STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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Published under the authority of The Hon. Corey Tochor, Speaker

[The committee met at 14:00.]

The Chair: — I do want to welcome the members and the officials to today's committee. We're going to be dealing with six bills this afternoon. The committee will be considering Bill No. 29, *The Justices of the Peace Amendment Act*; Bill No. 4, *The Queen's Bench Amendment Act*; Bill No. 5, *The Electronic Information and Documents Amendment Act*; Bill No. 6, *The Statute Law Amendment Act*; Bill No. 7, *The Statute Law Amendment Act*; Bill No. 9, *The Enforcement of Canadian Judgments Amendment Act*.

Before we go on, I will introduce the members: I'm the Chair, Mr. Brkich; chitting in for the Deputy Chair, for Doyle Vermette, is Nicole Sarauer; Nancy Heppner, a member; chitting in for Lisa Lambert is Mr. Fiaz; Eric Olauson is a member; Doug Steele; and chitting in for Warren Steinley is Mark Docherty.

With that, I will let the minister introduce his staff. And I will just ask the officials, when you are first up at the mike, if you can just introduce yourselves the first time, just for Hansard. That'll be for the ones also in the back.

And we will start with Bill No. 29, *The Justices of the Peace Amendment Act*. I'll ask the minister to introduce whatever officials he needs for that particular Act, and if he has any opening comments on that particular bill.

Bill No. 29 — *The Justices of the Peace Amendment Act, 2016/Loi modificative de 2016 sur les juges de paix*

Clause 1

Hon. Mr. Wyant: — Well thank you very much, Mr. Chair. To my right, Glennis Bihun, executive director of court services; and to my left, Jane Chapco, senior Crown counsel, legislative services; and to my very far right, Darcy McGovern, Q.C. [Queen's Counsel], director of legislative services.

So, Mr. Chair, I am pleased to be able to offer some opening remarks with respect to Bill 29, *The Justices of the Peace Amendment Act, 2016*. Mr. Chair, these amendments will improve and clarify the independent commission process. It was established in 2013 for the determination of salaries for justices of the peace. Under that process, a commission is required to prepare and submit a report with respect to the determination of salary and pension benefits for justices of the peace, and that's done every six years.

Mr. Chair, the next commission report will be due in December of 2018. Making these amendments now will allow the commission to make some additional recommendations that it would not otherwise be able to make under the current Act.

This bill will create a new assistant supervising Justice of the Peace position to provide additional administrative support to the supervising Justice of the Peace, and the new position will be filled by a sitting JP [Justice of the Peace].

The bill also provides that the additional salary amounts for the supervising and the assistant supervising Justice of the Peace positions will be determined under the independent commission process. The additional salary amounts for the supervising Justice of the Peace is currently set in regulation by the Lieutenant Governor in Council.

Mr. Chair, these amendments also set out the process to be followed when seeking clarification from the commission of a recommendation after the delivery of a report. The amendments will also allow a Justice of the Peace who has been suspended to receive his or her salary subject to any conditions imposed by the chief judge, and that amendment is consistent with the payment of salary to a provincial court judge who may have been suspended under *The Provincial Court Act, 1998*.

Finally, Mr. Chair, this bill will repeal *The Traffic Safety Court of Saskatchewan Act, 1988*. There has not been a traffic justice appointed under that Act since April of 2006. All senior JPs in Saskatchewan will now have the powers that traffic justices had under that Act, including the power to require attendance at driver improvement programs. Repealing that Act and making the powers of senior justices of the peace consistent throughout the province will certainly increase the efficiency of court operations and will be more reflective of current court practices.

So, Mr. Chair, the Justice of the Peace Association has been consulted with respect to these and is supportive of the amendments. So with that, Mr. Chair, I welcome any questions with respect to Bill No. 29.

The Chair: — Any questions on this particular bill? Ms. Sarauer.

Ms. Sarauer: — Thank you. And I'd like to thank the minister for the opportunity to ask these questions as well as the minister's officials for coming today, and I appreciate the introductory remarks from the minister with respect to this bill. Now I understand, based on your remarks, that the Saskatchewan Justice of the Peace Association was consulted on this bill and as a result of their recommendations, this bill was created. Were there any other recommendations that they had made that aren't being addressed in this bill?

Ms. Bihun: — Good afternoon. Glennis Bihun, executive director of court services. Yes, there are other recommendations. The majority of those recommendations are related to benefits and are under discussions still, for whether or not those concerns would be addressed in policy or regulations. And there are ongoing discussions as well regarding the title of justices of the peace.

Ms. Sarauer: — Thank you. You've also mentioned that this bill will be repealing *The Traffic Safety Court of Saskatchewan Act*, essentially to bring legislation in line with what's been practised in Saskatchewan for a little while. I'm just curious to know, because you had mentioned that there aren't any, I think you said, traffic justices who had been appointed since 2006. Why the change?

Ms. Bihun: — So our current practice that's established by the court is for the justices of the peace who are seniors to undertake the traffic safety courts. There's currently six different traffic safety courts that sit throughout the province

and they're all sat by either a full-time or a part-time senior Justice of the Peace.

Ms. Sarauer: — Okay. So why was the change made from traffic safety justices to Justice of the Peace being able to do all of this work? Back in 2006 . . . You just said that no traffic safety justice has been appointed since 2006. I'm just curious to know why that change had occurred at that time.

Ms. Bihun: — So the senior justices of the peace have a more general or broader authority than a traffic Justice of the Peace, and senior justices of the peace, authority would include those traffic safety-related matters when we consider their ability to undertake and perform trials. So that provided, as it was considered by the court, what skills would be needed for those justices of the peace, rather than zeroing in on only the traffic, to broaden those focuses to the seniors.

Ms. Sarauer: — Is there anything in *The Traffic Safety Court of Saskatchewan Act* that's now being repealed that isn't being followed anymore in this new bill? Of course aside from the one we had just talked about.

Ms. Chapco: — I'm Jane Chapco with legislative services. *The Traffic Safety Act* is a relatively short Act, as you will be aware, and the vast majority of the provisions in here are related to the appointment of the traffic justices. So clearly if we're not doing that anymore, those provisions wouldn't be needed.

So I can just take you through quickly. The sections that are continuing are sections 8 and 9, the powers of traffic justices and the record of convictions, and those have been moved over into *The Justices of the Peace Act* as section 6.1 and 6.2. As I say, the remainder of the Act would no longer be applicable and is no longer necessary.

Ms. Sarauer: — Right. Thank you. And the minister had mentioned in his opening comments, which was one of my questions, was that the new assistant Justice of the Peace role will be filled with an already sitting Justice of the Peace. I was just wondering if you could elaborate a little bit on that and what this is going to add to that individual's role, and just to ensure that it's not going to hamper an already quite busy justice system. The JPs are quite busy already.

Ms. Bihun: — Absolutely. And informally in these supervising justices of the peace role currently, during her absences for vacation purposes or whatever, there has been someone who has been named to be the, in essence, assistant supervising Justice of the Peace. That's been in practice for some seven years or so. This amendment really allows for that to be formalized and provide a remuneration to go with that.

Ms. Sarauer: — It's just codification of an already established practice?

Ms. Bihun: — Yes.

Ms. Sarauer: — Yes, okay. thanks. I have no further questions about this bill.

The Chair: — Thank you. Seeing no further questions, clause 1 short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 17 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Justices of the Peace Amendment Act, 2016.*

I would ask a member to move that we report Bill No. 29, *The Justices of the Peace Amendment Act, 2016* — it's also a bilingual bill — without amendment. Mr. Olauson. Agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 4 — *The Queen's Bench Amendment Act, 2016*
Loi modificative de 2016 sur la Cour du Banc de la Reine

Clause 1

The Chair: — I believe the next item before the committee will be Bill No. 4, *The Queen's Bench Amendment Act, 2016.* I'll ask the minister if he has any more new officials. He can introduce them, and if he has any comments on this particular bill he can make them now.

Hon. Mr. Wyant: — Thank you very much, Mr. Chair. Well with me again, to my right, Darcy McGovern, Q.C., legislative services director. Glennis Bihun is behind us, executive director of court services. To my left, Lorna Hargreaves, senior Crown counsel from court services; and to my far right, Alan Jacobson, senior Crown counsel from our constitutional law branch.

Well, Mr. Chair, I'm pleased to offer some opening remarks with respect to Bill 4, *The Queen's Bench Amendment Act, 2016*. Members may know that Saskatchewan residents have every reason to be proud of our hard-working and professional court, and I think the changes proposed today will facilitate their continued good work.

Amendments to *The Queen's Bench Act, 1998* are required to fulfill Saskatchewan's obligation as a signatory to the New West Partnership Trade Agreement to allow existing or future awards made by dispute resolution panels to be enforced against any party as if they were civil judgments of the court. Amendments to the Act will be made to allow awards made by dispute resolution panels under trade agreements to be enforced as if they were civil judgments of the court and allow awards to be enforced against persons other than the Crown.

[14:15]

The bill will also make changes to amend the reference to the size of the court from 31 to 32 judges to reflect the actual size of the court and include a notice requirement specific to the appointment of court-appointed legal counsel.

In addition, related amendments to *The Constitutional*

Questions Act, 2012 will be made to provide for the appointment of an administrator for the purpose of managing the court-appointed lawyer process. They will set out rules and processes for the appointment of court-appointed lawyers from a list of approved lawyers established by the administrator. It will provide that those lawyers would be paid a flat fee rate set by the administrator, and provide that any lawyer appointed outside the process is not entitled to payment by the government.

Mr. Chair, the lack of a statutory basis for the administration of the court-appointed legal counsel program has resulted in inconsistencies in when and how such counsel are appointed. These amendments will in no way remove or change the discretion of the court as to when and why the court would appoint counsel for a party before the court. Providing for a notice requirement specifically designed for court-appointed counsel and introducing those rules in *The Constitutional Questions Act* will enhance the ability to address these matters in the Act and improve certainty.

So with that, Mr. Chair, we're pleased to answer any questions that the committee has.

The Chair: — Ms. Sarauer, any questions?

Ms. Sarauer: — Thank you, and thank you for your explanation of Bill 4. I have a few questions first with respect to the expansion of awards enforcements. I understand that the changes will allow for the inclusion of the enforcement of some awards subject to some trade agreements that Saskatchewan is a part of. Now based on my understanding of the bill, the actual trade agreements will be lined out in the regulations. Do you have any idea of which trade agreements you're planning to put into the regulations at this time?

Hon. Mr. Wyant: — It would be the Agreement on Internal Trade and the New West Partnership.

Ms. Sarauer: — Thank you. Now it's also being expanded to allow for enforcements to be made against any person. Can you expand a bit on that?

Mr. McGovern: — Sure. Darcy McGovern. Thank you, Mr. Chair, and to the member. With regard to the subject of the order, the bill does provide that there is an increase in scope in who can be subject to the order. Under the Act as it's currently drafted, only the Crown can be subject to those orders. But under the AIT [Agreement on Internal Trade] and the New West Partnership Trade Agreement, or NWPTA, it requires that certain of these orders be enforceable against government entities like the Crown corporations or as well as people.

So these agreements have provided for, to be for enforcement in certain circumstances with respect to individuals. So it becomes our obligation under those trade agreements to facilitate that. And so that's the breadth of the scope of the changes to say that that would occur. Anticipating your next question I guess, we would anticipate that to be terribly rare, but it becomes a requirement for us under the trade agreement to accommodate it.

Ms. Sarauer: — So just to reiterate, it's an obligation that we are under pursuant to the trade agreements.

Mr. McGovern: — Yes.

Ms. Sarauer: — Okay. Thank you. Can you elaborate a bit for me on what sort of orders pursuant to the trade agreements would become enforceable in Saskatchewan?

Mr. Jacobson: — Thank you. Alan Jacobson, Ministry of Justice. The trade agreements provide for the ability not only for governments to challenge each other with respect to conformity to the obligations of the agreements, but they also in some circumstances allow private parties to challenge governments.

An award can be made by a trade panel — this isn't done by the courts; it's done by arbitration — against a defending government or a sub-government entity, such as a Crown corporation. An award then is always made against a public entity with the exception of the possibility of a cost award, if I can put it into layman's terms.

And so the way that this works is that it's only . . . There's several steps before you actually get there. If you have a complaint and consultations don't resolve the issue, then it can go to arbitration. If in arbitration a panel determines that a defending party isn't in conformity with its trade agreement obligations, then recommendations are made. No award is made at that point. It's only if a government refuses to follow those recommendations, then can the party apply for an award at that point. And then after that, we would expect that almost in every case a government would simply honour that obligation.

But the parties have agreed that it needs to be enforceable, and so those are the kinds of awards. They're always only financial in nature. There's no injunctive abilities of these trade tribunals.

Ms. Sarauer: — Thank you. Are any of the trade agreements that you indicated will be in the regulations, are any of those international trade agreements?

Mr. McGovern: — No, the AIT and the NWPTA are both domestic.

Ms. Sarauer: — Oh, so why was the removal of the qualifier "domestic" seen as necessary to be taken out of the Act?

Mr. Jacobson: — That was in recognition that there could come a time, for all we know, when under . . . Because after all Canada does belong to several international trade agreements as well, and it could . . . We recognized that there could come a time when similar obligations may arise under those agreements, in which case it seemed not wise to restrict ourselves from being flexible to expand that list should it become necessary.

Ms. Sarauer: — Okay, so you're anticipating that likely there will be more trade agreements added to this list in the future?

Mr. Jacobson: — There's no current expectation of that, but it's possible.

Ms. Sarauer: — Right. Thank you. Just to clarify your

explanation about who would be able to enforce . . . or who would be able to utilize these trade agreements in terms of enforcing judgment, would this allow more private businesses and individuals to enforce judgment against the Government of Saskatchewan?

Mr. Jacobson: — Yes. It's intended for anyone who successfully is granted an award under the trade agreements, whether it's a successful private party, as you cite, or whether it's a cost award.

Ms. Sarauer: — Now forgive me, I can't remember if it's this bill or if it's another bill . . . I think it's actually another bill. But is this provision being made retroactive?

Mr. McGovern: — Well, no. No in both cases, I think, will be where we end up today. But this doesn't have a provision that makes it apply retroactively, no.

Ms. Sarauer: — Right. Sorry, I think I'm confusing this with another bill that we'll be discussing later. Have any awards already been made which would be subject to filing under what would be the new section 89.2?

Mr. Jacobson: — No awards. In fact Saskatchewan has never even been a defending party to a trade dispute as of yet. We've been successful in challenging other jurisdictions on occasion, but we've never been challenged ourselves. And I anticipate that even if we were, it would be unusual to imagine that we would . . . Well that's speculative but, as I said earlier, it's far removed from being found to be in contravention of a trade agreement, and to take the further step of refusing to address that such that an award would be made against the government.

Mr. McGovern: — I think rare continues to be our characterization.

Ms. Sarauer: — Right. Well let's knock on wood and hope that that doesn't happen any time soon. Have any other jurisdictions made similar changes to their legislation?

Mr. McGovern: — I'll say five or six are compliant, and the rest have to yet take that step, but I'm just going to see if I have that information here with me. I can check that for you and have that for you very shortly.

Ms. Sarauer: — Sure, thanks. That would be great. Similarly what organizations were consulted with respect to these changes?

Mr. McGovern: — Given that it's a requirement under the New West Partnership and the AIT, that's been the forum for discussion. And this is us complying with our contractual obligation.

Ms. Sarauer: — Right. So the jurisdictions that have yet to comply, is there movement? Do you know if there's movement towards compliance?

Mr. Jacobson: — We don't know more specifically, except for we do have a list of those who . . . The secretariat, which is the administration of the agreement in Winnipeg, keeps a list of who's onside. And there's an internal mechanism that does not allow participation and dispute resolution until that happens. So that's the built-in incentive.

Mr. McGovern: — So as it works through the legislative lists in the different jurisdictions, we would anticipate that they would certainly become compliant.

With respect to your previous question, to the member, non-compliant: currently ourselves, Alberta, Ontario, Quebec, New Brunswick, PEI [Prince Edward Island], Nova Scotia, Nunavut, and the Northwest Territories. Compliant: BC [British Columbia], Canada, Manitoba, Newfoundland and Labrador, and the Yukon. So as I mentioned, we're sort of in the process of moving from non-compliant to compliant nationally.

Ms. Sarauer: — Thank you. I'll move on to the section regarding court-appointed counsel. I was wondering if you could elaborate a little bit on the notice requirement that's being added. It's section 4 of the bill, new section 33.2.

Ms. Hargreaves: — Lorna Hargreaves, court services. The notice requirement is not a new notice requirement. It does already exist under *The Constitutional Questions Act*. It's being placed in the new portion dealing with the court-appointed counsel. It is making some changes in that the Attorney General for Canada will not need to be served any longer in prosecutions that are not federal prosecutions.

There will be a requirement to serve legal aid and the administrator as well as the Crown. Legal aid is in the best position to provide the court with as much information as possible to make an informed decision about whether or not to appoint counsel, and of course the administrator requires time to respond to those applications. So the 14-day notice provision is not new.

Ms. Sarauer: — Right. Sorry, I'm not talking about the service requirements for an application. I'm talking about — and it might be they might bleed into each other; I could be wrong — but it's new section 33.2:

> . . . court shall not appoint a lawyer to represent a person in any legal matter unless the court is satisfied that the application and notice requirements of Part III.1 of *The Constitutional Questions Act, 2012* have been met.

I was wondering if you could elaborate a bit on that.

Mr. McGovern: — And what that is is, and you'll have noticed as you've read through the bill that we have provisions that are changing *The Queen's Bench Act*. As you also know, we have provisions in *The Provincial Court Act*. In each of *The Provincial Court Act* and *The Queen's Bench Act*, we have this provision which acts as a pointer to the requirement that we've introduced under part III.1 of *The Constitutional Questions Act*. And I think the reason for doing that, in large part, is when someone is making an application to the Queen's Bench, that *The Queen's Bench Act* is where they may start, and similar with *The Provincial Court Act*.

It's also where the existing similar provisions are with respect to child appointed counsel. And those provisions do the same thing. They say if the court is going to appoint counsel, then it

be referred to, and then the process to be followed is the process under, in that case, *The Public Guardian and Trustee Act*. And then as you know, the public guardian and trustee develops a roster of lawyers from which an appointment is then made.

And so this is a parallel process to say, in this process, here's the pointer. The reason why we don't have the Provincial Court reference here as well is because this is a bilingual Act; Provincial Court is a unilingual Act.

[14:30]

Ms. Sarauer: — Right. Okay. Forgive me, I'm just trying to wrap my head around this. Is this requiring . . . And I'm not concerned about the children's counsel perspective of any of this because I do know that that process doesn't of course require the child to make that application. That's a separate process. I'm more concerned about the applicant and whether or not this requires the applicant to take any extra steps in addition to the steps that we'll get into that Ms. Hargreaves was talking about.

Mr. McGovern: — No. This is simply a reference to the requirements in part III.1.

Ms. Sarauer: — Okay. Thank you. Since it had been mentioned, maybe we'll speak a little bit about 15.3, I guess, is what it will be in the new legislation, the service requirements that are being made. Do you mind . . . I'm sorry, and I'm going to be asking you to repeat your answer that you had given me earlier, Ms. Hargreaves, but do you mind explaining to me why this list was chosen?

Ms. Hargreaves: — These are the interested parties who would be able to provide information to the court with regard to court-appointed counsel. They are also the parties who have the responsibility to ensure that public funds are spent in accordance with legal requirements, and these notice provisions will provide clarity to how and when, who to serve, and that that will provide that.

Ms. Sarauer: — Okay, so just to clarify how the process is going to work with these new amendments. The individual who wishes to have a court-appointed counsel made for them will be required to file a notice of application to the court and then serve a notice of application to the parties that are listed in 15(3)(a) and then file proof of service consequently with a court after that. Is that correct?

Mr. McGovern: — So the way the process works in the Act right now, as you know, under *The Constitutional Questions Act*, 17(2) of the existing constitutional questions Act provides for the process for service on the Attorney General. That service occurs right now, and typically — and Alan can speak to this — the way that occurs is that there's a fax that comes into our offices from the individual, whether that's with the assistance of a third party or themselves who provide that notice.

Under what's being contemplated here, you'll have noticed 7(3) which is — and I'll speak in terms of what's being amended — it's 15.5 is the removal of the lawyer:

(5) The following subsection is added after subsection 17(2):

"(3) Any notice to be provided to any other person pursuant to this Act is to be served in the manner prescribed in the regulations**".**

So the Attorney General provision is already there. That's the fax process. This provision plus the last provision on your page, 17.1, if we look at (c) it says, "for the purposes of . . . (3), prescribing accepted manners of service." And so this is where we will have flexibility in the regulations as we conduct the consultations on the regulations as to what best way to serve people in that regard.

Right now the Attorney General is served by fax. And what we wanted to do with these provisions is provide as much flexibility as we can in that context as to what'll work best to provide that. And certainly at the very least we would look at accepting fax service and we would have to look at, with the administrator and with the Legal Aid, whether or not service of one party constitutes service of the other parties, for example, and how best to make that as flexible as possible.

Ms. Sarauer: — Okay. So you're anticipating that it'll be clarified in the regulations what service will look like. Are you anticipating then that the applicant will know to look at the regulations to figure out what service is supposed to be for these parties?

Mr. McGovern: — I wouldn't be . . . I appreciate what you're saying in terms of saying there'll need to be information that's available at the courthouses and through that process to advise them what's necessary for service right now. Similarly right now when they're told they're able to do that, to fill in the form and do it by fax now or . . . And it tends to be fax which is a little bit older technology, but that's something they're advised. So that's part of the education process. We're not saying you have to be a lawyer to be able to work through the regulations, but that's how the authority would be set up. And that's the most nimble way to add new ways to do it or to respond to ways that might not be working as well as you want them to.

Ms. Sarauer: — Okay. So your anticipation is that the . . . I guess how I would describe it is the point person for this, for an individual who is trying to obtain court-appointed counsel, would be the registrar's office?

Mr. Jacobson: — Well currently . . . I'm not sure if I'm getting the question exactly right, but currently what accused people will do is they'll often be directed to the front desk of the courthouse and they'll be given a form, and that is the application. And they simply fill it out, and they're supposed to provide some information, and they're given the fax number. That is service on the Attorney General to fulfill the requirements of *The Constitutional Questions Act* as it exists today.

Mr. McGovern: — And you'll note in that reg power as well that we have the specific ability to prescribe the manner and form for the application, so to make that form as friendly as we can be.

Ms. Sarauer: — So the intention though is to make it so that the application will be readily available at a regular point, obvious point place for an individual who is entering the court, be it provincial or Queen's Bench?

Ms. Hargreaves: — Yes, that's correct. These amendments would not be immediately implemented, so we would have some time to be able to identify the supports that would be necessary so that the applicant would understand the process and it would be easily available.

Ms. Sarauer: — You had mentioned that there was going to be some consultation with respect to the drafting of the regulations. Has there been any consultation with respect to any of the amendments to the Act regarding court-appointed counsel?

Hon. Mr. Wyant: — There was certainly some discussions with the Court of Queen's Bench and the Provincial Court, but there wasn't any broad consultations with the bar and legal aid.

Ms. Sarauer: — So have any members of the Saskatchewan Trial Lawyers Association been contacted with respect to these changes?

Mr. McGovern: — No. They've been identified as part of the consultation process for the regulations once this process is completed. What we do now, would have in place is the general framework for the Act, and this would allow us to go out to the stakeholders and say how best to implement this process.

Ms. Sarauer: — What about any organizations who are in the province who are involved with assisting unrepresented litigants in Saskatchewan? Have any of them been consulted with respect to the changes?

Mr. McGovern: — I think that's part of the same process. And certainly if you have anybody you'd like to identify for us in that regard, we'd be glad to hear it.

Ms. Sarauer: — I will, happily. I think of PLEA [Public Legal Education Association] and Pro Bono Law Saskatchewan as well as CLASSIC [Community Legal Assistance Services for Saskatoon Inner City Inc.] would be probably the logical choices, as well as STLA [Saskatchewan Trial Lawyers Association] has been . . . the criminal defence bar subsection that they have in particular.

I'm just wondering what the reasoning is behind waiting to do those consultations until after the amendments to the Act have been made.

Hon. Mr. Wyant: — I'll make an opening comment on that, and I know Darcy will add to this. But the goal of enacting the legislation is to create, you know, the framework for moving forward with appointment of counsel into trial courts. So that's what we're . . . That's the main goal of this element of the Act that we're amending. So we want to establish the framework, and the regulations will be consulted on, as Mr. McGovern has commented.

Mr. McGovern: — I think it's fair to say that legal aid has always been intended to be the primary means of providing counsel. As you know, this has grown in fits and starts. There's never been a review in terms of how those two fit together, so in talking to legal aid in terms of saying how best can we share that information and ensure that we have a program. Given that these are public funds, it needs to be transparent and accountable.

And while not everyone might agree in terms of how it'll go forward, this is the process that we feel will work with legal aid to be able to ensure that court-appointed counsel is provided when it's constitutionally required under the Act and that it'll be provided in a way that's fair both to the accused and to the . . .

Of course we count on legal counsel who identify themselves for the roster. And as with legal aid, there's no choosing your counsel per se. In legal aid you don't get to say I want Alan rather than Darcy no matter how much sense that might make. And similarly in this process we're recognizing that to be fair in terms of a process, lawyers who are willing to self-identify, come forward for this process need to be treated fairly in terms of the assignments side of the process.

Ms. Sarauer: — Thank you. Just to know as well, while I was looking at this bill for the past few months I have been consulting with several lawyers in the province, some of whom are members of the criminal defence bar, some of whom are currently doing court appointment work, who expressed some disappointment and frustration over not being involved in this process in terms of being able to have an active hand in improving a process that I think everybody agrees is confusing. I know it was confusing when I was trying to explain it to unrepresented litigants before I was elected, and I don't think that would be very controversial to say that some clarification was needed in this. But there has been quite a bit of disappointment over not being able to be involved in the process at the beginning.

Moving on, I noticed in the bill — and I think you mentioned it again — that the provisions around payment are going to be . . . Are they going to be included in the regulations or are they going to be negotiated between individual counsel?

Ms. Hargreaves: — Well I think that there isn't going to be a change in how or the amount lawyers are paid to do court-appointed counsel work. Typically lawyers will accept court appointments on the basis of the legal aid tariff and we expect that to continue. There are, on a case-by-case basis, needs . . . There needs to be adjustment for certain cases that are larger and more complex, but ordinarily that's how it works now and that's how we expect it to continue to work.

Ms. Sarauer: — So is the intention in the regulations that the tariff that will be put in the regulations will match the legal aid tariff?

Mr. McGovern: — I don't know that we would need to address it specifically in the regulations but that's the stated intention from the program people, that it would match the tariff in legal aid as the starting point, depending on the case-by-case.

Ms. Sarauer: — Is there any plan in terms of when you're making consultations in the regulations to include a discussion

with those who are doing court appointment work about the fees and the tariff as it stands now and as it will stand in the future?

Hon. Mr. Wyant: — That wouldn't be the focus of the consultations around the regulations. But certainly if it came up in discussions, it would be something that we could talk about. But it wouldn't be the focus of the consultation. But we're always willing to talk to the bar.

Ms. Sarauer: — I want to delve a little bit into who will qualify for being approved a court-appointed counsel. I'm assuming, but I never want to assume anything, that the requirements aren't going to change.

Ms. Hargreaves: — These amendments don't touch on the powers of the court. It is in their discretion and will continue to be in their discretion as to who qualifies for court-appointed counsel. So that's entirely . . . These are procedural amendments with regard to the program. The general qualifications will continue to exist. They're well established in case law, which is you have to be denied legal aid and appeal that denial and be denied, and exhausted all your avenues with the legal aid. The court needs to find that you are unable to afford a lawyer and that it falls within the mandate of court appointments, which is either serious criminal conflicts, criminal matters where there's a risk that the accused will go to jail, or in some child protection matters.

[14:45]

There are other factors the court may consider also, such as the educational level of the applicant, whether they could run their own trial or whether a counsel is necessary to ensure a fair trial. So that criteria will continue, and it is entirely in the discretion of the bench.

Ms. Sarauer: — Thank you. If an individual is fired from legal aid, would they qualify for court-appointed counsel?

Ms. Hargreaves: — If the applicant is fired?

Ms. Sarauer: — Yes, well either way. If the applicant fired their legal aid counsel, or if the applicant was . . . Well I guess if the legal aid lawyer withdrew.

Mr. Jacobson: — Yes, I don't think that'll change. And I can speak a little bit to the current law on that which is that the courts have recognized that sometimes there are legitimate reasons why that might happen, and why therefore legal aid is properly out of the picture and such that a court appointment is appropriate.

But the courts have also said that it is not appropriate for that to happen arbitrarily. And so this is why often the criteria is that there'd be a waiver of privilege and so that legal aid can explain the breakdown of relationship. Having said that, yes there is often the possibility even after that happens, even though questions need to be asked of a subsequent court appointment, and that won't change under this bill.

Ms. Sarauer: — Is there still discretion for a judge to appoint court-appointed counsel from the bench even if an application hadn't been made yet by an applicant?

Mr. Jacobson: — *The Constitutional Questions Act* itself has been interpreted to be a necessary condition of a constitutional remedy. And so whether or not it's honoured in practice is a different question, but the Act requires the notice to happen — period. And again this isn't a fundamental change to that. It's a change to the how and the who of notification, but not to the fundamental application requirement.

Mr. McGovern: — You know, what does change with this, to the member, is there's an ability now under this for . . . The notice requirements right now for court-appointed counsel are across the board There's no exceptions. There's no modifying that. Under subsection (4), 15.3 as proposed provides that the notice requirements don't apply to an application made for legal representation regarding:

> sentencing for summary conviction matters; [or]
> summary bail applications; or
> any other matter determined by the minister."

And that's also going to be part of that consultation process as we go forward in terms of identifying where that notice substantively isn't required to ensure that the public interest with respect to the Charter application doesn't need to be addressed by court services. And so that is new and more flexible. And what we're trying to do is to tailor it specifically for this context so that it's a little bit different than if you're challenging the *vires* of the tobacco legislation somewhere. So that it's a little more tailored to what we're actually dealing with.

Ms. Sarauer: — Right. Thank you for that explanation. I want to delve into, I guess, the other side of the coin: the lawyers that would be on the list. Now I think when you had described the procedure, the administrator will be the one who decides who is on the list and who stays on the list. Could you provide some more details about that process for me?

Ms. Hargreaves: — Sure. It's anticipated that the process won't change. The amendments are not meant to exclude lawyers that are currently on the list unless they've been removed from the legal aid roster in the last five years, or unless they were removed for just cause. So the kind of information that court services currently collects to make the current court-appointed counsel lists, what will occur after the amendment. So we collect basic information as to the year of call to the bar, what areas of practice that they're actively engaged in, what parts of the province they're willing to travel to provide service. And so this would just more mirror the legal aid system where there would be an application process with that short information and that will be what we will be using as the list for . . . So it won't change.

Ms. Sarauer: — Okay, so just to clarify. As you're saying, the application process for the lawyers and consequently being on the list will have . . . there will be no difference from what they're experiencing right now?

Mr. McGovern: — I don't think there'll be a substantive difference. I think one of the changes is on the removal of the lawyer. And so right now there's no particular due process

that's accorded to a lawyer who is on or off the list, and I'm not going to suggest that that's a, you know, a great battle that's going on. But in looking at the provision, we recognize that the legal aid process provides for an ability for a lawyer — and this can affect their livelihood — who is dropped from the list for a particular reason to be able to seek a review of that, in a similar way to 15 and 16, so that they have some recourse and some due process in that context.

Ms. Sarauer: — So . . . Sorry. Sorry, I got a little bit distracted here. Just let me recollect my thoughts for a moment. So let's delve into the scenario if a lawyer is removed from the list. So you indicated that removal would occur for just cause. Can you explain what that procedure looks like?

Mr. McGovern: — Well under 15.5(2), and I think, you know, just cause being a labour term that doesn't have separate definition within this legislation. But it provides that the administrator may remove a lawyer from the list for just cause by giving the lawyer notice of his or her removal and setting out the reasons. Then having the reasons, the lawyer may, within 30 days after receiving notice apply to the Court of Queen's Bench to set aside the administrator's decision in that regard. And so at that point you're in a court process in which the administrator would be compelled to justify their actions within the context of what constitutes just cause.

Ms. Sarauer: — Okay, so I'm happy to hear that there's an appeal process essentially for lawyers. So does this procedure mirror the legal aid's process?

Mr. McGovern: —Yes, 15 and 16 of the legal aid is . . . I don't know if it's precise, but that's exactly where it comes from.

Ms. Sarauer: — Great, thank you. What would be some examples for why an individual would be removed from the list?

Mr. McGovern: — Oh, I think your imagination is the same as mine. We don't have a, you know, we don't have a particular list, but obviously if someone is deeply in substance abuse territory and has been disbarred from the Law Society then that may well be just cause for not being able to represent clients.

Ms. Sarauer: — Makes sense to me. Is the intention that the administrator . . . Will that be an additional position or is that going to be someone already within court services?

Mr. McGovern: — It's an existing position and probably someone at this table.

Ms. Sarauer: — I'm wondering what the state of the court-appointed counsel list looks like right now throughout the province. I know it varies, but I'm wondering if you can be a little bit more specific for me.

Ms. Hargreaves: — Well yes, we have lists for the major centres and many of the smaller centres that are available through the court offices. We have approximately 50 to 60 lawyers throughout the province that are typically willing to accept court appointments. And we have lists that are for both child protection matters as well as people that are just interested in doing the criminal work, and so we have a healthy roster. We haven't, when we were called upon to locate lawyers to accept court appointments, have not had difficulty in fulfilling that.

Ms. Sarauer: — Have you had issues with maintaining the roster in any of the jurisdictions in the province?

Ms. Hargreaves: — There are areas where there aren't many defence lawyers that would do that work in very remote parts of the province, but we have lawyers that are in close proximity that will travel to take on those court appointments. So we don't have a court- appointed lawyer in every town, but we have them throughout the province in a good spread.

Ms. Sarauer: — What about in Regina, specifically child apprehension files in more particular? Do you know how many lawyers are on the roster currently?

Ms. Hargreaves: — Well about only about 5 per cent of the court appointments would be in child protection matters. The vast majority are with the criminal work, and so there are less lawyers on that list. But there are about 8 to 10 lawyers, I would say, on the list currently who would accept child protection matters in Regina.

Ms. Sarauer: — In Regina? Thanks. Have you heard any concerns from members of the bar who are taking on court appointments right now about the current fee system?

Ms. Hargreaves: — I wouldn't say concerns. Of course lawyers are wanting to be fairly paid for the work that they're doing, and sometimes the cases are more complex and require discussions with regard to, you know, how many preparation hours and what the hourly rate may be on a case-by-case basis. But the lawyers are aware that the legal aid tariff is the starting point for that and that . . . I haven't had any specific concerns about that.

Ms. Sarauer: — Thank you. Let's move into the decision to remove choice of counsel for an individual which I think one of you spoke a little bit about already. I understand that this change is contrary to what's been standard practice of upwards of 30 years, I believe, in Saskatchewan. Can you elaborate on why this change?

Mr. Jacobson: — Maybe I could just begin with the way the law stands on the question of choice of counsel. Mr. McGovern already referred to the case as it exists with the Legal Aid Commission and how this is going to conform or make appointments closer to the way the legal aid system works, to make that more consistent. But there isn't any doubt that there is not a right to choice of counsel. The case law is very clear about this, and I can point you to some cases if that helps.

But I think it's probably fair to say that it was never a deliberate policy choice to say we've got to make sure that there's a broad list from which people can choose. The reason why we have the list system that we have now is because there wasn't a system as such. There was just. . . People would say, I need a lawyer and who should I go to. And so as a way to assist, over a period of years a list developed just to help accelerate the process. It wasn't a, as I . . . So I guess the point I'm trying to make is it was never a case of we think there ought to be a choice of counsel in these circumstances and now we think there ought

not to be one. I'm not sure if that helps.

Mr. McGovern: — I guess part of that question is, I guess, asking the member if we're on the same page in saying there is no Charter right to choice of counsel; there is a Charter right to counsel in certain cases. And that's a legal distinction that we absolutely maintain, that the court is in a situation where they will say, under the terms of the Charter, an individual has a right to counsel. And in certain circumstances that have been outlined previously, that counsel will be appointed and will be paid for within the state.

As you know, the legal aid system currently doesn't provide for choice of counsel. In designing a system, legal aid of course is the first stop. They're meant to serve that purpose. We wouldn't want to be designing a system whereby if you work your way through legal aid counsel, in certain circumstances you may be rewarded by a circumstance of being able then to choose your particular counsel. That's not a good way to build a system where you go from not being able to do so.

And so I think, and Lorna can speak to this, the process right now isn't uniform across the province, isn't uniform between the courts or between different headings. And I think what we want to do here is to provide for that certainty with respect to what amounts to a fairly large public expenditure to ensure that that process is transparent and that process is accountable. And by establishing a roster, we assist with that by both being fair to the counsel who identify so that they're not putting themselves on a counsel and never getting chosen, that that's . . . You know, they're meant to be able to move forward, and that meets our legal requirement in that regard. But I'll let you ask a supplementary.

[15:00]

Ms. Sarauer: — I thank you for the answer, but I still have yet to understand why this decision was made to change this.

Ms. Hargreaves: — Well first of all, it's not a universal practice where the applicant chooses from the list, chooses their own lawyers. In a number of court locations, a number of places in the province, court services is routinely asked to locate a lawyer to accept the court appointment. So it's not a universal practice, but it does exist, and those lists were made for convenience, as Alan was saying.

So you know, court-appointed counsel is to be an extraordinary remedy to fill the gaps. And so as Darcy said, the first point is legal aid. We don't want to create an incentive for people to, as Darcy mentioned, be rejected from the legal aid system so that they can find a lawyer of their choosing.

Now having said that, it may make sense in some circumstances to have a lawyer — for instance if the lawyer is already representing an accused on certain matters before the court and further charges are laid — it may make great sense to have that lawyer continue on with those. So there may be some circumstances where that arises.

Ms. Sarauer: — So just based on your response, were these changes made because of some sort of concern that there were individuals who were feeling that there was an incentive to fire their legal aid lawyers?

Hon. Mr. Wyant: — Well certainly there's one of the, you know, one of the results of making these changes is going to ensure that we prevent manipulation of the system in certain circumstances. So that's going to be one of the benefits. But I think it's also fair to say that what we don't want to do is entrench in the legislation the right to choose because that's not a Charter right to choose your lawyers, even though in some, you know, you have a right to court-appointed counsel in certain circumstances.

Ms. Sarauer: — So based on the minister's response, were these changes made because there was a concern that there was a manipulation of the system?

Mr. McGovern: — Well I think the minister's comments obviously stand for themselves. That's an element that the court has identified in R. vs. Martin with Mr. Justice Sherstobitoff's comments. That's an element that's come up more recently with respect to a decision by Madam Justice McMurtry.

We're also dealing with the development of a program on a statutory basis. In that context, we are not, as the constitutional lawyer had pointed out, there is no right to choose counsel. We're not going to create one in this Act. It's essentially when we are codifying the process for court-appointed counsel, this reflects that decision. I think what Lorna had indicated was an ability of the administrator to look at specific circumstances, to work with a roster. But as far as the bold statement saying that we're going to uniquely create a right to counsel here where it doesn't exist in the legal aid, that wasn't the choice that was made.

Ms. Sarauer: — Right. You will admit that an individual has had a choice of who would be their counsel for the court-appointed counsel in Saskatchewan for at least 30 years.

Mr. McGovern: — I think what Lorna described was that that has occurred in some places. By no means is that even a uniform process between the courts and from jurisdiction to jurisdiction, as I understand.

Ms. Sarauer: — Okay. Is the ministry confident that they're not opening up the potential for any future Charter challenge with respect to this issue and choice of counsel?

Mr. Jacobson: — In my experience, you can never prevent Charter challenges. But having said that, I think what we've heard today is that we're confident that the system that's being put into place is entirely consistent with the case law, the consistent case law about court-appointed counsel.

Ms. Sarauer: — Thank you. I just need one moment just to go through my notes, if I could have that indulgence. I suppose what I will take this opportunity to do is, because I've pretty much gone through the questions that I had, is just to go through a few of the concerns. I've already expressed many of the concerns that have been indicated to me by members of the bar, be it individuals who assist unrepresented litigants, or individuals who are currently doing court-appointed counsel work, or individuals who are just simply members of the bar with respect to this.

And there were some concerns, as I've already indicated, about the removal of choice of counsel, and some concerns about how the court-appointed list would be maintained, and quite a few concerns as well about who would qualify for a court appointment. But I understand now that the plan for that is to not be changed in any way.

There has also been some concerns with respect to the level of consultation that's gone on with respect to these changes because they are quite significant changes. And they will affect not only . . . And in no way am I trying to make light of the hard work that I know you've all done, but my job is to, of course as opposition, is to make sure that members of the public's voices are heard when we're talking about these bills. So please don't take this any other way.

When we're talking about, in particular, unrepresented litigants and individuals who are, when they are looking for court-appointed counsel — be it because of a serious criminal matter or because their children have been taken away in child apprehension proceedings — are usually going through a fairly traumatic experience. So although, as I've said, the process as it stands right now is quite confusing and difficult to navigate, the bright side about it is the ability to choose your counsel also gives you an individual, an advocate, in terms of helping you through the system.

In terms of getting that court appointment, with these changes, the individual will now have to go through that application process themselves, with what I think and what other members of the bar think are quite an onerous service provision. For example, there's several individuals that are supposed to be served. And then some concern, of course, from the bar when the removal of choice of counsel, as it stands as well.

I understand that . . . I spoke, and he gave me permission to use his name, but I spoke with Jeff Deagle, who is president of the Saskatchewan Trial Lawyers Association, and is also, as you probably well know, an active individual on the court-appointed counsel roster list in Regina doing very serious criminal law matters. So he has quite a level of understanding of how this process works, has indicated that his members have quite a lot of concerns about these changes in this bill. And he asked me to pass this along to the minister and the members of the committee that they are scheduled to discuss Bill 4 at their next board meeting. Unfortunately that's December 9th, at which point they will likely come up with an actual statement from the STLA on their position with respect to the bill.

So with that, I understand that I'm only one vote here, so likely the bill will go through this portion. But my intention is to table two amendments to clause 9, both of which I have provided to members of the committee as well as the minister. And I'm happy to discuss them or . . . and I'll table them when it's appropriate, and forgive me if I get that wrong, but I'll table that later. And I just want to indicate that the two amendments that I'm proposing will address some of the concerns that have been expressed to me by members of the community, but not all of the concerns.

The first one, maybe I should have it in front of me. The first one amends clause 9 and subsection 15.3(3) of the Act. It essentially just changes the service provision to require the administrator to do the serving on the four parties. I understand that now, after having this discussion, that the intention is that in the regulations there'll be some consultation as to how this procedure will work in a way that's going to be as, I hope, easy for an applicant as possible to be able to follow.

I know from past practice that service of individuals is a very confusing process for unrepresented litigants. And that's who we're talking about right now because they wouldn't be represented at the time they're making these applications. It's difficult for an individual to know, for example, how to serve the chief executive officer of Saskatchewan Legal Aid, if they just go to their office or if they have to get the specific person. Things that are kind of common practice to lawyers, that we sort of take for granted, are not common practice to people who've never used the justice system before.

So my intention here was to not change it in any way. I understand why these individuals should be served; they absolutely should be served. But I thought that the process would be made easier if it was the administrator's job to actually effect the service instead of the unrepresented litigant, who perhaps is struggling with serious criminal charges or having their children taken away and maybe are trying to figure out how to comply with a section 9 agreement, for example, to also have to serve all of these multiple parties. So simply my intention with respect to that amendment is to try and make that a little bit easier and more convenient for the individual.

The other one that I . . . The second amendment that I intend on tabling when it's appropriate is again amending clause 9. And it's clause 15.4(1)(b), which is allowing for . . . And I'm now, after our discussions, I'm pretty skeptical about whether or not this one will go through, but it's changing or it's essentially . . . I suppose it's codifying what has been common practice here in Saskatchewan and what those who are doing this very important court-appointed counsel work in the province wish to remain standard practice.

Essentially what it changes is that instead of the administrator picking the individual from the list, the lawyer from the list, the administrator would provide the list to the individual, to the applicant, who would then pick from the list who they would like to have represent them. And alternatively, if the applicant has no desire or no preference as to who would represent them, then the administrator would choose from the list who would then be the lawyer.

So I apologize for the notice that I've given. Unfortunately I think the ministry gets a little bit more time with bills than the opposition, but I hope those are clarifications. There's no intention for trying to undermine the hard work that I know the ministry has done with respect to this bill. I'm simply attempting to highlight some of the concerns that I've heard about the Act and try and make the process, I suppose, a little bit easier, both for the administrator, I suppose, as well as the applicant, more so for the applicant because that's who we're all working for in the justice system, is the members of the public that have to use our justice system, but as well as for the lawyers who work within the justice system.

With that, I think that concludes my remarks and questions. Mostly questions.

The Chair: — Do you have some remarks on the amendment?

[15:15]

Hon. Mr. Wyant: — Well perhaps . . . I'm not sure what the process is here, Mr. Chair, because I know that the member is going to want to get her amendments on the record officially as we go through the bill, and I can reserve my comments then.

The Chair: — Well I'd just as soon you make them now. The proper time is when we hit that clause, the member will move her amendments then. They will be put on the record and then we vote. So I'd just as soon that the comments be made now before we get into it because then it just . . . We'll be into the voting.

Hon. Mr. Wyant: — Sure. Okay, well thanks very much, Mr. Chair. And I appreciate the comments that the member has made with respect to the suggestions that she has on the amendments. I think the comments that were made during the dialogue that we went back and forth . . . First of all I want to thank you for the compliment that you paid to the ministry staff. They have done a great job, and they continue to do that with respect to all the work that they perform for our office.

As far as the notice provision is concerned, I think that Darcy was pretty clear, Mr. McGovern was pretty clear in terms of the flexibility and in terms of engaging the bar and the criminal defence bar with respect to how that's all going to work. So we wouldn't be supportive of that particular amendment simply because of the fact that there will be some ongoing dialogue with the bar as we move forward and to try to create as much flexibility as we can to ensure that people aren't inconvenienced by the process in terms of the service.

With regard to the request that the applicant be allowed to pick from the list, again I think that the comments that the officials have made with respect to that particular point were pretty clear, and we wouldn't support the amendment. It really takes away from the goal, one of the goals of the legislation to create a consistent approach. And again, it wasn't our intention to kind of entrench a right to choose. We don't think that's going in a particularly good direction, especially given the fact that we want to move forward with creating a comprehensive framework for court-appointed counsel.

So I think for those reasons we're certainly willing to listen to members of the bar. They can reach out to us any time. We haven't got any direct comments from anyone in the bar, and I appreciate that you've gone out and done some work on your own. We haven't had any comments that have come directly to our office on any of these matters, but again, we will be doing some consultation with the bar in terms of the notice provisions. But again, I just think that from a consistent perspective and not wanting to entrench a right to counsel in the legislation, that it would be a mistake to be able to allow people to choose from the list. So with those comments, Mr. Chair . . .

The Chair: — Do you have any more questions? Seeing no questions, we will vote on Bill No. 4, *The Queen's Bench Amendment Act*. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 8 inclusive agreed to.]

Clause 9

The Chair: — Clause 9. I recognize Ms. Sarauer.

Ms. Sarauer: — Thank you. I'd like to move two motions . . .

The Chair: — Sorry, you can just move one amendment at a time.

Ms. Sarauer: — Sure. I'll move the first amendment then. Should I read the whole thing into record? Okay. I'll move a motion to amend clause 9 to read:

> Subsection 15.3(3) of The Queen's Bench Act as being enacted by Clause 9 of the printed Bill is struck out and the following substituted:
>
> (3) Subject to subsections (4) and (5), at least 14 days before the hearing of an application made pursuant to this section, notice of the application must be served on the administrator who shall:
>
> (a) serve notice of the application on:
>
> (i) the chief executive officer of the Saskatchewan Legal Aid Commission;
>
> (ii) the Attorney General of Canada, in the case of a prosecution brought by the Attorney of Canada;
>
> (iii) the Attorney General for Saskatchewan; and
>
> (iv) and prescribed person; and
>
> (b) provide each proof of service to the applicant who is responsible to file with the court evidence of service of the application upon the persons listed in subclauses 15.3(3)(a)(i) through 15.3(3)(a)(iv).

Thank you.

The Chair: — Before we vote on the amendment, will the members take the amendment as read?

Some Hon. Members: — Yes.

The Chair: — We will now vote on the amendment. Is the amendment agreed to?

An Hon. Member: — Agreed.

Some Hon. Members: — No.

The Chair: — I believe the nos have it, so the amendment is defeated. Is there another amendment with . . . Okay, I'll let you read it into the record.

Ms. Sarauer: — Thank you. I'd like to move the second amendment. This amendment to Clause 9:

> Clause 15.4(1)(b) of The Queen's Bench Act as being enacted by Clause 9 of the printed Bill is struck out and the following substituted:
>
> "(b) the administrator shall:
>
> (i) provide the applicant with the list of lawyers mentioned in subclause 15.4(3)(a)(i);
>
> (ii) appoint the lawyer the applicant selects from the list to represent the applicant for the purpose of the matter;
>
> (iii) if the applicant does not select a lawyer, appoint a lawyer from the list.

The Chair: — Before we vote on the amendment, will the members take this amendment as read?

Some Hon. Members: — Yes.

The Chair: — Is the amendment agreed to?

An Hon. Member: — Yes.

Some Hon. Members: — No.

The Chair: — I believe the nos have it. The amendment is defeated. Seeing no other amendments, we then vote on clause 9. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 9 agreed to.]

[Clause 10 agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Queen's Bench Amendment Act, 2016*. This is a bilingual bill.

I would ask a member to move that we report Bill No. 4, *The Queen's Bench Amendment Act, 2016*. This is a bilingual bill without amendment. Ms. Nancy Heppner. Is that agreed to?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 5 — *The Electronic Information and Documents Amendment Act, 2016*

Clause 1

The Chair: — I believe the next bill before this committee is Bill No. 5, *The Electronic Information and Documents Act*, 2016. I'll ask the minister, if he has different officials, to introduce them to make opening remarks.

Hon. Mr. Wyant: — Thanks very much, Mr. Chair. Again to my right, Darcy McGovern Q.C., director of legislative services; and to my left, Catherine Benning who's the director of the office of the public registry administration.

So, Mr. Chair, I'm pleased to offer opening remarks concerning Bill 5, *The Electronic Information and Documents Amendment Act, 2016*. This Act provides for the legal recognition of documents in electronic format where legislation asks for documents to be provided in writing. This Act has facilitated the legal translation of paper to electronic documents in the private and public sectors without requiring each individual Act or regulation to be amended to allow for electronic documents. The Act does however exempt certain documents, such as wills and health care directives, so that the paper-only requirements are not overridden by the Act.

Following a request from real estate and credit union communities, it's recommended the Act be amended to remove the existing exemption from the application of the Act for documents that create or transfer interests in land and that require registration to be effective against third parties. The exemption provision was originally intended to protect the registry system from land transactions occurring without adequate evidence and proper registration. Mr. Chair, the modern electronic registry process has removed that concern and overrides this Act by specifically prescribing the electronic registration requirements for the land registry. So with that, Mr. Chair, we're pleased to answer any questions.

The Chair: — Ms. Sarauer.

Ms. Sarauer: — Thank you, and I'd like to thank the minister for his opening comments. Just to clarify, but this, *The Electronic Information and Documents Act* is superseded by another Act, so are the changes to this are simply just acknowledging the fact that the superseding Act is . . . Is it to reflect that superseding Act? Apologies if this question didn't make any sense.

Mr. McGovern: — No, I understand what you're saying. Subsection 5(1) of *The Electronic Information and Documents Act* provides for a clause that says if there's specific legislation on a specific topic that deals with electronic information, it trumps — that word's a little tricky now — it takes precedence over this general legislation.

And this is very successful general legislation. The Uniform Law Conference of Canada recommended electronic commerce legislation which is . . . It takes this form so that we didn't have to, as times changed, try and catch up with the new electronic changes every time. And it's been very successful in that way.

In fact when it was first put in, it was considered terrifying to think that members of the public could make an application to government electronically with their Tandy 64, and how could that possibly work? But the flexibility in the Act has actually accommodated a lot of that work, both with electronic signatures and what we call PIN [personal identification number] numbers now and in this regard.

Initially with respect to land transactions, there was concern whether or not that could be accommodated electronically. *The Land Titles Act* was changed and we went with an automatic registry. As you know, in Saskatchewan we have a Torrens system. So we have a fully electronic Torrens system process here. And what that means is that the documents to effect registration, which was the wording, those all occur through ISC [Information Services Corporation of Saskatchewan] under *The Land Titles Act*. So in our view, it has completely supplanted that reference in this Act. We have now been asked to take that reference in this Act out to avoid any concern or chill effect with individuals who may want to complete their agreement for sale or mortgage electronically. We think they've always been able to do that since *The Land Titles Act*, but this will clarify that.

Ms. Sarauer: — Thank you for that answer. So was there, has there sort of been a chill with respect to whether or not this has been allowed? Or is this already standard practice in Saskatchewan?

Ms. Benning: — For a number of years, the mortgage lenders as well as lawyers were concerned that agreements for sale and mortgages could not be done electronically. And there's been sort of a back and forth with the ministry on this issue even though, from a perspective of somebody who's been involved in the registries for a long time, we were unconcerned about the practice that was happening outside of the registry because the concern for the registry is for the documents that actually come in to us, and because agreements for sale and mortgages are not required to be submitted to the registry, that we have always believed that the provisions of this Act apply to mortgages and agreements for sale. But there was reluctance from the bar and from realtors particularly, and lenders, to undertake electronic documents for fear that this provision as it exists currently didn't allow them to do that. So there was a concern and that's true.

Mr. McGovern: — A lot of that migrated from Ontario where they don't have a Torrens system and they don't have a similar system, so they do actually file documents that we wouldn't file. And so I think financial institutions and lawyers, being who they are, when they talk to other people they bump into this Ontario issue. And so despite our explanations, we thought this was the best process to ensure that there was no concern.

Ms. Sarauer: — Thank you so much. And I understand that this has come at the request of several different stakeholders. Are all stakeholders ready for this change?

Mr. McGovern: — No, and of course for most people there is no change. It's just going to happen for SaskCentral on behalf of the credit union system, chamber of commerce, and for the real estate sector. They'll welcome this as confirmation that their practice has proceeded. I spoke to this at the mid-winter bar meeting, and just had a lot of nodding heads agreeing that that's the way it should be. So I think we're fairly confident where we're going in that regard.

Ms. Sarauer: — Thank you. I have no further questions about this bill.

[15:30]

The Chair: — No other questions? We will vote on Bill No. 5, *The Electronic Information and Documents Amendment Act, 2016*. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 10 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Electronic Information and Documents Amendment Act, 2016*.

I would ask a member to move that we report Bill No. 5, *The Electronic Information and Documents Amendment Act, 2016* without amendment. Mr. Docherty. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 6 — *The Statute Law Amendment Act, 2016*

Clause 1

The Chair: — With that we will move on to Bill No. 6, *The Statute Law Amendment Act, 2016*. I'll ask the minister to introduce his new officials, and if he has any opening remarks, make them now.

Hon. Mr. Wyant: — Thanks very much, Mr. Chair. To my left, Maria Markatos, senior Crown counsel from legislative services and to my right, Andrew Donovan, senior legislative Crown counsel from the legislative drafting branch.

I'm pleased to offer some brief opening remarks with respect to Bill No. 6, *The Statute Law Amendment Act, 2016*. Mr. Chair, this bill makes amendments to 24 Acts to modernize outdated language, clarify wording, and correct grammatical and reference errors. There's no changes in substance to any of the Acts amended as these changes are corrective and editorial. Periodically the government reviews legislation to correct for these types of things, and this is one of those pieces.

This bill amends 17 Acts to update terminology that has changed as time passes. For example, "provincial magistrate" is replaced in favour of "provincial judge," "substitutional service" with "substituted service," and "ex parte" with "application without notice." The bill also repeals and replaces words that have a variety of spellings in favour of one standard spelling.

The amendments to subsection 8(4) of *The Statutes and Regulations Revision Act* is aimed at clarifying that revised Acts that are not part of a general revision are to be published in the annual bound volume of Acts enacted in the year in which the revised Act is deposited with the Clerk of the Legislative Assembly.

The current wording of the subsection refers to Acts enacted in the session. While that phrase would be interpreted as including a reference to the annual bound volume, we believe that the clause should be approved by directly referring to the annual volume. So there's no change in substance or intent.

So with that, Mr. Chair, happy to answer any questions with respect to Bill 6.

The Chair: — Ms. Sarauer.

Ms. Sarauer: — Thank you, and thank you to the minister for his comments. I understand this bill is making fairly inconsequential changes. I am curious to know, however, how these changes were discovered.

Hon. Mr. Wyant: — Well I'll make an opening comment and either Andrew or Maria will . . . As we go through particular pieces of legislation, as they come up for discussion within the ministry and these things are noticed, that's when we kind of develop a list. You may know that the statutes haven't had a full revision since 1978, and so this the way . . . And that's a very costly process to go through, a general revision of the legislation, and so this is the way we do it. As a critical mass of changes kind of come forward, we bring a piece of legislation to the House.

Mr. Donovan: — Just to add to what the minister says, that's correct. What we might consider one-off, catching a grammatical error, an incorrect section reference, those can be brought to our attention by the affected ministry. Sometimes we discover them internally between legislative services and legislative drafting. We've also, again in consultation with legislative services, sort of picked and chosen some what we call global changes. I can't say there's any sort of formal process. Sometimes it depends on our resources, but to just pick out a word or a term that has become outdated and try to do a full-scale what we call scrub of the legislation. And in this case, as the minister suggested, we just chose "provincial magistrate" and the use of the phrase "substitutional service" which is, again, out of date.

Ms. Sarauer: — I have no further questions.

The Chair: — Seeing no further questions, we will vote on Bill No. 6, *The Statute Law Amendment Act, 2016*. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 26 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Statute Law Amendment Act, 2016*.

I would ask a member to move that we report Bill No. 6, *The Statute Law Amendment Act, 2016* without amendment. Mr. Fiaz. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 7 — *The Statute Law Amendment Act, 2016 (No. 2)* / *Loi n^{o} 2 de 2016 modifiant le droit législatif*

Clause 1

The Chair: — Okay. Next bill before the committee is Bill No. 7, *The Statute Law Amendment Act, 2016* . . . Oh, sorry. Bill No. 7, *The Statute Law Amendment Act, 2016 (No. 2)*.

Hon. Mr. Wyant: — Thanks, Mr. Chair. Again Maria Markatos to my left and Andrew Donovan to my right. So I'm pleased to offer a couple of comments with respect to this one, a little less than the last one.

So this just amends the three bilingual Acts to make the amendments that are consistent with those made in the English Acts in the piece of legislation that we just considered. So again they'll just modernize outdated language and correct those references. So with that, Mr. Chair, happy to answer any questions.

The Chair: — Seeing no questions, we will vote on Bill No. 7, *The Statute Law Amendment Act, 2016 (No. 2)*. Clause 1, short title, is that agreed to?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 5 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Statute Law Amendment Act, 2016 (No. 2).*

I would ask a member to move that we report Bill No. 7, *The Statute Law Amendment Act, 2016 (No. 2)*, a bilingual bill, without amendment. Mr. Steele so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 9 — *The Enforcement of Canadian Judgments Amendment Act, 2016/Loi modificative de 2016 sur l'exécution des jugements canadiens*

Clause 1

The Chair: — I believe the next bill before the committee is Bill No. 9, *The Enforcement of Canadian Judgments Amendment Act*. I'll ask the minister if he has new officials to introduce them, and if has any opening remarks, to make them now.

Hon. Mr. Wyant: — Thanks, Mr. Chair. Well, to my left, Jane Chapco, senior Crown counsel, legislative services, and to my

right, Darcy McGovern, Q.C.

Mr. Chair, I'll offer some opening remarks with respect to Bill 9, *The Enforcement of Canadian Judgments Amendment Act, 2016*. These amendments will confirm that Canadian tax judgments can be enforced by using the same registration procedures that are currently used for enforcement of other civil Canadian judgments under the Act.

The Uniform Law Conference has recommended these amendments in order to provide greater certainty with respect to the enforcement of Canadian tax judgments. The amendments reflect the decisions of the Supreme Court of Canada that confirm that courts in each province need to recognize tax judgments from other jurisdictions in the country.

Mr. Chair, the amendments add a definition of "Canadian tax judgment" to the Act. A Canadian tax judgment includes both the judgment for the recovery of money under a tax law and a certificate of an amount payable under a tax law that has been registered as a judgment in a court of a province or a territory. Before a judgment that was obtained without notice can be enforced against a judgment debtor, the Act requires that an application for directions respecting enforcement be made to the court. The amendment will add an exception to the requirement so that for Canadian tax judgments an application for direction respecting enforcement will only be required if specifically requested by one of the parties.

Mr. Chair, to make administration easier and to allow for the uniform and equitable enforcement of Canadian tax judgments, these amendments will apply to all Canadian tax judgments, whether they were issued before or after these amendments came into force. Saskatchewan will be the second province, in addition to Manitoba, to have implemented these changes. As more provinces and territories adopt these amendments, the enforcement of tax judgments throughout Canada will become more efficient.

So, Mr. Chair, with those opening remarks, I welcome any questions with respect to Bill 9.

The Chair: — Ms. Sarauer.

Ms. Sarauer: — Thank you. And thank you for the comments. I just have a few very minor questions with respect to this. I understand that this is being done as one of the recommendations under the Uniform Law Conference. Were there any other recommendations under the Uniform Law Conference that have yet to be made that are planning on being implemented in the future?

Ms. Chapco: — With respect to this particular piece of legislation, no. These amendments reflect the current position of the Uniform Law Conference on this issue.

Ms. Sarauer: — Just out of curiosity, what other, generally speaking, other recommendations have been made that the ministry's looking at implementing in the future? Not with respect to this bill, but . . .

Hon. Mr. Wyant: — From the Uniform Law Conference?

Ms. Sarauer: — Yes.

Hon. Mr. Wyant: — Well perhaps I'll let Mr. McGovern. He sits on the Uniform Law.

Ms. Sarauer: — Awesome.

[15:45]

Mr. McGovern: — Yes, I'm more than willing to do an advertisement for that organization. I'm a past president of the organization and a current delegate for Saskatchewan. And I think one of the important pieces of legislation that we've been able to promote through that organization is *The Enforcement of Canadian Judgments Act*.

I know you had mentioned that you have some background in judgment enforcement or in conflicts law, but this is very much a growth out of the Morguard decision. And the Morguard decision provided for full faith and credit between Canadian jurisdictions. Previously there was a reciprocity process. I'm a strong advocate that the reciprocity system has failed and shouldn't be how to go forward, particularly between Canadian jurisdictions. The Morguard decision constitutionalized full faith and credit between provinces for enforcement, and this is an extension of that to the tax law.

In terms of other projects that the Uniform Law Conference . . . Saskatchewan has a very good record in terms of implementation. The ability of military citizens who were outside the province or inside the province in the last election, their ability to vote in a special way was a reflection of a Uniform Law Conference proposal.

I'm currently sitting on a working group with respect to issues that surround how criminal record checks work as going forward legislation. So that's an organization I think we . . . Because of the representation across the country, Saskatchewan gets a great deal of benefit from that organization in terms of the research and the consultations that occur, and I think we provide a great deal of input into their choices as well. So I think it's served us well.

Ms. Sarauer: — Thank you for that information. I appreciate it. I understand that this change will mean we're one of the first jurisdictions . . . We're one of the first jurisdictions to implement this change? Are there any concerns about, I suppose, being trailblazers in this area?

Hon. Mr. Wyant: — Well we're the second, and Manitoba has joined us as well. But given the fact that the Supreme Court has already ruled on this, the legislation is just simply reflecting the current status of the law. And so that's why I know that when we were in the House, you talked about the retroactivity of that, but it's really just simply recognizing the law. And I know you understand that.

Ms. Sarauer: — This is the bill that's being made retroactive or am I . . . Or is it a different one?

Hon. Mr. Wyant: — It's just simply recognizing the fact that the Supreme Court's made a decision with respect to the enforceability of these tax judgments across the country, so it

applies to existing tax judgments as it would . . . as a result of the decision of the court.

Ms. Sarauer: — No, I understand that, and I understand that it is the ability to put retroactivity into this legislation. So I have no issue with it. I just wanted to make sure I finally got the right one.

Mr. McGovern: — And just for the record because it kills public law lawyers like us . . . [inaudible] . . . as to what actually is retroactivity, and this isn't it. You know, this is a recognition with respect to existing rights that the new procedure will apply. And *The Interpretation Act* provides for that.

So retroactivity, as you know, is a special legal right, and we're not claiming that's what happens here. We're just saying that this new process will apply to existing judgments that are out there.

Ms. Sarauer: — So is this codifying an already existing process, or is this a brand new process?

Mr. McGovern: — As you recall from conflicts legislation generally, your conflicts class, one of the exceptions to comity between — c-o-m-i-t-y — comity internationally and nationally had been with respect to revenue judgments. And it's the same with penalties.

And you recall with respect to personal, some of the personal judgments where internationally they say, we're willing to recognize your judgments generally but here's some exceptions. And tax was always one of them, that there was less trust between nations, for example, to say, well we don't know if your tax system, you know, reflects ours or is fair, so we're not going to enforce that from XYZ country here. Now with the decision that Jane had mentioned, this is saying, in Canada we have similar systems. We can extend full faith in credit with confidence to the tax judgments. The case law suggests we should. This provides for a process to do so, similar to the process we would enforce a judgment for money.

Ms. Sarauer: — Great. Thanks. No further questions.

The Chair: — Seeing no further questions, we will vote on Bill No. 9, *The Enforcement of Canadian Judgments Amendment Act, 2016*. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 6 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Enforcement of Canadian Judgments Amendment Act, 2016.*

This is a bilingual bill. I would ask a member to report, to move that we report Bill No. 9, *The Enforcement of Canadian Judgments Amendment Act, 2016*, a bilingual bill, without amendment. Mr. Olauson. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Being that we've gone through our agenda, I will ask the minister if he has any closing remarks for the committee.

Hon. Mr. Wyant: — Thanks very much, Mr. Chair. Just to say thanks to you for chairing the meeting today and to the committee members for their patience. Ms. Sarauer, thank you very much for your questions. I hope we have them answered to your satisfaction. And to all my officials that are here today, I thank them very much for all their support. And to Hansard for being here as well. So thank you very much.

The Chair: — Ms. Sarauer.

Ms. Sarauer: — I would again like to thank the minister for answering my questions and taking the time to allow me to ask them. And also to the officials who are still here, and thank you so much for indulging me in my questions. Some questions are more logical than others but I appreciate you indulging me in all of them. And please pass along my thank you to the officials who have been here throughout the afternoon.

The Chair: — I would ask a member to move that we adjourn.

Mr. Steele: — I'll do it.

The Chair: — Mr. Steele has moved that we do adjourn. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. This committee stands adjourned until November 28th at 3 p.m., considering that if the House shuts down.

[The committee adjourned at 15:53.]