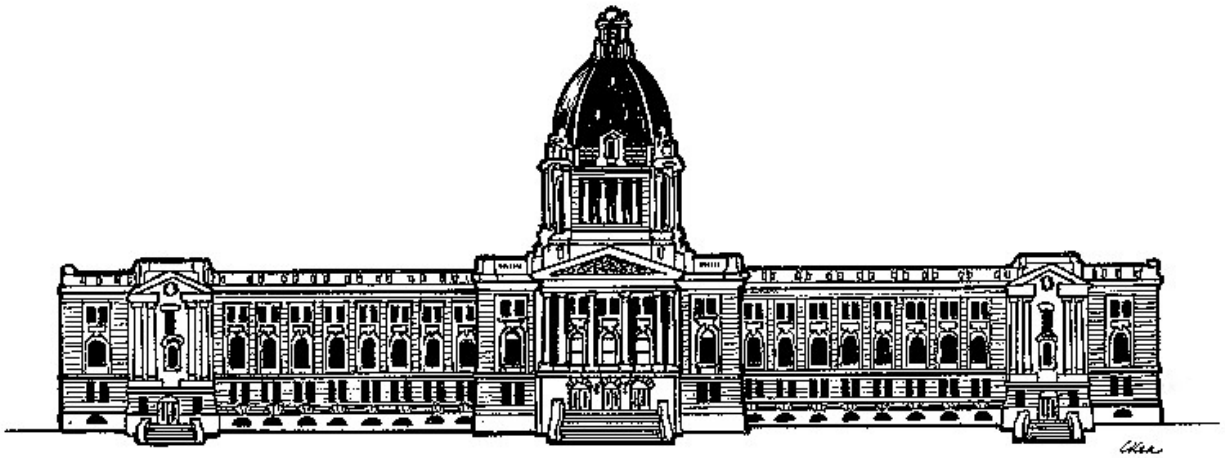
STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

Hansard Verbatim Report

No. 32 — March 11, 2019



Legislative Assembly of Saskatchewan

Twenty-Eighth Legislature

STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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Carrot River Valley

Mr. Buckley Belanger, Deputy Chair
Athabasca

Mr. Ken Francis
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Mr. Hugh Nerlien
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Mr. Eric Olauson
Saskatoon University

Ms. Laura Ross
Regina Rochdale

Mr. Corey Tochor
Saskatoon Eastview

Published under the authority of The Hon. Mark Docherty, Speaker

[The committee met at 19:01.]

The Chair: — Well good evening everybody, and welcome to the Intergovernmental Affairs and Justice Committee. I'm Fred Bradshaw, the Chair. We have Nicole Sarauer substituting for Buckley Belanger. We also have here Ken Francis, Hugh Nerlien, Eric Olauson, Laura Ross, and Corey Tochor.

This evening we will be considering five bills: Bill No. 142, *The Proceedings Against the Crown Act, 2018*, a bilingual bill; Bill No. 143, *The Proceedings Against the Crown Consequential Amendments Act, 2018*; Bill No. 144, *The Real Estate Amendment Act, 2018*; Bill No. 151, *The Personal Property Security Amendment Act, 2018*; Bill No. 154, *The Intestate Succession Act, 2018*, a bilingual bill.

Bill No. 142 — *The Proceedings Against the Crown Act, 2018/Loi de 2018 sur les poursuites contre la Couronne*

Clause 1

The Chair: — We will be considering Bill No. 142, *The Proceedings Against the Crown Act, 2018*, a bilingual bill, clause 1, short title.

Mr. Morgan, would you please introduce your officials and make your opening comments.

Hon. Mr. Morgan: — Thank you, Mr. Chair, and committee members. I am joined tonight by Jane Chapco, senior Crown counsel, legislative services; also Michael Morris, Q.C. [Queen's Counsel], director, general litigation, legal services division; and also Darcy McGovern, Q.C., from the ministry; as well as my own staff, Clint Fox and Molly Waldman.

I'm pleased to be able to offer opening remarks concerning Bill 142, *The Proceedings Against the Crown Act, 2018*. Mr. Chair, this legislation will replace *The Proceedings Against the Crown Act*. The new Act will remove the option for jury trials and proceedings against the Crown. This option is very rarely exercised, with only one such jury trial having been held in over 20 years. The change will also make Saskatchewan's Act consistent with the majority of Crown liability statutes across Canada. New Brunswick is the only other common-law province that currently allows jury trials in these proceedings.

Mr. Chair, in a trial by jury there are no written reasons. A judge's written reasons provide valuable guidance to the policy and decision makers who need to respond and implement a decision. Also, proceedings against the Crown can often involve complex issues that are better suited to trial by judge alone. Mr. Chair, removing the option of a jury trial means that juries will no longer have to sit for lengthy trials in future complex cases.

This new Act also includes some minor clarifications and improvements respecting who can attend questioning, how default judgments can be entered, and how orders can be stayed pending an appeal.

Mr. Chair, opening the Act for these amendments also provides the opportunity to redraft the Act to update the language to reflect modern drafting standards. The Act has also been translated into French.

Mr. Chair, with those opening remarks I welcome your questions respecting Bill 142, *The Proceedings Against the Crown Act, 2018*.

The Chair: — Well thank you, Minister. Are there any questions? Seeing none . . . Ms. Sarauer.

Ms. Sarauer: — Thank you, Minister, for your opening remarks. And I'd like to thank the officials for being here this evening. I just have a few questions about the changes being made in Bill 142.

First of all, Minister, I think you spoke most at length around the change about the jury trials, and appropriately so. I think that's the most major change that's happening in this bill, based on my understanding. Can you speak a little bit more about why this change is occurring since, as you said in your own words, this has only been exercised once in 20 years?

Hon. Mr. Morgan: — I think, for the reason that the prospect of having a jury trial is somewhat onerous, and then the concern that they may not be creating a precedent. So I think part of it is an anticipation that somebody may choose to exercise the right to a jury trial or perhaps use that as a negotiating ploy to extract a settlement, that in fact they've elected to go by a jury trial. I don't know whether . . .

Mr. Morris: — Mike Morris with the Ministry of Justice. One of the reasons this change is being implemented is that juries do not need to provide reasons for their decisions in civil proceedings. The government appreciates receiving written reasons because it can guide the interpretation of a result from a civil trial, both in terms of understanding the result as well as shaping policy on a go-forward basis as a reaction to the decision.

And this is not an unusual provision to have in proceedings against the Crown legislation. We are in fact presently — until this bill is passed, if it is passed — only one of two jurisdictions which allow the Crown to be sued in a jury trial. So the primary benefit to the Crown in proceeding in a judge-alone trial is certainly the provision of reasons by that judge.

Ms. Sarauer: — Thank you. Can you provide us with which other jurisdiction is the only other jurisdiction that has this provision?

Hon. Mr. Morgan: — New Brunswick.

Ms. Sarauer: — New Brunswick? Okay, thank you. You mentioned that there is a benefit in having this for the Crown, which you've outlined. What would be the benefit for the public?

Mr. Morris: — For the public, they will be able to review a decision in a judge-alone trial. And in that regard, it provides a greater understanding of the result of the trial and provides greater transparency for the public in terms of what was considered, how it was considered, and why a certain result was achieved by either the Crown or a plaintiff.

Ms. Sarauer: — Would that be an argument then that could be

made for all civil trials, not just ones that are proceedings against the Crown? Why specifically are we targeting proceedings against the Crown?

Mr. Morris: — Certainly written reasons will provide greater transparency about why a certain result was achieved. The Crown tends to be involved in litigation, which has obviously a greater public interest and potentially a greater public impact than, for instance, a slip and fall outside a grocery store where you might be able to try that before a jury. If liability is found because a patch of ice was left and the circumstances meant that it was unreasonable to have that ice there, fine. You know why the jury found that they did. It may guide that particular business's practices on a go-forward basis.

But with respect to the Crown, you do have a greater public interest in the Crown's litigation and how it's conducting itself generally on a province-wide basis. So there is a greater and heightened interest in court cases involving the Crown.

Ms. Sarauer: — Thank you for that. Just a few questions about a few of the more minor changes in the legislation. I understand there is some change around who can attend questionings. Can you elaborate on what that change is and why?

Mr. Morris: — It's not so much a change as to who will attend questioning, it's just a clarification that the deputy minister will select who is the individual who will be questioned under oath.

Previously that matter could be litigated and decided upon by a judge. This provision, which is similar to provisions in other jurisdictions, including Ontario, makes clear that it will be the deputy minister's decision as to who will be the proper officer on behalf of the Crown.

Ms. Sarauer: — Thank you. Similarly the change around the application for leave needed before a default judgment can be entered, can you explain, is this a clarification or a change? And if so, why is this made?

Mr. Morris: — It's actually a change. It's a provision which is found in other jurisdictions. I think most people would agree that there should never be a default judgment entered against the Crown. One would expect the Crown to defend itself if it has a case to defend, otherwise perhaps consent to judgment.

The Crown is an unusual entity in that many litigants, including self-represented litigants, may not know how to properly serve the Crown, and some local registrars may not understand how the Crown is to be served either. So you may have circumstances where a litigant purports to effect service upon the Crown, but service hasn't been properly effected; for instance, on the Attorney General or his designate, a lawyer employed by the civil law branch, for instance. And if service is not properly effected, the local registrar may accept that it has been effected, not knowing that it hasn't been properly effected. You then get an individual having the possibility to note the Crown for default without the Crown even being aware that it's been sued.

Once you're noted for default, you have no right to be served with any further notice of proceedings, and a default judgment can be entered against you. That is something that we don't want to happen, with respect to the Crown, solely on the basis that there has been an error in service because the service can be a little bit more technical.

So it is for the benefit of the Crown. It's to prevent default judgments issuing against the Crown. They haven't issued against the Crown in the past, to my knowledge, but it's simply a bit of a housekeeping amendment which is in accordance with other provinces' legislation as well.

Ms. Sarauer: — So just to clarify your last statement, which was going to be my next question, to your knowledge this hasn't actually happened against the Crown yet, but it's a preventative measure to ensure that it doesn't happen in the future?

Mr. Morris: — That's correct.

Ms. Sarauer: — Just checking. What about the change around staying orders pending appeals? Or is this a clarification or a change, and if so why is this being made?

Mr. Morris: — The existing Act was somewhat ambiguous about whether a cost award would be stayed pending an appeal, a cost award against the Crown. There was a potential interpretation that it was not stayed. That interpretation was not accepted recently by the Court of Appeal in a 2018 case. So what this new provision does is clarify that a cost award against the Crown is stayed pending appeal, and it is not a change in the law because our interpretation of the current provision was affirmed by the Court of Appeal in 2018.

Ms. Sarauer: — Right. So just to clarify, Queen's Bench thought it was not stayed. Court of Appeal confirmed your ministry's interpretation of the provision, and now this is just being further clarified in the legislation.

Mr. Morris: — It wasn't an issue before Queen's Bench. It was only an issue before the Court of Appeal. The Court of Appeal agreed with the ministry's interpretation, which is simply clarified in the new provision.

Ms. Sarauer: — Okay, yes. You're right. My apologies. What other jurisdictions have a similar stay provision clause?

Ms. Chapco: — I'm Jane Chapco with legislative services, and this wording is very similar to the wording that is in place in Ontario.

Ms. Sarauer: — Thank you. No further questions.

[19:15]

The Chair: — Well, thank you. Are there any further questions from the committee? Seeing none, clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 29 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Proceedings Against the Crown Act, 2018*, a bilingual bill.

I would ask a member to move that we report Bill No. 142, *The Proceedings Against the Crown Act, 2018*, a bilingual bill, without amendment. Mr. Nerlien has moved. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 143 — *The Proceedings Against the Crown Consequential Amendments Act, 2018*

Clause 1

The Chair: — We will now be considering Bill No. 143, *The Proceedings Against the Crown Consequential Amendments Act, 2018*. We will begin our consideration of clause 1, short title. Minister Morgan, would you please make your opening comments. And I don't think you have any different officials, do you?

Hon. Mr. Morgan: — No. Thank you, Mr. Chair. I am joined by the same high-calibre group of people I was on the previous bill, and I'm glad they're still here.

I am pleased to be able to offer opening remarks concerning Bill No. 143, *The Proceedings Against the Crown Consequential Amendments Act, 2018*. This legislation accompanies *The Proceedings Against the Crown Act, 2018* and makes consequential amendments to a number of English-only Acts.

Mr. Chair, *The Proceedings Against the Crown Act* is being repealed and replaced with a new bilingual statute, and references to the name of the old Act in several English-only statutes need to be updated to reference the new Act. A total of 27 Acts will be amended to reflect the title of the new bilingual Act.

Mr. Chair, there is no change in substance to any of the Acts that are being amended in this bill. The amendments also include one housekeeping change to *The Correctional Services Act, 2012* to clarify one provision. Mr. Chair, with those opening remarks I welcome your questions regarding Bill 143, *The Proceedings Against the Crown Consequential Amendments Act*.

The Chair: — Well, thank you, Minister Morgan. Are there any questions? Ms. Sarauer.

Ms. Sarauer: — Thank you. Minister, I just have one question around the clarification being made for section 111(3) of *The Correctional Services Act*. Can you provide some more detail as to what is being done with that repeal?

Ms. Chapco: — So subsection 111(3) of *The Correctional Services Act* is slightly repetitive and arguably circular. What it says is that subsection 1 does not, by reason of subsection 5(2) of *The Proceedings Against the Crown Act*, relieve the Crown of liability with respect to a tort committed by an employee of the ministry to which it would otherwise be subject.

So what it does, it effectively directs the reader to look at subsection 5(2) of *The Proceedings Against the Crown Act* for how the Crown is liable for the conduct or actions of employees. And then when you go and look at subsection 5(2) of *The Proceedings Against the Crown Act*, which incidentally in the new Act is numbered the same, it doesn't really add anything further. So it's just a housekeeping cleanup.

Ms. Sarauer: — Thank you. No further questions.

The Chair: — Are there any more questions? Seeing none, we will continue on then. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 5 inclusive agreed to.]

The Chair: — And Schedule 1, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Schedule agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Proceedings Against the Crown Consequential Amendments Act, 2018*.

I would ask a member to move that we report Bill No. 143, *The Proceedings Against the Crown Consequential Amendments Act, 2018* without amendment. Mr. Francis so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 144 — *The Real Estate Amendment Act, 2018*

Clause 1

The Chair: — We will now be considering Bill No. 144, *The Real Estate Amendment Act, 2018*. Clause 1, short title. Minister Morgan, I would like you to please make your opening remarks.

Hon. Mr. Morgan: — Thank you, Mr. Chair. I am joined on the purposes of this bill by Jane Chapco, senior Crown counsel, legislative services; and Janette Seibel, director, insurance and real estate division, Financial and Consumer Affairs Authority.

I'm pleased to be able to offer opening remarks concerning Bill 144, *The Real Estate Amendment Act, 2018*. Mr. Chair, this legislation amends *The Real Estate Act* to support the efficient regulation of realtors by the Saskatchewan Real Estate Commission. Mr. Chair, these amendments will provide the Saskatchewan Real Estate Commission with improved and expanded enforcement options. A new section authorizing special penalties will allow the commission to efficiently impose penalties for technical violations. The specific contraventions

and special penalty amounts will be set in the regulations, following further consultations with industry. Mr. Chair, the penalty amounts that can be imposed by hearing committees are being increased from 5,000 to $25,000 for each individual finding, and from 15,000 to 100,000 for the aggregate maximum of all findings. These increases are consistent with recent increases in Ontario, British Columbia, and New Brunswick.

This legislation will also revise bylaw-making powers to authorize the commission to make administrative bylaws respecting the conduct of its affairs without the need for prior approval of those bylaws by the superintendent, which will increase administrative efficiency. The more substantive bylaw-making powers will continue to require superintendent approval. Mr. Chair, a new bylaw-making power will also be added respecting the use of electronic signatures and how those signatures can be witnessed. The commission has requested this change to support the modernization of realtors' practices.

Finally, Mr. Chair, these amendments also include a series of other improvements, including revisions to the appeal process to authorize the registrar to appeal decisions of the superintendent to the courts. The amendments will also improve reporting and record-keeping requirements and support increased transparency. An amendment to the appointment provisions will support increased representation from the farm real estate industry.

With those opening remarks, I welcome your questions regarding Bill No. 144, *The Real Estate Amendment Act, 2018.*

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

Ms. Sarauer: — Thank you, Minister, for your opening remarks. I'd like to thank the officials for being here as well this evening.

My first question is around consultation. I understand some consultation was done, some extensive consultation was done with respect to this bill. Can you speak a little bit about that process and what specific organizations were consulted?

Hon. Mr. Morgan: — Significantly, the real estate profession, directly through the commission and also through the other real estate association in particular. The one that's been lobbied for the most aggressively were those changes to the provisions for electronic signatures because I understand we were one of the few jurisdictions that didn't have that.

And then there was a significant desire on the part of the profession to move towards more of their own ability to make bylaws or make regulation without coming to the superintendent or back to government. And over the last . . . Well since we've been in government, there's been a generally higher level of capacity within the profession to deal with some of those issues. But I'll certainly let Janette make other comments on the consultation.

Ms. Seibel: — I think the minister summarized it fairly well. We've spoken extensively with the Saskatchewan Real Estate Commission, and they had approached us with their desire to see a modernization of many of their provisions. And the Association of Saskatchewan Realtors also provided substantial input into the provisions proposed by the commission and those that we hope to bring into being.

Ms. Sarauer: — Thank you. And is a similar consultation process being undergone with respect to the regulations that, I understand, are still being worked on?

Ms. Seibel: — Yes. We've been meeting with both the commission and the Association of Saskatchewan Realtors. And we'll be continuing to work with them.

Ms. Sarauer: — Thank you. You mentioned some provinces which these changes will bring us more in line with. Is there a push nationally to harmonize a lot of this work and, if so, are we becoming more in lockstep with the entire country?

Hon. Mr. Morgan: — I don't think there's a direction from the federal government or a national association that I'm aware of. I think there's just a general desire on the part of provinces to become more consistent with each other as they go forward. And I think the provinces are doing more interjurisdictional scans. But there isn't a national or a directed push, but I think generally desirable that they move towards commonality.

Ms. Sarauer: — And as a result of that desire, is this moving us more in line with harmonizing with other jurisdictions?

Ms. Seibel: — I think it is moving us in specific areas more in line, in particular with regards to the amounts of fines that can be charged, the ability to better utilize electronic signatures. Those types of provisions move us more into alignment with other provinces.

Ms. Sarauer: — Thank you. Were there any concerns around public protection that sparked the desire to increase the sanction amount?

Hon. Mr. Morgan: — I don't think there was specific instances, but there's always the concern when there's been a disciplinary issue against a realtor whether the fine is adequate or the process and determination is adequate. And that's something that we had asked the officials earlier, to try and make sure that we had a higher . . . [inaudible].

But there hasn't been a matter where I'm aware of where members of the public have lost money or something. But there has been situations where members of the public have become embroiled in litigation involving realtors and where realtors have acted not in accordance with the rules or regulations, where they've resold or flipped property without disclosing that they had an interest and that type of thing.

By and large though, as time goes on there's certainly a greater degree of polish and professionalism. I'm not aware of any recent issues. I don't know whether . . .

Ms. Seibel: — We're not aware of any recent issues either. It was more in accordance with the fines were set at a time when commissions were much lower, real estate values were much lower, and they are no longer aligned with the amounts of monies realtors will hold in trust or that might be under their control or the value of the transactions that they're dealing with. And also there's been a trend across Canada to see the amounts of fines

rise, so it made sense to look at those.

Ms. Sarauer: — Thank you. I understand that some of these changes are allowing for a bit more power, for example bylaw-making abilities. Is there a movement toward a more self-regulation model for the commission?

Hon. Mr. Morgan: — I think the profession would like to go further in that, and we're regarding it as being an incremental process and sort of seeing how the profession matures. But certainly that's very much the direction that the association would like to go and we're just proceeding cautiously.

[19:30]

Ms. Sarauer: — Fair enough. I'm also curious about the regulation or the oversight over condominium property managers. I understand they fall in between the cracks in terms of regulatory oversight. I don't believe the commission has the power to oversee that body. So is there any movement within the ministry to look into that as a gap? And if so, what direction are you thinking of moving in?

Ms. Seibel: — Well this issue but has just recently come to us. There is provision under *The Real Estate Act* regarding certain activities of property managers, but there certainly is a broader amount of activity undertaken by people who manage things like condo associations. So that's something that would involve a number of different areas. Of course the Financial and Consumer Affairs Authority isn't responsible for *The Condominium Property Act*, just *The Real Estate Act*.

Hon. Mr. Morgan: — I don't think there's anything in this legislation that would address that. If there are issues that arise where there's gaps, I think they would have to be looked at in the context of the other pieces of legislation, real estate brokers.

Ms. Sarauer: — Yes. No, I understand that the . . . I believe it is a gap that's not necessarily dealt with in this legislation and it's something that we can . . . I would encourage the ministry to perhaps think about looking into in the future.

Hon. Mr. Morgan: — I see notes being taken. We'll certainly follow up. But thank you for raising it.

Ms. Sarauer: — Thank you.

The Chair: — Thank you. Are there any more questions? Seeing none, we have clause 1, short title. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 24 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Real Estate Amendment Act, 2018*.

I would ask a member to move that we report Bill No. 144, *The Real Estate Amendment Act, 2018* without amendment.

Ms. Ross: — I so move.

The Chair: — Ms. Ross so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 151 — *The Personal Property Security Amendment Act, 2018*

Clause 1

The Chair: — We will be considering Bill No. 151, *The Personal Property Security Amendment Act, 2018*. Clause 1, short title. Mr. Morgan, I see you changed officials, so could you please introduce your officials and make your opening comments.

Hon. Mr. Morgan: — Thank you, Mr. Chair. I'm joined tonight by Darcy McGovern, Q.C., director, legislative services; and Tamara Harasen, registrar of personal property security, office of public registry administration. Thank you for the opportunity to be here.

The Personal Property Security Act, 1993 allows lenders and sellers to secure a payment of a debt and to establish priority over other creditors by registering their security interest in the personal property of a debtor in the personal property registry, or what is referred as the PPR.

Saskatchewan, with the leadership of Professor Ron Cuming, has long been a leader in the development and operation of personal property law and registries in Canada. These changes will ensure that this commercial advantage is maintained for Saskatchewan businesses and consumers.

These proposed amendments will address a series of specific issues including security interest in electronic chattel paper; payment of debts and transfers of negotiable property by electronic funds transfer; account debtors' rights; revised conflicts of laws provisions; and technical and legal language improvements to the Act to facilitate operation of the secured lending provisions in the Act.

Mr. Chair, in order to promote certainty in interprovincial transactions, personal property security legislation in Western Canada and most other Canadian jurisdictions is substantially uniform. Justice officials have to continue to work with Professor Cuming and the Canadian Conference on Personal Property Security Law to finalize the exact wording of these changes to promote precise uniformity to the highest degree possible.

Accordingly we have two technical House amendments that will be presented today to ensure that these changes have the intended effect. We would be pleased to answer your questions regarding *The Personal Property Security Amendment Act, 2018*.

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

Ms. Sarauer: — Thank you, Minister, for your opening remarks and thank you to the officials for being here this evening. I'm going to try my best to pretend to sound like I know what I'm talking about. But it's been over a decade, I think, since Professor Cuming taught me and I had the opportunity to review the PPSA [*The Personal Property Security Act*], until recently with these legislative changes. So I apologize for my ignorance in advance.

Hon. Mr. Morgan: — I'm suspecting that Professor Cuming taught everybody at this table as well, and I was in excess of 40 years.

Ms. Sarauer: — He has been around for a while. That's true.

Let's first start with consultation. Can you provide us with some . . . I understand Professor Cuming has likely been involved in . . . He has been mentioned in your opening remarks, Minister. What other consultation has happened with respect to these changes?

Mr. McGovern: — There's no question that Professor Cuming has been the lead with respect to these changes, but the main consultation process for changes to *The Personal Property Security Act* flows through the Canadian Conference on Personal Property Security Law. And so that's an interjurisdictional body that's able to specifically consider changes over . . . to determine whether or not they will be jointly recommended to the ministers responsible for personal property security legislation.

As was mentioned in the opening remarks, the PPSA is viewed as a big success from the uniformity perspective in that . . . And it's one of our few Acts where it is word-for-word uniform in most of the Acts when you compare them from jurisdiction. What that allows is for lenders with increased certainty to be able to lend interjurisdictionally and to deal with interprovincial matters. And in this case, as the member will know, the driver with respect to the changes is largely conflicts of law, and as such it is very much how the provinces and how the jurisdictions interrelate with respect to where either the debtor or the property has moved across jurisdictional lines. And so in that regard, we very much have been reliant on the Canadian conference for the consultation process.

Ms. Sarauer: — Thank you. Are there any changes in this bill that result in us substantially deviating from any of the other jurisdictions?

Mr. McGovern: — I would say only from a bit of a leadership perspective. The intention is that the changes here will be the national model. So as opposed to us striking off in a new direction, this is meant to be the uniform direction.

Ms. Sarauer: — Thank you. Let's speak a little bit about some of the more specific changes that are being made. I understand there has been some amendments to specifically recognize electronic chattel paper. Can you explain why this is being done?

Mr. McGovern: — The current definition . . . and of course the Act is a 1993 Act. One of the drivers here, in addition to the conflict provision, is to recognize the use of electronics both in the security field. And chattel paper is a method for reflecting security, I think is an easy way to describe it. And now that is being done more and more solely in an electronic environment. And so part of the personal property security process is perfection, as you recall from all of our classes. And one of the ways historically you would establish perfection is by physically having a piece of paper in your hand, that being the chattel paper. With electronic chattel paper now being much more of the norm in business, we also had to provide for these types of provisions to say, well how does perfection work with respect to electronic chattel paper? Is there anything else you want to comment on, Tamara?

Ms. Harasen: — Just to expand a little bit. Hi, I'm Tamara Harasen, registrar of personal property security. Just to expand a little bit on what Darcy said, specifically the way that traditional personal property security rules are being expanded to address electronic chattel paper are not only the concept of control, which was relevant in an age of pieces of paper that somebody could control by possession, but also the use of marking or stamping. So there are a number of provisions that in some detail address what's anticipated to be the new means of dealing with that chattel paper in North America. And I think it's already been done in Australia, and we're following in their footsteps in that regard.

Ms. Sarauer: — So it sounds like although we're following in Australia's footsteps, this will be one of those instances where we're leading the charge in Canada?

Ms. Harasen: — Yes, and in fact the Canadian conference on personal property security law that Darcy referred to is a group that I attend annual meetings in June, and I can confirm that last June when I was there it was confirmed that Saskatchewan would be leading the charge on this particular set of amendments. It appears that Saskatchewan will be first, followed by I think some more minor amendments in two other provinces and that is very much consistent with the history of the Acts and particularly Professor Cuming's leadership in this area.

Ms. Sarauer: — Thank you. Can you explain the changes to purchase money security interests and why they are being made?

Mr. McGovern: — In large part the changes with respect to purchase money security interests, or PMSIs, are meant to deal with both with electronic chattel paper and with, to a degree, in inventory. And these are both developing areas within the law. And so what is recommended for purchase money security interests is a bit of a broader definition.

Purchase money security interest is often referred to as the super-secured position that a lender can be in. And so it's important to understand in this context, for example under 2(5) we pick up 5, 6, and 7 there where purchase money security interest won't lose status because of certain events, or for example how payments are made in that context. So it's more again, not so much a deviation from the existing pattern because PMSIs are very central to how lending is done, as it is an incremental expansion of the definition of the terms.

Ms. Sarauer: — Thank you. Can you explain why the changes to how growing crops are dealt with are being made?

Ms. Harasen: — I can address that. Make sure I've got the right section here.

A Member: — 13.

Ms. Harasen: — Thanks.

Mr. McGovern: — So it's the sixth clause, and section 13 of the bill is the provision that you're probably referring to, I think.

Ms. Harasen: — So section 13, a substantive change was recommended by the CCPPSL [Canadian Conference on Personal Property Security Law]. So the substantive change that's being made is section 13, or really what would be . . . was section 13(1). And the substantive change is that the security interest will attach to after-acquired property such as growing crops without being specifically appropriated by the debtor. So basically it allows the security interest to attach to future goods.

The remainder of section 13, so subsections 2 and 3, have been removed, and that's really a housekeeping measure. So at first glance it looks like a protection that's afforded to farmers is being removed, but in actual fact the reason those provisions are being removed is that in the context of Canadian law, and in particular *Bank Act* security, it really wasn't providing effective protection to farmers.

[19:45]

So basically the *Bank Act* does not contain a similar limitation in relation to security that's provided under the *Bank Act*. And secondly, secured parties and borrowers can contract out of that, out of the protection that was previously existing in section 13. As a result it provides little actual protection and hasn't been used in recent years.

And the decision was made to simply take those sections out because the so-called protection provided by them is illusory. It just wasn't being used in practice.

Mr. McGovern: — I think the one other point, maybe just for the record as well, is just to remind anyone who's, when they're reviewing the record, that 34(11) of the Act will continue to provide that a perfected security interest in crops or proceeds that's given for value to grow a crop that year can be given as a specific priority, regardless of previous contracts.

So there still is this express ability in the Act to go to a lender, get money for that specific crop year under those rules. And so the Act already accommodates to that to a certain degree. So as Tamara was saying, the other provision had become less used. The *Bank Act* would completely get around it, and so it was viewed that it was no longer serving its purpose.

Ms. Sarauer: — Thank you for that. Could you provide a bit more detail around the revisions that are being made around the conflict of law provisions?

Mr. McGovern: — Certainly. So the issue with respect to *The Personal Property Security Act* and the uniform code in the United States is that, both in the United States with the UCC [Uniform Commercial Code] and in Canada, as I mentioned, you have provisions that are meant to facilitate the modern reality of someone buying a car in Manitoba and moving to Saskatchewan or bringing a car up from the States or in other sorts of changes between jurisdiction. So what's necessary is to provide for a commonality of how conflict of law circumstances will be resolved.

In general terms, conflict of law — for the non-lawyers, of course — is what are the rules when one jurisdiction has a set of laws and another province has a set of laws. So for example, in personal property security law, sometimes how the law applies will be determined on the residence of the debtor. And so what you need to do is a conflict of law provision, when a debtor moves or a debtor is in a particular circumstance, is to set up cascading rules on how do you establish where that residence is so that you know which laws will apply.

And the goal of conflict of law provisions like these are of course to avoid endless litigation, where you have people in each province bringing forward litigation, saying I met my rules in my state, in my province. How do we resolve that? And so what this does is provide for a set of rules that are intended to be common amongst the provinces and to match the UCC so that those sorts of conflicts of law can be settled without immediately requiring litigation.

Ms. Sarauer: — Thank you.

The Chair: — Are there any more questions? Seeing none, clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clause 2 agreed to.]

Clause 3

The Chair: — Clause 3, is that agreed? Oh, just a minute. We have Mr. Francis.

Mr. Francis: — Mr. Chair, thank you. I'd like to put forth a motion to amend clause 3 of the printed bill. The amendment to clause 3 of the printed bill would be striking out clause 3(1)(c) and substituting the following:

"(c) by repealing clause (z) and substituting the following:

"(z) **'licence'** means a right, whether or not exclusive, that is transferrable by the licensee, with or without restriction or the consent of the licensor:

(i) to manufacture, produce, sell, transport or otherwise deal with personal property;

(ii) to provide services; or

(iii) to acquire personal property;

and includes a licence that is subject to cancellation and reissuance by the licensor to another party at the request of either the licensee or the secured party**";**

The Chair: — Do committee members agree with the amendment as read?

Some Hon. Members: — Agreed.

The Chair: — Carried. Is clause 3 amended agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 3 as amended agreed to.]

[Clauses 4 and 5 agreed to.]

Clause 6

The Chair: — I recognize Mr. Francis.

Mr. Francis: — Yes, thank you, Mr. Chair. I would like to put a motion forward to amend clause 6 of the printed bill:

> Amend clause 7.2(1)(d) of *The Personal Property Security Act, 1993*, as being enacted by Clause 6 of the printed Bill, by striking out "in investment property" and substituting ", other than a security interest mentioned in 7.1,".

The Chair: — Moved by Ken Francis to amend the following:

Clause 6 of the printed bill

> Amend clause 7.2(1)(d) of *The Personal Property Security Act, 1993*, as being enacted by Clause 6 of the printed Bill, by striking out "in investment property" and substituting ", other than a security interest mentioned in section 7.1,".

Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 6 as amended agreed to.]

[Clauses 7 to 28 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Personal Property Security Amendment Act, 2018*.

I would ask a member to move that we report Bill No. 151, *The Personal Property Security Amendment Act, 2018* with amendment. Mr. Olauson has so moved. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 154 — *The Intestate Succession Act, 2018*
Loi de 2018 sur les successions non testamentaires

Clause 1

The Chair: — We will now be considering Bill No. 154, *The Intestate Succession Act, 2018*, a bilingual bill.

We will be considering our consideration of clause 1, short title. Minister Morgan, would you please make your opening comments. And I see you have a new official also.

Hon. Mr. Morgan: — Thank you, Mr. Chair. I am also joined by Darcy McGovern who was with us for the last number of bills, as well as Maria Markatos, the senior Crown counsel, legislative services branch. Ms. Markatos recently told me that she aspires to become Justice minister of the province of Saskatchewan. That said, I'm pleased to be able to offer opening remarks concerning Bill 154, *The Intestate Succession Act, 2018*.

Mr. Chair, this act will repeal and replace the existing intestate succession Act, 1996 with a new Act that incorporates the recommendations contained in the 2017 report of the Law Reform Commission of Saskatchewan.

When a person dies without a will, the administrator may not have any knowledge of how the deceased wants their estate distributed. *The Intestate Succession Act, 1996* established its rules for the distribution of an estate where a person dies without a will.

The Law Reform Commission recommended and the new Act clarifies when a spousal relationship has terminated, for purposes of the Act. The new spousal separation provision will maintain the prohibition of a spouse who is cohabiting with another person in a spousal relationship from inheriting part of the estate, but will also add provisions that the surviving spouse take no part in the deceased's estate where at the date of death the spouses have been living separate and apart for two years, had started family law proceedings against each other, or were parties to an agreement distributing family property.

The Act includes a new provision that the spouse inherit the entire estate if all children of the intestate are shared between the spouses. This provision will reflect the common practice in wills of leaving the entire estate to the spouse and will ensure that the spouse has access to funds for the ongoing care and maintenance of the children of the relationship.

Mr. Chair, the Act replaces the existing next-of-kin distribution model with the parentelic model of distribution. The two models of distribution differ as potential inheritors become more remote. The parentelic model permits relatives with a closer common ancestor with the intestate to inherit before more distant familial lines.

The new Act will provide that the preferential share for a spouse be set out in the regulations. This will permit regular increases in the amount of the preferential share. Finally, the Law Reform Commission recommended that the doctrine of advancement be eliminated, and the new Act does not retain this provision.

Mr. Chair, with those opening remarks I welcome your questions regarding Bill 154, *The Intestate Succession Act, 2018*.

The Chair: — Thank you, Minister. Ms. Sarauer, do you have any questions?

Ms. Sarauer: — Sure. I'd like thank the minister for his opening remarks again and the officials for being here this evening. I understand this bill has been drafted after the hard work and good work by the Law Reform Commission. I have a copy of their report here this evening. My first question is around their recommendations. Were any of the recommendations that were made in this report left out of this bill? And if so, why?

Ms. Markatos: — Thank you. Maria Markatos from legislative services. The main recommendation that was left out was to codify the common-law principle preventing an individual from benefiting from a crime. We initially started looking at that provision, but when we dug into it and looked at the case law and looked at other jurisdictions that have created legislation around this common-law principle, it was so fact-specific and had so many different layers that we determined it was better to leave it to the common law.

Ms. Sarauer: — It's interesting. What other jurisdictions have that provision codified?

[20:00]

Ms. Markatos: — No Canadian jurisdictions do, but we looked to the UK [United Kingdom] and Australia and New Zealand. And they actually have complete Acts surrounding what happens, what crimes are caught, what happens if you cause the death of someone and then they were meant to inherit and then you inherit as a result. So far more nuanced than a single provision to be added to this Act.

Ms. Sarauer: — Thank you. And largely just for the record, can you explain what the common-law rule is currently around this issue?

Ms. Markatos: — The common-law rule is essentially that you shouldn't benefit from committing a crime. So if you caused the death of someone and you are entitled to inherit from that estate, you won't inherit.

Ms. Sarauer: — Thank you. Can you explain why the doctrine of advancement is being removed?

Ms. Markatos: — The doctrine of advancement is a really old concept where a gift, generally to a child, is provided while the intestate is still alive. And then when it comes time to distribute the estate, the gift is considered as part of the person's inheritance.

This one again is very nuanced, whether or not it should be included, whether or not it was intended to be a gift, if it was intended to be a straight-up inheritance before the person dies. And it has been eliminated in several other Canadian jurisdictions, including BC [British Columbia] and Alberta. They have the most recent estate legislation updates, so we followed it as well.

Ms. Sarauer: — Thank you. Can you also explain the parentelic model of distribution that's being adopted?

Ms. Markatos: — The current model in the existing Act is a next-of-kin model. So it sets out spouse followed by children are in line to inherit, parents, then siblings, then nieces or nephews. And that lines up with the parentelic model.

But when you get past nieces and nephews, the parentelic model is set up so that you exhaust that line of descendants, so the parental line — parents, siblings, nieces and nephews, great-nieces and nephews, and then it goes up to the grandparents line.

And it usually doesn't go that far when you're looking for descendants, but when you do get further out than nieces or nephews, it can become really difficult to find those other degrees of next of kin. And the parentelic model allows you to go to closer, probably in age or relationship, next of kin than you would with the existing model.

Mr. McGovern: — I think that explanation of parentelic, which is very well stated, but it's a good example of why in every case when *The Intestate Succession Act* is considered, either in the House or in committee, we make a point of saying, get a will.

This is intestate succession, and it becomes very complex. And this will make it more predictable, but it's not as predictable. And so, you know, without question any of these discussions should always be framed by someone like me saying, get a will. That's how you make sure that your estate is properly managed in a predictable way and, more importantly, in the way that you would like it to be.

Ms. Sarauer: — Absolutely. Always a good caution for the broader public and ourselves. I appreciate that.

I had another question, but now I forget what it is after your eloquent statement, Mr. McGovern.

Mr. McGovern: — Sorry.

Ms. Sarauer: — That's okay, just give me one moment and I'm sure it'll come back to me. Yes, I understand the Law Reform Commission did extensive consultation prior to the creation of their report. Was there any further consultation that the ministry did in drafting this bill?

Ms. Markatos: — We reviewed the report, obviously, that was prepared by the Law Reform Commission and received a list of the individuals and organizations they consulted with. Their consultation was very broad, very public, was on their website. And ours was a more targeted consultation, but we did consult with members of The Canadian Bar Association; the Estate Planning Council of Saskatoon and Regina were also provided with a copy of our draft paper; The Public Guardian and Trustee of course; and the Law Reform Commission.

Ms. Sarauer: — Thank you very much. No further questions.

The Chair: — Well thank you. Are there any further questions from the committee?

So we will start out with 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 Intestate Succession Act, 2018*, a bilingual bill.

I would ask a member to move that we report Bill No. 154, *The Intestate Succession Act, 2018*, a bilingual bill, without amendment.

Mr. Tochor has moved. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

This concludes our business for this evening. Minister, do you have any closing comments?

Hon. Mr. Morgan: — Thank you, Mr. Chair. I want to thank you, the members of the committee; the table officials; the officials that work in the building, with Hansard, security, and televising the proceedings; as well as the staff from the ministry that have been here tonight. And I would like to take this opportunity to thank the staff of the ministry for the work that they do all year long. I think our province is well served by the ministry officials.

As members would be aware, this is largely initiatives tonight that were driven by uniform law conferences, and I think our province has, generally speaking, been one of the leaders with regard to those type of things. So I want to take this opportunity to thank all of the officials from everywhere and you as well, Ms. Sarauer.

The Chair: — Ms. Sarauer, do you have any closing comments?

Ms. Sarauer: — I'd just like to join with the minister in also thanking everybody, in particular the officials for being here this evening and giving myself some thoughtful answers to my questions. Thank you.

The Chair: — And I want to thank all of the people who are galvanized watching their television this evening and watching all the lawyers talk. It's very interesting.

Seeing we have no further business this evening, I will ask a member to move a motion of adjournment. Mr. Olauson 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 20:09.]