

# BILL

No. 66

## An Act respecting the Provision of Protection Services to Witnesses and Associated Persons at Risk

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(Assented to )

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

#### Short title

1 This Act may be cited as *The Witness Protection Act*.

#### Interpretation

2 In this Act:

- (a) **“applicant”** means the law enforcement agency that makes an application on behalf of a witness;
- (b) **“application”** means an application pursuant to section 8;
- (c) **“approval committee”** means the approval committee established pursuant to subsection 5(1);
- (d) **“associated person at risk”** means a person whose safety or security may be at risk because of the relationship or association of the person with a witness;
- (e) **“director”** means the director appointed pursuant to subsection 3(1);

- (f) **“law enforcement agency”** means:
  - (i) the Royal Canadian Mounted Police;
  - (ii) a police service as defined in *The Police Act, 1990*; or
  - (iii) a prescribed law enforcement agency;
- (g) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (h) **“ministry”** means the ministry over which the minister presides;
- (i) **“prescribed”** means prescribed in the regulations;
- (j) **“protected person”** means:
  - (i) a witness who is a party to a protection agreement; or
  - (ii) an associated person at risk who is a party to a protection agreement;
- (k) **“protection agreement”** means an agreement between the director and a protected person that meets the requirements of section 12;
- (l) **“protection service”** means a service intended to protect or assist in protecting a person’s safety or security and, without limiting the generality of the foregoing, includes the provision of:
  - (i) transportation to and from a safe location;
  - (ii) accommodation;
  - (iii) transportation and storage of personal possessions;
  - (iv) reasonable financial support;
  - (v) security services and equipment;
  - (vi) counselling;
  - (vii) any other service that may be prescribed;
- (m) **“witness”** means an individual who is giving, has given or is expected to give evidence in a prosecution, conducted by the Crown in right of Saskatchewan or by an agent of the Crown in right of Canada, of an offence committed in Saskatchewan pursuant to an Act or an Act of the Parliament of Canada.

**Director, deputy directors**

- 3(1)** The minister shall appoint a director to administer this Act and the regulations, and may appoint any deputy directors that the minister considers necessary.
- (2) The director may, in writing and on any terms that the director may determine, delegate to any person employed in the ministry any responsibility or power of the director pursuant to this Act other than a decision-making power.
- (3) The director shall administer this Act and the regulations in a confidential manner to safeguard the safety and security of protected persons.

**Powers of director**

4(1) For the purposes of this Act, the director may make any inquiry or conduct any investigation that the director considers necessary to carry out any of the responsibilities of the director pursuant to this Act.

(2) Without limiting the generality of subsection (1), the director may make any inquiry or conduct any investigation that the director considers necessary to assess or determine any of the following:

- (a) the risks to the safety or security of a witness or an associated person at risk;
- (b) the eligibility of a witness to receive protection services;
- (c) the types of protection services that a witness or an associated person at risk might need;
- (d) the length of time during which a witness or an associated person at risk might need protection services;
- (e) whether any of the matters described in clauses (a) to (d) have changed with respect to a protected person;
- (f) whether the provision of protection services to a protected person should be terminated.

**Approval committee**

5(1) The approval committee is established.

(2) The approval committee consists of three persons appointed by the minister:

- (a) one of whom is nominated by the Minister of Justice and Attorney General;
- (b) one of whom is an official of the ministry; and
- (c) one of whom is a senior police officer.

(3) The minister shall designate one of the members as chairperson of the approval committee.

(4) For each member of the approval committee, the minister may appoint an alternate member who meets the requirement set out in subsection (2) for that member, and an alternate member has all the powers of a member when the alternate member is acting as a member.

(5) The members of the approval committee and the alternate members are to receive any reimbursement for expenses incurred in performing their responsibilities as members at any rates that may be approved for members of the public service of Saskatchewan.

(6) The approval committee shall:

- (a) in accordance with section 11, review and determine any applications referred to it by the director pursuant to section 10;
- (b) in accordance with section 18, review any decisions of the director with respect to the termination of protection services to a protected person;
- (c) advise the minister on matters concerning this Act and the regulations; and
- (d) perform any other duties that the minister may direct.

(7) Subject to this Act and the regulations, the approval committee may determine its own procedures.

**Provision of protection services**

6(1) Subject to subsections (2) and (3), the director may provide protection services, or arrange for the provision of protection services, to the following:

- (a) a witness who:
  - (i) meets the eligibility threshold set out in section 7; and
  - (ii) is determined in accordance with this Act to be eligible to receive protection services;
- (b) an individual who is determined in accordance with this Act to be an associated person at risk in relation to a witness described in clause (a).

(2) Subject to subsection (3), no protection services will be provided to a person unless the person enters into a protection agreement with the director in accordance with section 12.

(3) In an emergency, the director may:

- (a) provide protection services to a witness who has not yet entered into a protection agreement or to a person who, in relation to a witness who has not yet entered into a protection agreement, is an associated person at risk; or
- (b) provide to a witness, or to a person who, in relation to a witness, is an associated person at risk, protection services that are not included in the protection agreement of the witness or the associated person at risk.

**Eligibility threshold**

7(1) In this section, “**federal program**” means the Witness Protection Program established by the *Witness Protection Program Act* (Canada).

(2) A person meets the eligibility threshold for receiving one or more protection services if:

- (a) the director pursuant to section 10, or the approval committee pursuant to section 11, determines that the person’s safety or security may be at risk because the person is a witness; and
- (b) either:
  - (i) in the opinion of the director, the person is not eligible for admission into the federal program; or
  - (ii) the person has been refused admission into the federal program.

**Application for protection services**

8(1) An application for the provision of protection services to a witness must be made to the director by a law enforcement agency in Saskatchewan.

(2) The director shall consider an application promptly and:

- (a) determine whether the witness meets the eligibility threshold; and
- (b) if the witness meets the eligibility threshold, assess or determine:
  - (i) the seriousness of the offence with respect to which the evidence of the witness relates;
  - (ii) the value of the evidence of the witness and the importance of the witness to the prosecution;

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- (iii) the risk to the safety or security of the witness or an associated person at risk;
  - (iv) the likelihood of the witness or an associated person at risk being able to adjust to any conditions that may be incorporated in a protection agreement, having regard to the maturity, judgment and relationships of the individual;
  - (v) the financial and logistical requirements to provide protection services to the witness or an associated person at risk;
  - (vi) the availability of any alternative methods for protecting the witness or an associated person at risk without providing protection services;
  - (vii) the length of time during which the witness or an associated person at risk is likely to need protection services; and
  - (viii) any other factors that the director considers relevant.

**Witness, associated person at risk, to provide information**

**9(1)** A witness who is the subject of an application must:

- (a) provide the director with all information that the director requires to assess or determine any of the matters mentioned in subsection 8(2);
- (b) provide the director with copies of any documents that contain any of the information mentioned in clause (a);
- (c) provide the director with:
  - (i) the written consent of the witness to the disclosure by a third party of confidential information respecting the witness for the purposes of the application; or
  - (ii) if the witness is not capable of giving consent, the written consent of the person who is entitled to give consent on behalf of the witness to the disclosure described in subclause (i); and
- (d) co-operate with the director in the conduct of any inquiry or investigation pursuant to section 4.

**(2)** If protection services are sought on behalf of an associated person at risk, the witness who is the subject of the application must:

- (a) provide the director with all information that the director requires to assess or determine:
  - (i) the risks to the safety or security of the associated person at risk; and
  - (ii) the types of protection services that the associated person at risk might need;
- (b) provide the director with copies of any documents that contain any of the information mentioned in clause (a); and
- (c) provide the director with:
  - (i) the written consent of the associated person at risk to the disclosure by a third party of confidential information respecting the associated person at risk for the purposes of the application; or
  - (ii) if the associated person at risk is not capable of giving consent, the written consent of the person who is entitled to give consent on behalf of the associated person at risk to the disclosure described in subclause (i).

**Decision of director**

**10(1)** If the director determines that a witness who is the subject of an application meets the eligibility threshold, the director shall give further consideration to the application and:

- (a) decide that the witness is eligible to receive protection services and determine the period during which the witness is likely to need protection services; or
  - (b) determine that the witness is not eligible to receive protection services.
- (2) If the director determines that a witness is likely to need protection services for a period of 30 days or less, the director shall:
- (a) determine the protection services to be provided to the witness;
  - (b) determine whether there are any associated persons at risk who should receive protection services and, in appropriate cases, the protection services to be provided to associated persons at risk;
  - (c) determine the period during which the protection services are to be provided;
  - (d) subject to this Act and the regulations, determine the terms of any protection agreements that are required; and
  - (e) provide the protection services in accordance with the protection agreements.
- (3) If the director determines that a witness is likely to need protection services for a period of more than 30 days, the director shall refer the application to the approval committee for its consideration in accordance with section 11.
- (4) If the director determines that a witness is not eligible to receive protection services, the director shall promptly notify the applicant and the witness of the decision.
- (5) A decision of the director pursuant to subsection (4) is final, but does not preclude the making of a new application on behalf of the witness if additional information becomes available.

**Referral to approval committee**

**11(1)** The approval committee shall promptly consider any application referred to it by the director and review all information provided in relation to the application.

(2) The approval committee shall determine whether or not the witness who is the subject of the application is eligible to receive protection services, and is not bound by a prior decision of the director with respect to the eligibility of the witness.

(3) If the approval committee determines that a witness is eligible to receive protection services, the approval committee shall:

- (a) determine the protection services to be provided to the witness;
- (b) determine whether there are any associated persons at risk who should receive protection services and, in appropriate cases, the protection services to be provided to associated persons at risk;
- (c) determine the period during which the protection services are to be provided; and
- (d) subject to this Act and the regulations, determine the terms of any protection agreements that are required.

**Protection agreement**

**12(1)** A protection agreement must be made in accordance with any prescribed requirements and is deemed to contain any prescribed provisions.

(2) Subject to subsection 6(3), a protected person is entitled to receive only those protection services that are set out in the protection agreement to which the person is a party.

**Variation of protection services**

**13(1)** Subject to subsection (2), if the director is satisfied that the circumstances warrant it, the director may do any of the following:

(a) authorize the provision of additional protection services to a protected person;

(b) extend the period during which a protection service is provided to a protected person.

(2) A protected person must enter into a new or amended protection agreement with the director that incorporates any changes being made pursuant to subsection (1).

**Associated persons at risk**

**14** Protection services are to be provided to an associated person at risk:

(a) only in relation to a witness who has been determined to be eligible; and

(b) subject to subsection 6(3), only if the associated person at risk enters into a separate protection agreement with the director.

**Minors, others lacking capacity**

**15** If a witness or an associated person at risk is a minor or otherwise lacks capacity:

(a) a person who has legal authority to enter into a contract on behalf of the witness or associated person at risk may enter into a protection agreement on his or her behalf; and

(b) the witness or associated person at risk is deemed to be a party to the protection agreement mentioned in clause (a) for the purposes of this Act.

**Assistance to protected persons re: legal obligations**

**16(1)** If a protected person has any outstanding legal obligations or is involved in pending legal proceedings, the director must take any reasonably practicable steps to enable the protected person to comply with those obligations or participate in those proceedings.

(2) Without limiting the generality of subsection (1), the director may do any of the following:

(a) provide protection services to enable the protected person to attend court;

(b) notify a party to civil proceedings involving the protected person that the director will undertake to serve documents on the protected person.

**Termination of protection services**

17(1) Subject to subsection (2), the provision of protection services to a protected person terminates on the expiry of a protection agreement.

(2) Subject to section 18, the director may terminate the provision of protection services to a protected person if the director has reason to believe that the protected person:

- (a) has made a material misrepresentation, or has failed to disclose required information, with respect to the application made on his or her behalf for the provision of protection services; or
- (b) has deliberately breached a material term of his or her protection agreement.

**Review of termination decision**

18(1) If the director, pursuant to subsection 17(2), terminates the provision of protection services to a protected person pursuant to a protection agreement that applies to a period of more than 30 days, the director must take reasonable steps:

- (a) to notify the protected person and the approval committee of the director's decision;
- (b) to provide the protected person and the approval committee with particulars of the grounds for the director's decision; and
- (c) to provide the protected person with an opportunity to make a written submission to the approval committee with respect to the director's decision.

(2) The approval committee shall review a decision of the director described in subsection (1), and shall consider any written submission made by the protected person and any information provided to the approval committee by the director with respect to the director's decision.

(3) The approval committee may confirm or overturn the decision of the director or vary the terms of the protection agreement.

(4) If the approval committee confirms the decision of the director, the director must:

- (a) take reasonable steps to notify the protected person of the decision of the approval committee; and
- (b) give notice of the decision to the applicant.

(5) A decision of the approval committee pursuant to this section is final.

(6) Nothing in this section requires the approval committee to provide a protected person with an oral hearing.

**Co-operation of ministries, agencies**

19 All ministries and agencies of the Government of Saskatchewan must, to the extent possible, co-operate with any request from the director to provide protection services to a protected person.

**Persons who provide protection services**

20(1) A person who provides protection services pursuant to this Act to an individual whom he or she knows to be a protected person must comply with any directions that the director may give for the purposes of this Act.



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(2) Without limiting the generality of subsection (1), a person who provides protection services may be directed by the director to record the types of protection services provided to a protected person using an assumed name or a numeric identifier for the protected person.

(3) Notwithstanding any other Act or any regulation or professional bylaw, a person who complies with a direction of the director pursuant to this section does not contravene:

- (a) any Act, regulation or professional bylaw; or
- (b) any applicable code of professional conduct or ethical standard.

### **Reciprocal agreements**

**21** The minister may enter into an agreement with the government of another province or territory of Canada to provide for the reciprocal provision of protection services to witnesses and associated persons at risk.

### **Confidentiality**

**22(1)** No person engaged in the administration of this Act or the provision of protection services pursuant to this Act shall disclose or provide access to information respecting the identity or location of a protected person, a former protected person or a person on whose behalf an application has been made, or information that might otherwise compromise the safety or security of a protected person, a former protected person or a person on whose behalf an application has been made, except in accordance with this Act and the regulations.

(2) Subsection (1) does not apply to a disclosure of information that:

- (a) is made between any of the following persons:
  - (i) the director;
  - (ii) a member of the approval committee;
  - (iii) a person who is employed or retained by the ministry in the administration of this Act;
  - (iv) a person who has provided protection services pursuant to this Act to a person whom he or she knows to be a protected person;
  - (v) a member of a law enforcement agency that is an applicant; and
- (b) is necessary for the administration of this Act or the provision of protection services to a protected person.

### **Permitted disclosures by director**

**23(1)** The director may disclose information that might reveal the identity or location of a protected person or former protected person if:

- (a) the protected person or former protected person consents to the disclosure;
- (b) the protected person or former protected person has previously disclosed the information or has acted in a manner that results in the disclosure of the information; or

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- (c) subject to subsection (2), the disclosure is essential in the public interest:
- (i) for the purposes of an investigation of a serious offence, if there is reason to believe that the protected person or former protected person:
    - (A) can provide material information or evidence in relation to the offence; or
    - (B) was involved in the commission of the offence;
  - (ii) for the purpose of preventing the commission of a serious offence;
  - (iii) for the conduct of an inquest or a public inquiry; or
  - (iv) for a prescribed purpose.
- (2) Before disclosing information pursuant to clause (1)(c), the director shall consider whether the public interest can be met by means other than the proposed disclosure.

**Certain disclosures not affected**

**24** Nothing in this Act affects:

- (a) the obligation of the Crown to disclose information in the ordinary course of criminal proceedings; or
- (b) the disclosure of information when ordered by a court in criminal proceedings.

**Agent of AG acting in place of law enforcement agency**

**25(1)** For the purposes of any application made pursuant to this Act, an agent of the Attorney General for Saskatchewan may act in the place of the law enforcement agency.

(2) If an agent of the Attorney General for Saskatchewan is acting pursuant to subsection (1), all duties, powers and responsibilities of a law enforcement agency as described in this Act apply, with any necessary modification, to the actions of the agent of the Attorney General for Saskatchewan.

**Non-compellability**

**26** The director, a deputy director, the members of the approval committee, officers, employees and agents of the ministry, agents of the Attorney General for Saskatchewan and persons who have provided protection services pursuant to this Act to a witness or an associated person at risk are not compellable to give evidence in any court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of that person in the exercise of the powers, the performance of the duties or the carrying out of the functions of that person pursuant to this Act.

**Immunity**

**27** No action lies or shall be commenced against the minister, the ministry, the director, a deputy director, the approval committee, a member of the approval committee, an officer, employee or agent of the ministry, an agent of the Attorney General for Saskatchewan or any other person for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any one or more of them:

- (a) pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations; or
- (b) in the carrying out or supposed carrying out of any decision made pursuant to this Act or the regulations.

**Regulations**

- 28** The Lieutenant Governor in Council may make regulations:
- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
  - (b) for the purposes of subclause 2(f)(iii), prescribing law enforcement agencies;
  - (c) for the purposes of subclause 2(1)(vii), prescribing services as protection services;
  - (d) governing the making of protection agreements;
  - (e) prescribing standard provisions for protection agreements;
  - (f) for the purposes of subclause 23(1)(c)(iv), prescribing purposes for which the director may disclose information that might reveal the identity of a protected person or former protected person;
  - (g) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
  - (h) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

**Offences and penalties**

- 29(1)** No person shall fail to comply with a direction of the director pursuant to subsection 20(1).
- (2) Every person who contravenes subsection (1) or subsection 22(1) is guilty of an offence and liable on summary conviction to a fine of not more than \$50,000, to imprisonment for a term of not more than two years or to both.
- (3) No prosecution is to be instituted pursuant to this section without the consent of the Attorney General.

**Coming into force**

- 30** This Act comes into force on proclamation.

SECOND SESSION

# Twenty-sixth Legislature

SASKATCHEWAN

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## B I L L

No. 66

An Act respecting the Provision of Protection Services  
to Witnesses and Associated Persons at Risk

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Received and read the

First time

Second time

Third time

And passed

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Honourable Darryl Hickie

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