



# **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 and welcome to Intergovernmental Affairs and Justice. I'm Fred Bradshaw, the Chair. Substituting for Buckley Belanger, we have David Forbes. We also have with us Ken Francis, Hugh Nerlien, and Eric Olason.

This evening we will be considering four bills: Bill No. 133, *The Legislative Assembly (Election Dates) Amendment Act, 2018*, a bilingual bill; Bill No. 141, *The Interpersonal Violence Disclosure Protocol (Clare's Law) Act*; Bill No. 152, *The Builders' Lien (Prompt Payment) Amendment Act, 2018*; Bill No. 168, *The Justices of the Peace Amendment Act, 2019*, a bilingual bill.

There's been a request to switch the order of consideration of Bill No. 141 and Bill No. 152 on today's agenda. Is leave granted to change the order, the agenda?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

**Bill No. 133 — *The Legislative Assembly (Election Dates) Amendment Act, 2018/Loi modificative de 2018 sur l'Assemblée législative (dates d'élection)***

**Clause 1**

**The Chair:** — We'll be considering Bill No. 133, *The Legislative Assembly (Election Dates) Amendment Act, 2018*, a bilingual bill, clause 1, short title. Minister Morgan, would you please introduce your officials and make your opening remarks. And I'd like to remind the officials to state your name when you're speaking, for *Hansard*, please.

**Hon. Mr. Morgan:** — Thank you, Mr. Chair. I'm joined tonight by Darcy McGovern, director, legislative services, as well as staff from my office here, Clint Fox and Molly Waldman.

Mr. Chair, *The Legislative Assembly (Election Dates) Amendment Act, 2018* is being introduced to change the date for the 2020 general provincial election from November 2nd to October 26th. Under the existing election laws, the 2020 provincial election would have been held five days after municipal elections. With this bill and the proposed changes to *The Local Government Election Amendment Act*, the provincial election will now be held on October 26th, 2020, with municipal and school board elections held two weeks later on November 9th, 2020.

The amendments further provide that following 2020, future provincial elections will be held every four years on the last Monday in October. Future local government elections will be held on November 13, 2024 and in every four years on the second Wednesday in November.

Mr. Chair, after consulting with both rural and urban municipalities, it was clear they wanted to keep their elections in the fall of 2020, and so did we. Through this legislation we believe we have reached a reasonable compromise that will allow

local officials time to prepare for these changes. In 1991 and in 2003, the municipal and provincial elections were held roughly two weeks apart with no apparent problems. Fall provincial elections are preferable because they don't disrupt the legislative calendar. The elected government can still introduce the Throne Speech in the fall and a budget at the usual time in the following spring.

Prior to the 2016 provincial election, the previous four elections were held in the fall. The 2016 election was in April due to a fall 2015 federal election, and this delayed the provincial budget until June. With this in mind, the provincial election will be held prior to the municipal election. It would have been impossible to move the provincial election later, so it would be impossible to have a legislative session before Christmas.

Mr. Chair, this government introduced set-date elections when it was first elected to prevent the uncertainty of snap elections. Making these changes well in advance with the proposed election date is consistent with its practice and will support that commitment to certainty without unduly conflicting with local government elections. We would be pleased to answer your questions regarding *The Legislative Assembly (Election Dates) Amendment Act, 2018*.

**The Chair:** — Well thank you, Minister. Are there any questions? Mr. Forbes.

**Mr. Forbes:** — I have a few, and thank you very much for this opportunity. And I would say first off, right off the bat, this would have been a very good topic to have with the committee that was entertaining witnesses because this is an issue that's broader than just the two, you know, the government side, the opposition side, the two main parties in the provincial scene.

You know, we just had the Australians here and we've talked about the good things we've learned from them, and I'm thinking particularly about the committee, how we structure our committees. But the missing thing really is that we don't have witnesses like we should be having. And I think this would be an excellent one, an excellent opportunity here. What are people saying?

Now, Mr. Chair, Minister, you had said, and I just want, if you could repeat that line that you had, that because of the two weeks that there was not going to be apparent problems. You're surmising that, or is that something you've taken as proof?

**Hon. Mr. Morgan:** — We believe that the electoral office can manage the elections when there's that much of a distance between them. Otherwise they would've been directly on top of each other, so this allows for a distance between them and it sets the pattern for future elections.

**Mr. Forbes:** — Okay. You know, when I look back at what the Chief Electoral Officer's discussion paper, and it's two years ago, April 2017 that we received that, and it really did talk about the problems of the overlap. And at that point the elections were going to be five days apart, and now they are going to be 14 days apart. Is that right? It's October . . . No, the municipal was going to be October 28th of 2020 and they are moving now to November 5th, I believe, if I've got that date right.

**Hon. Mr. Morgan:** — They're moving slightly later. They are moving to November 9th.

**Mr. Forbes:** — Ninth? Okay.

**Hon. Mr. Morgan:** — And then the provincial election will go from November 2nd back to October 26th. So the spread will be November 9th to October 26th, so a two-week spread.

**Mr. Forbes:** — Two-week spread, or 15 or 14 days.

**Hon. Mr. Morgan:** — Fifteen days.

**Mr. Forbes:** — So you know, many of the same issues arise from what the Chief Electoral Officer had identified in 2017. And we all could see it coming that the overlap was going to be close, and it still remains close. Now I don't know . . . This is one of the questions I would ask, is you've had consultations, and if you could identify the consultations you've had and how did they respond. Was it a meeting or did they prepare briefs for you or what did they do?

**Hon. Mr. Morgan:** — It was informal discussions with a number of municipal leaders as well as the Electoral Officer. The Chief Electoral Officer would have liked to have seen a number of months in between. As it turned out, you know, these two elections were going to be right on top of each other and we accepted the fact that that was problematic. We've campaigned on and are committed to having our elections every four years. We made a change in it so we didn't . . . You know, we had the one year where we went for the additional six months so that we could move ours so we got past the overlap with the federal, and we don't want to go through another process again.

So the two options that would have been possible would have been for the provincial legislature to extend its term for a period of time or the municipal politicians to extend theirs. Nobody wanted to extend their term. The municipal politicians that I talked to said, it would look self-serving for us to do it. If you legislate us, we'll do whatever, but we're not going to publicly support or endorse anything that would appear that it was the self-serving extension of our terms. And I think as provincial MLAs [Member of the Legislative Assembly], we feel much the same.

So that left us with the preferred option of doing them both in fall of 2020. And this will give us sufficient spread. The Chief Electoral Officer indicates his preference certainly is to have a half-a-year spread but indicates that this is workable for their office as well. So this is probably by far the lesser of the evils.

**Mr. Forbes:** — So the Chief Electoral Officer had identified a third option and that would have been the four-year cycle and having it in the spring of 2020. And so why have you . . .

**Hon. Mr. Morgan:** — That would mean breaking our position from the four-year cycle. We've worked hard to get to the four-year cycle, so it would mean either shortening ours or extending ours. We're committed to having fall elections every four years unless, of course, there's a collapse in the . . .

**Mr. Forbes:** — But this isn't every . . . This isn't four years. This is four and a half years, right?

**Hon. Mr. Morgan:** — Well we're committed to four years, not four and a half.

**Mr. Forbes:** — So you're committed to a fall election. Now is it in the same cycle, and will it be in the same cycle as the municipal elections going forward? Are we going to be this close . . .

**Hon. Mr. Morgan:** — We will. So that's why the legislation has got the provision indicating what day it will be going forward in each and every election cycle after that. The provision will move the . . .

**Mr. McGovern:** — With respect to the municipal elections, Mr. Chair, the changes that were made to *The Local Government Election Act* would specifically state that we have a November 9, 2020 election. That takes them off their normal Wednesday date because of Remembrance Day. But after that, it would be November 13th, 2024, which is a farther spread than the last Monday in October to November 13th. And then on a go-forward from 2024, it would be the second Wednesday of November would be the set date with respect to the municipal side.

**Mr. Forbes:** — It's still pretty close. I mean people would say . . . The Chief Electoral Officer, I think what he was saying in his report was he was hoping that it would be a year, that he in fact . . . The reason he was thinking, and he was going for 2021, in the spring, was that every year. But you've had difficulties though actually having a fixed election date. You know, you achieved that in 2011 but not in 2016. And then this won't be fixed as well because it will be a change because of legislation. And so we might yet have . . . So that's two out of three that you haven't actually followed the formula.

**Hon. Mr. Morgan:** — The commitment was that it was going to be a four-year window.

**Mr. Forbes:** — Right.

**Hon. Mr. Morgan:** — By moving it a few days, we think we're compliant with that. We've actually moved ours to a few days shorter so nobody can say we've extended ours. So we've moved it by a few days shorter. Nobody's going to say, one way or the other, that we didn't comply with having a four-year cycle.

And I think the municipal councillors, mayors, and reeves feel the same way, that they're on a four-year cycle. Now as you're aware, they were a three-year term. Now they're on a four-year term as well. So this will move them slightly later and provincial slightly earlier. And it will work going forward because it will be defined in the legislation as to what day it is, going forward.

**Mr. Forbes:** — So your extension — and it is the second extension this government will get out of its three terms — is not as long. It's four days not as long than what . . .

**Hon. Mr. Morgan:** — No, it's actually four days less.

**Mr. Forbes:** — Less, or not as long.

**Hon. Mr. Morgan:** — So yes. So we're actually giving up a few days because the provincial election will be slightly earlier. The municipal election will be slightly later to allow for a two-week interval.

**Mr. Forbes:** — But it's going to be . . .

**Hon. Mr. Morgan:** — And I appreciate that some people may have wished to do something different, but after hearing and considering the different options, we feel this one fulfills the mandate, the commitment that we've made to the province that we're going to be on a four-year cycle. It moves the municipal politicians to a period of time where they're falling on the same cycle, but gives sufficient spreading and so on. It is, we think, a very workable option.

**Mr. Forbes:** — So did SUMA [Saskatchewan Urban Municipalities Association] and SARM [Saskatchewan Association of Rural Municipalities], did they give you an official policy position? Or this was, you said, you characterized it as an informal discussion.

**Hon. Mr. Morgan:** — What we heard from them is they didn't want to extend theirs any farther. And when you talked to them individually, there was a variety of different opinions that were given and there wasn't a clear position taken other than they knew . . .

**Mr. Forbes:** — Well I know I've heard both sides, you know, and I know that Mayor Charlie Clark was really hoping that there would be a difference. And he has stated that. Now I understand the mayor of Regina's stated something different. So just wondering if there is a . . .

**Hon. Mr. Morgan:** — When it was announced, SUMA announced that they were "... pleased that voters in Saskatchewan's hometowns will continue to head to the polls every four years to elect their municipal government. [This is a quote from SUMA President Gordon Barnhart.] Our hometown governments are the order of government closest to the people and established election dates promote accountability and transparency."

[19:15]

A quote from Ray Orb, from SARM president:

Saskatchewan Association of Rural Municipalities is generally satisfied with the municipal election date being moved to November 9, 2020. Our members did not want to postpone municipal elections by a year and although a date change was not our preferred option, the current option will allow time for our farmers to complete harvest and will not interfere with SARM's Midterm Convention 2020.

So this one seems to address the concerns that we heard from people.

**Mr. Forbes:** — Well, and I know Charlie Clark's not on that same page because he's been very clear about that and very outspoken about that.

**Hon. Mr. Morgan:** — I'm not sure that he is. I think he was of the ones that have said, you're the provincial government, you can legislate what it is; we'll live with it; I'll tell you what our publicly stated preference is. When I met with him he was, you know, we'll live with whatever it is, and didn't indicate that there was any particular problems with it. So I don't think what you

might have heard from him was vigorous opposition other than it was a matter of stating a different preference.

**Mr. Forbes:** — So now you had said something interesting earlier about the budget in the spring of 2016. Was that a mistake then to have that spring election and to have that spring budget then?

**Hon. Mr. Morgan:** — When we have the election, you know, we struggled at that, at the 2016, which was one that was done in the spring, to have the election and be able to do a budget immediately following because, as you're aware, budgets are usually done in the spring.

**Mr. Forbes:** — Right, yes. And so this is why . . .

**Hon. Mr. Morgan:** — So we delayed, the provincial budget was delayed that year until June, so the government essentially ran on warrants until that date.

**Mr. Forbes:** — So I understand the provincial election on the 26th, winner declared that night; there'll be a change of government. We'll have the swearing-in two weeks later, and then the Throne Speech a couple of weeks after that. You're in, you know, late November. That's unusual for a Throne Speech. Throne Speech is usually mid-October. Are you not messing with the legislative calendar by putting a Throne Speech so late? And why not do it in June where a Throne Speech can be prepared? A budget's given in the spring, you know, in March or April. We debate it, we go away, have an election.

**Hon. Mr. Morgan:** — Actually I think this speaks to that rather well because the election is actually earlier. For the last number of elections, we've had fall elections with the exception of one. So we've done them in the fall, had a Throne Speech as soon thereafter as was practical. This one we're actually moving it back a few days, so it's actually slightly earlier.

We're cognizant in the province that in the spring we have a long seeding season and it's difficult to say to the farm people in the province, take time off to go and get involved in an election. There's strong opposition to having spring elections in this province. The desired time, when I think you canvass most of the rural people and most people in the province, will be fall sometime after harvest.

**Mr. Forbes:** — Now, so did you do a survey? I mean when you say there's strong opposition, how do you know there's strong opposition to, say, a June election? We've had many in the province and, you know, there doesn't seem to be a problem with late June.

**Hon. Mr. Morgan:** — We didn't do a massive public consultation on this one. We wanted to address a problem that one election was right on top of the other one. So we didn't set out to rewrite the legislative calendar.

What we started out with was this government made a commitment to a four-year cycle. This fulfills the four-year cycle. We went a half year out of sync so that we could manage to get ourselves away from the federal election. We've done that. So now we're committed to fall of 2020 and 2024 and so on. And we're not prepared to look at a different cycle other than what we

committed to the voters when we formed government.

**Mr. Forbes:** — I appreciate that you're committed to the four-year cycle. I'm just having a question mark around the fall part of it because you've already, out of the three tries, you will have missed your four-year cycle twice. And so this is a problem. You've actually gained almost maybe a full year between the last two cycles. That'll be four and a half and four and a half.

**Hon. Mr. Morgan:** — Well that's exactly what happened. We moved them a half a year out on one and then we moved it back so that we were back in sync the next one. So yes, one of those was out by six months and the next one was four and a half to get it back in where it was supposed to.

So a year was gained to move it out of sync with the federal election. And we have now, with that exception of the one election, we've managed to have ourselves into a position where we're in step with the four-year cycle. And we're not prepared to consider moving it to a different time of the year.

And I'm sure you can find somebody that says, oh well, for my convenience I would like something different. But we think, given how the farming calendar works in our province, this is the time that I think would be the preferred time by most voters.

**Mr. Forbes:** — But you have now backed up . . . October 26th goes to September, late September. You're crossing into two things, the 28-day period. So if you just back up 28 days from October 26th, you're into September 28th.

And two things: people are going to be actively campaigning during Thanksgiving weekend. I don't know how many people came forward and said, listen, I really want you to have people on my doorstep on Thanksgiving weekend; that's something I'm looking forward to. And then the other thing is . . . Now there's many farmers over there that may be telling me this but I would think, and I come from a family of farmers as well, there is the odd farmer out there that sometimes maybe is not done by the end of September or even early October. And they hope they can be done, but sometimes we've had some weather problems.

Now if they're going to tell me everybody's done by September 15th, then that would be interesting. That would be something to get on the record. But there is the odd one. And we all hope people are done early, but it's just like the same with spring seeding. We're hoping everybody's done by June 1st. Sometimes people aren't done by June 1st.

So you have those two problems in the fall. So if you want to respond to that, I'd be interested in hearing your comments on that.

**Hon. Mr. Morgan:** — I think no matter when you have the election, there will be an inconvenience factor to some group of people. If you had it in the middle of winter, it would likely fall across the Family Day holiday in February. If you moved it forward, it would be . . . people that would want to do it. And there will always be people that will have late seeding or late harvest. And I, you know, I think we try and pick a time where people are typically and generally done harvest and are not yet gone away for the winter if they're people that are snowbirds. And we think it's a time when it's not too cold to door knock for

older politicians such as you and I. And it maintains the four-year cycle.

So you know, if it's going backward, when we've had that . . . We had April 14th in 2016; 2011 was November; 2007 was November; 2003 was November; 1999 was September; 1995 was June; 1999 was October 21st; '86 was October 30th; '82 was April 26; going back, September . . . 1978 was October; and in 1975 was June. So they've been all over but, more often than not, late, late fall. So that's sort of the pattern we think is preferred.

**Mr. Forbes:** — Well you know, and we can go back and I know that there's been different writings about all of this and different comments about when would be best. I mean it's interesting that Grant Devine's best elections were in the spring and his worst one was in the fall. And so we can take a look at that.

And I did actually find this quote by Charlie — now did I just lose it — yes, and just to get it on the record. And this is from the Postmedia news files on October 31st, 2018. And he said, and I'll just read this into the record:

Saskatoon Mayor Charlie Clark said he hoped the province would reconsider to "look at separating the seasons and have either the provincial or municipal election take place in the spring of 2021.

"The main objective is enough separation, however it gets determined, so that the electorate has a chance to follow and discuss and consider the issues that are at stake at the municipal level, not all at the same time as they're looking at it at the provincial level," he said.

So I don't know if that was pre when you came out with the actual date. But I think the point that he's making is the same point that the Chief Electoral Officer was making in his report just a year earlier when he talked about the problem of people being caught up with a pretty intense electoral period. And of course we have the American election that will be happening on November 4th I think of that year as well. And we know what an elephant in the room that is, in terms of people fixated on American elections when we hope that they think about our provincial issues and our civic issues as well.

But the issues that he was raising, the Chief Electoral Officer, and I'll just go over it, you know, the whole issue of different candidates, different voting hours, different assigned voters. The procedures may be quite different. And then eligibility rules, registration procedures, where they go to vote, voting times and dates, differences in acceptable identification documents, all of those things. And then of course the advertising on advance polls will overlap because you'll have the civic elections. Electoral people actually, I think if the election is on November 9th, they could be, you know, if you back up one week, the advance polls will probably be November 2nd and therefore they would be advertising probably during the same campaign period about where to go vote.

And we know that that can be a problem as much as people think they're cued in to where they always go. I mean we've had this numerous times where we try to get the best polling station, and they'd be changed. I've raised this issue several times about those kind of changes.

I know, for example in Riversdale in the last election — and, Mr. Minister, you would know Riversdale and quite familiar with it and TCU Place — well that's where they had to go vote, at TCU Place. They couldn't vote at Princess Alex on Avenue H. That's a change. And of course people did get plenty of notice and all of that but it's, you know, like many of us, maybe not read all of the information right away, and they didn't know that's where they went to vote. They tried to equalize out the number of voters per polling station and because Riversdale's a smaller population, some of them were over to TCU Place. So I think there's some real issues.

So now it's not your job, as we do have a Chief Electoral Officer to ensure that this is going to go well, but this is not going to help that. I think it's still too close. It may be 14 days apart as opposed to nine days apart or seven days apart. It's just still too close. And you know, this is the thing, that we don't want to be back here again. We have absolutely no problem with the four-year traditional rule and the fixed election date. But I think that this may be a problem.

So have you anticipated, have you thought about weighing the issues, the problems there that I've just identified, that the Chief Electoral identified?

[19:30]

**Hon. Mr. Morgan:** — We feel this is the best solution and minimizes the most number of . . . You raised the issue of Mayor Clark's preference was to have one or the other one go later on. So with the idea of the municipal election going in spring of 2021 or fall of 2021, there was virtually no support from SARM or SUMA to have the municipal election moved. They were committed, as are we, to having it done in fall of 2020.

So without either provincial or municipal politicians wanting to move away from fall of 2020, they for a good reason had decided this was the commitments they had made to the electorate, was there would be a four-year cycle. So having the four-year cycle, that's when it lands and how best to resolve the issue by moving it a few days, we're there. The Chief Electoral Officer indicates that they believe they're capable of doing it.

I don't think that the polling station issue is part of this bill. I mean I hope that the Chief Electoral Officer is able to publicize where polling stations are. I hope that their office is able to notify voters where there's a significant change from previous elections. But I think most of us have voted at a number of different locations over the years, and you look at the literature when it comes, you see, oh yes, this is where I vote in this election, where I vote on it.

I want to mention just a bit about the reason why we did this for the federal election and not for municipal elections. With the municipal elections, municipal elections are not done on a party basis. Where the confusion would come in is in a federal election and a provincial election being done at the same time, because in those cases — and I've got a note — there would genuinely be the possibility of confusion between the electorate. There are Liberals, NDP [New Democratic Party], and Green Party candidates that are running in both federal and in provincial elections. So there would be a possibility that somebody says, oh yes, this is the individual that I like and want to vote for her or

for him, and then go to the polling station and realize, oh, you're thinking of a federal election rather than a provincial election.

But that doesn't happen between a provincial candidate and a municipal candidate. A provincial candidate runs with a provincial banner and, you know, the separation is there. So I don't think there's going to be a significant amount of confusion. The Chief Electoral Officer, I'm sure, will just maintain staff and work right through, work through the processes. The volunteers and paid staff, they would have . . . You know, I can't speak from whether that's a benefit of not, just to continue working through the fall and getting the bulk of it done in the one season rather than a year apart. But I have confidence, you know, they've indicated they're quite capable of doing it, so I think it's going to be workable. And I'm sure that either one of us can go around and find somebody that would prefer it to be something different, but we think this is the one that is workable and will satisfy the most number of people.

**Mr. Forbes:** — Well I'm going to take you up on that word "workable." Because this is the thing that, you know, it's great that Saskatchewan in terms of its volunteerism and that, but the Chief Electoral Officer also had done a lot of, identified a lot of issues and talked about the administrative perspective, the same voting locations, temporary election workers.

And you know, there's 10,000-plus that are required provincially, will be sought by election administrators at both jurisdiction levels. And because of the overlap I think this is going to be an interesting time because you're going to be able to start voting probably in the provincial election — now correct me if I'm wrong — but the advance polls probably will be two weeks or 10 days before polling day, something like that.

**Mr. McGovern:** — I can speak to that if you'd like. My recollection under *The Election Act* is that advance polls under the existing election Act would have to be held within one calendar week of polling day. So it would be in that . . .

**Mr. Forbes:** — So let's say an October 19th election. Voting starts in the province of Saskatchewan and essentially goes from October 19th to November 9th. You know, it's going to be quite a season of voter activity. And the issue really becomes then the fatigue that may be out there because of that.

You know, they talk about the office, the rental space, the workers. You know, he talks about the 10,000 that are required provincially; how many will be sought locally, it's another matter. And then you have the competition for office space, and that's whether you have a party or whether you're just a city councillor. That will be the same thing — campaign volunteers and other campaign resources, sign printers will have to get their work done. So this will be really a pretty active time.

And again this seems to be based really around the issue of . . . not about the four-year cycle. We are okay with the four-year cycle, but whether it's in the fall or the spring.

**Hon. Mr. Morgan:** — I appreciate your preference might be spring. We think the citizens of the province would prefer the fall. We decided, we made a change to have four-and-a-half-year terms twice in a row to move it so that we would be moving a full year ahead. We rejected it at that time when the legislation

was . . . of moving it to a spring election. We felt that was the right decision to do at that point in time, so we've got it so we're not prepared to make a change on it.

And you're right. You make a valid point. It will be a busy time that the citizens will have to stay focused on what they do. I have confidence in the citizens of the province that they can handle two elections within a month. And I know you made the point that they'll be watching the US [United States] elections as well. I don't know how many of us might get mistaken for Bernie Sanders. I don't plan to, but it's always the risk that's there. I deliberately shaved today so that I wasn't confused with any other politicians.

**Mr. Forbes:** — And I appreciate that because I know there's many Democrats that like to sport a beard. But I don't think either one of us will be mistaken for Trump, so we're all good.

**Hon. Mr. Morgan:** — I think both you and I are safe on that issue, and I'd like to think both you and I are safe from being confused with Bernie Sanders.

**Mr. Forbes:** — So I just want to shift gears a bit. I may come back to this depending on the time. And you really have focused on subsection 8.1(1). Did you do any further analysis of this Act in terms of weaknesses that it may have in terms of the fact that you're going beyond the 48 months?

**Hon. Mr. Morgan:** — This Act was prepared and the amendment was intended to deal with the overlap of the two elections. So other issues would be dealt with at some point in consultation with whatever recommendations the Chief Electoral Officer or whatever . . . You know, we felt it was imperative to deal with this issue because we had the election coming. And we may want to take another longer look at other issues at some point in time, but this is the only issue that's dealt with in this one.

**Mr. Forbes:** — You know, because there are a lot of things, I mean, based on the four-year cycle and the 48 months in this legislation. So I have a good idea for you, and sometimes this is a place where we do this. It's happened before, and I am serious about that. I think about when Bob Bjornrud brought the animal service protection Act forward, and we had the animals . . . I forget what the bill was, but he took it that night.

So this might be a chance that we can talk about because we have the Act open tonight. Mr. Speaker, if I could just point out another weakness in this, and this is section 46, By-elections. And we've raised this before, where we have a flaw in the legislation that's based on a 48-month cycle. And of course the cycle is longer than 48 months; we're going to be hitting some 56 months, I think, before the election actually occurs. So I don't agree with the date, but we had to fix it. It was not going to be good.

So the bill that I had proceeded with — and I would like to hear what the minister thinks about it — was pretty straightforward. And it was just to introduce the following subsection after subsection 46(2). So there's a 46(1), but to introduce a new section:

If the next general election would be more than 48 months from the date of the previous general election, subsection (1)

applies.

And what that is, and your officials may not be aware of what I'm talking about here, but I think the minister may be . . .

**Hon. Mr. Morgan:** — It's your Bill No. 612.

**Mr. Forbes:** — Yes.

**Hon. Mr. Morgan:** — And I'm not prepared to debate or discuss that in the context of the bill that's before the House.

**Mr. Forbes:** — Why is that?

**Hon. Mr. Morgan:** — Well I came here to put forward four bills tonight. I didn't come here to debate or discuss another one, nor did I prepare or get out the calendar for it or look at it. I'm familiar with the opposition bills that have come forward. And that may be one that would be taken under advisement the next time there are recommendations from the Chief Electoral office, not something we'd look at in the context of this one. This one, we were wanting to deal with a specific problem, and that's the direction we're . . .

**Mr. Forbes:** — But we have the Act. We have the Act open before us right now, right? We're talking about amendments?

**The Chair:** — Well actually, no. We're working on this particular bill right now. This is a bill for the election dates. This is not to open up all the rest of it. So I would prefer that you did stick with that end of it. We can always just, if you want to discuss it later, we can do that some other time or you can discuss it with the minister. But at the present time, no. We should be sticking with what we have in front of us here.

**Mr. Forbes:** — Well you know, Mr. Chair — and not to challenge you, because I admire your work — but we've always had this standing in . . . You know, the Act is open right now, is it not?

**The Chair:** — The bill we're considering right now is, what we're talking about now is the election dates. It's not actually physically going through all different aspects of the bill. We're talking about the election dates at the present time.

**Mr. Forbes:** — But what would happen, Mr. Chair, if . . .

**The Chair:** — No, we have to . . . I want to stick with what this is.

**Mr. Forbes:** — Can there not be an amendment tonight to amend this bill that we have before us?

**Hon. Mr. Morgan:** — The House amendment would have to be within the scope of what this bill is, and you're talking about adding an amendment dealing with another section. And it's not something that's gone through a committee process or anything else. And I would ask the Chair to rule it out of order. We're here to deal with the provisions of this bill, and I'll certainly answer whatever other questions you've got or talk about . . .

**Mr. Forbes:** — Well let me ask it this way. We know there are members who are very unhappy about some of the democratic



processes we have had. And one of them is, and I'll talk about, this is the member from Cannington. And back in 2004, this is what he had to say. And this is a quote, and it was in a committee, "I think that's just not acceptable, Mr. Minister, that a seat should be vacant for one whole session or even potentially two whole sessions . . ." Now my point is, you're trying to fix this back to the 48-month cycle and we've said that's a good idea, but here is a flaw. How can you overlook this flaw?

**Hon. Mr. Morgan:** — We're not prepared to concede that it's a flaw or have the discussion on that issue as part of this bill. You know, maybe when Bill 612 gets to a committee stage or gets voted on, that may be the time we have that discussion.

**Mr. Forbes:** — So you know, this flies back into . . . and I just want to read what you had said . . . [inaudible interjection] . . . Yes.

**The Chair:** — You're out of order here. Let us stick with what we have in front of us here. And we can't go through all different aspects of this bill, so I'm going to rule it out of order. And let's stick with what we have here in front of us, Bill 133.

**Mr. Forbes:** — Okay. So we can't . . . Well I'm trying to think of my thoughts here because it just seems that we're in a situation. I want to quote the minister from 2008 on the fixed elections date amendment Act at that time. Would that be appropriate?

**The Chair:** — Yes.

**Hon. Mr. Morgan:** — I don't have an objection to you reading in something else if it's material to this bill. And if it's material to this bill, I'd be prepared to comment. If it's not, then I won't.

**Mr. Forbes:** — So this is what the minister, who was the same minister at the time, said. I mean it's interesting that you've had a break from Justice in between, but this is on your rebound.

[19:45]

**Hon. Mr. Morgan:** — Recycling.

**Mr. Forbes:** — Recycling. Had said the . . . and I quote, and this is from March 10th, 2008:

Mr. Speaker, this fixed election legislation will remove the guesswork and political opportunism that far too often dictates the timing of elections where a governing party seeks to set an election date to its own advantage.

So I think that speaks to the issue that we have at hand here right now.

But my problem is here we have a very complex problem and the government has taken a very simplistic approach to it, say, we'll just change the dates by a couple of weeks and the problem will be fixed. There's many other problems here. This is not an appropriate solution for the government to put forward.

The government, you know, whether it's us or those folks over there, probably will be back because one of the issues that we have and we have to do in these committees is to make sure

there's no unintended consequences. And here we're going to have some unintended consequences by a very short-sighted, very small bill. And maybe that's all.

And I would say and just reflect on the minister at the time and this same minister, when we talked about that governing parties seek to set an election date to its own advantage, and here we have them setting the date, October 26th in 2020, to its own advantage. There are problems with that, Mr. Chair. And it's not only limited to competition for the fact that people are going to be competing for office space and for volunteers and there may be confusion about who's who and what's happening and voter fatigue.

But the other problem because of that change, if they had chosen a spring date, we may have . . . we wouldn't have the problem of a couple of ridings we know that won't have representation. Now forgive me if I bring that up today, but that's a problem. And that's a problem to many members of the Sask Party that have raised that in committee. That's a problem. That's a real problem if we're talking about democracy.

Now this government's affection for the fall dates, that's one thing. We all agree to four-year dates. But I think it's a fair question to say, are you really, legitimately looking at all the issues related to the fact that you're extending your mandate by six months?

**Hon. Mr. Morgan:** — We actually are maintaining and we are shortening the mandate by a few days. So that's what's happened in this Act from the previous election. So we have not extended or done anything in this particular cycle other than shorten it by a few days.

The quote that you read in was exactly why we're doing this. It would be inappropriate of me to quote myself in this but that is exactly why we are doing this, is to maintain the four-year cycle. So this follows exactly to that method within a few days. So the variations that have taken place are tiny compared to the four-year window of in excess of 1,300 days. This is something where we are moving something by a few days one way for one election, a few days for another. Nothing more complex than that. It maintains the four-year cycle. It maintains the fall date.

And we appreciate that you or there may be others that would prefer a spring date. We don't feel that's where the people are. The commitment that we made as a government and when we ran was that we would have a four-year cycle and we would have the elections in October. And that's the position that we've taken on this bill and we think it fairly and appropriately represents the will of the people and is the most manageable solution for SARM, for SUMA, for the large cities in our province, for the municipalities that have to work around their convention dates. And there was, you know, they were saying, well we worry about this date. And so this was the one — and I read into the record from both the SARM and the SUMA presidents — so this is the one, the solution that we think adequately addresses or appropriately addresses where our election cycle needs to be.

And I appreciate and I don't want to minimize the other issues that you've raised. They're not part of this bill and not prepared to do them. But if you want to raise those issues, I'd be glad to chat with you anytime, as I have on any other issue. I've never

turned you down and not about to now. So I'd be glad to meet with you some time off-line and have a discussion on that. Or if you have a representation that you want to make through the Chief Electoral Officer as to, you know, and he's talking about where we need to go in the long run with technology and a variety of other issues. So that may be something that he may want to address or would regard as an issue to be addressed at that point in time.

**Mr. Forbes:** — And I do want to get on the record, you have been one of the very good ministers in being receptive to ideas. And so I don't know if we're getting too late for this, but maybe I will have a chat. So I appreciate the offer.

I do want to say . . . But I still have an issue. You said two things in there that I'm not sure I agree with. You talked about the will of the people, and I have the question. How do you know it's the will of the people?

And you also then said it was a mandate. And you did run on a four-year election term, but I don't know if in that mandate it also said that it will be in the fall. Like I don't think in the spring of 2016 you said the next election will be in the fall of 2020. You may have said, we're going to get back to the four-year cycle. But this is an extension.

And you know, I'll just even quote Murray Mandryk, that it's “. . . extended to four years and 205 days.” Now maybe he's got his math wrong and it's 201 days. But it's not four years. It's not four years.

**Hon. Mr. Morgan:** — Well you know I'm not going to debate with you or Murray Mandryk. The last election date, I read in when it was and I'm not going sit here with my calculator and count the number of days and when a leap year is or when it isn't. But the commitment that we've made is that it will be four years and it will be a fall election. And we feel that this separates, gives us separation between municipal election and provincial election and it's workable. And I appreciate the points that you're making, but we feel this is the one that represents the most people. And I know you've been elected more times than I have, but I think this is the one that I think will satisfy most people for the long run.

**Mr. Forbes:** — And I am waiting for you to bring up that quote about when do I like elections, because I know you have it in your back pocket, I think.

But, Mr. Chair, my question was still, how do you know the will of the people? How can you say that when I haven't heard you . . . You've talked about organizations, and rightfully so, they've said that they want to make sure they have their organizational interests. I'm not sure, well other than that one quote I read about making sure we have people . . . and this is what we really need to do is have people fully engaged in the political process so they don't become cynical and disengaged. And that's one of things we all worry about, I think, on both sides of the House.

**Hon. Mr. Morgan:** — I appreciate the point you make and we don't do a mass polling on every piece of legislation that goes through. We talk to voters and we, you know, we look at the calls that come in to our office. And I'm sure you do on your office as well, and on this issue, I didn't get a clear or any kind of consensus that it should be anything else other than a fall

election.

And that, you know, sort of the sense that I had was, don't manipulate it, don't play games with it. If you extend it six months, somebody's getting a free ride for six months. Everybody's supposed to go back to the polls. That's when the electorate expects the elections to be. And so that's the choices that we've made and we'll see whether the electors support that in the election and my belief is that this is something that citizens will find satisfactory and look forward to.

**Mr. Forbes:** — And so my question is, what happens if there are problems? What happens, you know, I wish I'd brought this in. But there were several polls, and the ones I was talking about Riversdale, Onion Lake was another one, were very low turnout. Will there be an examination of this?

This is, you know, now we have talked about a couple of . . . and I don't know if you're alluding to these, you and I are both aware of the city of Saskatoon elections have coincided with provincial elections. I'm not sure how far apart they were. I think that was one that the first one Don Atchison was elected mayor in the fall of 2003. I don't know how close they were, and there might have been another one. But will there be any sort of reflection or thinking about how did it go, how did it work? You know, we will know that sometimes voter participation goes up and down. That's a hard one to measure, but I am deeply concerned about . . . especially when you get voter turnout that's less than 20 or 30 per cent in a poll. Something is not right there.

**Hon. Mr. Morgan:** — I think all of us worry about wanting voter turnout to go and I know when we were looking at issues of voter ID [identification], there was certainly jurisdictions elsewhere in the world where voter ID was intended to suppress votes. And we certainly don't believe that that's the case. What we've done here is we've had the most broad, wide open, try and do it, other than having somebody walk in and say I want to vote here or there. We want to make sure that the system is professionally run. The people that are entitled to vote are able to vote with minimal intrusion or minimal effort to go and do it.

And so we think we came to . . . We did a lot of work to try and make sure, you know, so that chiefs could attest to an entire band list and say everybody that's on this list is in. So we tried to work it so . . . I think I agree with you. Everybody that's entitled to vote should vote, but on the other hand I don't want to see anybody that's not entitled to vote voting. So I think our system should have . . . people should have confidence in the integrity of the system and have confidence that it's doing what it's supposed to do.

Now to your point about the low voter turnout, voting is not mandatory in our jurisdiction and sometimes a stay-home vote is, in fact, a vote or an expression of somebody's interests. Sometimes it's a fact that they just don't care. But I think it's of concern to all of us if voter turnout is low and if there's reasons in the system that would create that.

So every election that we've had, the Chief Electoral Officer writes a report on it afterwards and he writes a report on the effectiveness of how the polling stations worked. He would include in there if there was issues that were how the ID requirements were, how the times at the polls were, whether the

stations were convenient, how far back the advance polls should be, whether people were waiting in line too long, and a myriad of other issues that are there.

And I think you and I have probably both read those reports and, for the most part, I think we've come away from it feeling that democracy is relatively well served. And we should continue to aspire to do the best we possibly can to ensure that our electorate that can vote is entitled to and able to vote. And we want to make sure that we do everything that we can to make sure that those people get there and that we've done our part to do a meaningful analysis afterwards and do the changes.

And as you're likely aware, the Chief Electoral Officer does make recommendations for legislative amendments and update, and we've always brought those forward to the Board of Internal Economy. And it allows us to say okay, this is where we're at and this is where we want to be, so we'll continue to watch that and monitor and see what else is there.

What we've brought forward in this bill is nothing that we're trying to hide or conceal. We think it's consistent with the openness and transparency we have. And one of the first bills that we introduced when we formed government in 2007 was a bill that would set the date for future elections. So this is consistent with setting that date so that it's predictable and going forward, and now we've made the adjustments that we think are necessary to align with municipal elections and federal elections. And I hope that once we get it lined up we don't have a government that collapses midstream and we have to go through the realignment process. So I'm hoping that people support strong majorities or at least workable majorities, that we're not looking at a short-term federal government or something after we've gone to this point. In any event, I thank you for the comments.

**Mr. Forbes:** — Yes. And I just have one last question, I think, as I think we have about an hour and then we want to vote. Is that right, Mr. Chair, that there were time allotments for them?

If the Chief Electoral Officer . . . This will be a unique little learning lab, if I can say, in terms of the questions that people may experience. There may be confusion, all the things he identified as potential problems. And if those problems do come to be reality and that they're able to document it and really say, you know, in Saskatoon Centre there were 45 people came in thinking they were going to vote for the mayor and it's the provincial office, that kind of information. If there is that documentation that the Chief Electoral Officer can provide, it's a unique time.

Will this government reconsider the fact that maybe they should move to June?

[20:00]

**Hon. Mr. Morgan:** — I've enormous confidence in Michael Boda. I've met with him and worked with him and I think he'll do a good job of communicating to the public when the election dates are for each of the elections and will be able to . . . You know, he doesn't technically do the other one but I'm sure that, you know, as you're aware how they work together on those things.

So I've got confidence in his . . . But anything that he recommends or raises afterwards, of course we would look at that. I'm not going to make a commitment tonight, you know, oh well if there's one person unhappy or this or there's that. But I think no matter who's in government, they would be well advised to listen to the concerns of the Chief Electoral Officer. His job was in presenting the information he did on this to raise all of the potential issues that were there. We think this addresses as many of them as can be addressed and we're optimistic that'll work out well. But I appreciate the points.

**Mr. Forbes:** — All right, thank you. Thank you, Mr. Chair. I appreciate the opportunity to ask some questions about this very important issue and I have no further questions now.

**The Chair:** — Thank you. Are there any further questions? Seeing none, 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 of Saskatchewan, enacts as follows: *The Legislative Assembly (Election Dates) Amendment Act, 2018*, a bilingual bill.

I would ask a member to move that we report Bill No. 133, *The Legislative Assembly (Election Dates) Amendment Act, 2018*, a bilingual bill, without amendment. Mr. Nerlien so moves. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

**Bill No. 152 — *The Builders' Lien (Prompt Payment) Amendment Act, 2018***

**Clause 1**

**The Chair:** — We now have Mr. Wotherspoon substituting in for Mr. Belanger. We will be considering Bill No. 152, *The Builders' Lien (Prompt Payment) Amendment Act, 2018*, clause 1, short title. And Mr. Morgan, could you please introduce your new officials and make your opening comments.

**Hon. Mr. Morgan:** — Thank you, Mr. Chair. I'm joined again by Darcy McGovern, director of legal services, and as well Maria Markatos, senior Crown counsel, legislative services branch, Ministry of Justice.

I have a few opening remarks to make, but for the benefit of the members that just came in, we received a letter this afternoon from the Saskatchewan Construction Association and I want to make sure that it had been provided to all members. I felt that the nature of it was such that people should be made aware of it because it was addressed to all of the members that were there.

Mr. Chair, I am pleased to be able to offer some opening remarks concerning Bill 152, *The Builders' Lien (Prompt Payment) Amendment Act*. Mr. Chair, this bill amends *The Builders' Lien Act* to add two new parts respecting prompt payment and adjudication. It also includes housekeeping amendments to update references to the legislation in government ministries.

Mr. Chair, new part I.1 respecting prompt payment creates timelines for providing payment or filing a notice of dispute of payment. Payment delay is of great concern to the construction industry and this new part will promote timely payment of invoices.

New part II.1 creates provisions respecting adjudication and the creation and designation of an adjudication authority. The authority will oversee the training and recognition of adjudicators as well as their appointment where the parties to a dispute cannot agree. The current Act does not have an effective dispute resolution mechanism. The proposed adjudication process will set strict timelines that will result in a determination well before a court action would be resolved, thereby allowing for the continued flow of payments. Parties will be able to rely on the determination of the adjudicator unless or until there is a decision of the court or an arbitrator, which decision would take substantially more time to obtain.

Mr. Chair, we will be introducing one House amendment today. The House amendment makes changes to several provisions in proposed new part II.1 respecting adjudication. The House amendment mirrors recent changes to the Ontario Act, on which this bill is modelled, and also makes changes identified after the introduction of the bill that will clarify the operation of the new provisions.

The first amendment clarifies that the authority may specify the amount of fees, or the method for determining the amount of fees, that are either payable to the authority for the training and qualification of adjudicators, or payable to an adjudicator for performing an adjudication. The second amendment provides that the notice of adjudication form may be prescribed in the regulations, and if prescribed must be used.

The next two amendments are tied together and will require that the party who gave the notice of adjudication provide both the adjudicator and the other party with any documents the party intends to rely on during the adjudication. The amendment also allows the party who receives the notice of adjudication to provide a response in writing in accordance with the regulations. The amendment will also clarify the process for requesting that the authority appoint an adjudicator where the parties cannot agree and correct an inconsistency in one provision.

Mr. Chair, with those opening remarks, I welcome your questions respecting Bill 152, *The Builders' Lien (Prompt Payment) Amendment Act, 2018*.

**The Chair:** — Well thank you, Minister. Are there any questions? Mr. Wotherspoon.

**Mr. Wotherspoon:** — Thank you. Thank you, Mr. Chair. Thank you, Minister. Thank you, officials that are here tonight and all those that have been working on this important piece of legislation. I'd also like to recognize those within industry who

have been so active, bringing together this piece of legislation and the coalition. And I'll just reference some of those members.

The Saskatchewan Construction Association, thank you to them for their lead role for a couple years now on this front. And certainly I valued the exchanges and the learning and the relationship on that front, as well as the Mechanical Contractors Association of Saskatchewan, the Saskatchewan Masonry Institute, the Saskatchewan Roofing Contractors Association, the Electrical Contractors Association of Saskatchewan, the General Contractors Association of Saskatchewan, the Canadian Institute of Steel Construction, and the Saskatchewan Association of Architects. So this is certainly a broad and diverse industry group that's been involved, and I want to thank them for their important work.

Certainly the matter of prompt payment is very important. It's certainly that there's a significant concern when someone isn't receiving the dollars they're owed in a timely way. And we've been supportive right from the get-go to making improvements that work for industry, work for the province, and address this concern. Certainly I've heard from many contractors as well that, sometimes often very small, that are left holding the bag, Mr. Speaker, and that are left in the lurch when the dollars aren't there at the end of a project, and recourse for — we use the situation of a small operation — is very limited. And it's a real challenge for sort of an owner-operator type of an operation to pursue the dollars that they're entitled to. So it's important. These are important improvements that we're aiming towards. And it's important that we get it, that we get it right here tonight.

I guess just to canvass the couple areas that have also been brought forward, and I know I've been meeting with that group as well as others on some of these fronts, but we've also met with the Surety Association, who I know has met with . . . the minister as well has engaged with the contractors and with this coalition group and with the construction association. And the case they were placing was that bonding is awfully important for projects because prompt payment is one thing, but payment certainty is another. And making sure that in fact those dollars are there is something that they described as being important, but not just important but actually making the whole system more efficient by having bonding in place.

I know the construction association and contractors have been engaged and they're certainly open to bonding as being a provision for public construction, public procurement. I guess to the Minister: where is he at and his officials on bonding?

**Hon. Mr. Morgan:** — I met with the bonding association and what they're advocating for is, as you had indicated, larger public contracts to ensure that there's money available on public contractors. Invariably on the public contractors, the owner of those or the payer on those is the provincial government or the federal government.

We have not had a situation where the federal government or the provincial government has failed to make a payment as required. So to require a bond to be in place . . . There would be a substantial cost to purchase the bond, then to adjudicate on whether the bond would be used for payment afterwards. So for purposes of a government project, we don't see that there's a benefit to either the contractor or to government to have the bond

in place. Government's cheques generally clear. So we don't see that there's a benefit on that side of it.

I asked them the question, what about making bonding available on smaller projects? And they said no, that was not the business that they were in, to determine a 5 or 10,000 . . . There is a cost to having a bond in place. Certainly bonds exist already on some types of projects. Where you're building a mall or something, you'll have the general contractor or a lender require a bond to be in place. But there's a substantial cost to it and the proposal that they made to us was that it apply for public contracts, and we just saw no benefit to that.

And I discussed it with the construction association as to where they were at on it, and they were not advocating for it or against it. But we just saw there was no real benefit to it. Other than the association themselves, there was no one seeking to have it.

**Mr. Wotherspoon:** — Yes. I had the discussion as well with the Surety Association of Canada around why just the focus on the public, and because certainly if you look at the private sector, there's the risks there and you need to make sure the dollars are in place as well. The response I got on that front was different than the interpretation the minister's provided here. They said certainly, that bonding can fully apply to the private sector as well and you're looking at the different sectors within construction. But anyways I wanted to bring it forward.

I know as well they brought forward what was, you know . . . Certainly we're loath to add any cost to construction projects, but they had brought forward some analysis as to why in fact it bringing, you know, greater value in not being a cost driver, if you will. And I guess just on the public side, just to make sure I'm clear on this consideration, of course government's not going to default in its payment, but government isn't the payer on a public project to the many hundreds of contractors involved in a project. That's done through the general contractor and through other subcontractors all the way through the supply chain.

So I just want to have the minister clarify his statement around where he doesn't see any benefit to bonding potentially in the public sector procurement. Because certainly you have companies in public sector procurement that sometimes face hardship and sometimes have gone bankrupt as well.

[20:15]

**Hon. Mr. Morgan:** — The government sometimes through SaskBuilds or whatever may require a bond to be in place, depending on the nature of the project. But what we're dealing with in this legislation is trying to ensure that suppliers of material and subtrades get paid promptly. The situation where the government is the owner, and I'll go to the P3 [public-private partnership] schools for an example, payments would be made to a general contractor. The general contractor would have to provide the certification that their subtrades and their material were provided, holdbacks were made. There would've been compliance with the lien legislation that's already in existence. And in those cases, so far as we know, all of the subtrades, all the suppliers were paid and there was certificates all the way through those projects.

So the larger projects that government typically is involved with,

there are existing processes that are in place as well and sometimes they might be a bond. But we're not aware of that being the challenge that the construction people . . . And the same ones that you would've heard are the same group of people that I would've heard from. What they're dealing with is the situation where either an owner or general contractor of a smaller project, a strip mall or something, has been unable to or unwilling to make the payments when they should. And I think what we're trying to do here is develop a situation where, within a few weeks after a payment being due, that there is an adjudication method in place to determine how much money is owing and then there's the expectation that it would be paid after that.

There's nothing we have in this legislation or that can be put in that would make money when money isn't there. So if there's a situation where a bank hasn't advanced, an owner has gone bankrupt, we may be able to determine more promptly what's owed. But we don't have a method of getting that money paid if the money doesn't exist. So what we're trying to do here is give the construction associations and construction industry the best and most powerful tools that we have for them to have an adjudication of what's owing with the expectation of, once those things are made, that those people will be able to apply for and obtain a judgment, stop working, and enforce their remedies, rather than going on week after week, month after month.

I think a smaller contractor — and you would have met with them — for those people, it's incredibly important because a lot of them have mortgaged their house or borrowed money from their families to meet a payroll, buy material, finance a truck. And those people are often highly leveraged and we need to be able, through this legislation, to give them every possible support that we can.

**Mr. Wotherspoon:** — Yes, and that's where we come to the table in a very co-operative way on this and where we've been an advocate as well for prompt payment legislation and where it's good to be getting to a place where we can make it a reality for people. And certainly, you know, I think what we're bringing forward is a much faster, or a faster moving process and actually a very reasonable space for sort of explanation and some back and forth to get an understanding of the circumstance for a contractor in a situation when they're not receiving the dollars that they're owed, and then the remedy and the adjudication.

So we certainly are very supportive of moving forward the legislation. It's just critical that we get it right. And when it comes to the bonding, it's my understanding that most states, if not all states, many of the states in the United States have this sort of legislation. It seems the case in many other countries around the world. I understand bonding is very common there. So maybe this is an area anyways for us to be tracking as this bill gets operationalized and as it gets implemented, to observe whether or not there's a space for improvements on that front and if bonding itself would be an improvement.

**Hon. Mr. Morgan:** — With what we're trying to do here, I don't think bonding gives any benefit to the tradespeople here that aren't getting paid. We're not going to . . . It's not reasonable to expect a bond to exist on a small building, a warehouse, or a roofing job or something like that. If we required the industry to obtain bonds on every one of those, it wouldn't work. The bonding industry told us that, you know, the size of the bonds

they wanted are greater than most of the jobs that are undertaken in the province. So it doesn't fit.

What I did do was I had conversations with Minister Wyant from SaskBuilds as well as with the Surety Association, and it said there may be some ability for you to have discussions there. And they may not require it as part of legislation, but they should certainly be aware of the services that you provide. And there are certainly situations where a performance bond or bid bonds are required.

**Mr. Wotherspoon:** — Thank you. I'd like to get to the case that this coalition that's been involved in pushing forward prompt payment in the industry, that's been involved in the Saskatchewan Construction Association, where they've been addressing what they would see as a fairly serious shortcoming of this legislation and something that deviates from what's gone in Ontario. Of course Ontario has brought forward this legislation fairly recently; it's new in Ontario. I believe it's just been passed in Nova Scotia as well. It's rather commonplace, I understand, through the United States.

But something that's different here in Saskatchewan is this five-eleven, 5.11, the clause which gives the minister the discretion to exclude really, you know, a sector or potentially a project as well. And it's really stated as a real concern by those very proponents of the legislation that want to make sure we get it right. And I'll read from the letter that we have received today. And of course they've been advocating on this front directly with government and with opposition on this front. But their feeling is that this is very important legislation, but that . . . And I'll quote. And this is from the Saskatchewan Construction Association, that "The inclusion of clause 5.11 threatens to undermine the very gains the bill introduces for small local contractors." It goes on to say, "We have four primary arguments against the inclusion of clause 5.11."

It goes through those. We may read into the record tonight, if we need to, kind of what that case is, but the first one being that it, in essence, undermines the whole point of the bill — the consistency and the fair set of rules and that would be laid out.

Number two, that exemptions create more problems for contractors, not less. I've heard as well on this front that many contractors . . . And I've heard from some contractors involved that have concerns on this front, who are involved, say, in the residential sector but also in the commercial sector, maybe in the industrial sector. And different sets of rules become very difficult to comply with and very difficult to manage, possibly a bit unworkable.

And the third point that they made is that exemptions break from the precedent and undermine industry's efforts elsewhere. And the fourth point — and of course there's substantive points behind each of the main points here — is that it forces the Government of Saskatchewan to pick winners and losers and it's very broad in how this could be utilized by any given government, by any given minister. And stated by the group that's been pushing this, that's been at the table helping to build it, they're stating that this important legislation is at risk of being undermined by having the inclusion of clause 5.11. And of course they're calling for it to be removed.

And I know we have some amendments here being brought forward by the minister here tonight that I look forward to addressing and speaking to as well. But I'd like to see . . . You know, we have a chance to get this right, here right now, and I'd like to gauge where the minister is at on these serious concerns that have been brought forward and whether or not we can't bring forward some further changes here tonight to pass better legislation.

**Hon. Mr. Morgan:** — I'm going to let Ms. Markatos speak to it in a minute. But what we're trying to do here is pass and create a regime that will allow for the prompt adjudication of disputes in construction. The legislation is starting to pick up steam across Canada. There's a number of other jurisdictions that have expressed interest in it; a number of jurisdictions are going forward with it. But nobody in our country has actually had it in place. It's not in force anywhere. So I absolutely agree with you that we want to get this right.

So what I'm contemplating doing is whether we implement this in phases where we say, okay, we want to see how the adjudication method works. We've said to the construction association, this is something that should be owned by industry; you should determine what the adjudication process is. I actually have a meeting with some of the lawyers that are working there this coming weekend. I haven't seen that. We haven't done consultation on that.

So what I don't want to do, but maybe what we should consider doing, is pulling the bill back and not going ahead with it and then spending some time doing some more formal consultation and some review. And you know, this came at 4:30 today. And I'm thinking if they're not happy with the bill in this form and want to go ahead at it all at once, maybe the better method might be to say, okay, we're not going to go with it till we've talked to and looked at the adjudication method, we've talked to the different sectors and tried to make sure that we have this exactly right so that it does what it wants.

So if their position is they want nobody exempted, that they don't want it phased in, then possibly what we should do is not pass it and go back and do it. But I don't think that that's what they want. I think they want it to go ahead. And I want to be able to do everything that I can as the minister bringing it forward that will give them a tool that will work. And my guess is that as they go through it, the first few times that they do it . . . And I don't want to see them inundated. I don't want to see it collapse of its own weight. I want to make sure that that process works, not just for the subtrades, but works for the general contractors, that works for the owners. And we've had no consultation, no discussion with them that it's there.

Ontario indicates that they're some months away from having it. We may well be the first jurisdiction to have it operational. And I'd like to be able to stand up and say, we spent the time to do it, get it right, and have it there and then roll it out, saying okay, it's going to be industrial first, it's going to be commercial, and then see to it that we get some situations where we work through it and produce something that's meaningful and that's workable for the contractors and for the subtrades.

And I understand all of them would like to have it all at once. If we tried to do it all at once and it doesn't work and then we're

back here amending a piece of legislation because we don't have the ability to do regulations, is not where I think they want to be or need to be. And I understand their desire to want to get on to it and I fully support them in that and want to make that happen. But I'm going to let Ms. Markatos talk to the other jurisdictions.

**Ms. Markatos:** — Thank you. Maria Markatos from the Ministry of Justice. The member mentioned that there are other jurisdictions that have this type of legislation in place regarding prompt payment and adjudication. And many of those jurisdictions do have exemptions in place. They're generally two broad types of exemptions where they've exempted classes of contracts or persons or where they've exempted work in relation to residential contracts.

So the two in Canada that were mentioned, Ontario and Nova Scotia, Ontario's Act exempts contracts and subcontracts relating to nuclear facilities, and those are exempt from the operation of the prompt payment and adjudication provisions. The Nova Scotia amendments to their *Builders' Lien Act*, that just was introduced in March of this year and passed in April, mirrors Ontario in a similar way that ours does except that all of the detail is going to be in the regulations.

All of the timelines, all of the requirements, how the adjudication is going to work, that's all going to be prescribed, and they also provide for the ability to exempt. And I'll read this from the Nova Scotia bill at clause 3(b). They will add a regulation-making power. It's clause (zf): "exempting persons or classes of persons from the requirements of Sections 4B [which is the proper invoice provision] to 4J [which is the adjudication provision]." And then it also allows for the regulations to exempt "construction contracts or classes of construction contracts from the requirements of Sections 4B to 4J," so essentially the entire portions that are going to be added to their *Builders' Lien Act*.

I can't speak to the United States, but in some of the other jurisdictions there are also exemptions. So in the UK [United Kingdom] they exempt from contracts for drilling for oil or natural gas and the extraction of minerals. In New Zealand they also exempt drilling for and extracting oil or natural gas or minerals. In Ireland the exemptions are limited to work on residential homes, dwellings, or work that is valued at less than 10,000 euros or a dwelling of less than 200 square metres where one of the parties resides in that dwelling. Singapore also does not apply their provisions to residential property. And then in Australia — New South Wales, for example, because there are so many different parts of Australia — oil and natural gas and mineral drilling and extraction are excluded from the operation of their prompt payment and adjudication provisions.

[20:30]

**Mr. Wotherspoon:** — Thanks for that information as well, and a bit of the context as well. And it is a bit of a new frontier in Canada. And Canada, you know, being similar but certainly unique as well, I think there's lots, I know that lots of what's been built has been mirrored off of the Ontario legislation.

We don't have the practical experience or the operational experience yet from Ontario to learn from, but we do have urgency here as well to address this because we have contractors that have been living some of the hard realities of not being paid

on time in a fair way. And I've heard from many right now that are dealing with very protracted periods without being paid in the construction sector. So this is important legislation.

**Hon. Mr. Morgan:** — I've talked to contractors that have not been paid for a year and are continuing to work and are subsidizing or paying for it out of their own pocket. So the reality that they're facing is something that's there. Now I don't know whether this legislation is going to provide a solution for somebody that hasn't paid for a year, whether that's a matter that they don't have funds or are waiting to sell. But I think the best we can offer as legislators is a tool that they try, that they work, they fine-tune. And I think we'll want to give them every support we can as they go through.

They're essentially being tasked with creating their own adjudication system. They're creating a model for a court. So it's going to be, well are they going to allow for experts? Are they going to allow for sworn testimony? Are they going to allow for competing experts? What kind of documents are going to be produced, which is one of the amendments that you saw in the list.

So I'm hoping that I have a productive meeting with their counsel on the weekend. One of the lawyers that they've got is Bill Preston, who I met with early on in the process. And what Bill told me at that time was the challenge that Saskatchewan contractors had was that during the boom we had large generals from out of province came in that didn't have a comfort level with local contractors, and then essentially financed large projects at the expense of our local contractors. And then they would get to the point where they were out of money or nearly out of money. Small amounts would be paid or the subtrades would have to compromise their bills just to get any money at all because they were at a point where they were going to default on their loans or meeting their payroll.

So based on my discussions with Bill Preston, I said okay, we need to do this, and I want to be able to do it where there's been that bargaining, where it's not a level playing field, where we've got people that are able to put them at a disadvantage. So I want to focus as well as I can or as much as I can over the next few months at creating a workable dispute mechanism. And I don't believe that the first time it's used, that's going to be . . . I think it's going to take a handful of times to try and work the bugs out. So my goal is to try and focus it narrowly at the beginning and, if it works, expand it as rapidly as we can.

I wouldn't pass it, the bill, I wouldn't have introduced it if I didn't intend it being of broad, general usage. So we want to go in. I know I've talked to the mining industry and they said, well we've got unusual circumstances because some things don't manifest themselves right away. We've got a variety of different safety and different things that we're not able to deal with a rapid dispute mechanism, but they've got a history of paying promptly. So if they're set aside for the time being, I don't think that's going to affect anybody.

And I understand the construction association would like to see everybody in it right from the beginning. Well I don't want to create more problems than we're fixing. What I want to have happen, and I think you will as well, is have something that's there and will work for them as quickly as we can. And I

appreciate they don't want to have an exemption, but the other option is to say, okay, if you want it all at once for everything, then that's going to be, you know, a two- or three-year consultation process. We've got to look at what's taking place in the jurisdictions. And I'm not willing to put that option to them. I want to go ahead with this bill. I want to pass this bill. And I want to give them tools that are going to work, and I want to have those tools in place probably this fall.

**Mr. Wotherspoon:** — The exemption itself, right now I think the challenge may be that it's legislated and it gives the minister discretion into the future, not just for a period where certainly you want to make sure that the tools are working and the mechanisms around adjudication are fair, so that's a very important thing. And in fact you're speaking about sort of operationalizing this and implementing this bill. It's going to be critical that we're listening and learning from the experience out of Ontario as that continues to be implemented as well, and at the same time have industry directly involved in the coming months to make sure, with government, to make sure that implementation and the adjudication processes are workable and fair.

So I very much get that we need a solution on this front. It is absolutely wrong to have the power imbalance that exists right now, and that leaves many people hurting, leverage not getting paid and for very extended periods of time, as the minister has identified. And we're a proponent of this legislation, have been from the get-go, and have worked with this group as well.

The problem is if the exemption is just left that it's at the minister's discretion, it's not just the interpretation and intent that I hear today from this minister that we need to figure out how to make sure that we operationalize this in a very fair way that doesn't have ill-intended consequences, but then it has the ability to be utilized by any minister of any government into the future at their discretion and really can, you know, could risk to undermine this important piece of legislation and its intent.

So I guess the biggest thing that's going to be important in the coming days following the passage of this bill is working very closely with industry on this front, working to make sure that the adjudication process is fair and organized in a way that works.

I know there's cash flow concerns as well for a lot of businesses out there right now. So how do you get this implemented to ensure fairness in payment for contractors, for companies across Saskatchewan, at the same time not having a cascading negative impact with, you know, in how it's being implemented?

So I too believe that industry is wanting this legislation here and they'd like to see it passed, industry as in the group that's been defined as the coalition, which is a broad and diverse group. I know there's some different concerns. You noted the Mining Association. There's been some concerns by the residential construction sector as well.

But I think this legislation is certainly valued. But I think it's worthwhile, before we pass this through Committee of the Whole, to make sure that as minister you're able to engage back with the Construction Association, as well as the coalition . . . I forget the name they describe themselves. The PPS [Prompt Payment Saskatchewan], the prompt payment system. Is that what . . .

**A Member:** — Saskatchewan.

**Mr. Wotherspoon:** — Saskatchewan coalition. Working with that group to better understand the very clear concerns that they've laid out to you and to me and to all of us around the exemption, and seeing if there's an opportunity to have a better understanding on that front as to how this will be utilized and maybe how this will be rectified into the future. Because I think it is a concern to pass legislation that leaves that open-ended discretion into the future. There may be the opportunity to deal with amendments still at Committee of the Whole, as we're dealing with this bill, if that's right for this piece of legislation, if that's right for the industry.

**Hon. Mr. Morgan:** — You know, this request came at 4:30 today, and I understand that's been the position that they've taken all the way along. I don't want to hold it up, but most other jurisdictions have allowed the ability for regulations to allow for exemptions. And I would say to people here, we don't have a position or an agenda one way or the other for one, you know, whether general contractors versus owners versus sub-trades. Our goal is for everybody to get paid. So we don't have a desire to give somebody a free pass on it. We want to see it be something that's workable and in place for everyone.

But I think we need to keep that regulation-making ability, as we do with a lot of pieces of legislation. We allow for bills to have exemptions for a variety of different reasons, and you heard some of the ones that were there. We're watching really carefully what's taking place with the other jurisdictions, and I wish that tonight we were speaking with the comfort or the certainty that we'd seen a handful of them go forward.

I didn't know what was going to happen following the Ontario election. There was a change in government there. So shortly after that I contacted the ministry there to determine what position they were taking with it, were they still going to go ahead with it, because I thought a new government may choose to abandon it. So they came back and they said, we want to look at it. We're going to review it, but our intention is still to go ahead with it.

So I don't have a sense that they're doing something different on it, or whatever the discussions are. But I would have a higher comfort level if Ontario — or with one of the other jurisdictions — had it proclaimed, had the adjudication method in place, and had ran a few of them. We know that in some other jurisdictions in the US where it's there that it sometimes created more litigation because there'll be an adjudicator's award made that becomes a subject of litigation: oh, you didn't look at this, you didn't do it; there isn't an appeal process; there isn't a review mechanism.

I'm hoping that what they come forward with is something that's a summary method, it's quick, easy to determine. But some methods where there are complex deficiencies, it may be that that system doesn't work. And I want to be able to say, okay, well because of this or because of that, we're not going to proceed with that. I want to be able to say, we want to do it carefully. And I think we want to consult with everybody as we go along.

I don't have an appetite to pull this off. I want this to go ahead. That's the commitment we've made to the industry, and want to



see it happen.

**Mr. Wotherspoon:** — So no one's, I think, pushing for it to be called off. Even in the letter that you'll have received in the advocacy from Prompt Payment Saskatchewan, all the way through, they're strong proponents, of course, of this legislation. And even in the recent correspondence here today, they're very clear that they see this as a significant improvement to the status quo and a very important piece of legislation.

I'll maybe just leave and place on the record some of what they've stated here to all of us, because I think it's important to the public record. Of course they give some background as to Nova Scotia and Ontario, who have been on the forefront along with Saskatchewan, who's right there on the forefront with this legislation. And then they identify, of course, that 49 of the 50 states, the United Kingdom, Australia, most of the European Union, and New Zealand, and others have all adopted prompt payment regimes and that for a long time Canada is an outlier. They describe that group that I've already described.

And then I'm going to quote just a little bit because they see this is very important legislation, but they do have a concern here, and I quote:

We have grave concerns with this clause and we are asking the committee to recommend the removal of 5.11 from the bill. Prompt payment legislation is necessary because there exists a fundamental imbalance in the contractual power structure between the owners of construction projects and the companies and individuals that actually build these projects.

In a quirk of construction law, owners are not in breach of contract if they choose not to pay their contractors, but those contractors would be in breach if they walked off the job because of non-payment. They are in effect forced to keep working for free in the hopes of someday getting paid. This is not a new problem or one that is narrow in scope. It is a systemic flaw of the construction contracting world and that it is why it has been addressed in legislation in so many other jurisdictions globally.

Delayed payment is a problem in every sector of construction — commercial, industrial, institutional, and residential — and is getting worse, not better. Bill 152 [which we have before us here today] does not cure every ill when it comes to delayed payment for contractors. No piece of legislation can. When an owner has no money for a project, the contractor will not get their money. However, under this bill they will be able to walk off the job and not lose any more. That alone will be of value to most. While any legislative solution will be imperfect, the construction industry firmly believes that Bill 152 is a remarkable and necessary improvement over the status quo.

[20:45]

The inclusion of the clause 5.11 threatens to undermine the very gains the bill introduces for small, local contractors. We have four primary arguments against the inclusion of clause 5.11. Exemptions undermine the entire point of the bill. As previously stated, slowness of payment is a problem

across all sectors of construction and has been a problem for decades, one that is getting worse. Bill 152 can resolve the fundamental power imbalance in existing construction contracts. The bill simply requires everyone within the construction supply chain to move faster to ensure money flows for work that was satisfactorily completed. Where money can't flow for valid reasons, then the bill requires everyone to communicate with others in their supply chain, something that doesn't happen today.

Where contractors believe they are being unfairly taken advantage of with respect to the timing of the payment, they can use a fast-moving and inexpensive adjudication model to resolve disputes. If any sector in construction receives an exemption, the entire benefit of the bill fails to flow to the builders of the projects within that sector. It in effect renders the entire point of the bill, that small contractors need added influence in order to ensure they get paid for work they get done, meaningless.

Point 2. Exemptions create more problems for contractors, not less. In a market like Saskatchewan, most contractors operate across multiple construction sectors. It's very common to find an electrician, a plumber, a mason, or a roofer that will be working on a residential project one week and a commercial one the next week. Keep in mind that 94 per cent of Saskatchewan's construction companies have fewer than 20 employees. These microbusinesses do not have sophisticated legal or financial teams or software to support them. In most cases, the only manager is also working in the field with her or his crew. If different sectors of construction have different payment rules and expectations, this will only enhance the frustration of small contractors and increase their administrative overhead. In short, allowing exemptions brings more harm to the very contractors the bill is intended to support.

3. Exemptions break from precedent and undermine the industry's effort elsewhere. Bill 152 is based on the Act that was proclaimed in Ontario. There is tremendous value in having a consistent legal framework across the country as it reduces the red tape that contractors must deal with when working across borders. If Saskatchewan's legislation passes with clause 5.11 in place, it is very likely that non-construction lobby forces will push for similar clauses in legislation in other provinces. Ultimately we'll end up with a patchwork approach to a systemic problem. As the construction industry across Canada fights to protect small contractors with the introduction of prompt payment legislation, the inclusion of clause 5.11 undermines that effort. We do not believe that is the precedent we want to set, and;

Number 4. Exemptions force the government to pick winners and losers. If some sectors or projects get exemptions and others do not, this will create an uneven playing field for construction projects. This puts the government in the unenviable position of choosing economic winners and losers. With even the possibility of an exemption clause, we've already seen multiple sectors asking for exemptions — residential, oil and gas, mining, and even some commercial retail. With the broad nature of clause 5.11, it is even possible that individual projects might

request exemptions too. Clearly it is not tenable to have a bill that provides exemptions for everyone, and so that inevitable conclusion is the government being forced to choose who should get it and who should not. Picking winners and losers in this case is not good for the government and, most importantly, it ensures that no matter who wins, the small contractor loses.

So that's the case that they're making. This legislation's very important to them. They value the involvement of government and the work. And they're, I know, very proud to be where they're at right now, but they are certainly pushing for the removal of clause 5.11.

**Hon. Mr. Morgan:** — I think we debated the reasons why we're leaving it in, and it's certainly appropriate for you to put their concerns on record. I think both of us would agree that it's not their wish for us to pull a bill, go back and do exhaustive consultation, review the adjudication process, determine the applicability of the adjudication process to the different sectors. I don't think that's what they want and I don't think that's what you want. So I appreciate you having placed them on the record, which was what you were asked to do.

**Mr. Wotherspoon:** — Yes. Well more than that, I want to make sure we have legislation that works. There's been a lot of work with Justice officials and a lot of work with industry, and we have an actual construction industry in a bit of a precarious state right now. And we want to make sure that anything we're doing is in fact an improvement.

And so I guess the urging I would have out of this committee, the minister seems fairly strong in where he wants to go tonight, but this consideration here does not preclude in the coming days engagement with industry and some reconsideration on this front and a potential amendment, say, at the Committee of the Whole. And I would just urge an open mind in the coming days, as opposed to forcing the minister into a situation that he's not comfortable with here tonight.

**Hon. Mr. Morgan:** — Yes. If the position of the opposition is that the bill has to go through without that clause being removed, you should state that that's . . . you do not want that there, that is the position of the opposition. And then we'll be able to go back to the Construction Association, meet with them in the next day or so, and say the opposition says that that has to stay in; if we leave it in, that requires us to go back and consult, and therefore we're pulling the bill.

So I need you to put on the record whether that is what your position is, that you want us to go to them and ask whether we should pull the bill. And it's your call. If you want us to go with them, I'm quite prepared to meet with them early tomorrow morning and say, the opposition says that it has to go with that clause removed. And if you want us to do that, that means going back and doing a formal job.

You've made it clear and we've made it clear that this has to be done right. So if we're going to do it right, that means stepping back. So I'll let you make your position, whether you want us to meet with them and say, pull it, or whether you want it to go with it as it is. Bills that we do all the time have got regulation-making capabilities with them. I understand their concern and I

understand yours, but I want you to be clear what your position is.

**Mr. Wotherspoon:** — Sure. Are we clear? You seem to be getting a bit owly here and there's no reason for it. This is important legislation and it's important to get right. And you're making sort of very definite spaces in a short period of time. And I think really what we maybe need is for an open mind with a minister and for government members. I suspect all members in this Assembly want to get this right, Minister.

And I know for a fact I want to pass legislation that allows contractors that I've heard from, that are left holding the bag for far too long, Mr. Minister, to be able to have fair recourse and be able to get paid in a timely way. So let's not get shirty here tonight and set up sort of definite positions in a very black and white scenario that's very unfair to the hard work of the Justice officials that have been at this work, very unfair to industry that's been involved in bringing this forward.

What I would urge is, we have very significant concerns that have been brought to us around a specific clause in a letter that also states the importance of this legislation, I believe describing it as important and remarkable in fact, but stating a risk for it to be undermined. So if we need a bit of time for you to engage with the industry, to make sure we're getting this right before it gets passed here — it's important that we're moving this in a very timely way — we can do that.

We certainly have the ability as well in these committees — because maybe we don't have to rush it all here tonight if folks are impatient or anything like that — where we can get, you know, the construction industry, this group, to come and join us as a witness in committee. That's a very common practice in many legislatures around, across Canada. I'd be very willing to certainly have them come and do that in a public forum. I'm very satisfied as well for you to keep an open mind and to engage with the construction industry in the coming days to see if there's a place for an appropriate change or an amendment around clause 5.11.

**Hon. Mr. Morgan:** — I apologize that I appeared short-tempered but I think both you and I and the industry want to move this forward. We want to focus on the adjudication method and try and get it in place. You know, if we're to go back and revisit whether we include that section, and I've, you know, I've given you the reasons why that has to stay in, you know, I guess my question to you would be, would you like us to wait until next fall and bring the bill forward and we could pass it fairly quickly next fall? My preference would be to have it passed now, but I'll let you make the call if you, you know, want us to go back and have something more meaningful where we consider not having any exemptions in it at all. Then that would require some additional work because we would have to take the adjudication model, circulate it to each one of those things, do a careful analysis on it. And my concerns with any analysis on that is it's being done without having seen how it works in any other jurisdiction. And I've got confidence in their ability to come up with something but we'd have to go through the process.

But I think what I'd like to do is just move the bill forward and then all of us focus on getting of the adjudication system in place and then working to have it where we need it to be.

**Mr. Wotherspoon:** — And without a doubt, the adjudication process and making sure that that's right is important because there's risk of not getting that right and potential, you know, there's real impacts there as well. So that's critical. Let's stay engaged with our partners here in the coming days. We have consideration at this table here tonight. Let's go back and work and listen to these valued partners that have been, you know, critical in the creation of this legislation and get a sense of where everyone is at. I know this legislation is important and valued, but certainly let's get it right.

I want to just adjust a little bit to the other amendments that have been brought forward. Can we speak to them? I know there was an embargo at one point. I don't want to get myself in trouble here in this . . .

**Hon. Mr. Morgan:** — We've talked about them and we would . . . Yes, it would be quite appropriate. Yes, feel free and I've got the officials here, absolutely.

**Mr. Wotherspoon:** — Thank you for that. I guess just the amendments that have been brought forward here as well, have those been . . . I know the coalition had brought forward some different amendments that they were urging and open to. Are those contained within those amendments? Or at the very least, are the amendments that are being brought forward, do you have support of industry for what I think are fairly housekeeping type amendments, if I understand them?

**Hon. Mr. Morgan:** — The amendments that are before the House are ones that were, they came out as a result of the changes to the Ontario legislation and deal with the cost for adjudicators and that kind of thing. I'll actually let Ms. Markatos walk through that.

The Construction Association sent some additional amendments this morning, which we haven't had time to focus on, and won't before the bill passes. I mean there may be an amendment a year from now and I'm hoping the opposition will be amendable to an amendment if we need to make one further down the road. You know, good practice would indicate pulling the bill and then sitting down and working through whatever came out of that process, whatever came out of the adjudication. I don't think you . . . I think one thing we agree on is that we want it to go ahead. So that's the position I'm taking, unless you want to take a different one on whether it should go or not go.

But I'll let Ms. Markatos answer the questions on, sort of give you a summary of the ones that are there as a result of the Ontario legislation. I think when you hear them, you'll agree that none of them are problematic or should be, but we'll certainly . . .

**Ms. Markatos:** — Thank you. There are six changes in one House amendment and as the minister mentioned, most of them are based on changes to the Ontario Act. The Ontario bill was passed some time ago and then they made a subsequent amendment to that bill. They expect that it's going to come into force this October. That's their projected date, but it could change.

So the first change is to 21.13, and it clarifies that the authority may specify the amount of fees or the method for determining the amount of fees in accordance with the regulations. And that's

something that Ontario did in their recent amendments.

[21:00]

Then the next two are tied together. There's an amendment to section 21.31, which is a provision that allows for consolidated adjudications. That's where there's a dispute going forward between an owner and a contractor and a dispute on the same matter between a contractor and a subcontractor. And it specifies certain provisions in the Act that should be read to allow for multiple parties. So where it considers one party, there are three or four sections that are outlined that allow for an additional party to also be considered. And so clause (b) is added there to allow for that.

And then that's tied to the amendment to 21.41, which adds two new provisions. New subclause (ii) provides that the party who provided the notice of adjudication must provide the other party with any documents it intends to rely on in the adjudication, and then also allows the party who receives the notice to provide a response in writing, which is what they've done in Ontario.

And then there are three amendments that are just for clarity. So the first is to 21.3 which would allow a form for the notice of adjudication to be prescribed, and if it is prescribed it should be used.

The next one is to section 21.32, a new subsection is added to provide that if the parties do not agree to an adjudicator, the party who provided the notice would ask the authority to appoint the adjudicator. It's implied in that section, but just to make it clear who that onus is on.

And then the last one is a straight-up housekeeping amendment to 21.52 to ensure that the term "determination" is used throughout.

**Mr. Wotherspoon:** — Thank you. Thank you for that information as well. And quite housekeeping by nature and practical in nature, so thank you for the presentation on that front.

Could the minister just speak a little bit to what the process will look like and the consultation will look like, to make sure that the adjudication process is developed in a way that's going to work?

**Hon. Mr. Morgan:** — Yes. I haven't seen it so I don't know what it's going to look like yet. My guess is that it will be provided to us in due course by the association and I'm glad for the opportunity to meet with their lawyers this weekend. So we'll look at it and then once they've got it in a final or semi-final form, I would probably take it back to the ministry, ask them for their review and comments, then do a cross-jurisdictional scan, and then probably do some consultation with the affected industry sectors, would probably post it online and ask for comments, would be the likely process.

I think for the association, they would want it done in as timely a manner as possible, and that's certainly where I would like to do it. I'd like to see it being applied as quickly as possible.

**Mr. Wotherspoon:** — Thank you. Thank you very much on that front. The involvement, I think, of industry through that is going to be critical as I think has been identified here as well.

**Hon. Mr. Morgan:** — I think the point on this, the whole thing, this is something . . . Government didn't set out to do this. This was something that was asked for by industry. So we've said yes, of course, this is something that's necessary. We think it's a good process to have. It would certainly be better if there was others that had done it before, but we're willing to be leaders or to go ahead and do it. But we think because it was something that industry had asked for, industry should be demonstrating the lead as to how the adjudication process might work. And I think we may not agree with them on everything, but we'll certainly want to do something that creates a fair balance and a level playing field between owners and payers and the subtrades that are there.

**Mr. Wotherspoon:** — Well I appreciate the time here tonight. I know there's been a whole bunch of work that's gone into this legislation. So thank you to the Justice officials that have been involved. Thank you as well to Prompt Payments Saskatchewan and that diverse coalition and the leadership of the Saskatchewan Construction Association, of course. I identified its membership earlier. I know they've really been tireless and strong advocates on this front and have really engaged in a meaningful way. So thank you so very much to those, the construction association and the different industry associations, and the relationship that they brought to bear with very practical understandings of their members and of this industry.

Certainly it's going to be critical that their involvement is continued. I would urge . . . You know we've gone through . . . We have as we've stated, we're strong advocates for prompt payment legislation, always have been. We do want to make sure we get legislation that's workable and legislation that has integrity and that can stand the test of time. And so it is a concern when we have, you know, the noted concern around the ability for the minister to exempt with their discretion certain industries or certain projects and citing the concerns that have been identified by the construction industry.

So I would urge in the coming days continued dialogue between the minister and Justice officials and industry to see if there's not yet an improvement that can be brought on this front. I've heard the minister here tonight say that, you know, either that the exemption is going to be in place or the bill doesn't go forward at this time, and that it may be a protracted period of time before we get prompt-payment legislation. I know industry would be looking for some certainty around timelines because this is important to them and I think the case would be as well that they'd probably take less perfect legislation if they have the confidence, and I know they have every reason to have that confidence, that they'll be involved in the regulation process and the operationalization of this process and the adjudication process.

So I would urge an open mind yet because we have considerations here tonight. We do have the ability to come back to a hearing. We could have them testify, or we have the ability to bring an amendment to the Committee of the Whole before we have legislation that's passed. But I'll leave that here tonight. Otherwise, thank you so very much to, you know, the minister for his time, certainly Justice officials that have been involved in this process, and all across the construction industry.

**The Chair:** — Thank you. Are there any further questions? Seeing none, 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.]

### Clause 7

**The Chair:** — Clause 7, I recognize Mr. Olauson.

**Mr. Olauson:** — Thank you, Mr. Chair. I would like to:

Amend clause 7 of the printed bill:

(a) in section 21.13, as being enacted by that Clause, by adding the following subsection after subsection (2):

“(3) In setting the fees mentioned in clause (2)(a), the Authority may, subject to the regulations, specify the amounts or the method for determining the amounts”;

(b) in section 21.3, as being enacted by that Clause:

(i) in the portion of subsection (1) preceding clause (a) by striking out “A party” and substituting “Subject to subsection (2), a party”; and

(ii) by adding the following subsection after subsection (1):

“(2) The Lieutenant Governor in Council may prescribe a form for the purposes of the notice of adjudication mentioned in subsection (1) and, in that case, the prescribed form must be used”;

(c) in subsection 21.31(3), as being enacted by that Clause, by adding the following clause after clause (a):

“(b) the reference in clause 21.41(1)(b) to the other party shall be read as a reference to every other party to a consolidated adjudication”;

(d) in section 21.32, as . . . enacted by that Clause, by adding the following . . .

**The Chair:** — Could you start out (d) again, please?

**Mr. Olauson:** — I will start out from the word (d):

(d) in section 21.32, as being enacted by that Clause, by adding the following subsection after subsection (4):

“(5) If the parties to an adjudication do not agree on an adjudicator, the party who gave the notice of adjudication shall request that the Authority appoint an adjudicator”;

(e) by striking out section 21.41, as being enacted by that Clause, and substituting the following:

### “Documents for adjudication

**21.41(1)** No later than five days after an adjudicator agrees or is appointed to conduct the adjudication, the party who gave the notice of adjudication shall give:

(a) to the adjudicator a copy of the notice, together with:

- (i) a copy of the contract or subcontract; and
- (ii) any documents the party intends to rely on during the adjudication; and

(b) to the other party the documents mentioned in subclause (a)(ii).

(2) A party who receives a notice of adjudication may, in accordance with the regulations, respond in writing”; and

(f) in section 21.52, as being enacted by that Clause:

(i) in subsection (1):

- (A) in the portion preceding clause (a) by striking out “decision” and substituting “determination”; and
- (B) in clause (d) by striking out “order” and substituting “determination”; and

(ii) in subsection (2) by striking out “the adjudicators” and substituting “an adjudicator”.

**The Chair:** — Mr. Olauson has moved an amendment to clause 7. Do committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Is clause 7 as amended agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

[Clause 7 as amended agreed to.]

[Clauses 8 to 14 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Builders’ Lien (Prompt Payment) Amendment Act, 2018*.

I would ask a member to move that we report Bill No. 152, *The Builders’ Lien (Prompt Payment) Amendment Act, 2018* with amendment. Mr. Francis has moved. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

I think what we’ll do now is we’ll just take a short recess of about five minutes and we shall return after that.

[The committee recessed for a period of time.]

**The Chair:** — Well welcome back to Intergovernmental Affairs

and Justice. I will say that David Buckingham is substituting for Laura Ross and Nicole Sarauer is substituting for Buckley Belanger.

**Bill No. 141 — *The Interpersonal Violence Disclosure Protocol (Clare’s Law) Act***

**Clause 1**

**The Chair:** — We will now be considering Bill No. 141, *The Interpersonal Violence Disclosure Protocol (Clare’s Law) Act*, clause 1, short title. Mr. Morgan, would you please introduce your new officials and make your opening comments.

**Hon. Mr. Morgan:** — Thank you, Mr. Chair. I’m joined once again by Darcy McGovern, director, legal services branch; and Danielle Schindelka, Crown counsel, legislative services branch.

I’m pleased to be able to offer opening remarks concerning Bill 141, *The Interpersonal Violence Disclosure Protocol (Clare’s Law) Act*. Mr. Chair, Clare’s Law is a risk-disclosure protocol that allows Saskatchewan police services to disclose relevant information about someone’s violent or abusive past to an intimate partner who may be at risk.

The concept for this bill comes from the United Kingdom and is named in honour of Clare Wood, a woman who was murdered by her partner and was unaware of his violent past. Clare’s father fought for more disclosure by police to protect domestic violence victims. It is our hope that identifying risk prior to the escalation of violence will prevent tragedies like those with Ms. Wood. I would like to recognize and thank my former chief of staff, Drew Dwernychuk. Drew found Clare’s Law, researched it extensively, and has been a tireless advocate for this bill.

Mr. Chair, this bill will provide the framework for disclosure of relevant information to applicants through the right-to-ask process and to persons identified by police to be at risk, through the right-to-know process. It will authorize the establishment of the interpersonal violence disclosure protocol, the protocol that will set out procedures for the disclosure of information by a police service to applicants and persons at risk. It will set out who can make an application for disclosure, including interpersonal violence support workers. It will provide for good-faith liability protection for police services that disclose information under the protocol. It will require the disclosed information to be kept confidential by all parties and require the disclosed information to be limited to prescribed information.

The bill was developed in conjunction with the Saskatchewan Association of Chiefs of Police, SACP, and representatives from the shelter community. The protocol is currently under development. We are working closely with SACP and the Provincial Association of Transition Houses and Services of Saskatchewan, PATHS, to ensure the process will be practical and effective.

Mr. Chair, this bill will represent an additional tool to prevent and reduce interpersonal violence in this province. It will assist potential victims to make informed decisions about their relationships and safety. The process will also act as a point of contact between potential victims and support services. Through the process developed under the protocol, we can provide access

to assistance and information for potential victims from our experts in the shelter communities and through our police-based victims services teams. As we work to develop the protocol, we are cognizant of the importance of creating a process that can be applied consistently across the province and that is able to appropriately support those individuals that are fearful for their safety.

Mr. Chair, we view this bill as a step in the right direction to addressing interpersonal violence in Saskatchewan. Mr. Chair, with those opening remarks, I welcome your questions regarding Bill 141, *The Interpersonal Violence Disclosure Protocol (Clare's Law) Act*.

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

**Ms. Sarauer:** — Thank you, Minister, for your opening remarks. As you know, and we've had this discussion many, many times over the past few years both in committee and in question period and in the House, that this is an issue that's near and dear to both of us as well as many other MLAs as well. We're very happy and excited to see the government taking positive steps forward in terms of providing supports in this area, because as you know we do have the highest rates of domestic violence amongst provinces in Canada and should be doing all that we can to provide all the supports that we can legislatively to address that very terrible issue.

With respect to this specific bill, it's difficult at the committee stage for us to have much of a dialogue on it because a lot of this is being left to the regulations. I think the public has some curiosity and I do too as to how this process is going to work, in particular who will be able to make the inquiry, what sort of information would be provided to that individual, and how will that decision be made. And based on my reading of the bill, all of that is being left to be determined in the regulations.

**Hon. Mr. Morgan:** — Protocol.

**Ms. Sarauer:** — Yes, correct. So is there more? Could you provide some more information as to how that's being developed?

**Hon. Mr. Morgan:** — Yes, I'm going to let the officials do this. It's a work in progress right now, but they've developed some criteria and some methodology as to how they're working through. So I'll certainly let Danielle or Darcy speak to it.

**Mr. McGovern:** — Thank you, Mr. Chair, and thank you for the question. Our approach to this has started with the UK protocol, and Danielle had led our group internally in terms of identifying how the UK protocol has worked and what their process has been and to start the process with our partners in how to translate a process that was developed on a small island for a big population to the Saskatchewan situation.

And I think in general terms to speak to your questions of who may make the application, in the Act itself sets out two scenarios in which a person who may be at risk would receive information. And this is best characterized as the right to ask and the right to know. So under the Act an applicant may make an application to a police service for disclosure information under the Act.

An applicant can be assisted, with their consent, by the list you see in the legislation, which includes shelter victim service workers, a lawyer, police officer, social worker, psychologist, doctor, registered or psychiatric nurse, who would be . . . Or, you know, the Act allows us to add others to that list. But these would be trusted people who would be able to provide support to an individual in making the application.

And so the intention of the Act is that a person who feels like they're at risk in their personal relationship . . . You know, when we ask ourselves in terms of the dialogue, you know, when should an individual access this Act or use this Act, you know, there's no one scenario. There's changes in behaviour of your partner, inconsistent stories, friends raising concerns. You know an example we use to work through the process would be if someone says, you know, I don't know him as Darcy McGovern. I met him in Manitoba and he said his name was Dave Weber. I don't think this guy you're with, you know, is who he says he is. And that's something that a person may well feel like is something that requires further clarification.

[21:30]

So under this Act, as a person who would make an application to the police service, they would be in a position to come forward and ask for information, under the protocol, with respect to their partner. The police service would take that information in as the initial point of contact. We are, of course, aware that there needs to be facilitation at that point with making sure that the person feels comfortable coming forward. If they have to be go and met, for example, that's something that we're looking at within the context of the protocol. But again at that first contact, that's an opportunity for the initial discussion to say, why do you feel like you might be at risk?

And of course, this isn't the legislation that applies if they say, I've had a violent encounter with my partner. We skip right over this legislation then. Then we're into *The Victims of Interpersonal Violence Act* or, more appropriately, the Criminal Code. So this piece of legislation applies where someone feels like they may be at risk but they're not yet in a position where it has descended into a violent circumstance.

In the protocol that we're working on, what we're looking at having is the police service make that initial contact. And then they would do the necessary investigation at the early stage to determine whether or not, for example, there's a criminal record for that individual or other contact information that the police would have that would be relevant. And the intent, in terms of our discussion with PATHS and with the police at this stage, is not to have a narrow definition of what would be looked for. You know, for example, a criminal assault might be something that occurs with the rugby team in the bar, or a criminal assault might occur in a personal circumstance which might be more relevant to interpersonal violence.

And one of the examples that the PATHS people drew to our attention which I thought was a good example was nuisance, for example. If someone gets charged with a nuisance charge for climbing up three balconies, three stories up in a balcony to knock on a window, you know, on a . . . In one context, a nuisance charge might not be viewed as relevant as previous interpersonal violence with past partners. That's an easy one.

That's an easy one to identify. But what PATHS, for example, has asked us to be aware of is that there's other types of offences that in context might well be someone who was essentially stalking their former partner, had more of a history in that regard. So that type of information would be gathered.

And what the protocol provides is two steps. One is, if it's an emergency circumstance, if Danielle, for example . . . and I think Danielle, if nothing else, is sick to death of me using her in examples as we run through this process. So if we're in that scenario where we're moving forward and I think she identifies a circumstance where she might feel like she's at risk, what we would look at in this process is, say, if it's an immediate risk then we don't go to the committee. We don't go to a process. If it's, that's that axe murderer; that this guy is in fact someone else, then they need to be told right away. That's the right to know. It's not as a discretionary issue.

But the common process would be that the information would then be provided to the committee. The committee that's been discussed would include police members, members of PATHS, as the representatives of the shelter community. We're looking at the victim services group. We don't expect that we've got a huge volume, so it'll be a smaller group that's able to work with contact provincially, and they would be provided de-identified information about the scenario.

And then the intention is that that group, with their expertise, would be able to look at that scenario and recommend whether or not there be disclosure information provided to the applicant. And at that point what's being disclosed, which was the third part of your question that I'm getting to, would be information that would identify the apparent . . . if there was risk to the individual. And I'll let Danielle speak to what's disclosed in the protocol in the UK, which is very little. But there's never been an intention that anybody's going to be handed a police file, obviously, an operational file. That's not how this can work.

What we're speaking to is that the individual would be provided risk analysis. They would be advised whether or not, based on the expertise of the police and on the advice of the advisory group, where you have people like the representatives from PATHS, like the victim service people who are able to identify an issue, whether at that point they would say, we feel you are, based on this information, this individual's at risk, needs to be advised that they are at risk. And that's been described as a high, medium, low type risk.

We're very conscious that lack of information with the police service through this process doesn't equate to safety for that individual. It just means there is no information with the police service. So you know, we aren't providing a guarantee of safety; what we are saying is there is no record of Darcy McGovern in that regard. But no one should feel unsafe in their personal relationship. And so at the time they are advised of the information that's available, they're also advised of what supports are available to them in the community. And what we're hoping to be able to do is to immediately provide them with those supports, if they accept them at the time of the disclosure.

And I'll let Danielle speak briefly to the UK protocol on how they handle the disclosure.

**Ms. Schindelka:** — So in the UK quite a bit of information is considered for disclosure. They'll consider whether convictions, cautions, reprimands, warnings should be considered, but there is quite a high threshold there for disclosure.

Nothing is actually left with the applicant to take away. Everything is provided to the individual verbally and this is to ensure that confidentiality is maintained. So although there's a broad amount of information considered for disclosure, it is narrowed down based on the test that they use in the UK, and then no information is actually provided in a hard-copy form to the applicant.

**Ms. Sarauer:** — Thank you for that. That provided me a lot of information and I really appreciate that. First, I'm happy to hear that there's a committee structure that's being created to help with the decisions around the disclosure process. I know that's something that PATHS has been advocating for, so I'm happy to see that that's included and that includes those, like PATHS, who work in the front line in this sort of issue.

Secondly, I didn't realize that it's actually not going to be created in regulations. You're calling it a protocol. Is that going to be made publicly available? I'm just wondering what sort of level of public oversight and understanding there will be. What sort of information is going to be made public? And how is that going to be made public in terms of how this is going to work and what the protocol is going to be, now that I know that it's actually not in regulations?

**Mr. McGovern:** — Well, and it's a bit of both. I think I would draw the member's attention to 9(2) of the bill and it provides that, for the purposes of clause (1)(e), which is setting out the protocol, the Lieutenant Governor in Council may make regulations adopting, as amended from time to time, all or part of a protocol of this information.

And so the minister was clear in terms of when we were developing the legislation that, you know, we would have to recognize who the experts are. And that's who we want to have in that group, in that committee group, as opposed to having to constantly change the regulations to pick up little items.

So what we're doing . . . And think of it like the fire code, perhaps, where we say what we're adopting is the protocol that's developed through this process. We would anticipate that protocol once it is finalized. It does legally form part of the regulations, but it's adopted through that process. And of course we would view that as a public document once it's finalized. And we think that's also, you know, it's important as part of the information that we want to get out to people.

You know, the minister mentioned in his opening remarks that each time we have someone come forward, it is an information and education opportunity. So if someone doesn't feel safe, they come forward. That's a good opportunity to say, here are the supports in the community. Here's the education that we have in terms of how a cycle of violence can start and how to recognize that as starting. And so those are really important points of contact as well. And we think the protocol can be part of that education, in addition to being a hard manual on process.

**Ms. Sarauer:** — Thank you. When do you think the protocol

will be finalized and this process will be accessible to the public?

**Mr. McGovern:** — We're working through this as a priority. I mean, it will be something we have to work through in the summer. We've got, I think it's a two-stage process, in the sense of we have an experts group that's likely to evolve into the committee itself that's working on the protocol.

The focus right now, of course, is to say we need to be able to identify risk. We need to be able to facilitate applications across the province. And we need to be able to provide disclosure that will enhance safety. That's what we're focused on right now.

I think once we feel like we've got a protocol that's workable, then we need to shop it around a little broader. And so that'll be a project that proceeds through the summer and, you know, I don't want to target specifically, but certainly by the fall we want to be in a position where we're able to start sharing the document.

**Ms. Sarauer:** — Will a third party be able to make an application? I'm thinking of the example of where somebody has a loved one and they're concerned about a new relationship that that loved one is starting. Will a third party be able to make an application to receive information about their loved one's partner?

**Mr. McGovern:** — So where we start our analysis is with consent. So in your example, if it's a matter of saying, can I help you out by making this application? I think that this individual . . . you should be informed about this. Can I make an application with your consent? That's easy.

It's not at all easy in a circumstance where you're saying, I'd like to make an application with respect to this adult professional with full capacity. The first question should be, do you have their consent to make this application? If they say, I don't, and you say, well I think they're not thinking straight and I'd like to know if this individual that they're with has a criminal record. That's a really difficult scenario that's been . . . and it's one that we are working through.

The starting premise should be consent. And the disclosure should go to the applicant, to the person at risk. It can't be a process by which we determine whether that kid that the neighbour's girl is running around with is a good guy or a bad guy. It's not prurient interest. It has to be more directly involved. And I think the discussions that we're having, both with PATHS and with the police in that context, you know, are around the debate about saying well the . . . Obviously there are some situations where I'm going to say . . . For example, if the person lacks capacity, you know, but is in a relationship, that may very well be a circumstance where a third party should. That's a little easier in that circumstance.

It gets much more difficult when we have a high-functioning professional adult who's in a relationship, who says I have no interest in having my co-worker go to the police and ask a question about this person that I'm seeing. They have no business in my relationship at that point. So it is the human condition. So I can't say yes or no.

**Ms. Sarauer:** — Well I hear you and that's why I'm trying to give you one of the most, what I think would probably be one of

the most muddiest examples which would be, for example, a concerned parent or a concerned sibling of the person at risk, who the person at risk isn't necessarily aware or is not consenting necessarily of the application, but the individual has a very close connection to the person at risk. So is that still a discussion that's ongoing or has a decision been made on where the line will be drawn?

**Mr. McGovern:** — Well I think that's a part of the discussion, and in terms of . . . that's ongoing. And I think there's a recognition that procedurally the first question, as I mentioned, is to say do you have the consent of that individual; why do you not have the consent of that individual? With someone who, like I said, a high-functioning professional saying — who in every way can look after their own interests — why would I be disclosing otherwise personal information to you? That's the right point to start that conversation.

[21:45]

Of course, the police and PATHS, for example, those organizations, they're both, you know . . . Police when they receive information are glad to receive information, and that's the nature of that organization of course. And PATHS would like to see, you know, information come in.

So rather than say it'll never be provided, I think the discussion is to say that it has to be carefully vetted at the front end. If it seems like it's, you know . . . And then the discussion becomes more along the lines of saying where you have credible information in a personal relationship, then it can be considered. The disclosure should still go to the individual affected. It shouldn't go to, a co-worker who can then say, hey I've got this information about that. It should always go to that individual. So it's got to come back to that person-at-risk analysis because I'm not equipped as a co-worker to be able to deal with that. You know, there's a general recognition that we'd like to, in the same way, have the funnel at the start fairly wide and the disclosure narrow. This fits into that analysis, but consent's a really important element.

**Hon. Mr. Morgan:** — I think it's worthwhile to note that, you know, the law is named after the Clare Wood situation, and the concern was raised by her father after she was . . . [inaudible] . . . And, you know, I don't know enough about it whether, if her father would have had the information, whether he could have done anything on her behalf or done something before. But given that we have the starting situation where the concern came from a family member, I think the concern you raise is an accurate one and we know that there's, you know, specific mention in the legislation about the possibility of an application being brought by a worker or by somebody else. So subject to appropriate detail and protocol, I think the answer is yes, we'd want to cover that to the extent that is practical and possible.

**Ms. Sarauer:** — Thank you, I appreciate that. And I want to stick to the analogy of the loved one, the family member, the parent, because I think that is one of the arguable potential examples of where there might be a reasonable argument to be made for the process for disclosure to occur to the person at risk without their consent. I'm just wondering if that discretion that I think you're alluding is still available, if that's left up to the police at the front-end stage as to whether or not that process may or may not



continue. Or is that something that the committee will have the opportunity to make that decision?

**Mr. McGovern:** — The initial contact with the individual will occur with the police, and keeping in mind that the information that the police has with respect to a criminal record, for example, or police contacts, is information that they own, they have care and custody under the legislation and are responsible for. So they're the starting point in terms of the process. One of the big advantages of this Act — and I think, you know, this is one of the things that it does do — is to provide express liability protection for the police for compliance with the protocol. And so there is every incentive built into the legislation to say, let's go talk to the committee.

We're not going to take away every circumstance and say in all cases you must go to the committee. That's again, you know, the human condition. They should be able to consider whether or not the Act has no application whatsoever, for example, or that when someone comes forward and says, I think I'd like to make an application under this Act because I keep getting beaten up, and then we say, well, you're not under this Act. This is the Criminal Code. So they don't have to go to the committee in that circumstance. They're in the wrong door and we should be able to help them quicker than that.

So it's more than a fair question. It's just one of those things where we are finding that, you know, in the human condition there's lots of scenarios where we're not able to say we'd never do it that way. But certainly that would be the general intent. The way the Act is built is that the police are able to avail themselves of this expertise and when they do it and the decision is made with respect to the disclosure, they have immunity and legal protection for having done so.

**Ms. Sarauer:** — Just so I understand for clarity's sake, so the police will have the discretion and it'll be up to them to decide whether or not, for example, this loved one, this parent is able to make the application or is told there is no consent for the applicant, so they get shown the door.

**Mr. McGovern:** — Yes. And that's part of what the protocol . . . So it won't be a universal situation. But there is no contact with that individual with the committee, remember.

**Ms. Sarauer:** — Yes.

**Mr. McGovern:** — Because of the de-identified information. So it's necessarily the police intake at that point. They will be advised within the protocol that this is the process for determining whether the committee. . . and we would expect the committee to be involved in the decision on do you think this is when we should make a disclosure, as opposed to just sending someone away.

**Ms. Sarauer:** — Yes, I was making sure that someone isn't — for example, a concerned parent — isn't immediately shown the door because they don't have consent, by the police. That's sort of the scenario that I'm . . . If there's a concern, it would probably be there.

**Mr. McGovern:** — I mean, the minister's message is loud and clear on that as well.

**Ms. Sarauer:** — Yes, I know. I've heard that from the minister and I do greatly appreciate that.

What about the scenario where an individual is making an application about another person. So a person at risk is making an application about someone they're in a relationship with, and the person that they're in the relationship with is a member of the police. How is that going to be addressed?

**Mr. McGovern:** — So I had mentioned previously that one of the issues at the intake is to determine where best that information can be provided. So if you've got someone who says, I can't come to the RPS [Regina Police Service] for example, because the person I'm making the application with is a cop, so we should meet off-site to discuss this initially. And so, you know, PATHS had raised that issue as well in terms of saying, you know, how would that occur. You know, to be fair, that's hopefully more rare but it won't be an unknown circumstance. But so an ability to say, well we need to have a contact occur at another point.

The additional assistance for the applicants is we know they have the ability for the application to be made, with their consent, by their lawyer, by a social worker, by the PATHS member at that point. And that would provide a further insulation with respect to not being seen making that application as to, why were you at the front desk?

**Ms. Sarauer:** — Thank you for that. One question I do have is another scenario which I'm wondering how you've thought through. Theoretically, those who would be likely benefit in this legislation, those who would benefit the most from this legislation would be those who are starting a new relationship, are not necessarily deep in this cycle of abuse, are not necessarily fleeing a situation of abuse because those folks already know that they have an abuser in their lives. So they wouldn't necessarily be in contact with PATHS as an assisted third party.

They may not even have legal counsel because they're not dealing with any sort of criminal or family issues. They may not have a social worker. They could just be someone else going about their day who haven't had to encounter any of these other systems because they're actually not at that stage in the abuse cycle, I would say. They're closer to the beginning, which is why this legislation is so great because it's hopefully going to steer people away from that at the beginning stages. But they won't necessarily have the support people that the legislation is contemplating can assist them in making that application that you've mentioned.

And I'm probably going to put my foot in my mouth because it probably, it might include a loved one or something to that effect in the legislation, now that I think about it. But could you for the record just indicate who is available to be able to assist that individual that would be more so at the beginning stages of a relationship, so may not have encountered the individuals that you've just mentioned as possible third party assistance.

**Hon. Mr. Morgan:** — I'm going to let the officials comment on it.

I think the point you're making is that there's individuals that are well on in a relationship and have the support of PATHS or

family members or somebody else, and at that point the information may not be particularly helpful because they already know that they're in a bad relationship.

So hopefully what this legislation and protocol does is would deal with somebody that is not yet at that point, that if it's a new relationship and a person's got a feeling there may be something wrong and they contact the police, then the police would assist them with it. Or a person may have the situation that you were raising before, where a parent or sibling or whatever else gets a bad feeling and says, I just don't, I've got to . . . So they contact the police. Then the police would go and start with, do they have the consent of the individual, to seek to get the consent, and hopefully there's a relatively high enough level of sophistication within the police that they are able to do that.

When we started, I know that the first two calls that I made were to the two chiefs of police in Saskatoon and Regina and said, would this work? And you know, they had a myriad of questions about how the privacy would work, how it might work. I said, I don't know, that would have to be something you have to work through. I told them about what Clare's Law was. And I was actually quite pleased with the level of engagement they had and the desire that they had for wanting to work through how those protocols might work, how it might work for, you know, a person that's, say 15 years old or underage. You know, they were engaged with sort of all of the levels and the different scenarios, some of the ones that you've asked and a bunch of others that they would have seen. So I took a fair amount of comfort that they were that engaged, and I'm hoping that that's what's happening.

But it may well be that as time goes on that, you know, the police comes and say, well we need to refine the protocols. We need to go and take some other steps, and hope that that happens where we're hoping that it's sort of a living, breathing, growing that it comes through over time, that it produces more and more benefits for people that may be in those situations, naturally with consultation with the Privacy Commissioner making sure that we've done things appropriately.

**Ms. Sarauer:** — That's good to hear, and I appreciate that. And I'm glad that this is going to be a fluid, growing document that of course, because this is such a new process, will grow and perhaps improve over time. So with that, I'll stop playing basically law school final exam with all the different scenarios that could come up.

I am curious to know if this will include, if the disclosure that will be . . . Well I guess the information that will be used to make a decision on what will be disclosed will include convictions only, or will it include charges as well?

**Mr. McGovern:** — The intention is, you know, again to use my funnel example, that in terms of information that the committee would be able to consider, that it be broader than just convictions, that charges and that contact, you know, as well be something that could inform the decision. You know, we're very much aware that this is an area where there's chronic undercharging and under-conviction. And so it will be relevant to making this decision to know that there were 20 times that the police attended on, you know, this individual in three different locations over five years, and in each case it was a domestic disturbance, may well

be relevant to what's under consideration.

**Ms. Sarauer:** — Thank you. One of the concerns I've heard expressed to me about this legislation is the potential for the perpetuation of a stigma that it's the fault of the survivor for getting into a relationship like one of abuse, for staying in a relationship of abuse, and for returning to relationships of abuse. Often for survivors that's a constant feeling for them.

This legislation in providing that extra information is fantastic, but it does add to the myth that if you knew this information about this person, why did you stay? Why did you have a relationship with them, or why did you not go to the police and try to find this information about this person? How is the minister planning to address this concern? Has any thought been given to that issue?

[22:00]

**Hon. Mr. Morgan:** — I'm not sure whether you're asking the situation where the stigma has come because somebody has availed themselves of the services, or where somebody didn't avail themselves of the services, and there is a stigma that becomes greater because they could have availed themselves.

**Ms. Sarauer:** — It's both, frankly. And it's a feeling that already exists now with many survivors, a feeling of, it's my fault or a feeling of guilt, that there is concern that this legislation could further that feeling.

**Hon. Mr. Morgan:** — I don't think we have a really good answer as to how that goes. I think that's sort of part of the supports that need to be there for anybody that's leaving a bad relationship. What's the purpose of this, is to try and identify where there's a threat and to provide appropriate information so the person can make an informed decision, and hopefully that happens.

And I think as a society, we shouldn't judge people whether they take the suggestions that might be made to them, or whether they do or whether they don't. I don't think we should be judgmental on that. And I hope that people aren't, but I don't have a solution within the scope of this legislation that helps anything. That's hopefully something that we move past.

I think it's a really valid concern. I think often that stigma is one of the reasons that people stay in a bad relationship because they're afraid that they'll look bad, or they'll look like they weren't able to work their way through a problem that they otherwise should've. And you know, the only thing I say to those people is we have transition houses, we have support services. Use them.

**Ms. Sarauer:** — Thank you for that. I agree with you, Minister. I don't think there is a legislative solution to that issue, but it is an issue. And I think the more we talk about it and the more we shed light on it, the hope is that the stigma will begin to disappear. And you're right, it's more of a societal issue, but one that needs to be discussed.

We've already talked a little bit about what stage in a relationship essentially this legislation will hopefully assist. And it's a great piece in terms of hopefully preventing abusive relationships from forming, or from getting so deep that it becomes more and more

difficult for individuals to leave. Unfortunately, this won't help those who are already deep in a cycle of abuse. So I caution the government from essentially waving the mission-accomplished banner on this particular issue. What other sort of measures is the government looking at in terms of helping survivors of domestic violence?

**Hon. Mr. Morgan:** — You know, your point's valid. This is not a silver bullet. This is a tool that we hope that we can give, and if it works for even one person it's worthwhile.

I don't think this is the forum to talk about the supports that are given through transition houses or the variety of different services and the money that's spent, and spent well through the different CBOs [community-based organization] that are providing services. I mean, those are things that are works in progress, and you'll see and hear more about them in days going by.

But for purposes of this Act, I don't think we want to oversell it as being something that's there. I was pleased with the support that we initially got by talking to the police chiefs, and I hope that filters down. I hope that it's something that's used. And we're going to watch really closely and probably report back periodically as to how it's being used, how it's being applied, and whether there's things we can do better. We're the first ones in Canada that's done it.

**Ms. Sarauer:** — Thank you, Minister. I do think there will be a bit of a training component or an education component that will be needed for many, but in particular the police, in terms of this legislation and how it should work. As you've already stated — I can't remember if it was you or if it was Mr. McGovern — there is a lower rate of both charges and convictions for domestic violence, so there is a big education piece for those who work within the justice sector that also may not be appropriate for legislation, but likely will have to be addressed peripheral to this.

You also mentioned, Minister, and I agree with you, that if this legislation works for one person, it's worthwhile. Which brings me to, I'm sure you won't be surprised, another piece of legislation that if it worked for one person, it would, I think we could both agree, would be worthwhile. That would be my private member's bill legislation on five paid days' leave, Minister. Is there any desire within the government to pass that legislation on the understanding that it will likely also work for one person and therefore be worthwhile?

**Hon. Mr. Morgan:** — I want you to know I'm not going to ask the Chair to rule that question out of order. We initially did, then we looked at the comparables across Canada. We met with the chamber of commerce and did the usual consultation and made the decision where we were going to align ourselves. I think I've indicated publicly that a number of the jurisdictions are shifting. We should look at and do a revisit of what's there and do some consultation.

I've indicated as well that I'm meeting with employer and employee groups later this week and plan to have some discussion with them at that point in time as to where we might go. So I'm not making a promise or committing the government, but I'm glad you raised it.

**Ms. Sarauer:** — Thank you, Minister, and officials for their work on this legislation. It's good work. Don't stop. This is an important issue. No further questions.

**The Chair:** — 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 10 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Interpersonal Violence Disclosure Protocol (Clare's Law) Act*.

I would ask a member to move that we report Bill No. 141, *The Interpersonal Violence Disclosure Protocol (Clare's Law) Act* without amendment. Mr. Nerlien so moves. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

**Bill No. 168 — *The Justices of the Peace Amendment Act, 2019/Loi modificative de 2019 sur les juges de paix***

**Clause 1**

**The Chair:** — We will now be considering Bill No. 168, *The Justices of the Peace Amendment Act, 2019*, a bilingual bill. We'll begin our consideration of clause 1, short title. Minister Morgan, would you please introduce any new officials and make your opening comments.

**Hon. Mr. Morgan:** — Thank you, Mr. Chair. I'm joined tonight by Jane Chapco, senior Crown counsel, legislative services; and Jan Turner, assistant deputy minister, court services. I'm pleased to be able to offer brief opening remarks concerning Bill No. 168, *The Justices of the Peace Amendment Act, 2019*. Mr. Chair, this legislation amends *The Justices of the Peace Act, 1998* to implement some of the advisory recommendations of the 2018 justices of the peace commission and to make other improvements.

Every six years as part of an independent remuneration process, a commission is required to prepare and submit a report with respect to the determination of salary and benefits for justices of the peace. The most recent commission report was submitted in December 2018. One of the recommendations in the commission report was the extension of the public employees pension plan to additional justices of the peace. Currently only senior justices of the peace are enrolled in the pension plan. These amendments will extend the pension plan to "non-senior justices of the peace" as well.

The amendments will also add a new section to the Act to provide that the salary, pension, and benefit amounts payable to JPs [Justice of the Peace] are "a charge on . . . the general revenue

fund.” *The Provincial Court Act, 1998* already contains a similar provision. This section will provide further support for the judicial independence of justices of the peace.

Mr. Chair, this Act also includes a transitional section to confirm the pension payments that will be made under the regulations in the interim period from April 1 to when these Act amendments come into force. Existing regulatory authority will be used to provide pension payments to the additional justices of the peace during the interim period.

Finally, Mr. Chair, there are some housekeeping amendments to repeal an outdated provision and to clarify the regulation-making power respecting the benefits of justices of the peace.

Mr. Chair, these Act changes will complete the 2018 justices of the peace commission process. The Saskatchewan Justice of the Peace Association is aware of the pension provisions in this bill and is supportive of the changes.

Mr. Chair, with those opening remarks I welcome questions regarding Bill 168, *The Justices of the Peace Amendment Act, 2019*.

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

**Ms. Sarauer:** — Thank you, Minister, for your opening remarks. What advisory recommendations were requested but aren’t included in this legislation?

**Ms. Chapco:** — Jane Chapco from legislative services. This legislation implements the recommendations in the report. There were also some amendments made to the regulations to implement some of the other recommendations. There was one recommendation in the report relating to benefits that suggested that certain justices of the peace who don’t meet a threshold number of hours worked per week still be paid an amount in lieu of those benefits. And that’s not being implemented at this time simply because it would be difficult to administer and it’s not something that the provincial court judges receive or any other government employees receive.

**Ms. Sarauer:** — Thank you.

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

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 10 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Justices of the Peace Amendment Act, 2019*, a bilingual bill.

I would ask a member to move that we ... [inaudible interjection] . . . No, we have to move this first.

I would ask a member to move that we report Bill No. 168, *The Justices of the Peace Amendment Act, 2019*, a bilingual bill, without amendment. Mr. Olauson moves. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Minister Morgan, do you have any closing comments?

**Hon. Mr. Morgan:** — Mr. Chair, I was really enjoying the fisticuffs that were going on. And if you want to proceed for another 15 or 20 minutes with that, I’d love to see you get whaled on.

In any event, Mr. Chair, I want to thank you and the committee members, the staff from Hansard, broadcast services, and the Legislative Assembly for being here and for the work that they do.

But tonight I want to thank all of the officials from the Ministry of Justice for their presence and the preparation that they did, for being here tonight, not just for today but for the work that they do all year around. We’re well served by these remarkably professional, competent people that can make me look semi-competent. So I thank them for that.

[10:15]

**The Chair:** — Thank you, Minister. Do you have any closing comments, Ms. Sarauer?

**Ms. Sarauer:** — I’d like to join with the minister in thanking everyone for their hard work this evening, including the committee members and yourself, Mr. Chair, as well as all the staff mentioned by the minister, who work so tirelessly to support us.

Apologies to Ms. Chapco and Ms. Turner. You both had to wait till 10:15 to answer one question from me. I tried to think of a few more, but it’s just a perfect piece of legislation, so I couldn’t think of any more for you this evening.

But thank you, all of you, for being here tonight and answering all of my questions. I very much appreciate this evening, as well as all of the work you’ve done behind the scenes.

**The Chair:** — Well thank you. I’d ask a member to move a motion of adjournment. Mr. Buckingham has moved a motion to adjourn. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. This committee stands adjourned until Tuesday, May 7th at 4:30.

[The committee adjourned at 22:16.]