — This particular commission falls as a Justice item. Is there a chargeback method or a method of including the costs of operating this commission added to SGI's [Saskatchewan Government Insurance] cost because this really is a cost of operating the Auto Fund?

Hon. Mr. Quennell: — That's correct, there is.

Mr. Morgan: — So is there a chargeback that's shown as a GRF [General Revenue Fund] transfer or . . .

Mr. Laxdal: — Yes. There is a regular billing on a quarterly basis to SGI to recover the costs associated with the

commission. Actually they recover the net cost — the difference between the total expenditures less the \$75 per application revenue received by the commission. So it's fully covered in effect.

Mr. Morgan: — Is there a system of accountability back to SGI? Like do they raise concerns about the cost of operating the appeal process? Or is there a method that they feel that the appeal commission is accountable to them in any way?

Hon. Mr. Quennell: — I'm advised that there are not regular but periodic or episodic meetings with SGI in respect to the operation of the commission. And I guess matters of mutual interest — and you might even describe them as matters of mutual concern or a concern of SGI — might be raised, but that Saskatchewan Government Insurance does not put any pressure on the Department of Justice or the commission in respect to the costs or any other matter.

Mr. Morgan: — My next question dealt with the selection of board members. What's the criteria? I presume that's done by order in council and done not with input from SGI or . . .

Hon. Mr. Quennell: — That's correct. It's done by order in council and they are not nominated by SGI. The commission sits in panels of one to three depending on the complexity of the matter that they're hearing, with three-person panels being the most common model. Commission members come from a variety of backgrounds, primarily legal and medical backgrounds but not exclusively that. The panel is always chaired by a lawyer, and the decision writers are usually lawyers.

Mr. Morgan: — Of the applicants that come before the commission, do you know what percentage of them are represented by counsel and how many of them are unrepresented or represented by lay people?

Hon. Mr. Quennell: — Approximately two-thirds of the applicants are not represented by legal counsel.

Mr. Morgan: — Is there any method where they are represented by lay people, or not represented . . . Those two-thirds would not be represented at all, is it?

Hon. Mr. Quennell: — I don't know if we have a breakdown as to who has somebody other than a lawyer or themselves represent them. But our understanding is that about two-thirds of the applications are not represented by legal counsel.

Ms. Draude: — Mr. Minister, I have a question. At the appeal commission is SGI always represented by a lawyer?

Hon. Mr. Quennell: — I don't believe that was originally the case. I think that is more and more the case. I don't know if that's always the case, but I think it has become more and more the case that SGI is represented by legal counsel.

Ms. Draude: — I know that under the commission that is, the appeal commission that is looked after by SGI, part of the wording of the Act says that the maximum amount of court costs that can be paid is \$2,500. Is that the same for the Automobile Injury Appeal Commission?

Hon. Mr. Quennell: — The regulations provide for a maximum amount of \$2,500. The people appealing the decisions of SGI have a choice between the appeal commission and the Court of Queen's Bench. I would be very surprised if very many people, if any, could recover as much as \$2,500 on a Court of Queen's Bench tariff if it went to the Court of Queen's Bench. That may be a reason why people choose the commission is because they can recover more costs.

Ms. Draude: — I would imagine that you have had indications from people who say that right now in order to go to the appeal commission and bring in any type of witnesses, the cost is a whole lot higher than 2,500, and it usually ends up costing money out of whatever settlement that they received. Do you hear that very often?

Hon. Mr. Quennell: — No, I don't hear that very often. This matter was in the media at one point in time and in respect to two issues — delay in getting proceedings dealt with. By the time that it had arose in the media we had made the appointments that we require the special warrant for now, that's two full-time commissioners. And that seems to be having the result that we expected.

As to the costs of proceeding in this direction, I appreciate that if one is represented by a lawyer one might not recover one's full costs. Whether one appeals, goes before the commission or a Court of Queen's Bench or takes the matter into small claims court, the costs that are going to be recovered and awarded by a commission or by a court aren't going to be one's actual costs.

Ms. Draude: — When someone would come before the commission as a layperson or representing themselves and they're going to go against a lawyer, somebody who actually is trained in this area, the chances I would imagine are more difficult to have a favourable ruling in their case. Can you tell me what percentage of the time that clients actually do win?

Hon. Mr. Quennell: — The claimants are successful in the majority of the appeals here before the commission — 55 per cent.

Ms. Draude: — Fifty-five per cent? Can you tell me how much money that represents in say last year?

Hon. Mr. Quennell: — No.

Ms. Draude: — Will you?

Hon. Mr. Quennell: — Well I think I've been fairly generous in how we've wandered away from what the supplementary estimate is for in the first place, which is really the hiring of full-time commissioners.

Ms. Draude: — Thank you.

The Chair: — Mr. Morgan.

Mr. Morgan: — I just have one other question in that area before we move on. You'd indicated that the claimants have the option to go to Queen's Bench. Do you have access to the number of what percentage of them are going to Queen's Bench? My understanding is it's next to negligible, but I could

be . . .

Hon. Mr. Quennell: — Mr. Morgan's understanding may very well be correct, and I think there is a couple of reasons why people might be choosing the commission in the vast majority of cases, which seems to be the case.

One is the . . . well actually three reasons. Despite the delays that we have had, compared to the Court of Queen's Bench may be the relative rapidity of getting results in most cases, despite the delays that we've had and have now acted to correct. Secondly the amount of costs that one can recover, I think, are probably much more generous under the regulations of the commission than they are in the Court of Queen's Bench.

And thirdly, although it hasn't been as informal perhaps as maybe the drafters of the system hoped, it still may be less formal and less imposing to an appellant to go to a commission than go to the court. For some mixture of those reasons and perhaps other reasons that I haven't thought of, the commission seems to be the preference of almost everyone making a claim.

Mr. Morgan: — The next issue I'd like to talk about is in some of the other items collectively. There's a variety of other . . . [inaudible] . . . and you'd indicated some of them deal with the costs of the strike. I'm wondering is there anything included in any of these budget lines that deals with additional courthouse security pursuant to the new legislation that's due to be passed soon?

Hon. Mr. Quennell: — No. And to be clear, none of the special warrant is associated with the cost of the strike. As I said at the beginning, overall the cost associated with the strike in the courts will be offset by salary savings. The largest part of the \$1.9 million is the anticipated increased payroll associated with the tentative collective agreement settlement.

Mr. Morgan: — I'd like to come back to the strike a little bit and get some specifics on that because this is, the net effect of the estimates that are here are the result of that settlement. But in the run-up to that, how many days were Justice workers off?

Hon. Mr. Quennell: — Again, none of the special warrant has anything to do with the strike or cost of the strike.

Mr. Morgan: — So I take you can't or won't answer how many . . . What I would like to know is the number of employees that were off and for how many days.

Hon. Mr. Quennell: — Yes. I don't know if I can answer that, but I would like to stay within what we are, what the special warrant is for. And there are no costs being requested by Justice in respect to the strike.

Mr. Morgan: — Okay. I'll go back to the first budget item, which is central management and central services, 330,000. How many full-time equivalents are affected by this?

Hon. Mr. Quennell: — In central management or administration, there are 83.2 FTEs.

Mr. Morgan: — And how many months is this supplementary estimate for?

Mr. Sisson: — Six months.

Mr. Morgan: — Six months. Can you tell us the gross payroll before this increase was applied, for those 83.2 FTE?

Hon. Mr. Quennell: — I can't at the moment, but we can provide that.

Mr. Morgan: — If you would, thank you. And yes, if we knew what it was before that was applied to it. And then I would have the same questions for courts and civil justice and legal and policy services and community justice. I don't require anything else for the boards and commissions aspect of it.

Hon. Mr. Quennell: — And what about marketplace regulation, Mr. Morgan?

Mr. Morgan: — Yes. The legal and policy services that are included there with prosecutions, does that include only the cost of the, related to the settlement, or is there other things included in there as well?

Hon. Mr. Quennell: — The \$300,000?

Mr. Morgan: — Yes.

Hon. Mr. Quennell: — It's related to the settlement alone.

Mr. Morgan: — Okay. So is that the same for each of these lines, is that they are for six months salary for each of them?

Hon. Mr. Quennell: — Correct.

Mr. Morgan: — And none of these . . . Is there anything else other than the salary increase?

Hon. Mr. Quennell: — With two exceptions. The central management and services, there is \$65,000 that's related to the overtime additional staff to manage the implementation of the new payroll system which I mentioned in my opening remarks. And the \$220,000 on the boards and commissions is the \$220,000 for the appointment of two full-time members to the appeal commission, which we've discussed.

Mr. Morgan: — So of the 1.9 million, if we take off the 65,000 for the payroll, the 220 for the automobile accident, the rest is entirely related to the cost of the settlement.

Hon. Mr. Quennell: — That will take you to \$1.615 million, yes.

Mr. Morgan: — And does not include any increase in the number of full-time equivalents?

Hon. Mr. Quennell: — No, not on this warrant, no.

Mr. Morgan: — Okay. So if you could for each of those lines provide us with the number of FTEs that are there, and what the salary was before the increase, then I don't think I've got any other questions unless . . .

Hon. Mr. Quennell: — We'll provide the FTEs in the budget for each of the broken down areas.

Mr. Morgan: — Okay. Thank you very much and would like to thank you and your officials today. Sorry we couldn't have put them through a more gruelling . . . but it's relatively minor changes and pleased that the matter did get settled. So thank you all for coming out.

The Chair: — Thank you. Not seeing any further questions before the committee, we will now deal with the estimates for the Department of Justice, vote no. 3 which is found on page 10.

Central management and services (JU01) in the amount of \$330,000. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Courts and civil justice (JU03) in the amount of 950,000. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Legal and policy services (JU04) in the amount of 300,000. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Community justice (JU05) in the amount of 100,000. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Boards and commissions (JU08) in the amount of 220,000. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: —

Resolved that there be granted to Her Majesty for the 12 months ending March 31, 2007, the following sums for Justice, \$1,900,000.

Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — And I will invite a member to move. Mr. Trew, thank you very much.

[Vote 3 agreed to.]

The Chair: — That concludes the business before the committee in regards to the Department of Justice, so I'd like to thank the minister and his officials for being with us here this afternoon. Thank you very much.

. . . report of the Standing Committee on Intergovernmental Affairs and Infrastructure. And I would invite Ms. Draude to move:

That the seventh report of the Standing Committee on Intergovernmental Affairs and Infrastructure be adopted and presented to the Assembly.

Ms. Draude: — I so move.

The Chair: — Thank you, Ms. Draude. With that, that will conclude the business before the committee. We will now recess until 7 o'clock tonight.

[The committee recessed for a period of time.]

Bill No. 11 — The International Interests in Mobile Aircraft Equipment Act/Loi sur les garanties internationales portant sur des matériels d'équipement aéronautiques mobiles

Clause 1

The Chair: — Good evening. We will now reconvene the Standing Committee of Intergovernmental Affairs and Infrastructure. The item of business before the committee this evening is the consideration of Bill No. 11, the international interests in mobile aircraft equipment. That's an interesting one. I'm sure that our viewing audience will be riveted to the television watching this.

Mr. Minister, will you please introduce your officials.

Hon. Mr. Quennell: — Sitting with me at the table, Mr. Chair, is Darcy McGovern, Crown counsel, legislative services branch.

The International Interests in Mobile Aircraft Equipment Act provides for the implementation of the Convention on International Interests in Mobile Equipment and its protocol on matters specific to aircraft equipment in Saskatchewan. The convention and the protocol create an international central registry that will enable the registration and search of convention-based security interests in aircraft equipment. The convention and protocol are based on the principle that a sound legal framework that facilitates the creation, perfection, and enforcement of security interests in aircraft equipment will provide confidence to lenders and institutional investors both within and outside the country concerned, and make it easier to attract domestic and foreign capital.

The Convention on International Interests in Mobile Equipment came into effect internationally in April 2004. The aircraft protocol came into force on March 1, 2006. This implementing Bill has been identified as a priority by the federal government for provincial and territorial implementation. Canada, Ontario, Nova Scotia, Alberta, Newfoundland and Labrador have all passed implementing legislation and this same Bill has been recently introduced in Quebec. The convention and protocol will be ratified by Canada once a majority of provinces and territories have passed implementing legislation. The convention and protocol will then have the force of law in Saskatchewan the first day of the month following three months after the date of Canada's ratification.

The Chair: — Thank you, Mr. Minister. Mr. Morgan.

Mr. Morgan: — The Bill as it's put forward contains some standardized language that I presume is uniform across the parties or the jurisdictions that are going to be implementing this framework. Where was that developed or what's the history of that?

Mr. McGovern: — The Bill itself, the implementing legislation, was prepared by the Uniform Law Conference of Canada. And the Uniform Law Conference would, with the assistance of the federal government and the members of the federal government team that were on the negotiating committee, develop a draft Bill that is put forward to the Uniform Law Conference and then once it's approved by the Uniform Law Conference, it's recommended to all attorney generals in Canada to implement for this purpose.

Mr. Morgan: — When this is fully implemented, how will it integrate with our existing personal property registry? Will the users of that protocol be obliged to or will it be an option to register within our framework?

Mr. McGovern: — Under the Act there's a declaration that the province of Saskatchewan can make a choice whether or not to continue under the PPR [personal property registry].

We have very much of an advantage under this legislation in terms of the . . . You'll be familiar with Professor Ronald Cuming at the University of Saskatchewan. When UNIDROIT [International Institute for the Unification of Private Law], the international organization that created this convention, first started to consider whether or not to proceed with the convention, they asked Professor Cuming from the University of Saskatchewan to be one of the initial rapporteurs to describe whether or not it's necessary. And with respect to your question, as you know, Professor Cuming is the foremost expert in Canada on The Personal Property Security Act as well.

And so the way this works is that this would replace the personal property registry with respect to aircraft and with respect to airframes and helicopters so that once you've chosen to make that international registration, then you could proceed. You would still have the option to register locally under the PPR with the specific numbers for the airframe . . .

Mr. Morgan: — That would be the choice of the Saskatchewan government to require that registration, or would that be the choice of the registrant?

Mr. McGovern: — It would be the choice of the registrant at that point.

Mr. Morgan: — But if the registrant chose not to, would that have an effect on the validity of their security vis-à-vis other Saskatchewan registrations?

Mr. McGovern: — It wouldn't in the sense that once this becomes law in Canada and in Saskatchewan, that we've made the choice to sign on to the registry internationally. So if you made an international registration, it would be effective against third parties with respect to the airframe, with respect to the engine of the aircraft, and with respect to a helicopter. And that's really the three instruments that we're talking about.

And those pieces of equipment, as you can appreciate, are fairly narrow in the world in terms of how expensive they are and how they're purchased. So there shouldn't be too much overlap in terms of security in that regard.

Mr. Morgan: — Okay. So there would be no benefit to

registering it under the Saskatchewan personal property registry.

Mr. McGovern: — I think there would be no specific legal benefit. There would be no harm in doing so if you wanted to indicate to third parties in Saskatchewan that you were claiming an interest with respect to that, but it would not give you any benefit in doing so.

Mr. Morgan: — Why would we allow it? If somebody isn't aware that this protocol exists, they complete a Saskatchewan personal property registry. The registration is complete. They get a verification notice and everything that they're required to do under the Saskatchewan legislation. And then they later find out that the Government of Saskatchewan has taken their \$25 or whatever the fee is, given them a registration identification number, and they've completed the process. And at that point in time they find out that, because they hadn't participated in this international protocol, their registration is meaningless. So my question is, why would we want to allow it?

Mr. McGovern: — Well and I guess the recommendation in terms of the, you know, the Uniform Law Conference in terms of the rationale when they're saying that making it a choice at the declaration stage, whether or not to do it, that they've made the choice. They're recommending the choice that the declaration that the federal government would make that it would allow for both registrations to occur.

I appreciate your question in terms of is it, does it create a deception? And I think the conclusion was that on a practical level it wouldn't create much of a, it shouldn't create any conflict because of the nature of the specific type of security.

Mr. Morgan: — We're allowing a registration that really has no meaning. Like no court will look at that registration as being a notice. Under that protocol it will be meaningless as to determined priorities. And it's unlike an interest under the Bank Act. Right now there is issues with priorities between the Bank Act and the personal property registry, and there's case law, and there's protocol as to whether you would register under one, register under the other, or registering under both. And there was some significance, and there's some reason why you would want to.

But if I read this Act correctly — and I'm certainly not an expert of this in spite of the fact that I'm probably one of the many in this room that was Professor Cuming's student — but my understanding is that to register under this Act would be of no benefit. The province will take money from those people. There's the potential that it will create an error. Why wouldn't we simply say to those people, your registration cannot be effected here; it must be done under the international protocol. Or, at a bare minimum, if they choose to register under it, include some kind of a notification back to them when they register their airframe number or their aircraft serial number that says, you must register as well under that, or this registration is for notification purposes only and does not give any form of legal priority.

Mr. McGovern: — I think there's I guess two answers to that. I think your second point in terms of a notice is well-taken, and that's something certainly we can look at with ISC [Information

Services Corporation of Saskatchewan] in terms of saying whether or not that's something that could be provided so people are aware. It would constitute notice and this, you recall from how the PPSA [personal property security agreement] operates as a self-contained code so that inter parties within the PPSA, a registration is permissible and it would be with respect to the parties relevant.

But it would not . . . When I say it doesn't have an effect, registering provincially can't undercut the validity of the registration federally, but you can register with respect to the PPR with respect to other PPSA parties. But I think your point in terms of a notification is one worth pursuing.

Mr. Morgan: — How would a search be conducted under this protocol?

Mr. McGovern: — Under the protocol, the registry has been established already in the country of Ireland. It'll operate on an electronic basis and the regulations that will be passed under the protocol will provide for the method of registration and how that works. But essentially it's an electronic process. Much like in Saskatchewan right now, you can search on the ISC website, the PPR to determine what priority or what claims there are with respect to a given piece of equipment.

Mr. Morgan: — So we have to buy into an electronic system that is going to be headquartered in Ireland? Is that correct?

Mr. McGovern: — That's the reality under the convention. That's correct.

Mr. Morgan: — What will the cost be for a search and for a registration and what will the cost be for the province to participate in this?

Mr. McGovern: — There's no specific cost to the province as such. We don't have a buy-in, for example, or we don't have a budgetary cost with respect to that. I don't have the information in front of me in terms of what the number will be per registration with respect to the registry in Ireland. And it'll depend, of course, when the Canadian registry actually comes into force. As you can appreciate, we don't have the Canadian ratification yet. If Saskatchewan chooses to proceed with this legislation, we're still a ways away from ratification. But I can undertake to try and find that number for you.

Mr. Morgan: — If you would. The minister indicated which provinces had signed on already and I'm sorry I missed that; if I could just get that again.

Hon. Mr. Quennell: — Jurisdiction. The jurisdictions of Canada, Ontario, Nova Scotia, Alberta, Newfoundland and Labrador have all passed implementing legislation, and the Bill has been introduced in Quebec.

Mr. Morgan: — You did say Alberta had?

Hon. Mr. Quennell: — Yes.

Mr. Morgan: — And what about Manitoba?

Hon. Mr. Quennell: — Apparently not.

Mr. Morgan: — And BC [British Columbia] not yet either?

Hon. Mr. Quennell: — No.

Mr. Morgan: — What will happen if some provincial jurisdictions choose not to participate? Will the federal government have the jurisdiction to mandate it?

Mr. McGovern: — This convention does have a federal states clause, so when we say that, when the minister mentioned from the materials that it could proceed without 100 per cent sign-up, for example, we could proceed without Prince Edward Island and Nova Scotia, for example. The federal government could choose to proceed with ratification. We would then have a little bit of a patchwork quilt in terms of Nova Scotia and Prince Edward Island not being participants.

Unlike some conventions, where if it doesn't have a federal state clause we have to wait until every province and territory in Canada has signed on before the federal government can proceed to seek ratification. So obviously when the federal government is identifying this as a priority, they do so to every province in the hope that they will all sign on.

Mr. Morgan: — Has the Government of Canada passed its enabling legislation yet?

Mr. McGovern: — Yes.

Mr. Morgan: — And that's proclaimed now? It's received Royal Assent?

Mr. McGovern: — It's received Royal Assent.

Mr. Morgan: — What about the existing personal property registrations in Saskatchewan on aircraft or on the things that would be caught by this Bill? What are the transitional provisions to bring those under? Will those people receive a notice that they have to re-register or will that registration be done for them by the province?

Mr. McGovern: — There won't be an automatic registration, so what we're contemplating is a notice process whereby we would have to have enough information out in advance so that people knew when it was coming up. And as you know, there's a three-month lag under the Act to begin with. But we'll also be able to work with ISC to identify and notify those who may be affected.

Mr. Morgan: — Do we have any idea at the present time how many registrations might be affected?

Mr. McGovern: — We don't have any specific numbers on that. I mean, the reality will be again, when you're talking about an airframe and an aircraft engine, the numbers will be fairly low, so I think we'll be able to specifically identify and do a mail-out in that regard.

Mr. Morgan: — Do we have any sense of how many lenders would be affected? Or would aircraft largely be — the ones that would be based here, registered — would they be part of a national registration that would have been registered into every jurisdiction, or would it be where the lender was local to

somebody that owned aircraft here? I'm trying to get a sense of how much problem it's going to be for an existing lender in this province or on a Canada-wide basis.

Mr. McGovern: — The reality is that this is quite a technical and elite level of, in terms of the large industry obviously, in terms of how the lending occurs. Oklahoma in the United States has a registry it conducts for a large number of the American flights . . . sorry, of aircraft and aircraft engines in terms of the registration there. And those are with international banks. And one of the main reasons for proceeding with this type of convention is that under private international law, the default rule with respect to this type of equipment is the *lex rei sitae*, in other words which would be where the equipment lies is potentially the law that will apply. That's the default rule at private international law.

So of course the concern for international banks when they're saying, well planes can move in and out of jurisdictions very easily and so if we're not sure what law is going to apply depending on not just what province but what country this plane might be in on a given day, we're likely going to have to charge a higher rate of interest to protect our investment. And so the intention with this legislation initially was to provide more certainty and more transparency with an international registry so that there would be some certainty in terms of what the rules would be in a situation where you've got a debtor who hasn't made the payments.

And so that's what's essentially being bought into with this approach, is to say in exchange for increased certainty, and hopefully both on the lender and the debtor there's a benefit to increased certainty — lower interest rates, more likelihood of being able to retrieve your security — that in exchange for that benefit, there's a recognition of how these international rules work. But it is very much Saskatchewan participating in a much broader map, if you will.

Mr. Morgan: — I'm presuming from the nature of some of your answers that we're relying on the Government of Canada who have brought this forward, and we choose to participate with it. We haven't done any consultation at a local level with either lenders or aircraft owners that might be debtors under this to find out.

Mr. McGovern: — Other than, as I mentioned, we have Professor Cuming's involvement which provides a fair degree of local. But a lot of the consultation occurred at the international level in terms of striking the approach.

The benefit in Saskatchewan for our smaller players . . . because of course we don't have a Bombardier here; we don't have a Boeing in our jurisdiction. But in terms of our asking the question — which of course we did — as to, you know, what's the benefit in Saskatchewan here, is that this also applies to smaller aircraft. So it doesn't just apply to the large jets. It'll apply in a circumstance where we are selling a Saskatchewan aircraft to an African state, for someone who's in an African state, or in the, I'm told, in the Central American states for example a lot of the planes — there's a transfer there. That would be an opportunity as well to sign on to this sort of a program so that you'd have the benefit of the increased certainty in those circumstances.

Mr. Morgan: — In the US [United States] I would assume that the situation be much similar to what it is here. You would have the federal government in the US being the driving force behind it, and the individual states participating on a state-by-state level that would be subject to them signing on in the same fashion.

Mr. McGovern: — It's a little trickier the way the federal state process works in the United States, as you can appreciate, at the convention level. Each state does have a registry process. But in terms of the signatory authority, my experience has been that on the conventions is that they hold quite jealously as a federal power the ability to sign on to the convention.

And so rather than here where, because of this being a registry process, it's within the provincial jurisdictions as you well know. And then the federal government signs on on ratification, but they're only able to do so after the provinces agree. It's a little different. When you said it's the same in the United States, not in terms of the signatory process.

Mr. Morgan: — So you're saying that in the US that their division of power is different to the extent that the federal government in the US can mandate this.

Mr. McGovern: — They'll be the signatory, sole signatories. They don't provide a role for the individual states to play in the same way that we do within our process.

Mr. Morgan: — So what will happen . . .

Hon. Mr. Quennell: — And as a matter of fact the United States is already a signatory.

Mr. Morgan: — And then you're saying it's unnecessary for the individual states to either become signatories. And what about them? Is there a requirement that they pass enabling legislation?

Mr. McGovern: — On a state-by-state basis?

Mr. Morgan: — Yes.

Mr. McGovern: — I'm not sure of that. And when I say that, that's actually an issue of some dispute in the United States. I know Louisiana for example has on different conventions tried to indicate that they would have a different position because of, as you know, they have a civil law process there. The federal government's position has been generally with respect to conventions that they hold that as a federal state power.

Mr. Morgan: — That was sort of where I was going with this, with these particular questions. I don't know all of the particulars of the various issues that the different states have with the federal government in the US. But my concern is if we adopt this in Canada without the US going forward, do we create a problem for Canadian lenders that we've required them to participate in international jurisdiction?

We've abandoned or effectively abandoned our various personal property registries that are done at a provincial level, and then we have aircraft that are different in a lot of ways as to how they're financed. Is that going to make it difficult or

problematic for an American lender to lend to a Canadian, or a hard for a Canadian company to receive financing for the purchase, lease whatever of aircraft?

Mr. McGovern: — It shouldn't, and I think that the answer that the minister gave is probably the reason why that the Americans are actually ahead of us on this. They're signed on. They've ratified the convention. They're already participating in that process. So when we come on, we'll be coming on board I guess to a level where they are already at.

Mr. Morgan: — My concern is if the Americans for whatever reasons are not able to implement it, are we setting ourselves back, are we posing other problems for us? And it's not that we're reluctant to participate in this. It's sort of a timing issue that if it doesn't gel out as it's expected to or hoped to in the US, does that pose a problem for Canadians to do it?

And I'm wondering whether maybe it's possibly something we may not want to have Royal Assent given to until we know that it's cleared all of the legislative hurdles it has to in the US. It appears we have with most of the provinces in Canada and I suspect the others will probably fall into, will support it eventually, but I'm concerned about what happens if the US doesn't.

Mr. McGovern: — And again my understanding is that the Americans have made that commitment. What we are able to do under the way that the Bill is structured — as you know it does not come into force until proclamation. So we would have, if an event occurred, for example if the registry crashed in Ireland and proved to be problematic, we would have the ability with our choice of when to proclaim the Act of holding off until this imaginary problem that I've just constructed was completed.

So Royal Assent in this case doesn't mean coming into force. We would have to, the two steps that would have to occur is proclamation subsequently which will occur following consultation with the other jurisdictions in Canada to try and get a good assessment of when to proceed and then the federal ratification process.

Mr. Morgan: — So what you're telling me is if we pass this Bill during this session, we don't want it to come into force on the last day of this session. It will be at some point in the future when we've resolved some of the other jurisdictional issues. Is that. . .

Hon. Mr. Quennell: — It doesn't have the force of law in Saskatchewan, as I said, until the first day of the month following three months after the date of Canada's ratification. So the federal government has to make a decision that ratification of the convention, of protocols are in the best interests of Canada, and in particular the Canadian aviation industry, before it will have the force of law in any province including Saskatchewan.

Mr. Morgan: — Can you tell us which European or which overseas nations. And I wouldn't mind knowing whether Mexico is participating as well. I'm just thinking of where it . . . And you may not have that.

Mr. McGovern: — That's provided. I have a list that's

provided on the UNIDROIT, which is the organization, the Convention on International Interests in Mobile Equipment, and the protocol, a list of ratifications declarations and entry into force that I can provide you, keeping in mind that this is quite a new convention in international law terms. And right now we have Afghanistan, Angola, Colombia, Ethiopia, Ireland, Kenya, Malaysia, Mongolia, Nigeria, Oman, Pakistan, Panama, Senegal, South Africa, United States, who are signed on with the protocol. The protocol, as you appreciate, is in addition to the convention itself. And so that's the list that's available on the website right now.

Mr. Morgan: — France and Great Britain are not on yet?

Mr. McGovern: — At this point they're not. And in terms of background — just to explain that a little bit, why Ireland — there was a fairly good understanding in terms of moving forward with this as the standard, but there was some competition initially as to where the registry would first be located. And Montreal was very much a participant in that process, in terms of where the registry might actually be located. But as it turned out it was Ireland initially where the registry is going to be started. So that reflects a little bit in terms of where the countries are in terms of getting into the process.

Mr. Morgan: — If you could provide us with the list that you've got in the next few days, that would be great just for our own information. We want to sort of be supportive of this type of legislation because we think it's imperative that the province participate in and give financing opportunities for Saskatchewan businesses, and opportunities for Saskatchewan lenders to want to finance at that level. But we have two concerns about it.

One is the transitional provisions for existing registrations, and the fact that you can continue to register in sort of this orphan situation where the registration is of no consequence but the registration works, takes your money, gives you a notice that's of no benefit. So hopefully, in your discussions with ISC, that can somehow be addressed. Either the people get a notification and secondly, a part of that as well, is the transitional provisions for the existing registrations that are there.

And of course our last one is more a timing one, that we would not want to give up the benefits of our registration by signing on to this and then finding out that the US is not on or that other major players that finance in and out of this jurisdiction would not be on. So it's our hope that when the Government of Canada comes on, that we're watching carefully to make sure that we're going lockstep not just with the Government of Canada but with other jurisdictions that trade here.

That was sort of where I was coming to, or coming at when I asked about who the other lenders were or where the other players were coming from. So those are the concerns that I have. But I think some of the other committee members might have questions as well.

Hon. Mr. Quennell: — Just on that last comment, Mr. Chair. It's often worthwhile to maintain communications with the federal government as to their expectation as to when they will be signing these agreements and when they would be ratifying these agreements. I think as a general rule that you want to have

that kind of co-operation with the federal government so that any transitional changes you have to make or any adjustments that would be required you make on a provincial basis, you have time to make because you have advance warning of the federal government's thinking on signature and ratification. And that applies here as it would to any international convention.

The Chair: — Mr. Huyghebaert.

Mr. Huyghebaert: — Thank you, Mr. Chair. A little bit confusing in the second reading speech where I looked at this and basically . . . I'll just quote what was said. It's founded on a principle of "sound legal framework that facilitates the creation, perfection, and enforcement of security interests in aircraft equipment."

Now security interests in aircraft equipment may mean different things to different people, and I understand from what you're saying now, this is primarily security of funds, or is it really in security of equipment?

Mr. McGovern: — The definition in the Act provides that it's, the equipment is the generic term, so they say, so it's a convention in mobile aircraft equipment. The three pieces that they're talking about when they talk about equipment are essentially a helicopter, the airframe, and the air engine. And I understand from the materials and from my discussions that the reason that they split out the air . . . And you're probably more familiar with this than I am, but the cost of the engine is so large that it's often financed separately from the airframe itself so that it's treated as a separate item.

And so that's why those three items are viewed as the items which can be provided as security under this provision.

Mr. Huyghebaert: — When we're talking about this, and what impact would this legislation have on Saskatchewan-based military equipment?

Mr. McGovern: — And you're speaking of federally owned equipment?

Mr. Huyghebaert: — Yes.

Mr. McGovern: — That would be covered by the federal implementing legislation rather than provincial legislation. It wouldn't be in our jurisdiction in other words.

Mr. Huyghebaert: — I guess that goes back to what my colleague was sort of talking about: if the federal overrides all of the provincial, what's the need for the provincial?

Mr. McGovern: — The trick on this one is that it actually, in this case, it doesn't override it. It's because of the nature of this, is a registry, which has traditionally been a local matter. We claim for example the personal property registry. We're clear that on our divisions of powers basis, we have that power. As Mr. Morgan indicated, where right now the federal jurisdiction is operated with respect to secured lending, is with respect to the federal banks. And there tends to be some conflict at that level.

In this case what we have is the provincial jurisdiction is relatively clear. The federal government needs the provinces to implement this legislation before they could go ahead. What the federal government though needs to do is to pass complementary implementing legislation to address the matters that are under their jurisdiction and control. And the federal military assets would be included in that.

Mr. Huyghebaert: — I guess it's a federal question. But it would surprise me . . . You talk about the costing of engines, etc. — EW [electronic warfare] equipment is probably more expensive than engines. And yet I guess that's what raised the flag with me is that the security interest, well there's nothing more in the interest of security than like something like EW equipment which is very, very expensive, and it's not included in this.

Mr. McGovern: — I have to say that I'm not familiar how the federal government would finance its equipment. I assume, to a large degree, they self-finance in terms of individual items, but I don't know the extent to how they operate with respect to financing their equipment.

Mr. Huyghebaert: — How would this legislation deal with third party leases?

Mr. McGovern: — Under article 2, the international interest provision of the convention, it provides that an international interest is occurred where it's granted by a charger under a security agreement, vested in a person as a conditional seller, or vested in a person who is a lessor under a leasing agreement. So if it meets the definition of a lessor under the leasing agreement, then it would be applicable.

Mr. Huyghebaert: — I'm sorry, I haven't read that portion in. But mine specifically was third party, not a lessor and a lessee if it's third party. I could give you an example provincially of how that happens, where a company purchases an aircraft and leases it or buys it from financing from another jurisdiction, buys an aircraft, leases it to an agency and then turn around and leases it to the provincial government.

Now who and where does the responsibility lie from this? And if something of that airplane is going to be sold or if something happens to the airplane, where do you now go? Where does this fit into this Bill?

Mr. McGovern: — Mr. Chair, to the member. Part of the issue would be determining on where the lease would be. The third party lease scenario — if I'm following the example that you've given — wouldn't engage the security interest as such. The security interest in terms of the initial purchase or a formal lease agreement would be with the banking institution as the creditor. If you're talking about that, at that point then the owner of the property leases or subleases, I think in your example, to a third party. That wouldn't affect the original arrangement.

One of the main criteria that they wanted to keep in the convention was party autonomy — in other words saying that, you know, the people who are entering into the agreements are going to be business people who are relatively sophisticated in terms of their operations, and they want to be able to contract in or contract out certain requirements.

And so the Act doesn't specifically prohibit your scenario in any way. That could still continue. The creditor's relationship with the debtor would be the determining factor, and they can enter into their agreement.

So in the simplest of terms as I understand it, if you wanted to enter a provision that said you cannot sublease as part of my initial financing arrangement, then you've made that a contractual requirement, but the convention or the Act doesn't address that.

The Chair: — Mr. Hermanson.

Mr. Hermanson: — Thank you, Mr. Chair, and good evening, Minister, and officials. I have a couple of general questions, and then with your permission, rather than waiting for a clause-by-clause review, just a few questions with some specific portions of the Act.

My understanding is that the Act that we're dealing with today is a consequence of the signatures on the agreement at Cape Town in 2001. I'm assuming that this was a rather long process to reach the Cape Town agreement. The reason I'm asking that is because it also happened very close to the time of 9/11, and I would assume that there is no bearing between the two incidents whatsoever.

Mr. McGovern: — My understanding, to the member, is on the history of the file . . . and I'm just looking at one of the printouts from the UNIDROIT people saying that initially that study group was chaired by Sir Roy Goode of the University of Oxford in '97 with input from as far back as '92 when, at a meeting in Rome, Professor Cuming was asked to prepare a questionnaire.

So it's looking like the dates go far back. 1998 is one of the first dates where Brad Smith, who is a senior international law expert with the federal government, had raised that this was a problem in international financing — that you had banks who were willing to lend for this purpose, but because the rules changed so much depending on where the plane landed, interest rates were artificially high. And so it's been a study that's been in . . . So to my understanding, there's not a link there.

Mr. Hermanson: — So did the push for this legislation, this protocol, come from the financial community to governments, and the governments have responded with the protocol in Cape Town and then various governments signing on subsequently?

Mr. McGovern: — The aviation industry is very much a player in this as well because they're looking for certainty in their world, I guess, in terms of saying, if you're looking to purchase a plane and they have to say, well, but what if it lands in country X where the rules are completely different? That drives up your interest rate. So I think there's a co-operative . . . I mean there's a mutual benefit there certainly between the aviation industry and the financial industry that deal in these matters.

Mr. Hermanson: — I understand that. And so if we sign on to this protocol but a number of countries — perhaps the trouble spots in the world — don't, does that impact negatively on interest rates? I mean you could have a plane that's purchased

in Saskatchewan . . . I know of one in my constituency that ended up in Africa, I think, spraying crops or, you know, it's quite an amazing thing. It could've, you know, it could've ended up in some country that didn't sign on and perhaps where there is a great deal of political uncertainty. Will signing on to this fix that partially or go most of the way, or will it be completely the way we want it to be?

Mr. McGovern: — I think the intention is to improve the circumstance, and obviously risk affects interest rates when you're a banker. And the degree to which you have increased certainty, you have more countries. The countries that you're more likely to deal with who sign on to this, you're decreasing risk and improving your ability to act on your security. So you're right in saying that this doesn't solve the problem, but the intention is to address the problem and try and improve it.

Mr. Hermanson: — But it's not sort of the weakest link analogy, where if you have one weak link in the chain that will destroy the purpose of the entire protocol.

Mr. McGovern: — I don't think so. I think the reality will be . . . You know, having a player like the United States involved and with the EU [European Union] looking at it, you know, you develop the centre of gravity where a lot of the financing, a lot of the planes rest. You know, whether there's going to be some island somewhere where they'll take planes to hide them is, you know, I guess I can create that scenario in my head. But I think the reality would be that the more you have countries signing on, the better you're creating for an environment in this world.

Mr. Hermanson: — Is there a security aspect to this legislation — perhaps even one that wasn't anticipated when it was first entertained and put in place — given some of the, you know, the recent events around terrorism? It's a registry. It keeps track of airplanes. So, you know, being a layman in this area, I am starting to wonder is there a security component that would be strengthened because of this registry?

Hon. Mr. Quennell: — I suppose it might be that unintended consequence of providing security in an entirely different sense of the word security than is provided for in the convention. I'm not sure that this ables you to track aircraft because that's not what's being registered. What's being registered is what has been loaned against or what has been leased or what is under conditional sale. Those are the three interests that are covered. And where the aircraft is at any particular time, I don't think is going to be assisted by the registry. That would be my view.

Mr. Hermanson: — I assumed that, but I wanted to make sure. Thank you.

Mr. Chair, if we could go just to a few specific points on the legislation. On page 6, which is under "Regulations" no. 8, it says, "The Lieutenant Governor in Council may make regulations" and there are some criteria there. I understand that this is pretty much a static document that wasn't drafted by Justice. We received this. We've been asked to sign on to it. What does it really mean, that we have the powers to make regulations at the provincial level? Are these significant? Is this, as a legislator, is this . . . you know, what should I be made aware of?

Mr. McGovern: — I think with respect to the regulations, the point here between 39 and 40 in addition to . . . Under the law of Saskatchewan, I'll put it this way, we have Acts that provide for attachment of certain interests without actual registration — every province has that — and typically a lien for example. And so the issue is how that would apply.

And so what this does is provides for a mechanism where we can say, these are the type of non-consensual . . . in other words you don't have to agree that it goes on your registration. So this does have some real application in terms of saying, these are the interests in Saskatchewan that are going to be recognized. We'll be working with the other provinces to develop those lists and say, here's the type of interest that everybody wants to have recognized. So it's not, it's not dead letter in that regard.

Mr. Hermanson: — Thank you, Mr. Chair. Do we then have the power? Or this power to make regulations, does it have the power to actually weaken the legislation or to somehow put us in disregard in the international aviation community? Or are they just consequential for local issues and initiatives and have no consequence beyond our borders?

Hon. Mr. Quennell: — I think the reason why this is in the Bill, and probably in the Bill in every other province and probably in the Canadian Bill as well, is that we don't want to give up our sovereignty in respect to the interest that can be registered against property not by agreement but by law. And there are interests that perhaps we would accept, and we do accept in Canada, as rights or interests that should be registered against property because it's good social policy. But we don't want to delegate that to another jurisdiction.

So I expect every jurisdiction is reserving the right to say, you know, it's one thing for the parties to agree to give this interest. It's another thing for another state to say that this is a right or interest that can be registered against property that belongs to a Canadian citizen for example.

Mr. Hermanson: — All right. Thank you. If there are parts of the Bill that talk about liability, if this Bill is passed . . . perhaps maybe I should turn it around the other way. If it is not passed, where do the liabilities increase within Saskatchewan? Is it just for the industry or are there also liabilities for the financial community and for the Government of Saskatchewan if this is not passed?

Mr. McGovern: — Certainly I can't think of any liability or any legal problem for the province if they choose not to pass the legislation as such. That's an act of sovereignty within the province, and we have that ability. Similarly, if we don't facilitate this process, the liability as such remains as it is right now. In other words, it's more a matter of the people who are involved in the process are paying a higher cost than they perhaps need to because of the perceived risk of eventual loss of the security if it's taken to our imaginary island that, you know, they can't get it back from.

Mr. Hermanson: — All right. On page 44 of the Act under chapter 8, it says "Relationship with other Conventions." Could you tell me what that means, because there are two conventions mentioned there. There's United Nations Convention on the Assignment of Receivables in International Trade and there's

also Relationship with the UNIDROIT Convention on International Financial Leasing.

By asking you what does this mean, does the signing on to this new protocol put us at odds with previous protocols that we have been associated with? Does it strengthen? Does it weaken? Does it change the relationship with these other agreements?

Mr. McGovern: — It won't cause us any problems in the sense of we're not a signatory on the leasing convention. And on assignments receivable, the provision in article 45 bis says that this convention prevails over that. And so essentially all this is, is a . . . At international law when you have conventions that may interact with each other, you need to have a provision that says which one will be trump, if you will. And so essentially we're saying that if we sign on to this provision with respect to the specific types of special interests, that it'll be trump regarding the assignment on receivables in international trade.

And as an aside where this becomes much more of a concern, frankly, in convention language is within the European community because there's all their inter . . . You know, what we have between provinces in terms of mobility of people and finances, that occurs between states there. So they have so many more conventions that apply that it becomes very important in international instruments from their perspective that you have this ordering that occurs. Whereas in Canada, we're not as . . . we don't have as many conventions that we're, frankly, signed up on.

For a number of years the problem was that the international community wasn't providing federal state clauses so that, as I mentioned before, every province had to be signed on at the same time which is a trick just to coordinate. So we have less concerns in that regard, I guess, Mr. Member.

Mr. Hermanson: — So you're saying, Mr. Chair, you're saying that Saskatchewan has not signed on to either of these two agreements. Is Canada as well not signed on to either of these two agreements, so we're not worrying about one trumping the other?

Mr. McGovern: — Leasing is one that we're looking at right now, and the assignments receivable in international trade is a convention that they're also looking at. But right now it's not going to be a problem. But Saskatchewan actually has a good record in terms of we don't . . . I can't identify an international incident where Saskatchewan's offside and everybody else is onside, to use that sort of language.

Mr. Hermanson: — So, Mr. Chair, if we are looking at signing on to the leasing one, what you're saying then is that the international interests in mobile aircraft equipment agreement will supersede this other leasing arrangement if we sign on to it. Is that what you're saying?

Mr. McGovern: — It provides that the protocol can determine that relationship, so yes. It provides for the protocol the ability to say that I will allow that in the circumstance to rule or not. So you have that individual autonomy with respect to the parties to do so.

Mr. Hermanson: — Thank you, Mr. Chair. And the

Government of Saskatchewan, that's your intent that this Act would supersede the other one even if you sign on.

Mr. McGovern: — International financial leasing, you know, I mean truthfully hasn't been something that we're hearing a lot about from our community. So certainly at the time, you know . . . Currently I think this is where the interest lies. That's correct.

Mr. Hermanson: — Thank you, Mr. Chair. It almost sounds to me like you're saying you don't know. Would that be a wrong interpretation?

Mr. McGovern: — I mean, the trick with international financial leasing is if a number of institutions came forward and made demands under that Act, we'd have to respond to it. So you're right in saying it's tough for me to say right now that this will be the way it'll always be. But certainly, currently this is where the pressure is and in terms of the federal government saying this is the benefit that they're asking the provinces to sign on for. But it's a tricky area; there's no question.

Mr. Hermanson: — Thank you, Mr. Chair. Just a couple of other areas briefly. This is more, I guess, for my own education. But on page 52 under article 59, it's called denunciations and such a process may take place. What does that mean? And how would that impact this piece of legislation?

Mr. McGovern: — Denunciation is a formal process by which a state seeks to leave a convention. And so that's what article 59 deals with just in terms of having . . . you know, the process how you sign on and essentially the process how you leave.

Mr. Hermanson: — It would take Canada to denounce the agreement rather than Saskatchewan as long as Canada is signed on. If we denounce it, it wouldn't mean much because they would . . . the national government would be able to overrule the province on this.

Mr. McGovern: — If the province repealed its provincial legislation . . . And this is an interesting point from a fairly specific division of powers perspective, that if the province of Saskatchewan repealed this Act and the federal government had previously ratified it, then the reality would be that Saskatchewan would have created itself as a patchwork, as a hole in that process.

We can't take Canada out of the convention in the same way that we can't put them in. But we continue to have . . . If we have jurisdiction over registry matters in Saskatchewan, that registry continues. We have a certain obligation at private international law to act in good faith. But if we had a good reason and we chose to repeal the legislation, then that Act's repealed within the province — not the convention, but the Act.

Mr. Hermanson: — Thank you, Mr. Chair. Just finally, just for my own understanding, if a Saskatchewan firm — an aircraft company — wants to purchase an aircraft, what changes will result in that process for them as a result of passing this legislation? In other words, what must they do as a result of this legislation, what should they do as a result of this legislation, and what are they no longer required to do as a result of this legislation? And I guess the same question I would ask on

behalf of a Saskatchewan lending institution that was providing the cash to buy aircraft equipment.

Mr. McGovern: — I mean, and this is of course presuming that we've had ratification subsequently and it's preceded into law in Canada, I assume is the basis for your question. Essentially what we've done is to provide on an international level for a PPR-like process, meaning personal property registry process. And so in that circumstance where you have a, if we're a buyer and consequently a debtor in the province, that under that process it wouldn't change that much. I mean you would be wise obviously, prior to purchase, to check what other interests are outstanding with respect to that property.

The lender, or the creditor in your scenario, would be required under that process again, they would do the search. They would conduct the . . . If they're satisfied that the search has given them a clear interest, they would register under the international process and at that point they would have an interest that's enforceable against third parties on an international basis.

Mr. Hermanson: — Thank you very much.

Hon. Mr. Quennell: — So we're taking globally what we have provincially in the case of the personal property security registry, or nationally in the case of the bank registry, and creating a global registry for this particular type of equipment is essentially . . . But the process is the same. It's just the size of the registry and who's covered by it expands.

Mr. Morgan: — Mr. Chair, I have just one more area I wish to ask just a couple of questions on and that's the area of disputes and priorities. What would be the process to determine priorities in the event that there is a dispute between competing lenders — one from Canada, one from another jurisdiction? What court would be . . . How would a court forum be selected and how would the jurisdiction be determined?

Mr. McGovern: — And there's a couple of questions there obviously in terms of jurisdiction and priority. Priority, which you'll be very familiar with, under the Act is first in time registration. And so that's the priority and it's very specific in that regard.

The inter-parties, people can subordinate their interest just like under the personal property registry right now. But in terms of determining priority under the Act, the simple rule is first in time; first to register receives priority with respect to the other interests.

Jurisdiction under the legislation is a little different. The principle being that rather than indicating that the . . . As I mentioned before wherever the asset happens to be, that determines jurisdiction. What you've done with respect to this convention is provide for a process where the jurisdiction is determined by the convention. And in most cases that will be where the debtor is.

And under the Act as you'll have noticed when you're looking at the convention, that there's a process for designation there in which we would indicate under the Act that it's the Court of Queen's Bench that's the relevant court for the purposes of article 53 of the convention in Saskatchewan. So as you can

anticipate, our superior court of original jurisdiction would serve the purpose of the court under this Act.

Mr. Morgan: — Now as you had indicated the court will be determined where the debtor is located or where the debtor was located at the time the registration was made. So this will have an adverse effect on a lender wanting to lend into another country or another jurisdiction. Because if they were lending to a debtor say in Louisiana or elsewhere, there would in all likelihood, if there was an issue, they would have to make that application to court. If there was a priority dispute or an issue dealing with . . . if they needed some relief under the Act, they would have to apply in that jurisdiction.

Mr. McGovern: — This is a default role. The parties can always agree to have the court chosen between the parties, as the court for the purposes of the convention. So that's the party autonomy principle. If they fail to do so, then it's the federal court.

Mr. Morgan: — It would be reasonable to assume that a lender from New York or Toronto would have a provision in the agreement that it would be determined by the courts from New York state, or alternatively the province of Ontario would likely be written in by default into most of the lending agreements.

Mr. McGovern: — If you or I were the counsel for the large aircraft company that we would be . . . We would deal in great detail with issues like jurisdiction, choice of court, choice of law.

Mr. Morgan: — What about a situation where relief was needed in a jurisdiction where the equipment was located? It was . . . You had equipment seized in this fictitious or fictional island or something there. You know, you needed to have something to . . . either an application brought to preserve the collateral or something to allow it to be taken into possession or something of that nature. How would you . . . Would you be entitled to bring it in that jurisdiction or would you have to go back to your original jurisdiction and then re-register the order? Or is that dealt with in the legislation?

Mr. McGovern: — If it's a non-contracting state, the reality is territorially there's just not much you can do in that you can't purport to apply the convention in a territorial unit that's not a contracting state in the same way that the province of Saskatchewan can't purport to have extra-territorial effect with respect to its legislation. So it's . . . You're right. There can be a hole there. And so that's why a fair bit of energy is required to ensure that as many countries as possible become participants with respect to the convention.

Mr. Morgan: — Mr. Chair, I do not believe we have any further questions on this Bill.

The Chair: — I'm not seeing any further questions on the Bill. We will move forward to having the Bill voted off. Clause one, short title. Is that agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 9 inclusive agreed to.]

[Schedule agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: Bill No. 11, An Act respecting International Interests in Mobile Aircraft Equipment. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — I will invite a member to move the Bill without amendment.

Mr. Trew: — Mr. Chair, I move that we move this Bill . . . we report this Bill without amendment.

The Chair: — Mr. Trew had moved that the committee report the Bill without amendment. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

The Chair: — The next item of business before the committee will be consideration of Bill No. 18, The Court Security Act.

Mr. Morgan: — Mr. Chair, . . . [inaudible] . . . the officials who are leaving, I wanted to thank them for having been here. But if they're all staying, welcome.

Bill No. 18 — The Court Security Act

Clause 1

The Chair: — Thank you, Mr. Minister, as I had just stated the business before the committee is consideration of Bill No. 18, The Court Security Act. Mr. Minister, if you would please introduce your officials.

Hon. Mr. Quennell: — Yes. Mr. McGovern's remaining at the table with me. To my left is Maria Markatos, Crown counsel, legislative services branch, and then to my extreme left, to Ms. Markatos's left is Sharon Pratchler, Queen's Counsel, registrar of the Court of Queen's Bench and Provincial Court.

Short opening statement. The Court Security Act is new legislation that will provide express authority for the implementation of general courthouse security. The Bill will allow for increased security concerns to be addressed within court facilities while continuing to provide open access to court facilities and proceedings. This legislation seeks to strike a balance between accommodating access to a court facility and promoting the safety of court proceedings. This is in line with recent incremental steps toward improved security that have occurred in a number of areas in our community.

The Court Security Act will initialize perimeter or airport style security and screening measures at various courthouses across the province, as well as mobile security at those less frequented court facilities where a specific security risk may exist. Perimeter security is the least intrusive security measure which still supports and protects an open court principle.

In addition, the Bill establishes authority for court security staff to perform essential court security activities. For example, court security staff will be authorized to screen persons both upon and after entry into courthouses and court facilities across the province. The Bill also establishes screening methods, authorizes weapons screening, and the seizure of any weapons found, and further authorizes court security staff to refuse entry or eject an individual from the courthouse or court facility.

The Bill will not restrict the public from attending upon court proceedings as all members of the public will continue to be able to freely access court proceedings. The legislation will also not require members of the public to provide their name or any other personal information to court security staff. The Bill will however ensure that court facilities continue to be safe in use for the conduct of court proceedings and for public attendance.

The Chair: — Thank you. Mr. Morgan.

Mr. Morgan: — Yes. Thank you, Minister. The process if this Bill passes, what will be the timeline to have these pieces of equipment put into place?

Ms. Pratchler: — The time frame is by March 2008, and the focus is initially on the largest courthouses in the province, plus supervision of some portable units.

Mr. Morgan: — Why are we doing the larger ones first? Do we perceive that's the greatest risk? I would have thought a more remote facility may be at greater risk where there wouldn't be as many available police officers. I'm just inquiring as to what the logic is that we would secure the larger ones first.

Ms. Pratchler: — Size and frequency of use of the courthouses are two of the key factors. And when you look at the incidents in the past where extra security has been required, it's been primarily in the larger centres.

Mr. Morgan: — What kind of circumstances would that be? Can you give us some examples?

Ms. Pratchler: — Well generically I would say there are instances where there was some concern in relation to a particular participant in the court proceedings. Traditionally people think it arises in the criminal context. It does, but it can in a family context as well. There are often security issues there because of family members particularly upset about the proceedings. So it could be that instance, or it could be the situation of a criminal case involving a significant risk such as some sort of gang allegations.

Mr. Morgan: — What kind of existing provisions are we taking right now?

Ms. Pratchler: — Well they are usually ad hoc as opposed to a general security program in Queen's Bench in particular, and so this introduces a general screening program at the front door. Usually what we are doing is designing a particular security program for a particular case depending on those needs. This introduces a general screening at the front door.

Mr. Morgan: — This piece of legislation doesn't offer any

assistance to court officials or judges when they're outside of the courthouse. This only deals with the courthouse. Are we providing any kind of security for a prosecutor or a judge or somebody or family law participant that would be vulnerable elsewhere? Is there a protocol in place?

Ms. Pratchler: — It's contingent on an ad hoc basis. Often our sheriffs will escort somebody to their car if there's a particular concern. But of course we have to respect our mandate which is court related, and we can't go too far outside the building.

Mr. Morgan: — Do we have a protocol in place to ensure that our judges are adequately protected offsite as well?

Ms. Pratchler: — I'm not sure I understand the situation you're contemplating.

Hon. Mr. Quennell: — I think the answer to the question is it wouldn't be done by court security. It would be done by the police in those ad hoc circumstances where it's required. It would be a policing responsibility to protect witnesses and court officials outside the courtroom.

Mr. Morgan: — I've looked at the Bill, and it's certainly the position of the opposition that we want to support anything that enhances security within the court system. We understand that the risks are there, and we want to ensure that (a) that the public's access be maintained but almost equally as importantly that the protection is supplied in an appropriate amount for court officers and participants in the judicial process. It's, I guess, a bit of a tragic statement of the times that we live in that we have to have this kind of legislation, but unfortunately it's reality.

When I looked through the legislation, I looked at no. 6, section 6, which lists the methods of screening. And I'm wondering where that particular clustering of things — metal detectors, fluoroscopes . . . It doesn't mention X-rays, but it lists a number of other types of . . . I'm wondering where that came from, whether it was adopted out of another piece of another province's legislation or . . .

Ms. Pratchler: — Very similar to what the other Western provinces have in their legislation. And a fluoroscope is an X-ray machine. So it basically picks up the different methods that are available to us for screening.

Mr. Morgan: — I'm not familiar with the term, with it being an X-ray, so . . . My concern with that is — with section no. 6 as it's drafted — I'm usually not a fan of putting anything in regulations that should be in the Act, but I'm wondering whether it wouldn't have been better off to leave the method of screening something that was subject to regulation in case newer technology became available or another method of doing that. You know, there's nothing in there that I take any issue with, but technology changes all the time. And I'm wondering whether it would be appropriate to consider an amendment to allow, by regulation, to include other methods of screening as new technology becomes apparent?

Hon. Mr. Quennell: — Mr. Chair, I believe that the ability to add use of other technologies as well as other procedures is covered by section 6(1)(f) where it says, "conducting any other

prescribed act."

So if we were . . . [inaudible] . . . we could be in the Bill as to what would be authorized, but they'd want to give some discretion to make additions as technology changes, as the member suggests or for other reasons.

Mr. Morgan: — Yes. Point is well taken. My concern as the Bill is put into place is to ensure that we're using the best technology that we can as we go forward on it. The other jurisdictions that you'd made reference to, have they adopted similar legislation in all of the other Western provinces?

Ms. Pratchler: — . . . as a result of a court case where there was a challenge to the exercise of general screening measures. And BC and Alberta have also adopted similar legislation.

Mr. Morgan: — Has Ontario or Quebec adopted legislation such as this?

Ms. Pratchler: — Ontario has an odd situation. They actually use the police to do court security, so they don't have a very detailed piece of legislation that deals with the powers. They basically pick up their peace officer powers. And I'm not sure of the situation in Quebec.

Hon. Mr. Quennell: — There's legislation in Manitoba, in Alberta. And Alberta was, in 2006, the first to implement the comprehensive perimeter security system with the scanners and X-ray machines that are proposed in our legislation. And they did so at the Edmonton law courts and the Calgary Court of Appeal — so at their larger courthouses — with plans to extend to other court facilities. British Columbia, Ontario, Nova Scotia, Newfoundland, and Prince Edward Island all have legislation of some sort or other.

I am briefed and advised that our proposed legislation more closely resembles British Columbia than any other jurisdiction but has elements from other legislation from other jurisdictions.

Mr. Morgan: — Your official had indicated that you were going to bring it in by spring of '08 into the larger jurisdiction, larger centres. Which ones are those?

Ms. Pratchler: — That would be Prince Albert Provincial Court, Saskatoon and Regina Queen's Bench and provincial courts.

Mr. Morgan: — Not Prince Albert's Queen's Bench?

Ms. Pratchler: — Based on the frequency of use of the facility, it's not contemplated at this time.

Mr. Morgan: — So in effect, five court facilities.

Ms. Pratchler: — And also a portable equipment of some type.

Mr. Morgan: — And what would be the cost, the capital cost for the equipment?

Ms. Pratchler: — I don't have that detail.

Mr. Morgan: — I presume it's something that's been costed

and it would be in this year's budget allocation if it's going to be in place for spring of . . .

Ms. Pratchler: — I should correct myself. The renovations as announced by the minister in November 2006 will cost up to \$3 million.

Mr. Morgan: — Are the renovations . . . does that include the capital cost of the equipment or is that just renovations to the facility to make way for it?

Ms. Pratchler: — That's the part that I'm not sure of.

Mr. Morgan: — I'm wondering if the minister or some of the officials could undertake to provide us with that.

Hon. Mr. Quennell: — I believe it's both, but we'll clarify that.

Mr. Morgan: — If you would, and then presumably we will, over a reasonably short period of time, likely implement it and in all of the court facilities. Would that be the intention?

Hon. Mr. Quennell: — We have to measure the cost against the frequency of the use of the courthouses. Where court is not being held for criminal matters on a very frequent basis, it may a better idea to use the mobile equipment on those rare occasions when it's needed in that courthouse.

Mr. Morgan: — Do we know what the ongoing costs of the additional security personnel and the people to operate the equipment?

Ms. Pratchler: — We're in the process of doing consultations, and we have a security consultant who is looking at our courthouses to see how the renovations would be effected. We need that information before any final determination can be made about the number of staff.

Mr. Morgan: — Where is the security consultant from?

Ms. Pratchler: — I don't have that information, I'm sorry. And we can undertake to provide.

Mr. Morgan: — If you could tell us who the security consultant is and what the cost of the security consultant and how that consultant was selected.

Ms. Pratchler: — It probably should describe it more as a consultant about the renovations on security to the courthouses, is a better description, I would say.

Mr. Morgan: — But that's where I'm going sort of with that is what I want to know — how that process took place and then also how the equipment itself was selected, whether it was tendered or how the specifications were determined.

Ms. Pratchler: — We haven't as yet proceeded to that degree of operationalizing and no tender has been issued to my knowledge, so we're still at the consultation stage with the members of the bar in terms of how this will take place and in looking at the renovations that are needed. So I think we're at a more preliminary stage.

Mr. Morgan: — So if that's correct, the \$3 million may not be a realistic figure. I'm asking, if we haven't at this point selected the type of equipment, selected the contractor, or determined the nature of the renovations, the \$3 million would be a guess at this point. Is that fair to say?

Ms. Pratchler: — I think that's the number that the department believes this will cost. This isn't by any means an inexpensive program, and so they want to be cautious to ensure that there's sufficient money identified with this program.

Mr. Morgan: — But at this point we can't say with any degree of certainty the actual cost of the equipment once it's selected or the renovations. That could vary significantly.

Ms. Pratchler: — I think it's fair to say there are a number of variables involved. We have a number of older courthouses and the cost of renovations is something that'll have to be determined.

Mr. Morgan: — The other provinces that have enacted legislation, are they further down the road with implementing the system and bringing the equipment on board?

Ms. Pratchler: — Yes.

Mr. Morgan: — Have we looked at what would their costs have been? Have they shared that information with the department?

Ms. Pratchler: — They've shared a number of pieces of information and in particular the policies. That's what I'm more familiar with. But certainly there are other officials in our department, who deal with the financial end, who are in a position to receive that kind of information from their counterparts in other jurisdictions.

Hon. Mr. Quennell: — It might interest members of the committee — it certainly interested me — when I had occasion to visit the Court of Queen's Bench in Edmonton, I saw the courtroom that they had built for gang trials. I don't know if they've ever used this courtroom or if they've used it more than once, but not all of their experience would necessarily apply.

And I'll just give this example. There is a parking garage underneath the courthouse. They took one floor of that parking garage and turned it into a courtroom. So it's, if you can imagine, a section of the parking garage under the midtown centre — maybe Mr. Morgan can put that in his mind and think about that — turned into a courtroom in which 40 defendants could sit in the defendants' area, shackled, and with interpretation, translators, if necessary, places for earphones to plug in if their first language wasn't English or French, I suppose.

Across on the other side of this enormous courtroom was where the jury would sit. And there was a small place for the public — and they would go through a metal detector to get into this small place — but not very many members of the public could sit there, with bulletproof glass in front of the defendants' space, the jury box, I guess I'll call it that, and the place where the public would sit.

And then there was a number of tables, and they all had computers on them, including of course the judge's bench, but also all the tables for all the counsel that potentially this number of 40 defendants might possibly have. And there were TV screens because I don't think the jury could probably see the defendants very well across this enormous space. So some of the experience around policies might be transferable, but nothing like that is proposed for Saskatchewan. As I said, I'm not sure if it's been used or how often it's been used in Alberta. So not all their experience can be readily transferable.

Mr. Morgan: — Timeline for this Bill to come into force is sort of the last area that I want to know about. There's provision in that regulations would be or may be required, and then there's also the implementation period to get the equipment in place. So I presume this Bill would not come into force for some period of time down the road. And so I'm just wondering when the proposed timeline would be to have this in place. And second, do we need to wait for regulations?

Hon. Mr. Quennell: — I think we'd want to give the legal authority to the sheriffs and the court security to perform these searches, take away weapons, provide these searches — the type of authority that many of us may have believed, before the case in Manitoba, that court officials of course would have to protect the administration of justice within the courts. So the authority we may very well want to give before the renovations are done.

Mr. Morgan: — So your intention would be that you would want this legislation passed during this session and then brought into force likely on the last day of this session so that we were effectively giving the tool to our sheriffs and court workers over the summer.

Mr. McGovern: — There would be regulations that we have to consider, and that'll be part of the consultation process. But again, we would have passage preferably this session, and then proclamation would proceed as soon as we're able to finish the regulations which I don't think . . . I'll ask Maria on this, I guess, but we don't view that as being a terribly onerous process on this one.

Ms. Markatos: — No, that's right. We're proceeding with consultations, but they shouldn't take very long.

Mr. Morgan: — Do you think they would they be done within the next few months? Is that . . .

Ms. Markatos: — No. We're looking to the end of the year.

Mr. Morgan: — The end of this calendar year?

Ms. Markatos: — Yes.

Mr. Morgan: — Okay. So we're some months down the road.

Ms. Markatos: — Yes.

Mr. Morgan: — Who would the consultations be with?

Ms. Pratchler: — . . . various individuals that we met with in December, December 8, in Regina. We started there. They

include federal Justice; the Law Society libraries because, as you know, they're located in our facilities; a number of representatives from Saskatchewan Justice civil law; the Court of Appeal; the Canadian Bar Association sent a representative; the RCMP [Royal Canadian Mounted Police] criminal operations section; the Regina Police Service; the Saskatchewan Trial Lawyers Association. And we also invited Legal Aid — the city and rural office both came — and the Ombudsman's office, which is a little unusual. But we thought it would be prudent to invite them to give them information because if any complaints were received they would go to the Ombudsman's office generally, so we thought it's prudent to bring them in as a consultation.

Mr. Morgan: — Is that a complete list that you've read in?

Ms. Pratchler: — For the people that attended the session that signed the sheet, I believe it's complete.

Mr. Morgan: — And there might have been notice given to others? Is that . . .

Ms. Pratchler: — This is just Regina. There are also meetings that will be held in Prince Albert and Saskatoon.

Mr. Morgan: — I don't want to second-guess the process, but I wouldn't mind having a list of who the offers were made to for the consultative process and who's participated, just so that in case people contact us because we have had some security folks that work in the existing facilities contact us expressing concern and in general endorsing their support for the Bill. So as long as we can tell them that there is a consultative process underway and maybe refer them back to, but if you can give us a list of who's there we can at least give them some comfort.

Ms. Pratchler: — And we'd certainly welcome any input from other people affected.

The Chair: — Go ahead.

Mr. Chisholm: — Thank you, Mr. Chair. Some communities have been notified — that used to host court on a bimonthly or whatever basis — that they will no longer be doing that, that there's been changes to where court is being held in the rural areas. Does that have anything to do with security issues, or maybe you could explain why that is.

Hon. Mr. Quennell: — Well I don't believe it has to do with security issues. I suppose with this caveat, that there are some places that we've been holding court in Saskatchewan that aren't entirely appropriate, aren't the most secure places to hold court, but where there's a need to have court in those communities, court has been held there.

So as there's less demand for, say, a provincial court judge in a particular community, there are fewer cases to hear, a declining rate of cases, then the quality of the facility may have, may be a factor in the consideration of the court, as to whether they continue to hold court there because it may be . . . Sorry, I may not be making myself clear. But if there's a great demand for use of a court in a particular community, that may trump the fact that the facility being used there is far from adequate. Where that demand drops, then that trump might go whereas it

wouldn't go so quickly if you had a more appropriate facility.

I've, certainly in my past life, been in court, in buildings that were used as courthouses that security issues would certainly be a significant concern. And if there wasn't a demand for court in those communities, the court might be tempted to abandon that community as a court point quicker than they otherwise might. Is that a fair . . .

Ms. Pratchler: — It is. And the factors are looked at in terms as the number of cases that are being held, and it's always a concern that people not have to travel too far to attend court. So there are a number of factors that are looked at. And the chief judge as part of his scheduling authority looks at those factors in making a determination.

Mr. Chisholm: — Thank you.

The Chair: — Mr. Morgan.

Mr. Morgan: — Nothing more, Mr. Chair.

The Chair: — Seeing no further questions, we'll deal with the Bill clause by clause. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 13 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: Bill No. 18, An Act respecting Court Security. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — I will invite a member to move the committee report the Bill without amendment.

Mr. Trew: — Mr. Chairman, I move the committee report this Bill without amendment.

The Chair: — It has been moved that the committee report the Bill without amendment. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 22 — The Legal Profession Amendment Act, 2006

Clause 1

The Chair: — The next item of business before the committee will be the consideration of Bill No. 22, An Act to amend The Legal Profession Act, 1990. We'll just have musical chairs of the officials, and then we'll deal with this particular Bill.

Mr. Morgan: — Mr. Chair, I see that some of the officials are leaving and presume done for the evening. So I would to thank them for having been here tonight, and I appreciate them being

here and answering our questions. Thank you.

The Chair: — Okay. I see the officials are in place. Mr. Minister, if you'll introduce your officials please.

Hon. Mr. Quennell: — I would be pleased, Mr. Chair. To my right is Susan Amrud, Queen's Counsel, executive director, public law division; and to my left is Shannon Carson, Crown counsel, legislative services branch.

The Chair: — Thank you, Mr. Minister. If you have an opening statement, we'll be happy to take that now.

Hon. Mr. Quennell: — This Bill proposes two sets of amendments to The Legal Profession Act, 1990. The first set of amendments to the Act deals with unclaimed trust funds. Presently the Act requires lawyers to hold unclaimed trust funds for three years, and then forward the funds to the Law Society. The Law Society is required to hold these unclaimed trust funds for 10 years after which they are paid to the Minister of Finance.

The amendments will direct the Law Society to pay these unclaimed funds to the law foundation rather than the Minister of Finance. The purpose of the law foundation as defined in the Act is to establish and maintain a fund for the purposes of legal education, legal research, legal aid, law libraries, and law reform. The law foundation receives the majority of its funds from interest generated on lawyers' trust accounts. The inclusion of unclaimed funds will increase the funds available to the law foundation to carry out its statutory function.

Under the current legislation, unclaimed trust funds held by the Law Society were payable to the Minister of Finance in 2006. A House amendment is proposed that would make the amendment retroactive to December 31, 2006. This will enable these funds to be paid to the law foundation.

The second set of amendments to the Act provides specific processes for the protection of solicitor-client privilege during an investigation of a complaint received by the Law Society. These amendments codify the common law rules that currently apply.

These amendments are in response to a recent Court of Queen's Bench decision that the Act did not contain adequate provisions to protect the confidentiality of records subject to solicitor-client privilege during the investigation process. Most other provincial jurisdictions have legislation dealing with this issue. It was noted by the court that such provisions were lacking under Saskatchewan legislation. These amendments codify the common law rules that courts have relied on in the past.

The amendments clarify that members of the Law Society must provide information to the Law Society during an investigation even where this information is subject to solicitor-client privilege. The amendments will allow the lawyer providing the records, any person claiming the solicitor-client privilege, or the court to require that proceedings dealing with the records be held in private and that the public or any other third party be denied access to the records.

Further, the amendments provide specific authority for benchers to make rules regarding the handling of information that's privileged or confidential. And I might add for the interest of the members of the committee — Mr. Morgan of course is already well aware of this — that this is the centennial year for the Law Society of Saskatchewan, the profession having been in existence and self-regulated for a hundred years this year.

The Chair: — Mr. Morgan.

Mr. Morgan: — Thank you, Mr. Chair. I appreciate the opportunity to participate in the discussion and I appreciate that the nature of this Bill is housekeeping in its nature. And for the Law Society centennial it would have been nice to have done something that recognized the importance of the contribution of the profession and, at the risk of imposing levity, maybe done a ban on lawyer jokes.

But having left aside my sense of humour, I'll go into the questions I've got dealing with the piece of legislation. On the issue of the money that's going to the law foundation, this particular amendment deals with the unclaimed portion of funds. What type of things would be included in that?

Ms. Amrud: — Any time that a lawyer has money in his or her trust account where they are unable to pay it to the person who's entitled to it, they're required by the Act to pay the money to the Law Society after three years.

Mr. Morgan: — This would include money that would be from trust cheques that were never cashed and the people moved away or money that was disputed and the . . . [inaudible] . . . moved on or a variety of other reasons that the lawyers were holding the money. But in all cases the expectation was that the lawyer would make a reasonable effort to try and locate the parties that are entitled to the funds. Is that a fair statement?

Ms. Amrud: — Yes. The Law Society advises us that they won't take the funds as being unclaimed unless they're satisfied that the lawyer has made reasonable efforts to find the persons entitled to it.

Mr. Morgan: — Monies that this legislation deals with are separate from the interest that's earned on the pooled or the intermingled trust account. Is that correct?

Can you tell us how much money is accrued during a year on average or in a typical year pursuant to this particular provision?

Hon. Mr. Quennell: — I can give you amounts over the last 10 years.

Mr. Morgan: — If you give us . . . If they're relatively consistent, perhaps if you just gave us the last three or four years. If there's been big variations . . .

Hon. Mr. Quennell: — There'd be variations. And as a rule, well the total from 1996 to 2005 is \$277,784.78. Now the funds are estimated to be around \$28,000 per year. So that would be, so a number divided by 10. But we have a low in 2001 of \$1,923.26 and a high in 2002 of \$101,590.96.

Mr. Morgan: — And at present the moneys are going to the General Revenue Fund. Is that correct?

Ms. Amrud: — No money has been paid to the General Revenue Fund because the Law Society, the Act requires that the Law Society hold it for 10 years, and 2006 is the 10th year. So it would have been the first year that money would have been paid to the General Revenue Fund.

Mr. Morgan: — What happened prior to that? More than 10 years ago.

Hon. Mr. Quennell: — Now I stand to be corrected, but my understanding is that The Legal Profession Act did not originally deal with unclaimed trust funds. Amendments in 1981 provided that lawyers may pay moneys into a trust fund held, well pay monies held in a trust account for more than three years to the Law Society if the trustees were satisfied the lawyer was unable to pay the money to the person who was entitled to it. The society in turn held the money in trust account for funds received in this manner, and interest generated by the fund was remitted to the Law Society.

If a person established they were entitled to the funds, the Law Society would pay the monies to that person. And those were the provisions that were incorporated into The Legal Profession Act in 1990. Then further amendments in 1996 provided if no applications were made against trust funds within 10 years after the funds had been received by the Law Society, the Law Society was required to pay the monies to the Minister of Finance.

I think we had a situation where a system was put in place for dealing with the interest from this trust money, but no system was in place for dealing with the trust funds themselves if they remained unclaimed for a long period of time. And as it became clear that there were trust funds that fell into that category — and there are now over a quarter million dollars worth — something should be done with them. And the resolution 10 years ago was that they would be paid into the General Revenue Fund. Obviously the request of the Law Society is that they go to the law foundation. The government believes that that's appropriate and hence the proposed legislation.

Mr. Morgan: — If I understand you correctly, you're saying that these funds were somewhat in limbo prior to the amendment in the early '90s. We dealt with interest, and then after that the monies have sort of accrued since.

My question is: after the monies have been paid by the lawyer to the Law Society or ultimately the law foundation, what will happen if somebody comes forward saying, that was my cheque? At what point will either the Law Society or the law foundation or . . . Now well the funds are sort of, would go to the GRF. What would happen if somebody came forward after a limitation period had expired? Would there be a practice, or would there be a statutory right on a legitimate claimant to . . .

Hon. Mr. Quennell: — The current circumstance is if a person establishes that he or she is entitled to the money paid that it would be the Minister of Finance who would refund that money. The proposal is parallel to that. If the person establishes to the satisfaction of the foundation that he or she is entitled to

the money paid to the foundation, the foundation shall pay an equivalent amount to that person out of the law foundation account.

Mr. Morgan: — It doesn't say for what period of time. And presumably that portion of the statute would create a debt that's owing, so it would be subject to the general limitation period, the limitation of actions Act which would preclude a claim beyond two years?

Hon. Mr. Quennell: — I don't think there would be a limitation period. I don't think The Limitations Act would apply. This is not money that's owing to somebody because of, that it's been loaned to the law foundation or misappropriated by the law foundation. It's not something to which an action would apply. There would be legal resolution potentially, but a moral obligation apparently — not apparently, but obviously — on the part of the law foundation to pay the money to its rightful owner, if that could be ascertained who that was. But I do not believe that it is anticipated that a limitation would rise as a defence to the law foundation.

Mr. Morgan: — So a person would not frame an action in debt. They would frame an action by way of seeking a declaratory relief that the monies are rightfully the property of . . . So if that's a correct assessment of the legal status of these funds, these people may have to go through a court proceeding to recover these funds?

Hon. Mr. Quennell: — That would be the case if the law foundation did not recognize their claim to the money as a, to use the language of the Act, "establishes to the satisfaction of the foundation . . ."

Mr. Morgan: — And then these funds or these monies would remain a contingent liability of the law foundation in perpetuity?

Hon. Mr. Quennell: — Yes, theoretically every penny that the law foundation spends from these monies might eventually be properly claimed by somebody, even though the money has been unclaimed for a decade or more.

Mr. Morgan: — Okay. And you'd indicated there was some variation, the amounts, that one year there was in excess of 100,000 and the year preceding was around \$1,000, so that would obviously be one or very few to get it up to that amount. So they could potentially have somebody come forward and say, that \$100,000 or whatever — that large sum of money — it belongs to one individual or one entity.

Hon. Mr. Quennell: — Theoretically, theoretically. Now this would be an individual that's lost track of an enormous amount of money for a long period of time and then realized it was his. But theoretically, I suppose that could happen.

Mr. Morgan: — I understand your intention is to bring forward a House amendment making this retroactive to deal with the money that they're holding at the present time.

Hon. Mr. Quennell: — Yes.

Mr. Morgan: — Okay. We have not yet seen that. Or it's

possible it got here and I didn't see it. But if just one section and you want to read it to us, that's fine with me.

Hon. Mr. Quennell: — Yes. Clause 9 of the printed Bill, we'll:

Strike out Clause 9 of the printed Bill and substitute the following:

“Coming into force

9(1) Subject to subsection (2), this Act comes into force on assent.

(2) Section 5 of this Act comes into force on assent but is retroactive and is deemed to have been in force on and from December 31, 2006”.

Mr. Morgan: — Okay. The issue of solicitor-client privilege, I was intrigued when I read that section. What I'm assuming took place, and I'm not familiar with the court application, so that a solicitor that was subject to disciplinary proceedings tried to assert solicitor-client privilege to thwart the investigation. Is that a correct assessment of what took place?

Hon. Mr. Quennell: — I think it would be a fair scenario of how it would be used, yes.

Mr. Morgan: — So the purpose of this is to avoid a solicitor asserting solicitor-client privilege during . . .

Hon. Mr. Quennell: — During a investigation of that solicitor's conduct or practice, yes.

Mr. Morgan: — And the expectation then would be that the Law Society would create a protocol to provide confidentiality for those matters as they went through the hearing because, when I looked at this, my thought was you could have a lawyer and one of the parties to the litigation not wanting the information to go forward either so they could act in concert to thwart it. My initial thought was why, if the client is the complainant, why would they not be deemed to have waived the consent? But it very well could be another party with the transaction or another party that's involved. So the expectation would be that the Law Society, the members of the investigating committee from the Law Society, would have to be charged with some kind of code of conduct that would deal with how they would handle this information as well?

Hon. Mr. Quennell: — Yes. Well we're both familiar, Mr. Chair, Mr. Morgan and I, with proceedings such as pre-trial conferences and examinations for discovery where there are limits on what those proceedings can be used for, so the concept, I don't think, would be unfamiliar to the legal profession that proceedings be in confidence. And there's limitations put upon what those proceedings can be used for. And they can be used for what they're intended to be used for, which is the investigation of the lawyer. Sometimes lawyers, when it's convenient, forget whose privilege it is, and they think it's theirs, and of course, that's what this legislation is to correct — the client's privilege.

Mr. Morgan: — I think I've seen some of that privilege used in this House in the last few days, but we won't go there tonight.

Hon. Mr. Quennell: — They're properly used by clients.

Mr. Morgan: — And so in any event, the practice that's being put forward, is that the same as or similar to what's used in other jurisdictions?

Hon. Mr. Quennell: — I believe that what we're proposing is similar to the legislation in other jurisdictions, where they haven't relied on the common law but have actual legislation similar to what we're proposing.

Mr. Morgan: — Which other jurisdictions has this been taken from?

Hon. Mr. Quennell: — Mr. Chair, British Columbia, Alberta, Manitoba, Ontario, and New Brunswick and Nova Scotia have specific legislative provisions addressing solicitor-client privilege in investigation disciplinary processes of the Law Society, so six of the provinces.

Mr. Morgan: — I presume as well that this was done with some fairly significant consultation with the Law Society?

Ms. Amrud: — Yes. We worked with them in putting together this provision.

Mr. Morgan: — I don't have a problem with the Law Society per se and its members because they're all subject to that Act. But the Law Society right now has got a lay person as the complaints investigator. And that person, I don't presume, would be subject to the provisions of The Legal Profession Act with regard to discipline or confidentiality. Has that been addressed at all?

Hon. Mr. Quennell: — Anybody involved in the investigation will be subject to the legislation. It is quite independent of the rules of the Law Society.

Mr. Morgan: — I know it would be subject to 84(1).

Hon. Mr. Quennell: — Yes, to the legislation. So you know, I don't think you'd distinguish between lay and professional ventures in respect to their obligations under the legislation.

Mr. Morgan: — I'm hoping that to be the case. When I was, you know, contemplating this, I was thinking of situations of matrimonial law where there was significant personal information involved and, you know, a lawyer and one of the parties working to try and thwart the process. It would certainly be my hope or my expectation that that wasn't going to be . . . [inaudible] . . . and that's addressed either through the Law Society protocol or this legislation. I'm not sure that I see it specifically in the legislation, but possibly it is there.

I'm just looking to see how . . . The Act talks — and maybe I'm missing something — the Act talks about the member not being able to assert their privilege and the member being obliged to answer the questions. But it doesn't — and maybe I'm missing something — it doesn't seem to deal with what happens when the information has been provided.

I see that in the last, the subsection six, it says, “. . . does not breach or constitute a waiver of . . . privilege . . .” but I'm not

sure that that applies to other people that might come into contact with the information.

Hon. Mr. Quennell: — Again the legislation in my view doesn't apply only to lawyer ventures. It applies to all the ventures both in their responsibility to keep the proceedings private if they are required to do so by a member or another person and in their ability as ventures to make rules or procedures, as in legislation:

“ . . . to prevent the disclosure of information that is privileged or confidential, which procedures may be applicable to any person who, in the course of any proceeding pursuant to this Act, would acquire the confidential or privileged information”.

Not just any lawyer, but any person. That's in the amendment of section 10.

Mr. Morgan: — Well I see in 84.1(3) — is that where you're referring to? — any other person who may claim may require that. Is that the section that you're looking at?

Hon. Mr. Quennell: — Yes. Any person may require it to be private, but the application of the procedures are to “any person who, in the course of any proceeding pursuant to this Act, would acquire the confidential or privileged information.” So this entitles the benchers to make rules that apply to any person who receives confidential information as a result of the investigation proceedings.

Mr. Morgan: — I guess when I look at this, it doesn't appear to be an automatic thing. It appears that that person would be obliged to ask for it. And then when I look at the subsection (4), it says the court may make orders dealing with sealing the records or requiring things to be held in private.

I would have thought the default position in the legislation would have been that everything would be not necessarily held in private, but would be kept, sort of . . . that the umbrella that was over the member that's subject to disciplinary procedure would automatically be extended to the disciplinary committee.

And I'm just sort of questioning the framing of the drafting. Would that not have been a better approach to take, just to the extent that the solicitor had privilege and duties to maintain confidentiality? Each and every member of the Law Society that comes into contact would be subject to the same.

Mr. Chair, it's our intention to adjourn as we're finishing this Bill. If the minister and his officials would like some time to look at that aspect of it . . .

Hon. Mr. Quennell: — I think I'm prepared to at least take a stab at an answer.

Mr. Morgan: — I appreciate what the Bill is trying to do and support the intent of what it's trying to do but just want to make sure we're comfortable in how it's crafted so . . .

Hon. Mr. Quennell: — Let me paraphrase the question, make sure I understand the question. I think Mr. Morgan's question is — but I can be corrected — is that the position that the

legislation seems to be taking is that if the member of the Law Society, the lawyer, or the client or the court doesn't ask for the hearing to be in private, then it's going to be in public, and why that policy choice, that somebody has to ask before it's in private. Is that the question?

Mr. Morgan: — Partly. But more importantly, the information that would come out during that process and the people that came into contact with it, if there was no order made or nothing that's there. I mean generally speaking Law Society hearings don't have a lot of public attention in any event.

Hon. Mr. Quennell: — Depending on the . . .

Mr. Morgan: — And I'm not sure that I'm seeing anything in here, that there's a lot of privacy or that the solicitor-client privilege is automatically afforded to people as they go through the . . . that they would have to either take a positive step of asking for it all or alternatively seek directions from one of the courts.

Hon. Mr. Quennell: — The existing legislation starts from the position that the hearings are to be conducted in public. If I had to defend that — and that's of course legislation that's already been approved by this legislature — but if I had to explain the intent of the legislature I would say that that would be for public confidence in the system. We have a profession that regulates itself, investigates its members, and disciplines its members, and that for the sake of public confidence in that system of self-regulation, self-investigation, and self-discipline, that what takes place should take place as a rule in public.

Notwithstanding that general rule, the law currently allows that evidence brought in the presence of a complainant or the public that may result in a breach of solicitor and client privilege can result in exclusion of a complainant or a member of the public from the hearing, part of the hearing where the committee or ventures believe that evidence may result in a breach of solicitor-client privilege. Or again the law currently provides an exception for the possible disclosure of intimate financial or personal matters which would outweigh the desirability of allowing the complainant or the public to be present during part of the hearing.

So my defence of the provision requiring someone to ask is, first of all, that the Law Society can already do it on their own motion without any member of the Law Society or the client or the court asking to do it. And that has been the case for over 15 years. That's in the current legislation. And secondly, that the current provision that we're not proposing change, that as a rule hearings be in public for the sake of public confidence, and the profession regulating itself is a good rule, a good general rule to which these are exceptions.

There is already an exception to protect solicitor-client privilege, and the amendments really don't address that except to say that the fact that solicitor-client privilege is no longer a way to thwart an investigation and then almost a reconfirming of the right of others other than the discipline committee because now it's the discipline committee or the benchers that can exclude somebody.

Here now the member can now do it, or the client can now do

it. So it, I guess, provides further rights to the client of the lawyer than they already had. Now they no longer have to rely on the judgment of the benchers or the discipline committee. They themselves can require it to be private.

Mr. Morgan: — Mr. Chair, I don't think we have any more questions with regard to this Bill, and I want to remind the members opposite that they bring this forward with the House amendment, not without.

The Chair: — Seeing no further questions before the committee, we will now deal with the Bill clause by clause. Clause 1, short title. Is that agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 8 inclusive agreed to.]

Clause 9

The Chair: — Clause 9. Mr. Trew.

Mr. Trew: — Mr. Chairman, I move that in clause 9 of the printed Bill we strike out clause 9 and substitute the following:

“Coming into force

9(1) Subject to subsection (2), this Act comes into force on assent.

(2) [says] Section 5 of this Act comes into force on assent but is retroactive and is deemed to have been in force on and from December 31, 2006.”

I so move.

The Chair: — Mr. Trew has moved the amendment. Is the amendment agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Clause 9 as amended. Is that agreed?

Some Hon. Members: — Agreed.

[Clause 9 as amended agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: Bill No. 22, An Act to amend The Legal Profession Act, 1990. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — I would invite a member of the committee to move that the committee report the Bill as amended.

Mr. Trew: — Mr. Chairman, I move that the committee report this Bill with amendment.

The Chair: — Mr. Trew has moved that the committee will report the Bill as amended. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That's carried.

Mr. Morgan: — Mr. Chair, I'd like to thank the minister and the staff members that he had present through this Bill. And I understand we would like to have an adjournment of this evening's deliberations if that's appropriate with the Chair.

The Chair: — The member has moved that the committee now adjourn. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. The committee now stands adjourned.

[The committee adjourned at 21:06.]