STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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

[The committee met at 19:01.]

The Chair: — Good evening, everyone. I want to welcome our members of the committee here tonight. We have Mr. D'Autremont. We have Mr. Francis, Mr. Kirsch, Ms. Ross, Ms. Sarauer, and Minister Morgan and his officials this evening.

We will be considering five bills: Bill No. 174, *The Enforcement of Maintenance Orders Amendment Act, 2019*, a bilingual bill; Bill No. 176, *The Fiduciaries Access to Digital Information Act*, a bilingual bill; Bill No. 177, *The Miscellaneous Statutes (Electronic Register) Amendment Act, 2019*; Bill No. 175, *The Marriage Amendment Act, 2019*, a bilingual bill; and Bill No. 188, *The Public Guardian and Trustee Amendment Act, 2019*.

Bill No. 174 — *The Enforcement of Maintenance Orders Amendment Act, 2019/Loi modificative de 2019 sur l'exécution des ordonnances alimentaires*

Clause 1

The Chair: — We will be considering Bill No. 174, *The Enforcement of Maintenance Orders Amendment Act, 2019*, a bilingual bill, clause 1, short title. Minister Morgan, would you please introduce your officials and make your opening comments.

Hon. Mr. Morgan: — Thank you, Mr. Chair. I'm joined tonight by Lionel McNabb, executive director of family justice services and director of the maintenance enforcement office; as well as Maria Markatos, senior Crown counsel, legislative services branch, Ministry of Justice; and as well by my chief of staff, Clinton Fox.

I'm pleased to be able to offer opening remarks concerning Bill 174, *The Enforcement of Maintenance Orders Amendment Act, 2019*. Mr. Chair, this bill amends *The Enforcement of Maintenance Orders Act, 1997* to strengthen the enforcement mechanisms available to the maintenance enforcement office in collecting maintenance orders.

Mr. Chair, the bill will permit the enforcement of arbitral awards and recalculated amounts by adding those items to the definition of "maintenance order." The bill will also permit the maintenance enforcement office to request financial information, including banking information, in a demand for information. This will match the office's existing practice of asking for this type of information, especially from employers.

Mr. Chair, the proposed amendments also include housekeeping changes to update the language in the French version of the Act, update out-of-date references, and require use of a prescribed form by the maintenance enforcement office when attaching a registered plan of the payor.

Finally Mr. Chair, the amendments include a related amendment to *The Family Maintenance Act, 1997* to permit the recalculation of agreements in accordance with that Act. Agreements are enforceable by the maintenance enforcement office. This amendment will permit those amendments to also be enforced if recalculated.

Mr. Chair, with those opening remarks I welcome your questions respecting Bill 174, *The Enforcement of Maintenance Orders Amendment Act, 2019*.

The Chair: — Are there any questions? I recognize Ms. Sarauer.

Ms. Sarauer: — Thank you. And thank you, Minister, for your opening remarks. I just have a few questions in relation to this legislation, the first being around 13(1), the amendment around demanding banking information. Is that largely codifying what is already existing practice?

Mr. McNabb:— It is, actually. We currently can ask for financial information, but we've been challenged a couple times, saying, well that doesn't include banking information. And of course if we're looking for someone or they haven't paid for a while, usually we know where they worked once before. And just about everybody gets their money direct deposited anymore. So we can go to the old employer and say, where does Nicole bank, as an example. So it's to make it really clear we can ask for banking information.

Ms. Sarauer: — The pushback you were receiving, that was from employers?

Mr. McNabb: — Yes.

Ms. Sarauer: — Okay. I'm curious to know a bit more about the recalculation office. Could you provide some information for the committee?

Mr. McNabb: — Sure. That is an office we started. It was started as a pilot in partnership with the federal government about a year and a half ago now. Last fiscal year they did 99 recalculations, and year to date they've done 131 recalculations. About half of them are up; half are down. So it's fairly equal. We weren't sure how that was going to work.

And the good news I think is of that 131, the majority of them would have had to go to court if they couldn't go there. And just for background — you would know this but a lot of people don't — people that have child support orders, if they follow the child support guidelines, can apply to recalculation. And they will recalculate their orders without them having to go back to court.

Ms. Sarauer: — Thank you. I remember you providing some information about the pilot project in estimates when it originally had been launched. Like you said, it is a pilot project. Are there plans for it to continue? First of all, how long is the pilot project supposed to be running for? And is there a plan for it to go on further than that?

Mr. McNabb: — We have funding for another year and a half. And it's been very successful so far.

Ms. Sarauer: — Thank you. I look forward to the province continuing that on, hopefully.

So just so I understand fully, the changes made to this legislation will make it clear that the recalculation office . . . I don't know if I should call them decisions, not an order or the result . . . [inaudible interjection] . . . Okay, the order can be then followed

through with by maintenance enforcement?

Mr. McNabb: — Yes, to make it perfectly clear, we can do that. But the big change this time is we started off as a pilot. We started really in Regina and then within a few months expanded province-wide, but it just relates to court orders right now. This change will make it so it also applies to agreements. And likely, particularly in the maintenance enforcement office, is 20 to 30 per cent of the orders . . . You take an agreement, take it down to the courthouse and file it; it becomes an order but it's still agreement. So we'll be able to recalculate agreements. That's the big change here.

Ms. Sarauer: — Were you having a challenge with that?

Mr. McNabb: — We couldn't do them.

Ms. Sarauer: — Okay. Agreements, not orders, right?

Mr. McNabb: — If it wasn't a specific court order . . .

Ms. Sarauer: — If it wasn't an order.

Mr. McNabb: — Right.

Ms. Sarauer: — Right. Okay.

Mr. McNabb: — The fact that when you take an agreement to the court and register it, it becomes a court order but it's really not. It just becomes an order so we can enforce it.

Ms. Sarauer: — So now individuals can skip that step of turning an agreement into an order and go straight to your office?

Mr. McNabb: — No, they still have to register them with the court, but we can recalculate them.

Ms. Sarauer: — Okay.

Mr. McNabb: — We couldn't recalculate agreements even when they were filed with the court before.

Ms. Sarauer: — Okay. I think I've sufficiently made it more confusing for *Hansard*, so maybe I'll just leave it at that and whoever the poor soul is that has to read through our discussion will just have to sort it out.

Mr. McNabb: — It would just be better for more clients would be the answer.

Ms. Sarauer: — That sounds fantastic. And the better access to your office for individuals, especially without having to go through the court process, is a good news story for access to justice. No further questions.

The Chair: — Thank you. So clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 12 inclusive agreed to.]

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

I would ask a member to move that we report Bill No. 174, *The Enforcement of Maintenance Orders Amendment Act, 2019*, a bilingual bill, without amendment.

Ms. Ross: — I so move.

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

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 176 — *The Fiduciaries Access to Digital Information Act/Loi sur l'accès des fiduciaux à l'information numérique*

Clause 1

The Chair: — We will now consider Bill No. 176, *The Fiduciaries Access to Digital Information Act*, a bilingual bill. We will begin our consideration of clause 1, short title. Minister Morgan, please if you have any opening comments, will you make them.

Hon. Mr. Morgan: — I do. I'm joined by Maria Markatos, senior Crown counsel, legislative services branch, as well as Darcy McGovern, senior Crown counsel, also legislative services branch.

I'm pleased to be able to offer brief opening remarks concerning Bill 176, *The Fiduciaries Access to Digital Information Act*. Mr. Chair, this bill confirms that the authority of certain fiduciaries extends beyond tangible property to also include access to digital assets. Increasingly, property is being held in a digital format and digital access may be password protected. Digital assets may include electronic records such as documents, emails, and social media accounts, audio and visual content, as well as other digital data available to the public or stored on digital appliances.

This lack of clear direction with respect to access led the Uniform Law Conference of Canada to adopt the *Uniform Access to Digital Assets by Fiduciaries Act* in 2016 on which this bill is based. The bill defines who is a fiduciary and establishes a clear right for a fiduciary to access digital assets. The new bill balances the privacy rights of an individual by permitting the account holder to restrict a fiduciary's access either in the appointing document or through the service agreement with the custodian of the digital asset.

Mr. Chair, with those opening remarks, I welcome your questions regarding Bill 176, *The Fiduciaries Access to Digital Information Act*.

The Chair: — Are there any questions for the minister? Ms. Sarauer.

Ms. Sarauer: — Thank you. Thank you, Minister, for your

opening remarks. I'm curious to know how access to digital assets is occurring for fiduciaries currently.

Hon. Mr. Morgan: — On an informal and ad hoc basis and depends on who's doing it, but I'll let the officials make a more detailed . . .

[19:15]

Ms. Markatos: — Maria Markatos, legislative services. The minister is right. There aren't really any rules right now around how digital assets will be accessed by fiduciaries. The big players like Facebook and Google and Instagram have their own policies in place, so if you go on to those sites or search, you'll see that if a family member of yours is deceased, you can contact them with a death certificate and proof that you're the legal representative and they'll close the account or give you data in some circumstances. But it isn't clear in all cases.

So those groups have policies in place and largely because, as the minister mentioned, this bill is based on a uniform Act prepared by the Uniform Law Conference that was taken on by the Uniform Law Conference of Canada because of a project in the States. And most of the states, with the exception of California and Louisiana, have adopted that uniform Act. And California has their own Act in place. And most of those big players are based there, which is why they now have these policies in place that are in compliance with the Act.

Ms. Sarauer: — Thank you. Is it correct that Saskatchewan will be the first jurisdiction in Canada to have this legislation? And if that is the case, can you explain why the other jurisdictions have yet to come forward with similar legislation?

Hon. Mr. Morgan: — I think on a lot of these things we've tried to be . . . The direction we've given to the ministry is where there are things that we could bring forward that brings our . . . We don't need to wait for other jurisdictions to do things. If something comes out of Uniform Law Conference, something that brings our legislation forward, to bring it forward and to do it.

And to the extent that we've been in government for over a decade, we're the longest serving government in the nation right now. We've got competent staff bringing things forward. And both the government and for that matter the opposition have been supportive of keeping our laws up to date. And I don't want to use the word "cutting-edge," but certainly leading. So we've encouraged that process to take place.

I don't know if the officials want to add any more.

Mr. McGovern: — I think that's fair. And if we think of a recent example is the informal public appeals piece. Saskatchewan was the first province to adopt that legislation and taking the approach that we can be at the front of the parade as opposed to the back. In that circumstance, as a good example, when the tragedy occurred in Humboldt, we had legislation in place which provided for an orderly process for that to unfold.

And we think we've been well served by having the Uniform Law Conference do some of the research that we can then capitalize on and move quickly on. And in this case, as Ms. Markatos has outlined, we had the added benefit of the American law commission who have the ability to get those big players to the table. And once they have, you know, developed norms for those big internet players, we're able to enter into this with a fair degree of confidence. It's not a great leap seeing that that many states are already taking that approach.

Ms. Sarauer: — Thank you. Are there any provisions or recommendations that were suggested by the Uniform Law Conference that weren't provided in this bill?

Ms. Markatos: — No.

Ms. Sarauer: — I have a question about jurisdiction. I'm curious to know how that works. When we talk about large digital companies that are international frankly, how does that work in terms of what laws they have to follow? Can you just explain for the purposes of the committee how that works around the obligations in this legislation and these large corporations who conduct activity in, for example, all the jurisdictions in Canada and all the jurisdictions in North America?

Mr. McGovern: — Thank you for the question. Conflicts of law, of course as you know, are a complicated area when you are dealing with extrajurisdictional effect for different statements. And one of the benefits of taking a uniform approach is that by having a similar approach to other states in this case, or hopefully soon in other provinces, is that you're able to take on, to the degree you can, some of those extrajurisdictional issues.

As you know there's a Supreme Court of Canada case called Morguard that establishes subject matter jurisdiction with respect to items based on a set of rules, some of which are assets-based and control-based and some of which are based on the autonomy of the parties, for example whether the parties had agreed in advance to have a matter heard subject to the jurisdiction of a particular location.

What we're hoping to do with this type of legislation is provide some greater certainty, some more clear rules. So that in the absence of a party-to-party, sophisticated-party-to-sophisticated-party agreement, you have an ability where if someone dies suddenly and you have a partner who says, you know, I know there were a lot of digital assets or a lot of digital passwords that were out there and I'm having a hard time establishing that I have a right of access.

And so, you know, your jurisdictional question is a valid one. If you're dealing with, you know . . . and I'll use the word "dark web" without knowing quite what it always means. But if you have a web organization based on an island somewhere without jurisdiction, you know, we're not going to come here and say we've got that covered. Because of course that's a real challenge.

But a piece like this is able to deal with the mainstream players and we think to do so quite well. So that if you have the Googles and the Facebooks and you have these different bitcoin operations who are required to think through this process and adhere to it in a number of states, that becomes their operating practice, and it's something that we can enforce here.

So when the assets are here, that gives us our jurisdictional subject matter and asset jurisdiction to be able to deal with it here.

But fair enough. If there's a small Caribbean island somewhere where they're operating this, there's only so much we can do.

Hon. Mr. Morgan: — If your question is, does this piece of legislation change any of the conflict-of-laws provisions, it doesn't. But to the extent that it adopts a standardized approach in every jurisdiction that follows the ULC [Uniform Law Conference] law, it probably won't matter for somebody where they've applied. They'll say, okay, well we'll get the same answer wherever it is. And it would make it easier for somebody that's trying to deal with an estate matter or something.

But I don't think that we would want to contemplate changing the Morguard decision or any of the other common-law or statutory bases. They're complex enough as it is.

Ms. Sarauer: — Great. Thank you.

The Chair: — Are there any other questions? Seeing no other questions . . .

Ms. Ross: — I think I do have a question.

The Chair: — Okay, Ms. Ross.

Ms. Ross: — Minister, I guess my concern is when we were saying there is someone that says they should have right of access, right, would we not also have to ensure that the proper protocols have been put in place that that is the person who should have access to that information?

Hon. Mr. Morgan: — That comes down to who is the fiduciary under the legislation. And that would be determined by either a will or power of attorney or by whatever the agreement there was when the account was established.

But this doesn't change whatever the rights are of that person. It just gives them the right to have the digital access. But it does not give anybody an additional right. It includes a right to the information there, but the person has to have the right to the information in the first place.

Ms. Ross: — Okay. Thank you very much.

The Chair: — Are there any other questions? Seeing no other questions, clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 12 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Fiduciaries Access to Digital Information Act*, a bilingual Act.

I would ask a member to move that we report Bill No. 176, *The Fiduciaries Access to Digital Information Act*, a bilingual bill, without amendment.

Mr. D'Autremont: — I so move.

The Chair: — Mr. D'Autremont so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 177 — *The Miscellaneous Statutes (Electronic Register) Amendment Act, 2019*

Clause 1

The Chair: — We will now be considering Bill No. 177, *The Miscellaneous Statutes (Electronic Register) Amendment Act, 2019*. We will begin our consideration of clause 1, short title. Minister Morgan, please make any opening comments that you may have.

Hon. Mr. Morgan: — Thank you again, Mr. Chair. I'm joined again by Maria Markatos, senior Crown counsel, legislative services branch, and Darcy McGovern, also senior Crown counsel, legislative services branch.

I'm pleased to offer brief opening remarks concerning Bill 177, *The Miscellaneous Statutes (Electronic Register) Amendment Act*. This bill amends 42 of the province's professions Acts to expressly permit each organization to determine if it will make its register available to the public in an electronic format. It is important that the public be able to determine who is a member of a professional or occupational organization in an easily accessible manner.

Mr. Chair, most professions Acts in Saskatchewan follow a model Act, which requires that a register be kept at the head office of the organization and be available for inspection by the public during regular business hours. Each Act requires that the register include the name and address of the member. Each organization may create additional requirements for the contents of the register and its bylaws, and some have. Mr. Chair, some organizations have interpreted the register provision narrowly to mean that the register cannot be made available in another manner; others have interpreted it broadly and have made their register available on their website. The proposed amendments will ensure that there is no question whether register information can be made available in any manner acceptable to the register.

Mr. Chair, with those opening remarks, I welcome your questions respecting Bill 177, *The Miscellaneous Statutes (Electronic Register) Amendment Act, 2019*.

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

Ms. Sarauer: — Thank you, Minister, for your opening remarks. Have the professional bodies affected by this legislation been consulted and what sort of feedback have you received?

Hon. Mr. Morgan: — I think generally favourable unless something was asked for by the professions depending on how they interpreted their own ability to have things available on a website. For example, the Law Society website, which is available to the public, also includes disciplinary information and where a person practises. So professional engineers, accountants

all wanted similar provisions and wanted it to be clarified that it would be available. But I'm not aware of anyone that wasn't supportive. It's not mandatory. It's permissive rather than mandatory.

Ms. Markatos: — That's right. All of the professional organizations were consulted. Of the 42 that we contacted, we received 14 responses and all of those were supportive. Most of these professions already provide this information online. There was just a question about whether or not it was broad enough to allow it, so we wanted there to be no question. And then some of them actually want to start making the information available in other electronic ways, like apps, and so the language, which was adjusted slightly through the consultation process, would allow for that.

Ms. Sarauer: — Great, thank you.

[19:30]

As I know you well know, Minister, the Privacy Commissioner had commented on this legislation by way of letter, supportive of the legislation but suggested an expansion that would include professional bodies also making publicly available by posting licence status, restrictions on practice, current disciplinary proceedings, and past disciplinary proceedings and their results of their respective members, similar to what we see for the Law Society. Is any work being done regarding potentially expanding this, and if so, what is being done?

Hon. Mr. Morgan: — This was intended to be a permissive piece to allow and clarify that this was an acceptable way to make the register and comply with the bylaws. To accept the position that the Privacy Commissioner did would require amendments or a lot of consultation with each of the bodies, because you would need to determine what information was there, whether the information is public, whether it's internal. So it would be something, it would be a project that would be undertaken over a longer term with those bodies as they chose to update their bylaws.

Ms. Markatos: — And when we reviewed the correspondence from the commissioner, he was requesting that an amendment be made to make the addition of this information permissive, so not required by the organizations. And so a review of all the legislation and bylaws showed that 18 of the 42 already include additional information in their bylaws that must be included in their register.

So for example, the Chartered Professional Accountants. They include in their register the requirement for the full legal name, date registered, registration status, residential address, business address, conditions on the registration or licence restrictions, date of non-compliance and date of suspension, just to name a few of the additional criteria. So when we reviewed it, since the suggestion was to make it permissive and each of the organizations can create additional criteria in their bylaws anyway, as the Law Society has done, we left it to them.

Ms. Sarauer: — Thank you.

The Chair: — Are there any other questions? Mr. Belanger.

Mr. Belanger: — Thank you very much. Just on the actual organizations themselves, and you mentioned that it's permissive in nature and many of them add more information than required. Is there any kind of background that you can share with us as to the different jurisdictions that may have multi members?

As an example, I would use a professional forester. If they were to come in from Alberta and join our provincial association and that they become a chartered member of that forester association, I'm assuming, is there any kind of difference in qualification? Would that be noted in these files? Or is there any issues around that?

And the reason I'm asking is that a professional forester from Alberta may have vastly different interpretations of how forests can be managed as opposed to Saskatchewan-based. None of those . . . Like is there any assessment of that process as you establish these registries?

Hon. Mr. Morgan: — No. The registry doesn't second-guess or deal with what the qualifications are or not. It only deals with those people that are members.

So if somebody was a member of that association in Alberta, applied to become a member here, and the association here accepted them, then they would be on the register here. If there was a difference in qualifications and they didn't qualify here, they wouldn't be entitled to have their name on the register here.

But it wouldn't be part of this legislation to deal with, you know. That would be whatever those interprovincial qualifications are. And I'm not able to speak to those. It's different ministry.

Mr. Belanger: — Thank you.

The Chair: — Seeing there are no other questions, clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 44 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Miscellaneous Statutes (Electronic Register) Amendment Act, 2019*.

I would ask a member to move that we report Bill No. 177, *The Miscellaneous Statutes (Electronic Register) Amendment Act, 2019* without amendment.

Mr. Francis: — I so move, Mr. Chair.

The Chair: — Mr. Francis so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 175 — *The Marriage Amendment Act, 2019*
Loi modificative de 2019 sur le mariage

Clause 1

The Chair: — We will now be considering Bill No. 175, *The Marriage Amendment Act, 2019*, a bilingual bill. We will begin our consideration of clause 1, short title. Minister Morgan, would you please make your opening comments.

Hon. Mr. Morgan: — Thank you, Mr. Chair. I'm joined by Lionel McNabb, executive director, family justice services, and director of the marriage unit, as well as Maria Markatos, senior Crown counsel, legislative services branch, Ministry of Justice. I'm pleased to be able to offer opening remarks concerning Bill 175, *The Marriage Amendment Act, 2019*.

Mr. Chair, this bill amends *The Marriage Act, 1995* to expressly provide for an application to the court for a declaration of nullity where a person believes that a party to the marriage did not have the capacity to provide valid consent to enter into the marriage contract. This new provision is a clear declaration the Court of Queen's Bench has jurisdiction over claims that a marriage was entered into without valid consent being given.

The bill also makes housekeeping amendments to the Act. A related amendment is made to *The Wills Act, 1996*. The capacity required to enter into a marriage contract is lower than the capacity required to execute a will. This means that a testator may have the capacity to enter into a marriage contract but then not have the required capacity to create a new will.

The bill will repeal section 17 of *The Wills Act, 1996* which revokes a will on marriage or 24 months' cohabitation. The proposed repeal will ensure that a testator's wishes regarding the distribution of his or her estate will continue. This provision dates back hundreds of years when a woman's will was revoked on marriage because she lost the testamentary capacity to deal with her own property on marriage. For a man, his will was revoked on the presumption that his intention on marriage was to provide for his wife and any future children of the marriage. This ensured the man's family did not become dependant on the state.

The modern view is that revocation of the will causes more harm than good as it goes against the intentions of the testator and may disinherit beneficiaries who are not relatives, such as charities. Modern spouses also have other legislative remedies available to them that were unavailable in earlier times.

Repealing section 17 will have no effect on persons who do not have a will and no effect on existing valid wills. It will also put Saskatchewan in line with other Western provinces that have recently repealed similar provisions.

Mr. Chair, with those opening remarks, I welcome your questions respecting Bill 175, *The Marriage Amendment Act, 2019*.

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

Ms. Sarauer: — Thank you, Mr. Chair, and thank you, Minister, for your opening remarks. I have some specific questions about some of the specific sections of this bill, so please bear with me. The repeal and the new wording around section 19 regarding issuing a marriage licence to those under 16 years of age. Can you provide some explanation to the committee as to why this change is being made?

Ms. Markatos: — Thank you. The section currently allows for marriages under the age of 16 with parental consent. However the federal government passed amendments prohibiting marriage of persons under 16 in all cases, whether there's parental consent or not. And since the minimum age for marriage falls under federal jurisdiction, this amendment is made to bring us in line with the feds.

Ms. Sarauer: — Thank you. Now when I was reviewing the legislation, in particular the wording in section 25(7) seemed like it was ripe potentially for some modernization of verbiage. And particularly I'm looking to section 25(7)(b) where ". . . consent required by this section is a condition precedent to a valid marriage unless . . . the parties have lived together as husband and wife after the ceremony." Can you provide some clarity to the committee as to why there was a decision not to modernize this language?

Ms. Markatos: — So the changes that were made to the Act to add section 32.1 and then to make that amendment to bring us in line with the federal legislation were the only substantive changes that were made. All of the other changes that were made were housekeeping changes.

And I do know that there are a lot of provisions of this Act that are out of date that need to be revised and reviewed in a lot of different areas, like the use of the term "husband" and "wife," and especially around section 25 and consummation. And finally there are a lot of Christian-specific religious terms that are used that should probably be revised.

So we're aware of those and they're definitely on our list, but at this time only housekeeping amendments were made other than 32.1 because there are so many that needed to be made that we had to draw the line.

Ms. Sarauer: — You're absolutely right. And I was going to point in particular to section 32 as another one that has some interesting language that should probably be reviewed at some point. Like you had already mentioned, Ms. Markatos, there is a lot in here that probably could be reviewed at some point and modernized.

Like you said, there's a lot so that decision was made not to do it at this time. Is there a timeline in the future as to when this legislation might come forward again for review?

Hon. Mr. Morgan: — I see them looking at me for when the . . . Yes I've seen this in the committee that this is the type of thing that should not be regarded as typically housekeeping. It should be something that's brought forward and probably looked at more aggressively. So I think the answer I would give you, depending on what happens later this year in an election, it would be at or near the top of my list following whatever the outcome of that election is.

Ms. Sarauer: — Maybe I'll put it at the top of my list too, just for clarity and consistency.

Hon. Mr. Morgan: — In the event that you and I are both here afterwards, whoever has got control of the file at that time I'm sure will have the support of the other.

Ms. Sarauer: — Sounds like a good plan to me. Thank you for that. I hadn't had the opportunity to review *The Wills Act* in a while and while going through it, it was quite shocking to me the language that was in some of the provisions. So I'm happy to hear that it was noted by you folks as officials and that it is on the radar to be updated at some time in the near future.

[19:45]

The changes around section 32.1, was that available prior to this change? Is this another codification of existing practice?

Ms. Markatos: — Yes, the Court of Queen's Bench has been hearing cases around capacity for a hundred years, but this provides clear direction to interested family members, and there's a list: party to the marriage, family member, any other person with a close personal connection, or the Public Guardian and Trustee if they're the appropriate person to bring the action. So it is just codifying the existing practice.

Ms. Sarauer: — Like you said this is something that's been common practice for a very long time. Was there a specific event that occurred that made this change necessary?

Ms. Markatos: — I don't know that the change is necessary because the court can hear these actions now. But there has been a recent increase in case law around what we call predatory marriages. There are a few cases in BC [British Columbia]. There are a few cases in Ontario. There's one that recently hit the news last week about an older gentleman whose children are challenging the validity of his marriage. And there have been a lot of scholarly articles by some very famous people like Professor Oosterhoff, suggesting that there are no or very limited legislative options available to people. So we wanted to codify it to bring it to the forefront.

Hon. Mr. Morgan: — I think there was a lot of public interest in wanting to protect seniors who may be vulnerable at certain times in their life. And we talked to a number of MLAs [Member of the Legislative Assembly] that had people come to their office and said we're worried about this issue or we're worried about that issue. And the advice we were giving the MLAs was you have to tell these people to go retain the services of a lawyer and go through the process.

So they'll still have to go through the process, but at least when people know that there is a codification of it or there is a specific statute that deals with it, we've given them as much legislative support as we can. As you're aware, these things are case specific and fact specific, so we think it's a tool that will make it somewhat easier for people.

Ms. Sarauer: — Thank you, Minister. And that, I think, segues into a conversation around the revocation of section 17, a rule that has been in Saskatchewan for a little while now. This is a fairly major change to the law in Saskatchewan, so can you speak a bit . . . You already provided some information as to why this change is being made. Can you speak a bit more about the process that went into determining this decision? And what sort of consultation has occurred as well?

Hon. Mr. Morgan: — I'll let Ms. Markatos speak to it. When the bill came forward, I looked at it and I thought, this is a major change. I graduated from law school in 1978, and it was regarded as old and well-settled law that that was the way things happened.

When you gave people advice that were contemplating marriage, you told them, well you're going to have to do a new will right away afterwards. And you explained to them what a will in contemplation of marriage was. And, you know, that was like that throughout the Commonwealth. And so when this came forward from the ministry, I was somewhat surprised. And I think you and I had had a brief discussion about it.

Over the last few months I've reached out to a number of different practitioners, and I'll let Ms. Markatos speak more specifically to the consultation. And I was surprised by the amount of support there was for going . . . Not only is it taking place in some other jurisdictions, but they made the comment — and it's a valid one — that to get married there's no capacity, no standard.

A person that's preparing a will has got, at common law, has got reasonably high standards to meet on proof that the document they're preparing and executing . . . and the person has reasonable capacities. So it makes some sense not to have a will that was prepared with a lot of diligence essentially being nullified because of a marriage that may have been entered into without the same level of thought or planning. So anyway, I'll let Ms. Markatos speak to the consultation and the process that's there.

But I certainly appreciate your point that it is a big change. But I was surprised at how much support there was from the legal community. As you are aware, I've been away from that for a number of years. And I don't know whether you reached out to people as well and what you were hearing, but that was certainly what I'd heard over the last number of months.

Ms. Markatos: — I think this starts in around 2002. There was a case in Saskatchewan that went to the Court of Appeal eventually called Ratzlaff. And at the Queen's Bench the issue was whether or not a will was made in contemplation of marriage. It didn't name the spouse. It just said if I married, this is what happens. But then the testator went on to get married a few weeks later.

So the Queen's Bench judge said no, will's revoked. It went to the Court of Appeal and the Court of Appeal said it was clearly in contemplation of marriage, given all of the extrinsic evidence. And then after that, the Law Reform Commission actually looked at section 17 and there was a 2006 report that was persuasive on both sides. But they weren't prepared to make a recommendation either way at that time.

And then after 2006, the BC Law Institute, followed by the Alberta Law Reform Institute, both did really thorough reports and both recommended that the provision be repealed for the reasons that the minister mentioned in his opening statements.

So after that, BC and Alberta went on to revoke that provision. And that led the Uniform Law Conference — we've been talking

about them a lot — to review their *Uniform Wills Act*. And they also made a similar recommendation that now there are additional protections in place for spouses that were not there a hundred years ago. So there's *The Family Property Act* and there's *The Dependants' Relief Act*, so there are other avenues that are available to spouses to obtain a portion of an estate if they're not accounted for in the will. And that the careful planning of a testator to divide their estate and maybe make bequests to non-family members shouldn't be revoked because of a marriage. So that's the background.

In terms of consultation, we consulted with a number of consultees last summer, including the Canadian Bar Association Saskatchewan branch, the Law Society of Saskatchewan, the Regina and Saskatoon Estate Planning Councils, individual lawyers, some trust companies, and credit unions. And all of the responses that we received were positive.

Ms. Sarauer: — Thank you. And you answered my next question which was going to be around other jurisdictions. But just to clarify, you mentioned that BC and Alberta have a similar rule. Are those the only two jurisdictions in Canada that currently have what Saskatchewan will also have once this bill passes?

Ms. Markatos: — Currently, yes.

Ms. Sarauer: — And can you just clarify for me what the Uniform Law Conference, which you had mentioned as well, has recommended with respect to this provision?

Ms. Markatos: — In 2014 the Uniform Law Conference of Canada removed the revocation provision from its *Uniform Wills Act* and recommended that that revision be adopted by all Canadian jurisdictions.

Ms. Sarauer: — Thank you. Can you also clarify how this new clause or the revocation of this clause will work once this bill becomes law? For example, for marriages that are already in existence. So how's this going to work practically for folks, especially, you know, those who were married before this bill becomes law?

Ms. Markatos: — So a will that was revoked because of a marriage or cohabitation of 24 months before this bill is in effect, those wills will not be revived. Those wills have been revoked. They're done. But any valid existing wills will continue whether a person is in a relationship or not. And if a person marries or cohabits for 24 months after this provision is repealed, their will will continue. So there is no change to any existing valid wills. They will continue.

Ms. Sarauer: — Just so I fully understand, because it is getting later at night and I already muddled my way through one piece of legislation tonight, say a decade ago I had a will and then nine years ago, I got married. Currently under the legislation that will would have been revoked. Once this bill becomes law, does that will now become valid again or is that still revoked?

Ms. Markatos: — That will is not revived. That will was revoked and it's no longer valid.

Ms. Sarauer: — So is it just moving forward, any future marriages?

Ms. Markatos: — Yes. The bill is not retroactive.

Ms. Sarauer: — Thank you. Thank you, no further questions.

The Chair: — Are there any further questions? Seeing no further question, clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 17 inclusive agreed to.]

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

I would ask a member move that we report Bill No. 175, *The Marriage Amendment Act, 2019*, a bilingual Bill, without amendment.

Mr. Kirsch: — So moved.

The Chair: — Mr. Kirsch moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 188 — *The Public Guardian and Trustee Amendment Act, 2019*

Clause 1

The Chair: — We will now be considering Bill No. 188, *The Public Guardian and Trustee Amendment Act, 2019*. We will begin our consideration of clause 1, short title. Minister Morgan, if you can introduce your new officials and please make any opening comments.

Hon. Mr. Morgan: — Thank you, Mr. Chair. I'm joined tonight by Rod Crook, Public Guardian and Trustee; Carolyn Decker, deputy public guardian and trustee; as well as Maria Markatos, senior Crown counsel, legislative services branch, Ministry of Justice. I'm pleased to be able to offer brief opening remarks concerning Bill 188, *The Public Guardian and Trustee Amendment Act, 2019*.

Mr. Chair, the Public Guardian and Trustee is a public official appointed to protect vulnerable persons in Saskatchewan and to administer certain estates. The Public Guardian and Trustee may act as guardian for the property of a minor, property guardian for an adult who has lost capacity, property guardian of the estate of a missing person, or administrator of last resort for an estate where there is no one else capable of acting.

This bill implements recommendations made by the Office of the Public Guardian and Trustee to amend *The Public Guardian and Trustee Act* and to make amendments in a separate bilingual bill to *The Administration of Estates Act*.

[20:00]

Mr. Chair, this bill moves the official administrative provisions which permit the Public Guardian and Trustee to act as administrator of an estate from *The Administration of Estates Act* to this Act. With the move, the provisions are updated and replace the term "official administrator" with "public guardian and trustee."

The bill also adds a provision respecting heir-locator companies and creates requirements around the compensations agreements they enter into with beneficiaries. The proposed provision limits the fees an heir-locator may charge and sets out requirements that must be met for compensation to be valid.

Now, Mr. Chair, you're aware there's two pronunciations: "air" or "hair." I spoke at an event that Minister Wyant was at and he was quite concerned about looking for a "hair" locator because of his balding issues. In any event, I set that aside for another day.

Mr. Chair, the bill includes updates to the unclaimed asset provisions to permit unclaimed real property to escheat to the Crown after six years. The Public Guardian and Trustee regularly administers estates where real property is involved. Where the real property can be sold, the proceeds are payable to the General Revenue Fund. The revised provision will provide more flexibility to the Public Guardian and Trustee in administering an estate where there are no known beneficiaries.

Finally this bill includes additional amendments to clarify the role of the Public Guardian and Trustee, including granting the Public Guardian and Trustee discretion not to act as administrator where there is another suitable person able to do so and authorizing the Public Guardian and Trustee to renew a suspension freezing assets where there is suspecting financial abuse for an additional 30 days.

With those opening remarks, and my apology for my poor humour, I welcome your questions respecting Bill No. 188, *The Public Guardian and Trustee Amendment Act, 2019*.

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

Ms. Sarauer: — Thank you, Mr. Chair. And thank you, Minister, for your opening remarks. I just have a few questions. In particular, I understand that these provisional changes are made per the recommendations by the Public Guardian office. Were there any recommendations requested by the office that were not . . . Sorry, my grammar is quite poor right now.

Hon. Mr. Morgan: — You're wondering if they recommended things that were not accepted?

Ms. Sarauer: — Exactly. Thank you.

Hon. Mr. Morgan: — I'll let them answer that.

Mr. Crook: — No, there were no recommendations that weren't accepted.

Ms. Sarauer: — Thank you. Your answer was much, much more clear than my question. I appreciate that. The immunity provision that's provided, could you speak a little bit as to why that is being introduced in this bill?

Ms. Markatos: — Thank you. The current Act has an immunity provision. It's just being updated to the standard immunity provision that's found across other legislation.

Ms. Sarauer: — Thank you. And in standardizing that, what change is being made?

Ms. Markatos: — There is specific reference to the Public Guardian and Trustee and to the minister and the Government of Saskatchewan and any employer agent of the Government of Saskatchewan.

Ms. Sarauer: — Were there any particular incidents or reasons why this change is being made, or is this just a standard change?

Ms. Markatos: — There was a recent litigation. There was a case called Thirsk where the Public Guardian and Trustee was acting as official administrator under *The Administration of Estates Act* which does not include an immunity provision. And the question was whether or not the Public Guardian and Trustee could then rely on the immunity provision in this Act.

That's part of the reason that the Official Administrator provisions are being moved from *The Administration of Estates Act* to this Act, to ensure that the Public Guardian and Trustee has immunity when they're acting. And then when we reviewed the Act, there was a direction from drafting that generally the immunity provision has been standardized across the board, so it was updated.

Mr. Crook: — I would just add that the immunity provision refers to our duties and responsibilities not only under *The Public Guardian and Trustee Act* but under any other Act. We had thought that was already covered with the existing language because there was a separate provision in the Act that spelled out that any duties or responsibilities we had under other Acts were also considered to be duties and responsibilities under this Act. However immunity clauses are interpreted narrowly, and when this one was interpreted the judge decided that the clause didn't cover duties that were under a different statute. So that has now been fixed.

Ms. Sarauer: — Thank you.

The Chair: — Are there any other questions? Mr. Belanger.

Mr. Belanger: — Just as the MLA, we get involved with a number of family matters that of course require greater legal counsel and knowledge. So a lot of times we end up indicating to people that they should seek legal advice in the sense that many occasions we've had . . . I'll give you the most recent example. A veteran had passed away, relocated to our community, and no family, just relocated. And I think he had one daughter and she had since passed away, and nobody really came forward to talk about this individual's estate. He owned a house and an old van, not much in terms of value.

When we run into circumstances like that, is it wise counsel just to simply refer to your office? Because a lot of times it becomes a bit of a confusing problem when you, as the MLA, people look for you for answers and many times you don't . . . So with your

office and some of the, just for my own clarification, what are some of the areas that you often get involved with as the Public Trustee?

Mr. Crook: — We're certainly happy to take any inquiries. We get a lot of inquiries about the different areas that we operate in, which include administering deceased estates, acting as property guardian, protecting children's interests. We'll get questions about acting as an attorney under a power of attorney, that kind of thing.

Now we can't provide legal advice to the public, but we can often point them in the right direction and give them some, you know, some good, solid information that they can use. We've also updated our website over the last two or three years to try to put a lot of plain language materials on there that will be helpful for people.

So for example, we have a section on if you're administering the estate of a loved one, here are some of the things that you have to think about, and we have specific sections on different aspects of your duties administering an estate.

Similarly we have some pretty solid material on there if you're dealing with the situation where your capacity of your loved one is deteriorating, you're wondering what your options are. So we provide information about powers of attorney, about how one applies to court to be property guardian or co-decision maker.

We also spell out some of the other kinds of arrangements short of that type of formal authority, like there can be more informal trustee arrangements for example, where all that's involved is government money, either old age security or GIS [Guaranteed Income Supplement] or veterans' pensions, or provincially, you know, SAID [Saskatchewan assured income for disability] money for example. Both levels of government will enter into trustee arrangements with family to administer those funds if the person is considered suitable to doing so.

So we do our best. We answer a lot of calls, and we seem partly . . . We thought the website might reduce the number of calls by providing good information, but what we found is we actually get more calls, and people seem to want to just talk through their particular situation a little bit. And as I say, while we can't provide legal advice, we often can be helpful in providing them with some good general information.

Mr. Belanger: — The reason I indicate that is there's very complex casework that's out there, and a lot of times we feel a bit neutered as the MLA with, you know, saying well, go talk to a lawyer. Many people say well, I don't have $10,000 to get a lawyer engaged. Then we mention the Public Trustee option, you know.

And one of the things that I think is complicating for me is that within the Indigenous community, a lot of older members of my constituency don't really do wills and often we get caught up in that process where child A and child B and child C . . . And of course we don't want to get in the middle of that because (a) we're ill-equipped, and how do you win that battle?

So that's kind of the basis of my earlier question, is that where do you find the Public Trustee and guardianship services? Where are some of the demands when it comes to your general responsibilities to the public? Is it really people not doing their wills or is there some confusion or families not coming forward? Like where would you say the bulk of your work is?

Mr. Crook: — Well, our biggest area is acting as property guardian for adults that can't manage their affairs, and we've seen a fair growth in that over the last couple of years in particular. We used to have about as many clients die as we would get new clients in a given year, but with the demographics of the population we're starting to see our overall caseloads rise.

Another area relating to vulnerable adults is financial abuse, and we're certainly getting lots of calls. We have certain powers to investigate and, where appropriate, try to look to how the individual will be protected going forward. Either there is a loved one who can take over. Perhaps there is an existing power of attorney or somebody can apply to court to be a property guardian. But in many cases, these individuals are becoming our clients and we become their property guardian and look after the situation. So the adult side is a fairly large side.

We're also very active in administering deceased estates. The typical type of situation where we're involved is where there is no family or other appropriate person that can administer the estate. The beneficiaries are unknown. The thing's a bit of a mess. Or we're in a situation where there is a lot of family dysfunction. The family is fighting and the court's looking for somebody to be a neutral person that can administer the estate. So those areas are both quite active. We certainly get lots of calls in those areas.

Mr. Belanger: — My question is around the process itself. I realize given the complexity of many of the cases that . . . Like people assume because you're the MLA you have a lot of knowledge of how the law works and how laws are developed and so on and so forth. So they assume most of us are lawyers but a lot of us aren't. So you tend to try to give as best advice as you can and often we refer them to legal counsel.

But when you look at the process itself. When I want to tell someone, look, you had a dispute in your family or your dad didn't give a will before he passed away, go see the Public Guardian and Trustee services. Their website is very readily available. They have good advice on there, and you're looking at, you know, say you're looking at a year or a year-and-a-half process. Is that a fair time frame before you get any kind of direction or settlement? Would you care to speculate on an average wait time, just so I can be a bit helpful, you know, to the families that do come talk to you as an MLA?

Mr. Crook: — It would depend on the particular service that we're providing. For example, when adults are certified incapable, we go through a process to look, talk to family and the person's support network to see whether there's an appropriate person that can apply to the court to be property guardian. If there isn't, then we move fairly quickly. If it's a financial abuse situation we'll move even quicker. So there aren't significant waiting times for us to become somebody's property guardian if that's necessary. So it depends on the service.

You know as I said we have a limited mandate, you know, with respect to these individual areas that I identified, so outside of

those areas we can't take on, you know, legal work for . . . You know, we're not a legal aid plan that can provide legal services in a bunch of different areas. But we do try to be helpful because we do know a fair bit about estate administration and about powers of attorney and property guardianship and the like.

So we do try to be helpful and give people good information that they can hopefully use. We've also, you know, referred people to pro bono law, for example, etc., because you know, as you pointed out, people can't necessarily afford $10,000 for a lawyer. So it obviously is an issue out there.

[20:15]

Mr. Belanger: — My final question's around the explanation and the description of "vulnerable." How would you describe the vulnerability of the people impacted? Would it be cognitive vulnerability, financial difficulties?

Mr. Crook: — Yes, there is a definition in our legislation which basically just refers to any vulnerability, whether it's by virtue of a disability or an aging limitation such as Alzheimer's or dementia or maybe a cognitive disability the person's had from birth, you know. So it's a fairly wide gamut.

But at the end of the day, is the person . . . And we have, you know, a distinction when we're taking on property guardianship. And the test is, is the person incapable or not? And there's medical evidence as to whether they are or not.

If we're investigating financial abuse, we have a broader test of, you know, is the person vulnerable for whatever reason that they may be being taken advantage of financially by somebody else? In which case, we'll investigate.

Mr. Belanger: — Thank you.

The Chair: — Are there any other questions? Seeing no other question, clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 27 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: Bill No. 188, *The Public Guardian and Trustee Amendment Act, 2019*.

I would ask a member to move that we report Bill No. 188, *The Public Guardian and Trustee Amendment Act, 2019* without amendment.

Ms. Ross: — I so move.

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

Some Hon. Members: — Agreed.

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

Hon. Mr. Morgan: — Thank you very much, Mr. Chair. I would just like to take this opportunity to thank the people that work hard to make committee process work as well as it does: the building staff, people from broadcast services, Hansard, the committee members on both sides, and the officials that prepare at great length for being here. You can tell why these people are the polished professionals that they are. So I thank them not just for being here tonight and the work they did to prepare but the good work that they do throughout the year. So with that, Mr. Chair, thanks to you and the committee members.

The Chair: — Ms. Sarauer or Mr. Belanger do you have any . . .

Ms. Sarauer: — Sure. I'll just echo the minister's sentiments and thank everyone who make committee, especially evening committee, possible, in particular broadcast services and Hansard, the folks that work for our committees, all of the staff, in particular the officials who are here this evening who were able to provide such well-thought-out answers to our questions, my somewhat muddled questions. Thank you for the clarity you provided on these pieces of legislation this evening, and thank you to the committee members for their work tonight.

The Chair: — Thank you, Ms. Sarauer. I would also like to thank the officials for coming out, Hansard and all those folks that work behind the scenes, and of course our committee members sitting here tonight putting in the extra hours.

Seeing that we have no further business this evening, I will ask a member to move a motion of adjournment.

Ms. Ross: — I so move.

The Chair: — Ms. Ross has moved a motion to adjourn. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. This committee stands adjourned to March 3rd, 2020 at 7 o'clock p.m.

[The committee adjourned at 20:20.]