STANDING COMMITTEE ON HUMAN SERVICES

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STANDING COMMITTEE ON HUMAN SERVICES
2004

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Mr. Don Morgan
Saskatoon Southeast

Published under the authority of The Honourable P. Myron Kowalsky, Speaker

The committee met at 11:30.

Bill No. 38 — The Credit Reporting Act

Clause 1

The Chair: — The first item of business before the committee is Bill No. 38, The Credit Reporting Act. I'll recognize the minister and have him introduce his officials.

Hon. Mr. Quennell: — Thank you, Madam Chair. Sitting next to me is Darcy McGovern; in the back row to your right, Andrea Seale; to your left, Madeleine Robertson. And they're all Crown counsel with legislative services at Sask Justice. In between them is Tia Johnston, who is a summer student with the department and with Crown counsel, legislative services.

The Chair: — Thank you. Did you want to make any statement before we begin?

Hon. Mr. Quennell: — In respect to this first Bill, Madam Chair?

The Chair: — Yes, to the Bill.

Hon. Mr. Quennell: — The main purpose of this Bill is to update and modernize Saskatchewan's credit reporting legislation. The Bill's also designed to harmonize Saskatchewan's credit reporting legislation with the legislation of other Canadian jurisdictions.

The Credit Reporting Agencies Act was originally enacted in 1972. This new legislation builds on the core elements of existing legislation and provides additional protections for consumers.

The legislation regulates the activities of credit reporting agencies, those who furnish information to credit reporting agencies, and those who use credit reports. It promotes the privacy of those agencies, for these agencies and for those who use credit reports. It also promotes accuracy and fairness in the consumer credit marketplace.

The Chair: — Thank you. Questions for the minister? Mr. Morgan.

Mr. Morgan: — Thank you, Madam Chair. This Bill has been put forward as being of significant benefit to consumers. The one that I saw as the most significant benefit would be the limitation on how long a bankruptcy could be kept on a consumer's file — that and the dispute mechanism. I'm concerned about the cost of operating the dispute resolution method and where those costs ultimately will, who will bear them and how they will be apportioned.

Hon. Mr. Quennell: — The sections involving disputes, beginning in section 23, provide that where a consumer believes there's a discrepancy or inaccuracy in the report, he must report to the credit reporting agency in writing. I don't expect that to be a significant cost. The agency would then bear the cost of doing their investigation. If the dispute continues, the consumer is entitled to provide a written statement in writing to go on the file, and again I don't expect much of a cost there. There is no provision for a court proceeding. It is possible that, under certain circumstances, the registrar may make an order for something to be done, but it's difficult to say with any accuracy what costs there would be. But I would expect the costs under this part of the Act to be minimal.

Mr. Morgan: — My concern was directed specifically at section 25 which deals with the registrar making an order and the cost . . . you know, clearly the registrar is not going to make an order without some kind of an investigation or review of the file. And I don't know whether there would be a bureaucracy set up to do that. I'm not opposing that type of thing; I'm not critical of that taking place. I'm just worried about whether there would be a provision in there that if the credit reporting agency was difficult or was unnecessarily obstreperous or a customer had a frivolous complaint, whether there'd be a provision that the costs of the registrar's time or the registrar's investigation would be borne by one party or another.

Hon. Mr. Quennell: — There is no provision, as the member's probably noted, for apportionment of costs for the work done by the registrar where there is an unresolved dispute, where a registrar's order is necessary or the registrar has to look at whether an order would be necessary.

But in these areas there has not been a particularly onerous load on the registrar where there had been disputes, and we don't anticipate that there will be. In other words it would be part of the administrative costs of the registrar's office.

Mr. Morgan: — I'm assuming that, Madam Chair, that the department will be cognizant of the fact that this is a change to the legislation and there may be costs that will occur over time; and that the department would watch, and that we may want to see some changes at some point in the future if these costs become of some significance.

I certainly am not opposed to that being borne by the province at this point in time, but I'm always concerned when we create an obligation on the province to do something and we're not sure who's ultimately going to pay for it. So my expectation is the department will be monitoring that closely.

My next question, Madam Chair, deals with the length of time that bankruptcy information is kept on file, and I know there's been some variation with the legislation across the country. And I'm wondering who was consulted or what kind of consultative process took place to arrive at the period of time specified in the Act.

Hon. Mr. Quennell: — First of all, Madam Chair, on the issue of the registrar's costs, the member requests that the government monitor whether there's any increased cost as a result of the amendment and I think that is a worthwhile suggestion.

Secondly, on his latter question as to consultation, the proposed changes to this Act were provided to all credit reporting agencies licensed in Saskatchewan of which there are 10, Consumers' Association of Canada Saskatchewan branch, Canadian Federation of Independent Business, Saskatchewan

Chamber of Commerce, and the Retail Council of Canada.

There wasn't a specific consultation on the bankruptcy provisions with any of those bodies.

Mr. Morgan: — There was or there wasn't?

Hon. Mr. Quennell: — There was not. They were provided with the draft suggestions and three of the credit reporting agencies responded. But there was, I mean, no specific consultation on any part of the Act. The amendments were discussed with those bodies in their entirety.

The proposal, as the member will realize, is to exclude information on a first bankruptcy after six years. That is a change from the existing 14 years in Saskatchewan, which was nationally high. Only one other province had a period as long as 14 years. Most provinces are at seven years or at the six years.

Mr. Morgan: — Madam Chair, my question dealing with this is, I am pleased that we're falling into line with other provinces.

There's nothing in this legislation that precludes a credit granting agency — not a credit reporting agency — from asking about a bankruptcy or at least nothing that I'm aware of that would prevent a bank or a credit union from asking a prospective applicant for a loan, have you ever been bankrupt at any point in time? It's something that I don't think is protected.

So my point, Madam Chair, is even though we say that a credit reporting agency can't report that information, I don't think there's anything wrong with . . . or there's nothing that prohibits or limits the right of a credit granter to ask the question, retain the information, and to make a credit decision based on a bankruptcy that took place somewhat earlier — unless my understanding is incorrect or there's another piece of legislation I'm not aware.

Hon. Mr. Quennell: — This legislation governs the relationship between the consumer and a credit reporting agency, and a lender and a credit reporting agency, not the relationship between the lender and the debtor or consumer of credit. So the issue of what a bank could ask a prospective borrower wouldn't be covered in this legislation in any case. This governs the legislation that is provided to and disclosed by credit reporting agencies.

There would be — and we're getting outside the ambit of this Act, obviously — there would be an issue as to whether the province could even govern the relationship in that respect between a chartered bank and a borrower.

Mr. Morgan: — Madam Chair, where I'm headed with this is the minister is correct in that this Act only deals with the relationship between the credit granting agency and the proposed borrower, and I think the department will likely be putting out information circulars or brochures that would be available for the public.

And it may be appropriate to include in those brochures that while this information can't be reported by a credit reporting agency, there is no prohibition against a lending agency relying on information if they already have it on file, and probably no prohibition against them asking it directly because I'm sure that some lenders will refuse to lend based on, you know, their own criteria if they are aware of it.

And I'm not aware of any prohibition on it, so what I'm worried about with this legislation is that we'll send a message that once the time period in this legislation passes that a person can't be refused credit, and credit is of course always in the discretion of the lender. And if the lender chooses to rely on that, that's certainly their right to do that. It's not protected by Human Rights Code. So anyway that's my comment and my suggestion for the department.

My next question is — and I just want some reassurance that the department has, in preparation of this, looked at the federal Privacy Act and the PIPEDA (Personal Information Protection and Electronic Documents Act) legislation to ensure that this piece of legislation is compliant with the other two pieces.

Hon. Mr. Quennell: — We believe that this Act is consistent with both federal and the provincial privacy legislation, that it doesn't conflict with either set of legislation; and that it doesn't displace that legislation but is specific to privacy issues surrounding credit reporting — but without displacing or being inconsistent with either the federal privacy legislation or any provincial Act.

Mr. Morgan: — Madam Chair, I'm wondering about the provisions for when this Act will be coming into force. Does this come into force on proclamation or is there another date that's going to be dealt with for coming into force of this legislation?

Hon. Mr. Quennell: — As set out in section 52, the Act comes into force on proclamation. If the member is interested, the target date is November 1 — the proclamation — assuming that the regulations can be in place.

Mr. Morgan: — Have the regulations been drafted at this point in time?

Mr. McGovern: — No, they haven't.

Mr. Morgan: — So this Act, I take it from that, could be a year or two away from coming into force.

Hon. Mr. Quennell: — No, it would come into force in the fall, November.

Mr. Morgan: — Of this year? Presuming the regulations are done.

Mr. McGovern: — The intention would be that we would continue to consult with the affected community, develop the regulations in consultation with them. And the target I think that we're looking at is November 1, Minister . . . member.

Mr. Morgan: — I don't want to be very much longer with this because we've got three other Acts that I want to . . . But I would like to ask the department officials whether there are a lot of complaints that come forward from consumers. And I'm wondering what kind of history there's been with disciplinary or registrars' activities dealing with credit reporting agencies,

and how effective that's been. I don't know whether it's something that happens on a frequent basis, where there's been credit reporting agencies that have been offside, and what kind of success there's been in dealing with those issues.

Hon. Mr. Quennell: — Mr. McGovern will speak to that.

Mr. Morgan: — Madam Chair, I have no problem with the government official answering all the questions if that makes it easier for the minister.

Mr. McGovern: — The information that I have is that since 1999, which is the period for the statistics that I have, the credit reporting is only about two and a half per cent of all of the complaints that are received by the consumer protection branch in terms of how they split out their complaints on various topics. So that would be roughly 85 complaints respecting credit reporting agencies over that period.

The breakdown that I have is that with respect to divulging prohibited information, there were seven complaints raised. There were seven complaints, for example, as well, on not disclosing information on a file to a consumer. And so they're able to break that down on a few categories.

As the member mentioned previously, of course we're entering into a somewhat new territory in terms of the broadening of the different requirements. The understanding that we would be working with is that the registrar who had been the registrar under the previous legislation would continue as the registrar under the new Bill once it's proclaimed, and that the process would continue to be one of dispute resolution wherever possible.

And I think the general statement that we hear from our consumer protection branch is that while concerns are raised in this area, it hasn't been a large time commitment for them. There's 10 credit reporting agencies licensed in the province. Of that, as the member is aware, there are two that are the major players nationally. So they are large organizations that are relatively established. This Act is intended to modernize the process by which consumers can be protected in that context.

Mr. Morgan: — My last question, Madam Chair, is: has there been a situation where one of the agencies has ever had their licence revoked or removed?

Mr. McGovern: — I'm not able to report on that. I'm not aware of any credit reporting agencies in the last five-year period certainly having their licence removed.

Mr. Morgan: — I don't need to go back any further then. Madam Chair, I'm ready to vote on this.

The Chair: — Okay. Clause 1, agreed?

Some Hon. Members: — Agreed.

Clause 1 agreed to.

Clauses 2 to 52 inclusive agreed to.

The Chair: — Thank you. Bill 38 then, that Her Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows: The Credit Reporting Act.

Could we have a motion to have the Bill reported without amendment? Mr. Borgerson. Agreed?

Some Hon. Members: — Agreed.

The committee agreed to report the Bill.

Bill No. 40 — The Fatal Accidents Amendment Act, 2004

The Chair: — The next item of business is Bill No. 40, The Fatal Accidents Amendment Act. I recognize the minister again and if you have any different officials?

Hon. Mr. Quennell: — Madam Chair, I'm joined at the table by Andrea Seale, who I had previously introduced as Crown counsel for legislative services.

Clause 1

The Chair: — Did you have anything that you wanted to say to the Bill before we proceed?

Hon. Mr. Quennell: — Very briefly, amendments to The Fatal Accidents Act will allow family members of a deceased person to recover damages for grief and loss of guidance, care, and companionship in relation to the wrongful death of their loved one, where previously only pecuniary damages were awarded.

The Chair: — Questions of this Bill?

Mr. Morgan: — Madam Chair, just for the record on this, I want to have the minister confirm for us that this Bill will have no application in a situation where the no-fault provisions relating to an automobile accident Act would apply.

Hon. Mr. Quennell: — Madam Chair, that would usually be the case, that this would not provide any benefits to where the no-fault provisions apply.

Within the automobile accident Act, there are provisions for an action on the part of someone who is insured under the no-fault scheme in certain grievous circumstances, for example homicide with a vehicle, where an action would exist even though the person is insured under the no-fault regime.

And in those cases where there was an action, because there is an action or would have been an action on the part of the deceased person if not deceased, there would therefore be damages in this circumstance as well.

But with that small exception, yes, the member is correct.

Mr. Morgan: — Madam Chair, my concern is where the notion for this came from. Ordinarily in tort law you have rights to claim for a variety of heads of damages, and a court determines the cap that's there.

If this is outside of the provisions of no-fault, there's not going to be a great cost to SGI (Saskatchewan Government Insurance) or to the province, so I'm wondering where the impetus came

that we would want to limit common law rights in this province. Was this as a result of insurers lobbying us? Or was this a result of something within SGI? It just seems like a strange thing for a government to want to interfere with.

Hon. Mr. Quennell: — Speaking to the larger public, and just to avoid confusion, the intention of the Act is not to limit rights but to expand them. I appreciate that there will be very few circumstances where this will apply because most accidental deaths are the result of automobile accidents, and most people are insured under the no-fault regime.

However there are only three provinces in the country that do . . . (inaudible) . . . allow recovery for non-pecuniary losses relating to the accidental death of a loved one; Saskatchewan is one of them. This Act would remove Saskatchewan from that list and provide for non-pecuniary damages in, I appreciate, exceptionally and, fortunately, exceptional circumstances where someone has died and a cause of action existed on the part of that person. That cause of action continues and now after the passage and enactment of this Act will allow the surviving children or spouse or parent to recover damages, not only for loss of income as a result of that death but for loss of companionship and for grief.

Mr. Morgan: — I have two other questions: why this isn't expanded to deal with grandparents and grandchildren, and the other question — and if the minister wants to answer at the same time, that's fine — is, where did the 30,000 and $60,000 figures come from that's in the legislation?

Hon. Mr. Quennell: — In respect to limiting the right of damages to spouses, parents, and children, those are the closest people to the person that has died. Some limit had to be drawn and that was the limit that was selected, and obviously those are the closest family members.

In respect to the amounts, legislation in our neighbouring provinces provides for amounts to be paid for these — and set out in the legislation — for these damages. What we are proposing is lower than Alberta but higher than Manitoba, and it strikes a middle ground. I'm also advised that when one looks at court awards for these type of damages, that what we are proposing falls in the middle of the range.

Madam Chair, if I may in respect to that, we did have the option of not setting any amount and having the courts determine these damages. But I believe the reasons our sister provinces have set out amounts is in part to relieve family members — the spouses, the parents, the children — of going through the stress of making the claim and trying to quantify in money their loss, and we are attempting to do the same in this case.

Mr. Morgan: — Was there any consultation done with insurers or any associations at all so . . . I realize there's no amount of money can compensate for a lost child or a lost family member, and that's the only compensation that the courts can award, is monetary. And I'm just wondering what type of discussions took place and with whom other than sort of saying well, we'll be partway between Manitoba and Alberta?

Hon. Mr. Quennell: — Madam Chair, the consultation paper that was prepared and distributed in November 2003 went to the Law Society of Saskatchewan; the branches of the Canadian Bar Association; committees for civil litigation and law reform, north and south; Saskatchewan Government Insurance; Public Guardian and Trustee; Superintendent of Insurance; Saskatchewan Trial Lawyers Association; Saskatchewan Mutual Insurance Company; Canadian Life and Health Insurance Association; Insurance Bureau of Canada; and Co-operators Life Insurance Company.

Mr. Morgan: — Madam Chair, I'm ready to vote this Bill.

The Chair: — Thank you. Clause 1 agreed?

Some Hon. Members: — Agreed.

Clause 1 agreed to.

Clauses 2 and 3 agreed to.

The Chair: — Thank you very much. And Her Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: The Fatal Accidents Amendment Act, 2004.

Could I have a motion to have the Bill reported without amendment? Mr. Cheveldayoff. Thank you. Agreed?

Some Hon. Members: — Agreed.

The committee agreed to report the Bill.

Bill No. 51 — The Limitations Act

The Chair: — The next item of business is Bill 51, The Limitations Act. The minister has a different official.

Hon. Mr. Quennell: — Well, a official I have previously introduced, Madeleine Robertson, who is Crown counsel of the legislative services has joined me at the table.

Clause 1

The Chair: — Do you have anything you'd like to make a statement on about the Bill before we proceed?

Hon. Mr. Quennell: — Both The Limitations Act and the next Bill that we're dealing with, the short title which is The Limitations Consequential Amendment Act, are being proposed to replace the existing Limitation of Actions Act with a new Act to clarify and rationalize limitation periods for legal actions.

And maybe I should add that . . . two primary points. One is to provide a single two-year limitation period for most actions, and secondly to provide I think for the first time in Saskatchewan, an ultimate limitation period.

The Chair: — Questions then? Mr. Morgan.

Mr. Morgan: — Thank you, Madam Chair. What is the effect of this legislation on actions for collection of a debt?

Hon. Mr. Quennell: — Essentially of seeing a two-year limitation period for most actions. There is a provision that the

creditor and debtor could agree to a different limitation period by mutual agreement, extend that.

As well the member will be aware that under the current legislation, acknowledgment in writing of a debt or partial payment of a debt commences the limitation period running, again, from that acknowledgment or partial payment, and there's no change in that respect.

Mr. Morgan: — My question is why we would want to have such a dramatic reduction from six years to two years? It's often been in the past, you know, people come in at the end of the fifth or the sixth, you know, at the end of the fourth or fifth year trying to enlist the services of a lawyer, and I appreciate that's maybe a long time. But to say two years, oftentimes parties will informally negotiate without something in writing. And I think my concern with this is this limitation period could very rapidly go past without somebody realizing that they've gone past the two-year period.

Hon. Mr. Quennell: — Well the concern behind the legislation as a whole is that because of the . . . there are limitation periods in so many pieces of legislation and those limitation periods are of so many different lengths and durations that that causes more harm in missed limitation periods than a consistent two-year limitation period would have.

Secondly, the proposed two-year limitation period, including two years for action on a debt, has been in place in Alberta since 1999 and is now in place in Ontario. It came into effect January 1, 2004.

Now that's not an imperative on our part. But some consistency in this type of legislation across the country is probably beneficial for consumers who are mobile, who move from place to place. And when the rules change when you move, that can cause confusion as well. I'm sure we can appreciate that.

Now the member's point is a good point. Some people will have in their minds — including a lot of lawyers, I expect — that this is a six-year limitation period. And clearly the department will be responsible for making sure that there is public education — and particularly education of lawyers — around the change in the limitation periods.

Mr. Morgan: — Madam Chair, I looked at this legislation and I had to read it several times because when I first read it, I thought oh, they haven't dealt with the action in debt because it's, you know, sort of dealt with as part of an umbrella clause that deals with a number of other things.

So on a first reading, one isn't aware that this is a very significant change to the existing legislation. And it doesn't start out by saying, section such-and-such is repealed or, you know it's . . . I realize that that's going to be the effect of this. But I think it should be made abundantly clear to members of the public and members of the legal profession that this is a very substantial reduction.

And I'm not opposing the reduction, but my concern is in making the public generally aware of this. Because the six-year limitation period has been in place probably long since before either the minister or myself were born. You talk to elderly practitioners, bankers, etc. — they know they got six years and they got to start getting letters and everything else out.

So because we've made a very substantial change, I want to ensure that this becomes very well publicized because, in the face of the legislation, it's certainly not something that jumps out at you.

Hon. Mr. Quennell: — And again, I don't want to dismiss the member's point; I think it's well taken. But the department has consulted over an extended period of time not only with the profession, but particularly with credit granters — specifically with the Canadian Bankers Association and Credit Union Central. They are both aware that these changes are proposed.

That's not to diminish the need for public education when these type of changes are made, particularly with the legal profession. I think the credit granting bodies, the banks and credit unions, will make their necessary provisions. And as I said, they can make their separate agreements on limitation periods with borrowers, and I believe they will do that.

Other individuals who lend money perhaps not on a formal basis — aren't banks or credit unions but do have debts — they and their lawyers will need to know that there's been a change in this legislation. I don't deny that.

Mr. Morgan: — Madam Chair, I presume that what's going to happen is that in mortgage documents, loan documents from banks are going to have a clause in there granting the institution that lends the money some significant enhancement of their rights and maybe virtually an almost unlimited liability period.

Private lenders, and in particular members of families — a father or mother lending money to one of their children for purchase of a house; they don't collect on it and it goes on for a period of time — this is something that could have significant consequences for those people. So I'm expecting that the department will communicate and ensure that that happens.

Madam Chair, I would like to deal with ultimate limitation periods. I think probably members on the government side as well as members on the opposition side have been lobbied by industry, by insurers for provisions, and have been lobbied both ways on this. We've received some suggestions that the proposed ultimate periods be shorter yet; others saying that it shouldn't be there.

I was wrestling with this and watching television when I probably should have been spending time reading this, and there was a special on dealing with an aircraft accident at Sioux City, Iowa, that was caused by a metallurgical defect that had been in an aircraft engine going back to when the aircraft engine was first brought into service in 1971, and had performed something, you know, in excess of 20 years before the defect became apparent. And of course the issue came about, well does it go back to a maintenance issue that they should have discovered it? But it was clearly a defect that was there right from the outset.

So it really . . . When we pass this, what we are saying to people that may be victims of that kind of thing is, we have chosen to legislate away your rights in the interest of business expediency

and trying to assist insurers in quantifying or dealing with what their long-term liability is.

So I think it's a step that we as legislators — and it's certainly not something that's partisan in any way — we as legislators should take this step very seriously because by passing this legislation, what we're saying to those plaintiffs who may have a claim now that they are not aware of, that we are going to put a cap on your claim after 15 years.

So it's something that we should not do lightly. I intend to support this, but want to make the comment that this is something we want to deal with . . .

I'm wondering if the minister wanted to comment on why the 15-year period and why not some other length of time?

Hon. Mr. Quennell: — Madam Chair, as the member's pointed out it's a difficult balance. And I speculate . . . And the member has implied that people have come to him and set out why it should be longer and people have come to him and set out why it should be shorter.

The variation in the country ranges from 30 years in British Columbia to 10 years in Alberta. We fairly recently have been debating between 10 and 15 years and came to the view that 10 years, for some of the reasons that the member points out, is just too short.

Mr. Morgan: — Perhaps the minister or the department official . . . There is a difference in the time periods between section 7(1) and section 3 . . . 7(3) rather. The section 7(1) is the ultimate period for 15 years, and 7(3) deals with a judgment or order and that one is 10 years. I'm not sure how that would even come to rise because if you have a judgment, you have a judgment. But I'm not sure what proceeding you may want to take on that, that would even fall within that. But I'm just wondering why those are different time frames.

Hon. Mr. Quennell: — Okay with respect to a claim based on a judgment or order, that is not a change from the current circumstance. And when other provinces such as Alberta updated their limitations legislation in 1999, in that case they kept the provision that a proceeding on . . . execution essentially on a judgment or order can be commenced up to 10 years from the date of the judgment or order. A lot of judgments or orders are enforced across interprovincial boundaries — the debtor moves, the judgment debtor moves — and for consistency across Canada we have not made a change as those other provinces did not make a change.

Mr. Morgan: — Madam Chair, is there a provision that would allow . . . I'm aware that there's an existing . . . that a writ of execution or an order stays in place for 10 years. Is there a provision that it could be renewed?

Hon. Mr. Quennell: — Yes, that provision remains in The Queen's Bench Act.

Mr. Morgan: — I have an issue with the wording of section 7(3):

> With respect to a claim based on a judgment or order for the payment of money . . .

I'm presuming that the claim based on a judgment would mean Court of Queen's Bench or a court of competent jurisdiction, but I'm thinking in terms of what an order might be, because I don't see that that's defined anywhere. Could an order be something that a party agrees to? I'm just wondering whether this is going to be a method of circumventing the two-year requirement elsewhere.

And actually when I went through it, I was trying to decide from reading the legislation whether the intention was that we were shortening the claims for actions and debt to two years or enlarging them to ten. So it was . . . you know on the face of that I just thought . . . I'm presuming that that's going to be interpreted as an order. But I'm wondering whether it couldn't be made more clear.

Hon. Mr. Quennell: — I believe this would be interpreted as a court order; it's intended to be a court order. It doesn't involve a change in language, particularly when it follows judgment. Sometimes a writ of execution — and as provided for in The Queen's Bench Act and the Queen's Bench rules — a writ of execution is issued on, not on a judgment, but on an order and the provisions are the same. For the two writs of execution, there's no differentiation.

And as I said this is not a change from the current circumstance. And the reason for not changing from the current circumstance . . . Well there's no reason to change it, and secondly where other provinces are updating their limitations legislation, they have not made the change. And as I said, for the purposes of enforcing judgments or writs of execution based on judgments or orders across boundaries in Canada, some consistency is felt to be necessary.

Mr. Morgan: — Madam Chair, the part IV, section 15, deals with . . . Am I correct that there is not a limitation period in place regarding the Crown's entitlement to collect an unpaid fine?

Hon. Mr. Quennell: — Ms. Robertson's not aware of a case where the Crown has ever taken a civil proceeding to collect a fine. This is here so as to not preclude the unusual case where there may be for example a significant penalty in the case, say an environmental case, and there leaving open the possibility of the Crown taking a civil proceeding to collect the fine. But it's not just unusual, as far as we know it has never been done.

Mr. Morgan: — Madam Chair, I want to deal with the sections dealing with section 88 of The Highway Traffic Act being repealed. And I'm just sort of wanting confirmation as to the effect that the legislation will have on claims for the various heads of damages for non-economic losses and how that affects claims for pain and suffering, and is there a chance or is the legislation drafted such that these changes will not be retroactive? And then if they want to comment as well on how these changes might apply to cases involving impaired driving issues.

Hon. Mr. Quennell: — The intent, well, in section 51 and in some of the surrounding sections is to make limitation periods in other legislation, including The Highway Traffic Act,

consistent with The Limitations Act, and again, for consistency and simplicity. And I might comment in a moment just about the motivation behind that.

If the member is referring to suspensions for impaired driving, they wouldn't be affected by this.

On the purpose behind the Act as a whole and the consistency limitation periods in limiting most actions to the two years, where people believe that there is a two-year limitation period — as there is for a lot of actions — and it turns out that there is not a two-year limitation period, there is a one-year limitation period, they end up really being involved in two actions quite often, Madam Chair — one against the original defendant and then the second one against their lawyer for negligence and for not knowing the limitation period.

And part of the purpose behind this legislation in providing consistency in limitation periods is to avoid the costs to litigants and to the court system that's been caused by proliferation of inconsistently long limitation periods set out in various pieces of legislation. And here in this part of the Act, including section 51, is repealing limitation periods and making them consistent throughout the piece.

Mr. Morgan: — Madam Chair, the question that's been asked of me by some of . . . (inaudible) . . . circulated this to, has been where the limitation period commences on a conviction for impaired driving or a section 236 conviction, that the limitation period will run from that date onward. Their concern was, does their cause of action arise before that or do they have to wait? Does their window start on the date of conviction or on the date of the accident? And if you want to just clarify that for me.

Hon. Mr. Quennell: — The new section being substituted states, at the end of subsection (2), that:

> . . . the day on which the act or omission on which the claim is based takes place is the day on which the operator is convicted of that offence**".**

So not the date of conviction.

Mr. Morgan: — So you're saying that the window starts at the date of conviction and runs for two years, so they have to wait while it drags through whatever criminal proceeding takes place. So if it goes through several stages of appeal, the person is obliged to wait for that?

Hon. Mr. Quennell: — I don't think the person's obliged to commence their action; they're just not obliged to commence it. In other words, the limitation period doesn't start running against them until the conviction.

Mr. Morgan: — So they could quite conceivably start the action before the person was even charged?

Hon. Mr. Quennell: — I don't see what would provide that they would not. This just provides when the limitation period would run out, and after which they would not be able to.

Mr. Morgan: — Madam Chair, there's changes to The Mental Health Services Act, and that is one of the situations where we're not dealing with a two-year period; civil proceedings in that case are limited to one year.

And I was surprised that that was one of the areas that was not made consistent with the two-year period. I thought that somebody who may be dealing with a mental health issue, the limitation period may be of greater significance to them than to other individuals, so I'm just wondering whether there was a rationale for that?

Hon. Mr. Quennell: — The civil action — and that's what the limitations periods deal with — the civil action will be changed from a one-year to a two-year. It's only the prosecutions that are going to be maintained with a one-year period.

Mr. Morgan: — Madam Chair, I have no further questions with regard to this Bill. I don't — considering this Bill is some 64 sections long — I don't know whether it's necessary to vote on it clause by clause or whether we can do it . . .

The Chair: — I have a plan.

Mr. Morgan: — Very well.

The Chair: — Thank you. As this Bill, as the member was saying, does have 89 clauses, I was going to ask leave of the committee to vote it by part. Agreed?

Some Hon. Members: — Agreed.

The Chair: — Part 1, clause 1 to 4, agreed?

Some Hon. Members: — Agreed.

Clause 1 agreed to.

Clauses 2 to 89 inclusive agreed to.

The Chair: — And we have Bill 89, that Her Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: The Limitations Act.

Can I have a motion to report the Bill without amendment? Mr. Borgerson. Agreed?

Some Hon. Members: — Agreed.

The committee agreed to report the Bill.

Bill No. 52 — The Limitations Consequential Amendment Act, 2004/Loi de 2004 sur les modifications corrélatives découlant de la loi intitulée The Limitations Act

Clause 1

The Chair: — The last item on our agenda then is Bill 52, the limitations consequential Act, 2004. I see the minister and his official are the same. Do you have any statement to make on this one?

Hon. Mr. Quennell: — No. I referred to this Act in my previous statement.

The Chair: — Then any questions?

Mr. Morgan: — Yes, Madam Chair. These changes are being done . . . And I understand there's bilingual Acts that are involved or Acts that have to be done in both languages. And I'm sort of wondering, has that process been in place? And I'm wondering when we anticipate proclamation with regard to this because there's so many other things that are being affected and I don't know how many other things require changes to regulations.

Some of the changes that are in Bill 51 are quite profound and may require some public information being done. So I'm sure that members on both sides are going to be asked timelines as to when this is going to come into force and, sort of, what the plans of the department are with that?

Hon. Mr. Quennell: — Madam Chair, I don't believe there's necessity for drafting regulations. But as we have discussed previously this morning and into the afternoon, there's going to be some time required for communications, for public education, for professional education.

There may be time required for institutions to change their systems and their procedures around some aspects of the new limitation periods, and likely even some consultation to start off with about the time required for institutions to be changing their procedures and systems.

Both Alberta and Ontario, I understand, took some time between when the legislation was passed and was proclaimed. And there might even be a year required for the communication and education required to make some of the changes that a member of the committee has referred to as dramatic.

Mr. Morgan: — Madam Chair, my concern is exactly the direction the minister is going with regard to getting public information out. And my suggestion was going to be that the department might want to announce well in advance of a date that it's going to be proclaimed into force so that people might get their affairs in order, especially somebody that's contemplating a lawsuit that may well be precluded by either the ultimate limitation period or by the reduction from six to two years. So I would hope that they would give the public some significant notice as to the proclamation date and embark on some publicity so that people aren't caught blindsided on this.

I have no objection to this one being voted on in the same fashion we did the last one, Madam Chair.

The Chair: — This is a bilingual Bill, but we'll still go through just by . . . Clause 1 agreed?

Some Hon. Members: — Agreed.

Clause 1 agreed to.

Clauses 2 to 9 inclusive agreed to.

The Chair: — That Her Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: The Limitations Consequential Amendment Act, 2004. Could I have a motion that the Bill be reported without amendment? Mr. Hagel. Agreed?

Some Hon. Members: — Agreed.

The committee agreed to report the Bill.

The Chair: — And I will now entertain a motion to adjourn.

Mr. Morgan: — I so move.

The Chair: — Mr. Morgan. Thank you very much. The committee is adjourned until Tuesday, June 8, at 7:00 p.m. in this room.

Mr. Morgan: — Madam Chair, I would like to thank the minister for having his officials present today. I realize there wasn't a great number of them, but their help was much appreciated.

The committee adjourned at 12:32.