

EXPLANATORY NOTES

B I L L

No. 109

An Act to amend the Statute Law

Clause of Bill

1 *The Statute Law Amendment Act, 2017 (No. 2)*

2 **Existing Provision**

The Administration of Estates Act

9(1) On the application of any person interested, which may be made *ex parte* unless a judge orders otherwise, a judge may, without granting letters probate or letters of administration, order that the personal property of a deceased person be paid or delivered to a person named by the judge to be disposed of by that person as the judge directs and in accordance with subsection (2), where:

1998, c.A-4.1, s.9; 2008, c.2, s.9.

24(3) An application for an order pursuant to subsection (1) may be made *ex parte* or on any notice that the judge may direct.

1998, c.A-4.1, s.24.

26(2) An application for a transfer of the records with respect to an estate from one judicial centre to another may be made *ex parte* or on any notice that a judge may direct.

1998, c.A-4.1, s.26

32(2) A notice mentioned in subsection (1) is to be placed in:

(b) any other newspaper designated by a judge on an *ex parte* application by the executor or administrator.

(3) By an order that may be obtained on an *ex parte* application, a judge may dispense with publication of the notice in the case of:

1998, c.A-4.1, s.32; 2008, c.2, s.22.

36(1) An executor or administrator may apply *ex parte* for an order discharging the executor or administrator without passing the accounts.

1998, c.A-4.1, s.36; 2001, c.34, s.2.

45(2) On an application by the official administrator, or any person interested in the estate, made *ex parte* or on any notice that a judge may direct, a judge may increase or decrease the amount of the fees and expenses to be paid to the official administrator.

2008, c.2, s.26

Explanation

Proposed section 2 amends provisions of *The Administration of Estates Act* by replacing references to “*ex parte*” proceedings with proceedings “without notice”.

3 Existing Provision

The Adoption Act, 1998

5(2.2) The court may, on an *ex parte* application, dispense with the requirement to give notice to a person who is or may be a birth parent of the child if the court is satisfied that dispensing with that requirement:

1998, c.A-5.2, s.5; 2004, c.4, s.5.

Explanation

Proposed section 3 amends subsection 5(2.2) of *The Adoption Act, 1998* by replacing the reference to “*ex parte* application” with “application without notice”.

4 Existing Provision

The Children’s Law Amendment Act, 1997

2(1) In this Act:

“**child**” means a person who:

(a) is under 18 years of age; and

(b) has never married; («*child*»)

1997, c.C-8.2, s.2; 2001, c.34, s.2.

7(3) Notwithstanding subsection (1), the court may allow an application for an interim order to be made *ex parte*.

1997, c.C-8.2, s.7

24(3) An application pursuant to subsection (1) may be made *ex parte* where the court is satisfied that it is necessary that action be taken without delay.

1997, c.C-8.2, s.24.

Explanation

Proposed section 4 amends *The Children’s Law Act, 1997*.

The proposed amendment to subsection 2(1) of the English version of the Act updates the definition of “child” to correct the reference to the French term “enfant”.

The proposed amendments to subsections 7(3) and 24(3) replace references to “*ex parte*” with “without notice”.

5 **Existing Provision**

The Constitutional Questions Act, 2012

15(2) The court may, on an *ex parte* application made for the purpose, order an abridgement of the time for service of a notice mentioned in section 13 or 14.

2012, c.C-29.01, s.15.

Explanation

Proposed section 5 amends subsection 15(2) of *The Constitutional Questions Act, 2012* by replacing the reference to “*ex parte* application” with “application without notice”.

6 **Existing Provision**

The Co-operatives Act, 1996

181(1) A member, the registrar or any interested person may apply *ex parte*, or on any notice that the court may require, to the court for an order directing an investigation to be made of the co-operative or any of its subsidiaries or affiliates.

(4) An *ex parte* application pursuant to this section shall be heard with the public excluded.

(5) No persons may publish anything relating to *ex parte* proceedings conducted pursuant to this section other than with the authorization of the court or the written consent of the co-operative being investigated.

1996, c.C-37.3, s.181

Explanation

Proposed section 6 amends subsections 181(1), (4) and (5) of *The Co-operatives Act, 1996* by replacing references to “*ex parte*” proceedings with proceedings “without notice”.

7 Existing Provision

The Enforcement of Canadian Judgments Act, 2002

7(4) An application for directions must be made pursuant to subsection (1) before any measures are taken to enforce a registered Canadian judgment if:

(a) the enforceability of the judgment is, by its terms, subject to the satisfaction of a condition; or

(b) subject to subsection (5), the judgment was obtained *ex parte* without notice to the persons bound by it.

2002, c.E-9.1001, s.7; 2015, c.22,
s.6; 2016, c16, s.4.

Explanation

Proposed section 7 amends clause 7(4)(b) of *The Enforcement of Canadian Judgments Act, 2002* by removing an unnecessary reference to “*ex parte*”.

8 Existing Provision

The Enforcement of Maintenance Orders Act, 1997

17(3) On service of a notice of seizure of account, the recipient shall cause to be served on the payor a true copy of the notice of seizure of account within:

(b) any further time that the court may allow on the application, *ex parte*, of the recipient made before or after the period mentioned in clause (a) has expired and before or after the payor is served.

2012, c.13, s.15.

32(2) If payments are received by the court or the director pursuant to subsection 18(2) and no dispute is made pursuant to section 25 or 28 or a dispute is settled in favour of the recipient:

(a) the payments held by the court are to be paid to the recipient:

(i) on an *ex parte* application by the recipient; or
2012, c.13, s.15.

40.2(4) After service of a notice of attachment on a trustee pursuant to subsection (2), the director shall serve the payor with a true copy of the notice of attachment within:

(b) any further time that the court may allow on an *ex parte* application of the director made before or after the period mentioned in clause (a) and before or after the payor is served.

2004, c.8, s.9; 2009, c.17, s.49; 2012, c.13, s.18.

52(1) If the recipient or payor fails to file a financial statement required pursuant to section 50, the court may, on an *ex parte* application, issue a warrant for the recipient's or payor's arrest for the purpose of bringing the recipient or payor before the court.

(2) If the payor fails to appear as required by a summons issued pursuant to section 51, or fails to appear as required pursuant to section 51 at any subsequent adjournment of the proceeding, the court may, on an *ex parte* application, issue a warrant for the payor's arrest for the purpose of bringing the payor before the court.

2009, c.17, s.37.

55(1) On an *ex parte* application by the recipient and where the court is satisfied that the payor is hindering or defeating or is attempting to hinder or defeat the

enforcement of a maintenance order by dissipation, gift or transfer of assets, the court may make an order:

(2) On an *ex parte* application by the recipient and where the court is satisfied that the payor is attempting to hinder or defeat the enforcement of arrears under a maintenance order by leaving Saskatchewan, the court may issue a warrant for the arrest of the payor for the purpose of bringing the payor before the court to be examined with respect to his or her ability to meet his or her obligations pursuant to the maintenance order.

1997, c.E-9.21, s.55; 2009, c.17, s.49

Explanation

Proposed section 8 amends clause 17(3)(b), subclause 32(2)(a)(i), clause 40.2(4)(b), subsections 52(1) and (2) and subsections 55(1) and (2) of *The Enforcement of Maintenance Orders Act, 1997* by replacing references to “*ex parte*” applications with applications “without notice”, and making other minor formatting changes.

9 Existing Provision

The Family Maintenance Act, 1996

7(2) In determining the amount, if any, of maintenance to be paid for a dependant, the court shall not take into account any benefit that the Department of Community Resources and Employment provides to or for the maintenance of the dependant.

1997, c.F-6.2, s.7; 2004, c.66, s.5.

8(2) An application pursuant to this section may be made *ex parte* at the discretion of the court.

1997, c.F-6.2, s.8

12(3) An application pursuant to this Act, other than an application pursuant to subsection 4(2), may be made by the Minister of Community Resources and Employment, in the name of the Minister of Community Resources and Employment in his or her official capacity or in the name of the dependant, if the Department of Community Resources and Employment is providing a benefit to or for the maintenance of the dependant.

1997, c.F-6.2, s.12; 2004, c.66, s.5.

23(3) The court may make an order for substituted or other service by letter, advertisement or otherwise as it considers reasonable or it may make an order dispensing with service where, on an *ex parte* application, the court is satisfied that:

1997, c.F-6.2, s.23; 2016, c.29, s.4

27(2) The Minister of Community Resources and Employment shall not be added as a party pursuant to this section.

1997, c.F-6.2, s.27; 2004, c.66, s.5

Explanation

Proposed section 9 amends *The Family Maintenance Act, 1997*.

The proposed amendments to subsection 7(2), subsection 12(3) and subsection 27(2) replace outdated references to the Department/Minister of Community Resources and Employment with the ministry/minister responsible for the administration of *The Saskatchewan Assistance Act*.

The proposed amendments to subsection 8(2) and subsection 23(3) replace references to “*ex parte*” applications with applications “without notice”.

10 Existing Provision

The Family Property Act

17 An order may be made pursuant to this Part on an *ex parte* application by a spouse who is residing in the family home if the court is satisfied that, as a result of the conduct of the respondent spouse, there is a danger of injury to the applicant spouse or to any other person residing in the family home.

1997, c.M-6.11, s.17; 2001, c.51, s.11.

29(4) An application for an order pursuant to subsection (2) may be made *ex parte* and, where an application is made *ex parte*, the court may:

1997, c.M-6.11, s.29; 2001, c.51, s.11.

Explanation

Proposed section 10 amends *The Family Property Act*.

The proposed amendments to section 17 replace a reference to “*ex parte* application” with “application without notice”, and make housekeeping updates to the section’s format.

The proposed amendments to subsection 29(4) replace references to “*ex parte*” applications with applications “without notice”, and make other minor housekeeping updates.

11 Existing Provision***The Jury Act, 1998***

3(2) This Act does not apply to a trial held in accordance with *The Legislative Assembly and Executive Council Act, 2007*.

1998, c.J-4.2, s.3; 2005, c.18, s.2;
2007, c.L-11.3, s.97.

6 The following persons are excluded from service as jurors:

(d) members of:

(i) boards of education mentioned in section 61 of *The Education Act, 1995*;

(ii) conseils scolaires mentioned in section 62 of *The Education Act, 1995*; or

(f) persons who are engaged in the administration of justice including, without limiting the generality of the foregoing:

(i) officials or employees of the Department of Justice; and

1998, c.J-4.2, s.6.

14(3) Except where otherwise provided in this Act, the Department of Justice shall pay the fees and expenses of jurors.

1998, c.J-4.2, s.14

36(2) Where an employer contravenes subsection (1), sections 2, 89 and 90 of The Labour Standards Act apply, with any necessary modification.

1998, c.J-4.2, s.36.

Explanation

Proposed section 11 amends *The Jury Act, 1998*.

The proposed amendments to subsection 3(2) replace a reference to “*The Legislative Assembly and Executive Council Act, 2007*” with “*The Legislative Assembly Act, 2007*”.

The proposed amendments to section 6 update references to boards of education and the conseil scolaire under to *The Education Act, 1995*, and replace a reference to the “Department of Justice” with the “Ministry of Justice”.

The proposed amendment to subsection 14(3) replaces a reference to the “Department of Justice” with the “Ministry of Justice”.

The proposed amendments to subsection 36(2) replace a reference to certain provisions of *The Labour Standards Act* with the equivalent provisions of *The Saskatchewan Employment Act*.

12 Existing Provision

The Justices of the Peace Act, 1988

14 Unless otherwise specially provided, the provisions of the *Criminal Code*, as amended from time to time, relating to:

- (a) summary convictions; and
- (b) extraordinary remedies;

apply to proceedings before justices of the peace under or by virtue of any law in force in Saskatchewan or municipal bylaws and to appeals from convictions or orders made under them.

1988-89, c.J-5.1, s.14.

Explanation

Proposed section 12 updates section 14 of *The Justices of the Peace Act, 1988* by removing the wording “as amended from time from time to time” in reference to the *Criminal Code*. The proposed changes also update the formatting of the section and make other housekeeping changes to the wording.

13 Existing Provision

The Non-profit Corporations Act, 1995/ Loi de 1995 sur les sociétés sans but lucratif

2(1) In this Act:

“**Canada corporation**” means a body corporate incorporated by or pursuant to an Act of the Parliament of Canada; («*personne morale de régime fédéral*»)

“**Commission**” means the Saskatchewan Securities Commission; («*Commission*»)

“**extraprovincial corporation**” means a body corporate without share capital incorporated otherwise than by or pursuant to an Act, and includes a Canada corporation; («*personne morale extraprovinciale*»)

1995, c.N-4.2, s.2; 2005, c.22, s.3;
2010, c.4, s.4; 2014, c.20, s.2; 2015,
c.22, s.12.

2(1) Les définitions qui suivent s'appliquent à la présente loi.

«**Commission**» La Commission appelée Saskatchewan Securities Commission. («*Commission*»)

«**personne morale de régime fédéral**» Personne morale constituée sous le régime d'une loi fédérale. («*Canada corporation*»)

«**personne morale extraprovinciale**» Personne morale sans capital social non constituée sous le régime d'une loi. La présente définition vise également les personnes morales de régime fédéral. («*extra-provincial corporation*»)

«**société**» Personne morale, sans capital social, constituée sous le régime d'une loi. Dans la partie III, ce mot s'entend également d'une personne morale extraprovinciale. (“*corporation*”)

1995, ch.N-4,2, art.2; 2005, ch.22, art.3; 2010, ch.4, art.4; 2014, ch.20, art.2.

174(1) Une personne morale peut demander au directeur de lui délivrer un certificat de prorogation :

a) dans le cas d'une personne morale extraprovinciale, si la loi sous le régime de laquelle elle est constituée le permet;

(5) Dans le cas d'une personne morale extraprovinciale, le directeur doit immédiatement envoyer un exemplaire du certificat de prorogation au fonctionnaire ou à l'administration compétents de l'autorité législative dans laquelle a été autorisée la prorogation sous le régime de la présente loi.

1995, ch.N-4,2, art.174.

182(1) In this section, “reorganization” means a court order made pursuant to:

(b) the *Bankruptcy Act* (Canada) approving a proposal; or

1995, c.N-4.2, s.182.

190(1) This Division does not apply to a corporation that is insolvent within the meaning of the *Bankruptcy Act* (Canada) or that is a bankrupt within the meaning of that Act.

(2) Any proceedings taken pursuant to this Division to dissolve or to liquidate and dissolve a corporation shall be stayed if the corporation is at any time found, in a proceeding pursuant to the *Bankruptcy Act* (Canada), to be insolvent within the meaning of that Act.

1995, c.N-4.2, s.190.

214(1) A member, a security holder or the Director may apply *ex parte*, or on any notice that the court may require, to a court having jurisdiction in the place where the corporation has its registered office for an order directing an investigation to be made of the corporation and any of its affiliated corporations.

(5) An *ex parte* application pursuant to this section is to be heard in private.

(6) No person may publish anything relating to *ex parte* proceedings pursuant to this section except with the authorization of the court or the written consent of the corporation being investigated.

1995, c.N-4.2, s.214.

250(1) Sous réserve des paragraphes (2) à (6), une personne morale autre qu'une personne morale extraprovinciale peut, par résolution spéciale adoptée conformément à l'article 174:

1995, ch.N-4,2, art.250.

PARTIE III

Enregistrement des personnes morales extraprovinciales

264(3) Sous réserve du paragraphe 244(3), une société est réputée enregistrée sous le régime de la présente loi le jour où le directeur délivre:

b) dans le cas d'une personne morale extraprovinciale, le certificat mentionné au paragraphe 255(2).

1995, ch.N-4,2, art.264; 2013, ch.21, art.3

267(3) Dans le cas d'une personne morale extraprovinciale, le directeur n'est tenu de produire les documents enregistrés conformément à la présente loi que dans les six ans suivant la date à laquelle la dénomination sociale de la personne morale figurait encore au registre.

1995, ch.N-4,2, art.267

272(3) L'avis mentionné au paragraphe (2) est signifié conformément à l'article 273. Dans le cas d'une personne morale extraprovinciale, l'avis est envoyé par courrier recommandé ou certifié au siège social de la société en Saskatchewan ou ailleurs ou au fondé de pouvoir nommé en vertu de l'article 260.

1995, ch.N-4,2, art.272; 2013, ch.21, art.3.

276(2) Dans toute action ou procédure, il incombe à la personne morale extraprovinciale de prouver qu'elle était enregistrée.

1995, ch.N-4,2, art.276.

277 Si une société qui n'était pas enregistrée le devient conformément à la présente loi, l'action ou la procédure mentionnée au paragraphe 276(1) peut être intentée, comme si la personne morale extraprovinciale avait été enregistrée avant l'introduction de l'action ou de la procédure.

1995, ch.N-4,2, art.277.

Explanation

Proposed section 13 amends *The Non-profit Corporations Act, 1995*.

The proposed amendments to section 2:

- repeal the definition for “Commission” as it is not used in the Act or regulations; and
- update the phrase for extra-provincial corporations in the French version of the Act to “société extraprovinciale” from “personne morale extraprovinciale”.

The proposed amendments to sections 174 and 250, the Part III heading and sections 264, 267, 272, 276 and 277 update the phrase for extra-provincial corporations in the French version of the Act, as noted above.

The proposed amendments to sections 182 and 190 of the English version of the Act replace references to the federal “*Bankruptcy Act*” with “the *Bankruptcy and Insolvency Act*”.

The proposed amendments to section 214 of the English version of the Act replace references to “*ex parte*” applications and proceedings with applications and proceedings “without notice”, and make other housekeeping updates to formatting.

14 Existing Provision

The Public Inquiries Act, 2013

13(1) If a commissioner is refused entry to any premises or vehicle, or if the commission is of the opinion that entry without notice is necessary, and the commission has reasonable grounds to believe that entering and searching the premises or vehicle will assist in the conduct of an inquiry, the commission may apply *ex parte* to the court for a warrant permitting a commissioner or a person named in the order to do those things mentioned in section 12.

2013, cP-38.01, s.13.

Explanation

The proposed amendment to subsection 13(1) of *The Public Inquiries Act, 2013* replaces a reference to an “*ex parte*” application with an application “without notice”.

15 Existing Provision

The Queen’s Bench Act, 1998

27(2) Where, in a particular case, a procedure is not expressly provided for by this Act or the rules of court, the procedure to be followed is the procedure for a similar circumstance or the procedure that a judge, on an application made *ex parte* or on notice, directs.

1998, c.Q-1.01, s.27

36(8) On an *ex parte* application, a judge may order that a medical practitioner who makes an examination pursuant to this section be called as a witness at the trial, and a witness called pursuant to that order:

1998, c.Q-1.01, s.36.

44.1(9) The court may, on an *ex parte* application, exempt a party from the requirement to attend a parenting education program pursuant to this section, or postpone the requirement for a party to attend a parenting education program, where:

- (a) the party is seeking interim custody incidental to an *ex parte* application for a restraining order where there has been domestic violence;
- (b) a child of the party has been kidnapped or abducted; or
- (c) in the opinion of the court, there are extraordinary circumstances.

(10) The court may, on an *ex parte* application, postpone the requirement to attend a parenting education program pursuant to this section where one of the parties has made a unilateral change in a custody or access arrangement.

2001, c.35, s.3; 2002, c.I-10.03, s.49;
2004, c.66, s.7.

51(1) In this section, “**labour dispute**” means any dispute or difference between an employer and one or more employees or between an employer and a trade union within the meaning of *The Trade Union Act*, as to matters or things affecting or relating to work done or to be done by the employee, employees or trade union, or as to the privileges, rights, duties or conditions of employment of the employee, employees or trade union.

(2) No injunction to restrain any person from doing any act in connection with any labour dispute shall be made *ex parte*.

(3) A copy of an affidavit intended to be used in support of an application for an interim injunction to restrain any person from doing any act in connection with any labour dispute must be served with the notice of motion.

(4) An affidavit mentioned in subsection (3) must be confined to facts that the deponent is able to prove from his or her own knowledge.

(5) Where members of a trade union within the meaning of *The Trade Union Act* are the defendants or intended defendants:

(a) a notice of motion may be served on the president, vice-president, secretary, treasurer, secretary-treasurer or any other officer, or the financial secretary or business agent, of the trade union if the person is resident in Saskatchewan; or

(b) if no person mentioned in clause (a) is resident in Saskatchewan, a notice of motion may be served on any employee of the defendant or intended defendant who is a shop steward, agent or other representative of the trade union, regardless of the name or title by which the person is known.

(6) On an *ex parte* application to a judge, if it appears that prompt service of the notice of motion cannot be effected on any of the persons mentioned in subsection (5), the judge may make an order for substituted service, or for the substitution in lieu of service of the notice of motion by advertisement or other means that will in all reasonable probability ensure that notice of the motion will be brought to the defendants or intended defendants.

(7) Nothing in this section authorizes an action or matter against a trade union or permits a trade union to be made a party to an action or matter in any court.

97(2) On an *ex parte* application, a judge may order that a person who prepares a report for the assistance of the court be called as a witness, and a witness called pursuant to that order:

(a) is subject to cross-examination by any party; and

(b) is deemed not to be a witness of any party.

1998, c.Q-1.01, s.97.

Explanation

Proposed section 15 amends *The Queen's Bench Act, 1998*.

The proposed amendments to subsection 27(2), subsection 36(8), subsections 44.1(9) and (10) and subsection 97(2) replace references to “*ex parte*” applications with applications “without notice”.

The proposed amendments to section 51 replace references to “*The Trade Union Act*” with “*The Saskatchewan Employment Act*”, update references to “trade unions” with “unions”, replace references to “notice of motion” with “application”, replace references to “*ex parte*” applications with applications “without notice”, and make other formatting and minor housekeeping updates.

16 Existing Provision

The Reciprocal Enforcement of Judgments Act, 1996

3(4) Reasonable notice of the application shall be given to the judgment debtor in all cases in which the judgment debtor was not personally served with process in the original action, and did not appear or defend or otherwise submit to the jurisdiction of the original court, and in all other cases an order may be made *ex parte*.

1996, c.R-3.1, s.3.

6(1) Where a judgment is registered pursuant to an order made *ex parte*, notice of the registration shall be given to the judgment debtor within one month after the registration or within any further period that the court may allow.

(2) The notice shall be served in the manner provided by the practice of the registering court for service of writs of process or of notice of proceedings.

(3) No sale under the judgment shall be valid if made prior to the expiration of one month after the judgment debtor has notice of the registration or prior to the expiration of any further period that the court may order.

1996, c.R-3.1, s.6

7(1) Where a judgment is registered pursuant to an order made *ex parte*, the registering court may, on application of the judgment debtor made within one month after he or she has notice of the registration, set aside the registration on any terms the court may think fit.

1996, c.R-3.1, s.7.

Explanation

Proposed section 16 amends *The Reciprocal Enforcement of Judgments Act, 1996*.

The proposed amendment to subsection 3(4) replaces a reference to “*ex parte*” applications with applications “without notice”.

The proposed amendments to section 6 replace a reference to “*ex parte*” with “without notice” and make other formatting and housekeeping updates.

The proposed change to subsection 7(1) replaces a reference to “*ex parte*” with “without notice”.

17 Coming into force.