



# **STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE**

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**STANDING COMMITTEE ON INTERGOVERNMENTAL  
AFFAIRS AND JUSTICE**

Mr. Fred Bradshaw, Chair  
Carrot River Valley

Mr. Buckley Belanger, Deputy Chair  
Athabasca

Mr. Ken Francis  
Kindersley

Mr. Hugh Nerlien  
Kelvington-Wadena

Mr. Eric Olauson  
Saskatoon University

Ms. Laura Ross  
Regina Rochdale

Mr. Corey Tochor  
Saskatoon Eastview

[The committee met at 19:00.]

**The Chair:** — Well good evening, everybody, and welcome to everybody watching on television to the exciting Committee of Intergovernmental Affairs. I am Fred Bradshaw, the Chair, and substituting for Buckley Belanger, we have Nicole Sarauer. We also have Mr. Francis, Mr. Nerlien, Mr. Olauson, Mr. Tochor, and substituting for Laura Ross, we have Nadine Wilson.

Pursuant to rule 148(1), the estimates for the following ministries and agencies were deemed referred to the committee on April 18th, 2018: vote 73, Corrections and Policing; vote 30, Government Relations; vote 91, 196, Integrated Justice Services; vote 3, Justice and Attorney General; vote 27, Parks, Culture and Sport; vote 88, Tourism Saskatchewan.

Pursuant to rule 148(1), the supplementary estimates — no. 2 for vote 3, Justice and Attorney General, were deemed referred to the committee on April the 10th, 2018.

This evening we will be considering five bills: Bill No. 95, *The Miscellaneous Statutes Repeal and Amendment Act, 2017*; Bill No. 97, *The Arbitration (Family Dispute Resolution) Amendment Act, 2017*; Bill No. 98, *The Miscellaneous Statutes (Family Dispute Resolution) Amendment Act, 2017*, a bilingual bill; Bill No. 104, *The Saskatchewan Human Rights Code, 2017*, a bilingual bill; Bill No. 105, *The Saskatchewan Human Rights Consequential Amendment Act, 2017*.

**Bill No. 95 — *The Miscellaneous Statutes Repeal and Amendment Act, 2017***

**Clause 1**

**The Chair:** — We will begin our consideration of Bill No. 95, *The Miscellaneous Statutes Repeal and Amendment Act, 2017*, clause 1 short title. Minister Morgan, would you please introduce your officials and make your opening comments.

**Hon. Mr. Morgan:** — Thank you, Mr. Chair. I am joined tonight by Neil Karkut, Crown counsel, legislative services branch, Ministry of Justice; Darcy McGovern, director, legislative services branch, Ministry of Justice. I have two staff members here as well. Clinton Fox my chief of staff and Molly Waldman who is one of our senior MAs [ministerial assistant], who spent budget day shadowing the critic who is here today and who was exceptionally polite to recognize that she was being shadowed. But I think it's more important that it's Wallace's 23rd birthday today, so I hope people wish her a happy birthday.

I will now offer some opening remarks concerning Bill 95, *The Miscellaneous Statutes Repeal and Amendment Act, 2017*. Mr. Chair, this bill will repeal outdated and obsolete legislation including older Acts that are no longer relevant, Acts or portions of Acts that were passed but never proclaimed in force, and amending Acts that were never proclaimed in force which amend provisions of repealed legislation.

Repealing this legislation will eliminate confusion and help maintain provincial laws that are up to date. Due to the housekeeping nature of this bill, the proposed changes will have no other substantive impacts.

Mr. Chair, with those opening remarks, I would welcome questions with respect to Bill 95, *The Miscellaneous Statutes Repeal and Amendment Act, 2017*.

**The Chair:** — Thank you, Minister. Are there any questions? Ms. Sarauer.

**Ms. Sarauer:** — Thank you, Minister Morgan, for your opening remarks. Understanding based on my reading of the bill and what you've also just said, this is largely a housekeeping piece of legislation. I just want confirmation that all of these provisions, Acts, sections that are being repealed in this bill are no longer being utilized for whatever reason.

**Hon. Mr. Morgan:** — The list was prepared by the officials and I will let the officials give you a better confirmation of that. You probably have a list of them from looking at the legislation and probably recognize that most of them have not been used for some decades. But anyway, I'll . . .

**Mr. Karkut:** — Yes, we can confirm that none of the provisions are being used anymore. We consulted with other ministries to ensure that the pieces of legislation they've identified have no longer been in use, and in some cases, they'd been approved for repeal for upwards of a decade.

**Ms. Sarauer:** — Thank you for that. Is there any reason why, for some of these pieces of the bill, that it has taken upwards of a decade to finally repeal them?

**Mr. Karkut:** — Unlike a regular statute law amendment bill that you see come forward on a yearly basis, repeal Acts are a little bit more rare. And in some instances you have some of the bills that might just get a little bit lost in the mix or just kind of there's some oversight with that. So when we do bring forward a repeal Act, it gives a chance for the different ministries to review that and identify pieces. So that's why some of them, I guess, sit in line for a little while but eventually get identified.

**Hon. Mr. Morgan:** — We've never, for a long period of time, done a thorough overhaul and update of the statutes. It was done in 1965 and in 1978 and hasn't been done since, where you've got a . . . Even so the, I think, officials just use this as a time to do a general update. And we may not have to go through that formal process again.

**Ms. Sarauer:** — Great. I noticed and I wanted to ask a question about section 5 of the bill specifically, which repeals a clause in *The Enforcement of Money Judgments Act*. And from what I understand — and you can correct me if I'm wrong — this clause was never proclaimed to begin with. Can you explain just a little bit the history of that clause and why that was never proclaimed?

**Mr. McGovern:** — Yes. The homestead provision, which the member will be aware is generally addressed in *The Saskatchewan Farm Security Act*, at the time that *The Exemptions Act* was also in force at the same time, it included a reference to homestead.

When we were bringing in the new money judgments piece, the consultation had led us to believe that there was no need for this

to be carried forward from *The Exemptions Act* like some of the other provisions. However out of abundance of caution, we brought it forward because we were . . . it was difficult to be 100 per cent sure. And so now, in the period of time since that clause has come into effect, we've been able to confirm no one has come forward suggesting that they're in some sort of a unique or historical or awkward circumstance where this would still be relevant. And accordingly we're at this point able to say not only will we not proclaim it, but we can repeal it from the books.

**Ms. Sarauer:** — Section 7 of the bill is repealing section 53 of *The Forest Resource Management Amendment Act* which I understand is therefore repealing a public disclosure section. Can you explain why that's being repealed?

**Mr. Karkut:** — So when that bill was originally moving forward, there was a decision made to vote against that section at the committee stage and prior to third reading. However the section was mistakenly passed; so it wasn't intentional. So in order to address this the section was never proclaimed in force and just sat unproclaimed. So this is just cleaning up that section and removing it from that Act as originally intended.

**Ms. Sarauer:** — I'm shocked to hear that legislators made that sort of an error. Thank you for letting me know about that, Mr. Karkut. I have no further questions about this bill.

**The Chair:** — Are there any more questions from the committee? Okay, we will begin then. Clause 1, short title, is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 25 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Miscellaneous Statutes Repeal and Amendment Act, 2017*.

I would ask a member to move that we report Bill No. 95, *The Miscellaneous Statutes Repeal and Amendment Act, 2017*, without amendment. Mr. Francis so moves. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

**Bill No. 97 — *The Arbitration (Family Dispute Resolution) Amendment Act, 2017***

**Clause 1**

**The Chair:** — We will now be considering Bill No. 97, *The Arbitration (Family Dispute Resolution) Amendment Act, 2017*. We will begin our consideration of clause 1, short title. Mr. Morgan, do you have any opening comments on this?

**Hon. Mr. Morgan:** — Thank you, Mr. Chair. Both this bill and the next one deal with arbitration and dispute resolution. I'm joined now by Maria Markatos, senior Crown counsel, legislative services branch. I'm pleased to be able to offer opening remarks concerning Bill 97, *The Arbitration (Family Dispute Resolution) Amendment Act, 2017*.

Mr. Chair, this bill accompanies Bill 98, *The Miscellaneous Statutes (Family Dispute Resolution) Amendment Act, 2017* to make amendments to *The Arbitration Act, 1992*, which is an English Act. The bill creates new provisions to establish a framework for the use of arbitration in family disputes. The bill will define "family arbitrator" to ensure individuals who are acting as an arbitrator in a family dispute meet the prescribed requirements and qualifications. The bill will also provide how an arbitrated award may be varied or updated where there's been a change in circumstances. Where the new provisions do not specifically address an issue, the general arbitrations provisions will apply.

Mr. Chair, with these opening remarks I welcome your questions regarding Bill No. 97, *The Arbitration (Family Dispute Resolution) Amendment Act, 2017*.

**The Chair:** — Are there any questions from the committee? Ms. Sarauer.

**Ms. Sarauer:** — Thank you. Could you start by explaining why there was a need to create a separate definition for "family arbitrator"?

**Ms. Markatos:** — Thank you. As the minister mentioned, this bill together with the next bill, Bill 98, bring forward amendments to create new streams for the resolution of family disputes. And we looked at the best way to ensure that people who were acting as arbitrators had the necessary qualifications to deal with family law matters. So the decision was made to define "family arbitrator," and it will mean a person who is recognized by the minister as meeting the requirements prescribed. So the necessary requirements will be in the regulations and then we will have a list of people who meet those requirements.

**Ms. Sarauer:** — Thank you for that. Bearing in mind that as you had said there's some overlap between this bill and the next bill, and I think the next bill is the one that talks a little bit more about the parenting coordinator and the mediation changes that are being made, so I'm going to try and keep my questions focused on the arbitration side. But forgive me if I overlap.

Could you talk a little bit about that stream, the arbitration stream that's being created, and why the ministry decided to create that stream?

**Ms. Markatos:** — Well court is the obvious stream for a resolution of a family dispute that the average person would think of, but it's not the only option that's available. And *The Arbitration Act* presently doesn't prohibit a family law matter from being arbitrated but it also doesn't include specific provisions that deal with family law disputes. So the amendments add the concept of a family arbitrator. It also defines "family dispute," specifically references part of *The Children's Law Act*, and it excludes child protection hearings,

*The Family Maintenance Act*, family property Act, divorce Act matters. So that will give parties who are interested in resolving their dispute through arbitration to take that route.

[19:15]

Some of the other provisions that are specific to family law disputes: 32 addresses the concern that someone attempts to make an arbitration award that's inconsistent, for example, with the tenets of a particular religion but not family law legislation. So those types of provisions are being added into the Act. Or the amendment to section 46 adds a new subsection that would address a variation application. So probably in a normal arbitration, an award would be granted that could be appealed but wouldn't go back to the same level of arbitrator to get a new decision. This would allow, if there is a change in material circumstances, for a new arbitration to proceed.

**Ms. Sarauer:** — Thank you. Do you know if there have been family law issues that have been arbitrated prior to these changes?

**Ms. Markatos:** — I understand there have been a couple in Saskatchewan. It is more normal in other jurisdictions, but there has been interest from especially lawyers who are interested in pursuing this stream.

**Ms. Sarauer:** — Thank you. Now specifically section . . . There'll be new section 6.1 of *The Arbitration Act*, so section 6 of the bill, speaks to the fact that, except for what's provided in subsection (2), you cannot arbitrate future issues. Can you speak a little bit to that? I'm just saying the section says, it has to deal with a “. . . dispute may be made only after the dispute to be arbitrated has arisen.” So an issue's already occurred and then someone's trying to rectify the problem. For the knowledge of the committee, can you explain a little bit about what that is saying?

**Ms. Markatos:** — So future subsection (6.2)(1) talks about an agreement under, as defined in *The Children's Law Act*, family maintenance Act, family property Act, which would be an agreement entered into between the parties for access and custody or maintenance or a property division. So they could in that agreement say any future dispute will be through arbitration.

**Ms. Sarauer:** — That leads into my next question. So typically parties will agree to arbitration which means that this stream would be voluntary. Is that correct?

**Ms. Markatos:** — Yes, that's correct.

**Ms. Sarauer:** — Thank you. Now I understand that the qualifications for an arbitrator, for a family arbitrator, are as yet to be laid out in the regulations. I'm curious to know a bit more about the certification process. Will there be somebody within the ministry regulating these arbitrators?

**Ms. Markatos:** — There will be qualifications set out in the regulations. So for example, BC [British Columbia], in their regulations, set out the qualifications for a family arbitrator. It could be a lawyer or someone who has met certain hours of training. And then I think the intention would be that a list

would be maintained. So someone would say, I meet these qualifications. But there wouldn't be training provided by the ministry.

**Ms. Sarauer:** — So will someone within the ministry be tasked with maintaining that list and ensuring that that list stays up to date?

**Ms. Markatos:** — It would be similar to a roster process where they could contact . . . someone who's interested in engaging the services of an arbitrator could contact someone at the ministry, and they would have a list of people who are qualified or who meet the qualifications.

**Ms. Sarauer:** — Okay. And then again, so that individual who that person would be contacting within the ministry will be tasked with maintaining and updating that list and ensuring that those folks within the list . . . For example, if that person is not a lawyer but has said that they've done the certified amount of hours and should . . . I'm assuming there will be potentially requirements in the regulations for them to maintain perhaps annual amount of training to be able to keep themselves up to speed. Will there be a person within the ministry whose job will be to ensure that that list is up to date and maintained?

**Ms. Markatos:** — I expect so.

**Ms. Sarauer:** — Thank you. Is that list going to be similar to, for example, the list for a court-appointed counsel? Will it be someone within court services who will be maintaining that list?

**Ms. Markatos:** — We haven't worked out where the list will be housed yet.

**Ms. Sarauer:** — I do have an idea of what sort of demand there will be for individuals to certify themselves, so to speak, as family arbitrators and add to that list. Has that work already started?

**Ms. Markatos:** — We consulted on the proposed amendments in this bill and the other bill, and through that process there was some interest from individuals: how will this happen, how soon will this happen, what do I need to do.

**Ms. Sarauer:** — Since you've referenced it, the consultation, can you tell us who you have consulted with, with respect to this change and I'm guessing Bill 98 as well. They will probably overlap.

**Ms. Markatos:** — We consulted on the proposed provisions in both bills together and a consultation document was circulated broadly in July 2017 to lawyers and ADR [alternative dispute resolution] service providers. So for example, CLASSIC [Community Legal Assistance Services for Saskatoon Inner City Inc.] collaborative professionals, the CBA [Canadian Bar Association], Pro Bono Law Saskatchewan, the Saskatchewan Trial Lawyers Association, and Conflict Resolution Saskatchewan. And it was also on the government website.

**Ms. Sarauer:** — How many responses did you receive to that consultation?

**Ms. Markatos:** — About a dozen.

[Clauses 2 to 12 inclusive agreed to.]

**Ms. Sarauer:** — Is that consultation document, is that publicly available?

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Arbitration (Family Dispute Resolution) Amendment Act, 2017*.

**Ms. Markatos:** — It's currently online on the government website.

I would ask a member to move that we report Bill No. 97, *The Arbitration (Family Dispute Resolution) Amendment Act, 2017* without amendment. Mr. Tochor moves. Is that agreed?

**Ms. Sarauer:** — Currently on the government website?

**Some Hon. Members:** — Agreed.

**A Member:** — Yes.

**The Chair:** — Carried.

**Ms. Sarauer:** — Okay.

**Bill No. 98 — *The Miscellaneous Statutes (Family Dispute Resolution) Amendment Act, 2017/Loi modificative diverse (résolution des conflits familiaux) de 2017***

**Hon. Mr. Morgan:** — I think we, over a period of time, have gradually moved away from litigation towards alternate methods of resolution on family law. We had a large uptake on mediated settlements. And, you know, that mediation takes place at a variety of different stages, right up to the pretrial conference. And I think the purpose of this is to create another option for members of the public where they would have an arbitrated solution, where they agree to the arbitrated process so they would have a binding resolution coming out of it. And I think that was an outflow of discussions that had come from other jurisdictions and from the legal community.

**Clause 1**

**The Chair:** — We will now be considering Bill No. 98, *The Miscellaneous Statutes (Family Dispute Resolution) Amendment Act, 2017*, a bilingual bill. We will begin our consideration of clause 1, short title. Minister Morgan, do you have any opening comments?

**Ms. Sarauer:** — Absolutely, and I recognize that is also a voluntary stream. It's some of the more involuntary provisions that we'll talk about in the other bill that I'm going to want to ask a few more questions about. I just have a few more questions about this bill.

**Hon. Mr. Morgan:** — Yes, Mr. Chair. I'm joined by the same officials. I'm pleased to be able to offer opening remarks concerning Bill 98, *The Miscellaneous Statutes (Family Dispute Resolution) Amendment Act, 2017*. Mr. Chair, this bill amends several statutes to add provisions to recognize and promote early dispute resolution in family law disputes. The proposed amendments will amend *The Children's Law Act, 1997*; *The Family Maintenance Act, 1997*; and *The Family Property Act* to add provisions respecting the use of family mediators and family arbitrators to resolve disputes. Qualifications for each will be set out in the regulations.

I'm curious to know . . . and this is my ignorance about the fee structure for arbitrators. Does the ministry plan on regulating a fee structure for these family arbitrators?

*The Children's Law Act, 1997* is also amended to add reference to parenting coordinators. Parenting coordinators are trained individuals who can help parties navigate an existing order or agreement, but cannot change a court order. They are traditionally used in high-conflict relationships to help parties resolve issues incidental to existing orders, agreements that are outside the court setting. The minimum practice and training requirements for parenting coordinators will also be set out in the regulations.

**Ms. Markatos:** — Not at this time.

**Ms. Sarauer:** — And what is the timeline for implementation of this new stream?

Mr. Chair, the bill will amend *The Queen's Bench Act, 1998* to require parties to certain family law proceedings to try to resolve disputes before proceeding with the court process. Families with low-conflict disputes are more likely to reach a resolution outside the court process, and the Government of Saskatchewan is committed to encouraging and supporting early dispute resolution processes where appropriate. This new provision encourages parties to family disputes to attempt to resolve their disputes pre-pleading, using an early dispute resolution process. Where attempts to resolve pre-pleading did not occur, parties will be required to participate in an approved dispute resolution process immediately after the close of pleadings.

**Ms. Markatos:** — We're in the process of starting consultations on the regulations which will need to be in place, and then the Act will come into force on proclamation.

**Ms. Sarauer:** — Any idea of when those consultations may conclude?

**Ms. Markatos:** — I'm hopeful that we can begin consultations within the next three months. The response that we receive and how long it takes to prepare the regulations, I can't say.

**Ms. Sarauer:** — Thank you. I have no further questions.

**The Chair:** — Thank you. Are there any further questions from the committee? Okay, we will continue on then. Clause 1, short title, is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

[Clause 1 agreed to.]

The Government of Saskatchewan recognizes that requiring parties to participate in dispute resolution may not be appropriate in all circumstances. The new provision creates exceptions for parties . . . for participation on application to the court or another prescribed person.

Amendments are also made in an English-only bill to *The Arbitration Act, 1992* to add provisions respecting arbitration in family disputes.

Mr. Chair, with those opening remarks, I welcome your questions regarding Bill 98, *The Miscellaneous Statutes (Family Dispute Resolution) Amendment Act, 2017*.

**The Chair:** — Thank you, Minister. Are there any questions? Ms. Sarauer.

**Ms. Sarauer:** — Thank you. Let's start with the parenting coordinators stream first. Could you provide for the committee's reference an explanation of how that stream is going to work.

**Ms. Markatos:** — Parenting coordinator is a new position that will be defined in the Act. People who meet certain qualifications will be able to act as parenting coordinators. They cannot create orders respecting custody or access, but what they will do is assist parties who have an existing order or agreement in navigating that order.

**Ms. Sarauer:** — So when you say assistance, they are not able to issue an order that both parties aren't in agreement with?

[19:30]

**Ms. Markatos:** — They will be able to issue what we're calling a determination, and if the determination is filed with the court, it is enforceable as a court order. But the Act limits them to the types of determinations they can make. So they will be able to make . . . Say the parties have a dispute over the child's daily routine or the types of extracurricular activities they're participating in or pickup or drop-off, that type of thing that the court just doesn't want to see, that shouldn't be going back to court, parenting coordinators will be trained to deal with conflict and help the parties reach a resolution.

**Ms. Sarauer:** — What's the appeal process for a determination made by a parenting coordinator?

**Ms. Markatos:** — The court may set aside a determination if the parenting coordinator acted outside their authority or made an error of law or mixed fact and law.

**Ms. Sarauer:** — So that's an application made to Queen's Bench then?

**Ms. Markatos:** — Yes.

**Ms. Sarauer:** — Can parties be ordered to utilize a parenting coordinator or is that a voluntary stream for parties to enter into?

**Ms. Markatos:** — The court can order parties to use a parenting coordinator. BC has a similar provision and I

understand, looking at their jurisprudence, that it's used in high-conflict situations where the court recognizes that there might be an issue and that the parties might need some assistance.

**Ms. Sarauer:** — So this is . . . These provisions are mirroring BC legislation?

**Ms. Markatos:** — They are similar to BC, yes.

**Ms. Sarauer:** — Is there any other jurisdiction in Canada that has a similar stream?

**Ms. Markatos:** — Ontario and Alberta both have parenting coordinators. The Alberta system is less evolved than BC and Ontario. And in Ontario there aren't specific provisions that deal with parenting coordinators. They rely on their *Arbitration Act* and have more of a mediation, arbitration situation.

**Ms. Sarauer:** — Understanding that some of this is going to be laid out in the regulations, can you, to what extent is already decided, explain to us what the requirements may be for an individual to certify as a parenting coordinator?

**Ms. Markatos:** — We haven't started consultations on what the qualifications might be in Saskatchewan. I can tell you that in BC, parenting coordinator qualifications are along the following lines: a person must be a member in good standing of the Law Society, College of Psychologists, College of Social Workers, Association of Clinical Counsellors, Family Mediation Canada, Mediate BC Family Roster, the BC Parenting Coordinator Roster Society.

If they're a member of the Law Society, they have to meet requirements set out by the Law Society and their rules. And otherwise they have specific training requirements, so 10 years' experience in family-related practice, 40 hours of training in parenting coordination, 21 hours of family law training, 14 hours of family violence training, and then annual CPD [continuing professional development], and also insurance.

So I can't say for sure that that's the route that we would go, but it provides an example.

**Ms. Sarauer:** — Thank you. Will the fees for these parenting coordinators be paid out of the ministry, or are they going to have to be paid by the parties?

**Ms. Markatos:** — They will be paid by the parties.

**Ms. Sarauer:** — Is the ministry considering any considerations for individuals of limited means who may be ordered by the court to utilize this process?

**Ms. Markatos:** — At this time we'll have to consider that as part of the consultation.

**Ms. Sarauer:** — I would strongly urge the ministry to do that. Similar to the other stream we were just talking about in the other bill, will there be a roster of parenting coordinators that the parties can choose from, or does the court order a specific individual to be those parties' parenting coordinator?

**Ms. Markatos:** — The provisions in the bill as presented do not require the court to direct a specific parenting coordinator.

**Ms. Sarauer:** — Is there any consideration into what happens if the parties cannot decide on which parenting coordinator to choose from?

**Ms. Markatos:** — We'll have to consider that in the regulations.

**Ms. Sarauer:** — Thank you. Just making sure that a process that's intended to clear up the court system doesn't inadvertently create more litigation. So thank you for that. Similarly to the other stream we were just talking about, will there be someone within the ministry who is tasked with monitoring the list and ensuring that it's up to date?

**Ms. Markatos:** — Someone in the ministry will have to monitor the list, yes.

**Ms. Sarauer:** — Let's move on to the changes that are being made in this bill with respect to mediation. Now I am quite cognizant of, I guess it's section . . . the changes that are being made to *The Queen's Bench Act* which will be changes to section 44, 44.01 of *The Queen's Bench Act* in particular, which is calling for some mandatory mediation. And I want to talk about that for a while, but I want to just make sure that I'm not missing anything else in this legislation. So have there been any other changes to the process to this bill that I'm missing, other than this change around mandatory mediation in this particular provision, that I haven't already asked you about?

**Ms. Markatos:** — I don't believe so.

**Ms. Sarauer:** — Okay, let's talk about this a bit. Now can you explain for the committee's understanding this change that's being made.

**Ms. Markatos:** — A new section 44.01 will define "family dispute resolution" and "family mediator," and will require parties who are going through the court process in a family matter to participate in mandatory family dispute resolution. So the member mentioned mandatory mediation, but it's not just mediation. So the parties could participate in arbitration, or have participated or attempted to participate in arbitration, mediation, the services of a parenting coordinator, other collaborative law services, and then anything else that's prescribed in the regulations.

**Ms. Sarauer:** — So my first question would be around fees. Based on the conversation we've already had, it sounds like the only option for parties to be able to utilize that would be subject to a sliding scale, to my understanding, is mediation. Is that correct?

**Ms. Markatos:** — Well one of the services that we have on our radar to prescribe in the regulations — and that wasn't put into the bill because it was previously funded by the Law Foundation — is the ministry's Family Matters program, which is a free service and would be available and likely included in the regulations as one of the ADR options for individuals who need to fulfill this requirement.

**Ms. Sarauer:** — Certainly a really good way to get people to utilize the ministry's Family Matters program. Speaking about that program, I'm not sure if you're prepared this evening to speak about Family Matters and how that program is being utilized. Do you have any numbers that you can present to the committee today in terms of how that program is being used?

**Ms. Markatos:** — Family Matters is an early intervention process that allows families to access information and, if they so choose, work with an approved service provider to reach an agreement or address immediate concerns and develop a plan to address additional concerns. So there's two components: there's the intake component, where people can phone in and just get general direction and advice; and then there's the problem-solving session. Since November 2017 there have been 4,297 inquiries by phone, email, or in person, and 249 problem-solving sessions.

**Ms. Sarauer:** — Now does Family Matters keep track of statistics of the individuals who are using their services? I'm in particular interested in knowing income levels.

**Ms. Markatos:** — I don't have that information.

**Ms. Sarauer:** — For the committee's understanding, this is a pretty major change that's actually happening with respect to family law practice in the province and how anybody with a family dispute utilizes the court system. Can you explain for the committee's reference which types of family law proceedings will be required to now go through a mandatory family dispute resolution process prior to being able to move on to next steps in their family issue?

**Ms. Markatos:** — The new provision will be limited to applications under part II and IV of *The Children's Law Act* — that's access and custody but not including child protection matters — applications under *The Family Maintenance Act*, *The Family Property Act*, and the *Divorce Act*.

**Ms. Sarauer:** — Other than child apprehension cases, is there anything . . . and I'm not talking about the exemptions, but is there any legal issue that will not require mandatory family dispute resolution?

**Ms. Markatos:** — Not that I'm aware of.

**Ms. Sarauer:** — What sort of consultation was done with respect to this change?

**Ms. Markatos:** — The previous stream we were talking about. We circulated a consultation document in July of 2017 broadly to lawyers and ADR professionals including CLASSIC collaborative professionals, the CBA, Pro Bono Law Saskatchewan, Saskatchewan Trial Lawyers Association, Conflict Resolution Saskatchewan.

**Ms. Sarauer:** — Can you provide the responses that you received to that consultation to the committee?

**Mr. McGovern:** — Thank you, Mr. Chair, for the question. The issue, and always when that occurs, is whether on the terms of the consultation, whether or not at that point it was made clear with the consultees that it could be a matter of public



consultation. What we can do is take a look and make sure that it would be appropriate for it to be circulated so that we're not breaching any confidences with respect to the organizations that we discussed this with.

**Ms. Sarauer:** — Thank you. I'd appreciate that, you undertaking to do that. Throughout your consultations, did you receive any concerns from anybody regarding adding another step to the court process?

**Ms. Markatos:** — Generally the responses that we received were supportive of the ADR process in general. What the bills will do is not prohibit people from going to court, but just require them to attempt in another way to resolve the issue. And in a lot of cases, like, people don't know that they have another option than court. They think that that's their only option. So this, if nothing else, will provide people with another option and show them that they could follow a different stream.

**Ms. Sarauer:** — Right. But this process will not be, I suppose, known to people until after their petition has been filed, so after they've filed a court document already. Correct?

**Ms. Markatos:** — Possibly, yes.

**Ms. Sarauer:** — Has there been any consideration by the ministry about the extra level of legal fees that this extra step will incur on parties who are represented?

**Mr. McGovern:** — Well, and I think it's important for the committee to understand, you know, the policy intent with respect to alternative dispute resolution in this context. We are not viewing this as an additional layer. We're very hopeful that this is the solution. We're not viewing this as something that will lead inevitably to court. This is an alternative process to solve those problems, and to do that either through a mediator, an arbitrator, parenting coordinator, collaborative law services, another process.

And I think this is a response to what many of the members will have heard and what we certainly hear that, you know, the court process for some individuals becomes very burdensome. It's expensive for the lawyers. It's time-consuming for the courts. It's time-consuming for the parties. By introducing them to a process where they need to consider in a more formal context a way to solve their problems, we think that this is a way to avoid going to court. So I think that characterization isn't one that we would probably be leading with, in terms of saying, here's an additional step.

You know, and parenting coordinator is in the same vein. That here's a way for people who previously, as Ms. Markatos had mentioned, might not be agreeing, for example, on the daily routine for the children. And instead what they're able to do through a parenting coordinator, where they've reached an agreement in advance, is to say our relationship is so toxic that we can't talk to each other rationally and so we agree in advance with a parenting coordinator to help us with that and say these are the matters we'll talk . . . that if this person — who we agree in advance might be a good person to make those decisions or help us with those — can make those decisions, that helps us in that relationship.

And we think this is in the same vein that we're talking about. We're not saying you must mediate, you must arbitrate. We're saying you have a range of options that you consider to try and facilitate that. We're all aware that mediation has been something that started in the agricultural community, moved into the main court process as a way to help people reach decisions without having to go through the whole court process. And we think in the family context, which it hasn't been used before, that this is a way to step forward in that regard.

**Ms. Sarauer:** — Thank you. And I agree with you, Mr. McGovern, in part. My duty is to ensure that I make the committee aware of concerns that I've heard with respect to the legislation. And some of the concerns that I've heard, with respect to this change in particular, stem from counsels' experience in the civil litigation field and how that structure has played out and how difficult it can be sometimes from even in civil litigation, getting two opposing parties together to mediate something when they haven't voluntarily come to the table but through the court process, through their process legally, they have to come to the table. And sometimes when you get parties together involuntarily for mediation, it's much more difficult to get them to reach a solution that they can walk away from when they're being essentially told they have to be at that table. Mediation is exponentially more successful when it's voluntarily coming to the table.

And so that's some of the concern I've heard is that this will add another step. That although maybe the intention is an honourable one, it may actually create further problems. So I am bringing that to the committee's attention and the ministry's attention as well.

**Mr. McGovern:** — And certainly we have a minister who's very much of the view that extra, unneeded steps are to be avoided at all costs. And I think part of the instruction on this file reflects the intent to say, let's see what options, what tools we can provide for people who are in a difficult circumstance, who are very close to reach a resolution.

**Hon. Mr. Morgan:** — I would agree with your comment that parties approaching mediation voluntarily will likely have a much better chance of success than those who are mandated. When mediation was brought into Court of Queen's Bench on non-family matters, there was initially a lot of resistance from lawyers — oh, well it's being forced or something — but the success rate was relatively high when people did get into the same room with some professionals. They shared some information, and a lot of times, although they might not have settled on that particular day, it sowed the seeds for a settlement that occurred later on. So ideally you would want people to approach it voluntarily.

In this situation, if they choose not to approach it voluntarily, they're mandated to approach it. The success rate still might not be as high, but those that approach voluntarily will do well at it. And even those that are mandated to do it, hopefully there's a reasonable success rate as there was with Queen's Bench. And I understand the apprehension that some lawyers have had, but it has worked in QB [Queen's Bench] in other matters and it certainly has in the debt collection area. So we're optimistic and hopeful there, but the concerns you raise are well-taken, and we'll certainly take them into consideration.

**Ms. Sarauer:** — Thank you. I did want to raise one concern I had, but I'm hoping that I just missed it in the legislation. I had mentioned briefly that there is subsection 6 which allows for an application that can be made for someone who wishes to be exempted from this process. Is this . . . If someone is noted for default, so the party has served the opposing party, the opposing party didn't respond, and therefore they were noted for default. Are they exempted from going through this process?

**Mr. McGovern:** — Do you mean precluded from using the process after the fact? Or exempt from the access to dispute resolution in the future?

**Ms. Sarauer:** — Maybe I should take a quick step back. Does this . . . this provision doesn't . . . this mandatory family dispute resolution doesn't preclude someone . . . doesn't kick in until after the petition is filed. Correct? Or does it happen before the petition is filed?

**Ms. Markatos:** — It doesn't kick in until the close of pleadings.

**Ms. Sarauer:** — Okay. So what I'm asking is, once someone is noted for default, pleadings would be technically closed. Right? Because a response hasn't been filed.

**Ms. Markatos:** — In the mandatory mediation provision for the civil cases in the QB Act, close of pleadings is defined in the regulations, and we would take a similar approach with this provision.

**Ms. Sarauer:** — Okay.

**Ms. Markatos:** — So we'll need to define closing pleadings in the regulations.

**Ms. Sarauer:** — Okay. I'm just flagging, and I can't tell if it's been already determined if . . . I suppose I'm . . . coming from a person . . .

**Hon. Mr. Morgan:** — I think if I understand your question, it is if somebody's noted for default, do they still have to go through this, either voluntarily or non-voluntarily? Are they still required to go through this process, or does the applicant go ahead and make their application? That's your question?

**Ms. Sarauer:** — Yes, the petitioner. Yes.

**Hon. Mr. Morgan:** — Yes. It's a good question, and . . .

**Mr. McGovern:** — Sure. And if you looked at subsection 5 and, Mr. Chair, for the committee:

If a party fails to participate in family dispute resolution, the court, on application, may:

- strike out the party's pleadings or other documents;
- refuse to allow the party to make submissions on an application . . .
- order the party to participate . . . or
- order costs or any other relief.

**Ms. Sarauer:** — So that's creating an additional step then.

When a party, a petitioner would normally be able to just get a default judgment in the absence of the respondent responding, the petitioner will now have to file an additional application before receiving that default judgment. Is that correct?

**Hon. Mr. Morgan:** — I don't think so. They would make it a part of the relief in the same application.

**Ms. Sarauer:** — Okay, I'm flagging this as something that I . . .

**Hon. Mr. Morgan:** — The point's taken. My expectation would be the applicant would serve the other party; the other party doesn't respond. They go through the noting process and then they make their application for whatever judgment they're going to. And it's not going to be a cash judgment; it's going to be whatever they do. And it's part of that . . . They would look for the relief under that section. It would say they would not participate anymore or have . . . without further leave of the court.

**Mr. McGovern:** — That's right. There's a combined process and it's a little bit different than a money judgment obviously, in the sense that it may well be dealing with matters that require a little more consideration than a simple recalcitrant party resulting in a default judgment. But it's a fair point to make and, as the minister said, we'll ensure that the process will be one that will work at the same time.

**Ms. Sarauer:** — Thank you. I wouldn't necessarily agree. And I'm now speaking from personal experience, not from stakeholders' consultation. But a lot of what . . . I still volunteer at the free legal clinic and what I still see, from family law issues that I see at the free legal clinic, ends up being a lot of people seeking remedies that end up resulting in . . . Oftentimes there are, petitions are served on those opposing parties and there's no response. I'm not wording this very well. Oftentimes that work results in default judgments.

There's a lot of . . . I could list quite a few examples of where petitions are served for custody and access and child support because the opposing party has taken off to another location and has left an individual with their children. And they just need the orders that they need to be able to get doctors' appointments and things like that. Oftentimes there's the result of serving an individual and they don't respond, and those petitioners want those default judgments to be efficient and available.

So I'm raising this as a flag, that those who have been noted for defaults, those petitioners, I would hope that this process wouldn't be creating an extra step for those petitioners. And if all it requires is an amendment to the default judgment form that's being used by, for example, Family Law Information Centre, the very long-established . . . took a long time to create the program, the online program that self-represented litigants are using for family law court forms. I'm just flagging this as a potential challenge.

**Mr. McGovern:** — The minister's made clear his expectation, which becomes our expectation as well.

**Ms. Sarauer:** — Can you speak a little bit about how this is going to be implemented?

**Ms. Markatos:** — Subsection 44.01(8) provides that the section only applies at a judicial centre designated in the regulations. So the intention is that it will roll out slowly.

**Ms. Sarauer:** — Thank you. Do have a timeline for when you anticipate the regulations to be completed? Are we talking months or more likely a year or two?

**Ms. Markatos:** — We will need to consult on the regulations, which I hope will be under way in three to six months, and then once the regulations are in place we'll look at proclaiming the Act.

**Ms. Sarauer:** — Thank you so much for answering all of my questions. I really appreciate it. I have no further questions on this bill.

**The Chair:** — Thank you. Are there any more questions from the committee? If not, we will go into 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 Miscellaneous Statutes (Family Dispute Resolution) Amendment Act, 2017*, a bilingual bill.

I would ask a member to move that we report Bill No. 98, *The Miscellaneous Statutes (Family Dispute Resolution) Amendment Act*, a bilingual bill, without amendment.

[20:00]

**Hon. Ms. Wilson:** — I so move, Mr. Chair.

**The Chair:** — Ms. Wilson moves. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Just give me a second here. I've got to sign these others too, bilingual end.

**Bill No. 104 — *The Saskatchewan Human Rights Code, 2017*  
*Code des droits de la personne de la Saskatchewan de 2017***

**Clause 1**

**The Chair:** — We will now be considering Bill No. 104, *The Saskatchewan Human Rights Code, 2017*, a bilingual bill. We'll begin our consideration of clause 1, short title. Minister Morgan, do you have any opening comments on this?

**Hon. Mr. Morgan:** — Very briefly, Mr. Chair. I am joined tonight as well by Darcy McGovern and Maria Markatos. I am pleased to be able to offer some opening remarks concerning Bill 104, *The Saskatchewan Human Rights Code, 2017*.

Mr. Chair, this new Act will repeal and replace *The Saskatchewan Human Rights Code* with a new bilingual Act. There are no changes in substance made to the Act.

Since 1988 Saskatchewan has enacted over 55 bilingual bills to meet the needs of Saskatchewan's francophone community. To date, the Acts translated have been of general application or identified by French language organizations. The code was identified as a priority for translation by the Assemblée communautaire fransaskoise and the Association des juristes d'expression française.

Mr. Chair, with those opening remarks I would welcome your questions respecting Bill 104, *The Saskatchewan Human Rights Code, 2017*. My officials have generously suggested that when you go to clause by clause that you do it part by part at the end, which I suspect you already know.

**The Chair:** — Thank you. Are there any questions?

**Ms. Sarauer:** — Yes, thank you. I was hoping that the minister could start by reading the French language portion of this bill into the record please.

**Hon. Mr. Morgan:** — I would be pleased to do that, but I'm afraid with the late hour I would like to start tomorrow right at the beginning of question period and I'll read it right through question period.

**Ms. Sarauer:** — Thank you. I'll look forward to that. Now, I understand the bill — all jokes aside — largely sought to meet . . . All it did essentially was make the Human Rights Code bilingual. Are there any other changes with respect to this bill that the committee should know about?

**Ms. Markatos:** — There is one new subsection, 21(6), that "If a member dies or resigns, that person ceases to be a member on the date of death or on the date . . . [of] resignation . . ."

**Ms. Sarauer:** — Thank you. Would you explain for the committee why this change was made?

**Ms. Markatos:** — This is a standard provision where there is a board or committee appointment, and it was implied but it wasn't specifically considered in the code. All of the other changes that were made are not substantive in any way.

This Act is from 1979, and a lot of language that was used is, in the drafter's words, archaic. And so they updated some of the provisions and restructured them, for example to get rid of sandwich clauses. But that was the only real substance change.

**Ms. Sarauer:** — Thank you. And I had the pleasure of learning what a sandwich clause was the last time we were able to meet at committee. And can you confirm for the committee that all of those changes . . . if all of those minor changes that were made were in fact minor, and do not change the intent of any of the provisions in the legislation?

**Ms. Markatos:** — There were no changes in substance to the code, yes.

**Ms. Sarauer:** — Thank you. I have no further questions.

**The Chair:** — Are there any further questions from the committee? Okay, I thank you for your advice. But to keep it simple for me since I have to initial all of them, we're just going to quickly run through them. There's only 60. Okay.

Clause 1, short title, is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 60 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Saskatchewan Human Rights Code, 2017*, a bilingual bill. I would ask a member to move that we report Bill No. 104, *The Saskatchewan Human Rights Code, 2017*, a bilingual bill without amendment.

**Mr. Nerlien:** — I so move.

**The Chair:** — Mr. Nerlien moves. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

**Bill No. 105 — *The Saskatchewan Human Rights Consequential Amendment Act, 2017***

**Clause 1**

**The Chair:** — We will now be considering Bill No. 105, *The Saskatchewan Human Rights Consequential Amendment Act, 2017*. We will begin our consideration of clause 1, short title. Mr. Morgan, do you have any opening comments?

**Hon. Mr. Morgan:** — Thank you, Mr. Chair, I'm joined by the same officials that I was with the preceding bill. I'm pleased to be able to offer some opening remarks concerning Bill No. 105, the Saskatchewan human rights code consequential amendment Act, 2017. Mr. Chair, this Act consequentially amends *The Saskatchewan Employment Act* employment code, a unilingual Act, to replace reference to *The Saskatchewan Human Rights Code* which is being repealed and replaced by a new bilingual version.

There is no change in substance to any of the provisions amended by this bill. Mr. Chair, with those opening remarks, I welcome your questions respecting Bill 105, the Saskatchewan human rights code consequential amendment Act, 2017.

**The Chair:** — Thank you. Are there any questions? Ms. Sarauer.

**Ms. Sarauer:** — Thank you. The minister largely answered the questions that I had, but just to confirm, as has already been stated, all of the amendments that were made in this very small bill are consequential in nature. Is that correct?

**Hon. Mr. Morgan:** — That is correct.

**Ms. Sarauer:** — This is a housekeeping bill. Is that correct?

**Hon. Mr. Morgan:** — Yes. I don't know if housekeeping is the right word, but it is to change the references because of the new bilingual Act within the employment code.

**Ms. Sarauer:** — Thank you. I have no further questions.

**The Chair:** — Are there any further questions from the committee? Okay, we will start then. Clause 1, short title, is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

[Clause 1 agreed to.]

[Clauses 2 and 3 agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly in Saskatchewan, enacts as follows: *The Saskatchewan Human Rights Consequential Amendment Act, 2017*.

I would ask a member to move that we report Bill No. 105, *The Saskatchewan Human Rights Consequential Amendment Act, 2017* without amendment. Mr. Olauson — I still have . . . [inaudible] . . . in my head — moves. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Well that will conclude our business for this evening. Minister, do you have any closing comments?

**Hon. Mr. Morgan:** — Yes, Mr. Chair. As always with this, I know that when we have evening sittings that people are giving of their own time, so I would like to thank you, Mr. Chair, and all of the committee members on both sides, as well as the staff from Hansard, the Legislative Assembly, our respective office staffs, as well as all of the ministerial staff and members of the public service for the contributions they make, not just today but throughout the year. We're well served by an incredibly professional and competent public service, so I thank all of them.

**The Chair:** — Thank you. Are there any other comments? Ms. Sarauer.

**Ms. Sarauer:** — Yes, I'd like to join with the minister in thanking you, Mr. Chair, and all of the committee for their work this evening along with committee staff as well as the folks at Hansard and those behind the cameras this evening and the guards who are also here working late hours tonight.

And I also in particular want to thank the officials who are here this evening and thank you for answering my questions. No matter how unreasonable I sometimes am, I really do appreciate your hard work on all of this legislation we talked about tonight and all of the work that you do. And also to staff on both sides, and for the record, I would never make my staff work the

evening of their 23rd birthday. And I do hope that the minister makes it up to his staff in the future. Thank you.

**The Chair:** — Well thank you, committee, and I want to thank everybody who's been watching this on television. It's been riveting. That concludes our business for the evening and seeing that we have no further business, I'd ask a member to move a motion of adjournment. Mr. Nerlien has moved a motion to adjourn. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. This committee stands adjourned to the call of the Chair.

[The committee adjourned at 20:14.]