STANDING COMMITTEE ON HUMAN SERVICES

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STANDING COMMITTEE ON HUMAN SERVICES
2005

Ms. Judy Junor, Chair
Saskatoon Eastview

Mr. Wayne Elhard, Deputy Chair
Cypress Hills

Mr. Lon Borgerson
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Regina Rosemont

Mr. Glenn Hagel
Moose Jaw North

Mr. Ted Merriman
Saskatoon Northwest

Mr. Don Toth
Moosomin

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

[The committee met at 15:30.]

Bill No. 116 — The Osteopathic Practice Repeal Act

Clause 1

The Chair: — The first item of business before the committee is Bill No. 116, The Osteopathic Practice Repeal Act. I see the minister is here without officials. If you have any comments to make on the Bill before we proceed with questions . . .

Hon. Mr. Nilson: — No comments.

The Chair: — Questions then. Mr. Elhard.

Mr. Elhard: — Thank you, Madam Chair. Mr. Minister, would you give us a thumbnail explanation for the repeal of this particular piece of legislation.

Hon. Mr. Nilson: — Basically this Act is very outdated. It was from 1944 and it doesn't have modern provisions around the practice of osteopathy. There are no practising osteopaths in the province and there haven't been for over 10 years. And basically it's a . . . if a Canadian-trained osteopath wanted to come and practise in Saskatchewan, the way this Act is written, they would have to get approval from an American organization and so it just doesn't work.

Mr. Elhard: — Is the practice of osteopathy covered off by other medical specialities now?

Hon. Mr. Nilson: — Well yes, in the sense that basically osteopaths can practise here much like a massage therapist, as long as they don't infringe on other professional legislation. And it's a non-invasive practice and basically it can be dealt with.

We don't have any osteopaths right now. We have some people who are interested in or who are studying osteopathy, but this Act would actually be a barrier to them practising.

Mr. Elhard: — Does the government have any intention of introducing legislation that would be appropriate to that professional practice in the future?

Hon. Mr. Nilson: — It's very hard to preclude that. But at this point we don't think that there are very many people that would want to do that. And so at this point we don't have any plans.

Mr. Elhard: — Thank you.

The Chair: — Seeing no further questions then, clause 1, short title. Is clause 1 agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clauses 2 and 3 agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows: The Osteopathic Practice Repeal Act.

Could I have a member move the following motion, that this committee report Bill No. 116, The Osteopathic Practice Repeal Act without amendment. Mr. Elhard. Thank you. It has been moved by Mr. Elhard that Bill No. 116, The Osteopathic Practice Repeal Act be reported without amendment. Is the committee ready for the question?

Some Hon. Members: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — It's carried. Thank you to the minister.

Bill No. 108 — The Business Corporations Amendment Act, 2005

Clause 1

The Chair: — The next item up for business is The Business Corporations Amendment Act, Bill No. 108. Welcome to the minister, and I'd invite you to introduce your officials and if you have any comments to make on this Bill.

Hon. Mr. Quennell: — Yes. Thank you, Madam Chair. To my left is Tim Epp, Crown counsel, legislative services, public law division. And to my right is Phil Flory, director, corporations branch, courts and civil justice division of the Department of Justice.

The proposed amendments to The Business Corporations Act are needed to keep Saskatchewan legislation current, to respond to amendments to the Canada Business Corporations Act, and to respond to recent developments in securities law.

The amendments follow the lead of the federal business corporations Act by reducing the minimum number of Canadian resident directors to 25 per cent. The ability to include more directors from outside Canada will increase a corporation's ability to access necessary expertise in some industries and to raise capital outside of the country. This amendment is a necessary response to keep Saskatchewan competitive in this regard.

The bulk of the provisions in this Bill respond to changes in Saskatchewan's securities law. Current provisions of The Business Corporations Act regarding the solicitation of proxies and preparation, auditing, filing, and distribution of financial statements are out of step with provisions contained in the national rules which have been adopted as regulations of the Saskatchewan Financial Services Commission. The amendments provide that wherever corporations comply with the relevant provisions under Saskatchewan securities law, they will be exempt from the corresponding provisions in The Business Corporations Act.

The Act also enables the creation of regulations prescribing the qualifications of persons eligible to be appointed as an auditor

of a corporation. Regulations will be introduced to assist Saskatchewan corporations in avoiding the liability that may flow from receiving auditing services from someone who is not qualified.

The Act also contains a number of housekeeping amendments. These amendments seek to maintain and enhance the currency, clarity, and consistency of the Act.

The Chair: — Thank you. Questions? Mr. Morgan.

Mr. Morgan: — Madam Chair, we accept the fact that this is largely a housekeeping Bill. When we're supportive of keeping our legislation in line with any changes to the federal legislation, we're also supportive of the change in residency requirement for directors of a business corporation in this province and hope that it has the desired effect of bringing out renewed or enhanced investment in this province. We have concerns obviously with other issues before this, before the government right now, but with regard to this piece of legislation, we are generally supportive and look forward to this Bill going forward.

The Chair: — Seeing no further questions then, is clause 1, short title, agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 19 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: The Business Corporations Act, 2005. Could I have a member move that this committee report this Bill without amendment. Mr. Hagel.

It's moved by Mr. Hagel that Bill No. 108, The Business Corporations Amendment Act, 2005 be reported without amendment. Is the committee ready for the question?

An Hon. Member: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — The motion is carried.

Bill No. 113 — The Non-profit Corporations Amendment Act, 2005/Loi de 2005 modifiant la Loi de 1995 sur les sociétés sans but lucratif

Clause 1

The Chair: — The next Bill is Bill No. 113, The Non-profit Corporations Amendment Act, 2005. The minister has the same officials. Any comments on this Bill?

Hon. Mr. Quennell: — Yes. We've introduced a number of amendments to The Non-profit Corporations Act that will enhance the environment within which non-profit corporations operate in Saskatchewan. The amendments will assist corporations in dealing with the increased costs of audit services by increasing the threshold below which a charitable corporation may waive the requirement of an audit. In addition the amendments allow for new regulations that will prescribe the qualifications of individuals conducting audits or financial reviews.

The voting requirements for resolutions to waive audits and financial reviews have also been amended to avoid the potential for one or two disgruntled members forcing corporations to obtain audits or reviews where they would not otherwise be necessary, but will at the same time reflect the higher standard required of a charitable corporation that solicits donations from the public.

A new provision stipulates that the appointment or election of a director to a non-profit corporation will not be valid unless the consent of a new director has been obtained. This amendment will address problems created where individuals that become subject to the obligations and potential liabilities that may flow from being a director without their knowledge or consent.

In addition the Act's been updated by adding the power to create regulations that will allow for electronic communications under the Act. The regulations will include a provision allowing corporations to communicate with their members via email where the member has consented to receiving communications in that manner. The Act also includes some minor technical amendments necessary to keep the legislation up to date.

The Chair: — Questions? Mr. Morgan.

Mr. Morgan: — Madam Chair, this Bill has a number of housekeeping amendments which we are supportive of. We are pleased to note that there's been changes made to the provisions dealing with directors. This will have the effect of preventing somebody from being accidentally drafted by their friends to become a director without their knowledge. I think too often with non-profit or volunteer groups, it's easy to say, oh, my neighbour will do that or so-and-so will do that. People find themselves facing director's liability without knowing that they were ever formally directors.

This probably should be supported by an informational program on the part of the department so that people become aware of what it means to be a director. I know there's some information available from the Public Legal Education Association and elsewhere, so it would certainly be our hope and expectation that the department would follow up and ensure that there is better information available. We're pleased to see that.

We think that in Saskatchewan we enjoy a great deal of support from the volunteer sector and would like to see that continue. We also note that it costs a substantial amount of money for a small non-profit corporation or charitable group to incur the cost of an audit and were pleased to see that the provision allowing for a waiver of a formal audit be there.

We might comment at this time that there are still issues within Saskatchewan law as to who can or cannot perform an audit. There's provisions that chartered accountants have lobbied that,

if a person is going to hold themselves out as an auditor, they should have a professional designation. But that's something that may be dealt with in other legislation at some point in the future. In any event, Madam Chair, we're ready for this Bill to proceed.

The Chair: — Seeing no further questions then, is clause 1, short title, agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

The Chair: — This Bill has 20 clauses. With leave of the Assembly we could vote clause 2 to clause 19 in a block. Agreed?

Some Hon. Members: — Agreed.

[Clauses 2 to 20 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: The Non-profit Corporations Amendment Act, 2005. Can I have a member move that we report this Bill without amendment?

Hon. Ms. Crofford: — Agreed.

The Chair: — Ms. Crofford. It has been moved by Ms. Crofford that Bill No. 113, The Non-profit Corporations Amendment Act, 2005 be reported without amendment. Is the committee ready for the question?

An Hon. Member: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — Motion is carried.

Bill No. 112 — The Provincial Court Amendment Act, 2005

Clause 1

The Chair: — The next Bill before the committee is Bill No. 112, The Provincial Court Amendment Act. The minister has new officials. You could introduce them and if there's an opening statement, please make it now.

Hon. Mr. Quennell: — Madam Chair, I have with me Darcy McGovern, Crown counsel, legislative services of Sask Justice, sitting to my left. And sitting to my right, Ron Kruzeniski who is here as Chair of the Small Claims Court review committee.

The Provincial Court Amendment Act, 2005 and The Small Claims Amendment Act, 2005 implement the recommendations of the Small Claims Court review committee 2004 which was comprised of representatives of the legal community as well as government officials.

Small claims related amendments to The Provincial Court Act, 1998 are being made that will establish a civil division of the Provincial Court. Currently the vast majority of this work consists of, or work of this court, consists of criminal proceedings. It was a recommendation of the review committee that a civil division be created that would be focused on addressing the specialized nature of civil matters brought before the . . . brought under The Small Claims Act.

This Bill also provides that, with the consent of the chief judge, the Lieutenant Governor in Council may set the number of judges to be assigned by the chief judge to the new civil division and, as needed, the location of such an assignment. The chief judge has the flexibility to assign non-civil division work to these judges where necessary, or to assign additional judges to act as judges to the civil division where the workload is appropriate.

The Small Claims Court is intended to operate as a court for lay people rather than lawyers and it's a low cost method of dispute resolution. The changes in The Small Claims Act, when combined with the creation of a civil division of the Provincial Court under this Bill, should greatly assist in achieving these goals.

The Chair: — Questions? Mr. Morgan.

Mr. Morgan: — Madam Chair, we are supportive of the proposal to allow for the creation of a civil division which will allow for certain judges to become specifically tasked with work in Small Claims Court. We have concerns as to the dollar limit and would like to ask the minister what plans we have for the current legislation raising the dollar limit in Small Claims Court.

Hon. Mr. Quennell: — It would be my hope and goal that we raise the limit from the current $5,000 as quickly as possible. When the legislation was introduced or when it received second reading, I'm not sure which, I publicly announced the intent to raise by regulations — and that's where the amount is set — the limit from 5,000 to $10,000 on January 1, 2006.

I would like to move towards a limit of $25,000, and I would like to do that as quickly as possible. The limiting factor is the increase in workload to the Provincial Court. And so we will see next year when their limit is raised to $10,000 what effect it has on the workload of the Provincial Court. But that's what limits our ability to raise the limit quickly.

The Chair: — Mr. Toth.

Mr. Toth: — Thank you, Madam Chair. Mr. Minister, one of the concerns in the past with Small Claims Court is the time it takes to get to court and have an issue heard and addressed and a decision made. Will this expedite that process?

Hon. Mr. Quennell: — I hope that establishing a separate civil division to the court will assist in doing that so that a small claims matter isn't an add-on at the end of a criminal judge's day.

Mr. Toth: — One of the other concerns as well is when a decision is rendered, is the time and also the follow-up to

ensure that if a decision was rendered, that an individual would receive, say, a compensation claim of $4,000, that that is indeed followed through and that person's claim is honoured. Has that been a problem?

I know one of the concerns that's been raised to me is the time — not only the time it takes but even after a decision's made — trying to receive the adequate compensation.

Hon. Mr. Quennell: — There's a 30-day appeal period after a small claims judgment, at which time if there's been no appeal, the successful plaintiff can register their judgment as a judgment of the Court of Queen's Bench, essentially take out a writ of execution the same way they would if they'd received a judgment in the Court of Queen's Bench.

That can't really be facilitated, I don't think, any more by legislation. Court services and the Department of Justice can certainly make sure, I think, or help ensure that people who obtain small claims judgments are aware of the process so that there's no delay there in turning their judgment into, say, a writ of execution or a garnishee summons or what's necessary to enforce their judgment.

The Chair: — Mr. Morgan.

Mr. Morgan: — Madam Chair, my question's about the consultative process that took place. I understand this was done as part of a review process. Can you tell us the timeline and who participated in that process?

Mr. Kruzeniski: — Madam Chair, I can indicate that after the minister appointed the committee, we had a representative from the Law Society who participated in all the meetings of the committee, also a representative of the Canadian Bar Association. And they certainly reported back to their organizations, I guess, as they considered appropriate.

In addition to that, we organized about five different discussion or focus groups throughout the province. And when the leaders of those groups would go out to a community, they would talk to litigants who had actually been in Small Claims Court. They would speak to court staff, and then they would speak to lawyers who had also been part of the small claims process when they had appeared in that court.

We also did a survey of the various jurisdictions across Canada. And having gathered all that information, we then consolidated into the report and the recommendations that we provided to the minister. So that was mainly the consultative process.

Hon. Mr. Quennell: — I would add to that, Madam Chair, that there was a judicial advisory committee to the small claims review committee composed of Judge Darryl Bogdasavich, Judge Terrance Bekolay, and Judge Peter Kolenick. And they were of course, as provincial court judges that had some considerable experience with the system that is now in place, I think of considerable value to the small claims review committee and their work.

The Chair: — Seeing no further questions, the Bill before the committee is The Provincial Court Amendment Act, 2005, Bill No. 112. Is clause 1, short title, agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clauses 2 and 3 agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: The Provincial Court Amendment Act, 2005. Could I have a member move that we report this Bill without amendment? Mr. Borgerson.

It has been moved by Mr. Borgerson that Bill No. 112, The Provincial Court Amendment Act, 2005 be reported without amendment. Is the committee ready for the question?

Some Hon. Members: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — The motion is carried.

Bill No. 111 — The Small Claims Amendment Act, 2005/Loi de 2005 modifiant la Loi de 1997 sur les petites créances

Clause 1

The Chair: — The next Bill before the committee . . . We've had some conversation about this, but it is The Small Claims Amendment Act, Bill No. 111, The Small Claims Amendment Act, 2005. The minister has the same officials and maybe has some more to add to this Bill.

Hon. Mr. Quennell: — Just briefly, Madam Chair. The Small Claims Amendment Act, 2005 implements the recommendations of the Small Claims Court review committee 2004 which was comprised of representatives of the legal community as well as government officials.

The amendments to The Small Claims Act include changes to implement case management meetings between the parties and a judge prior to their small claims trial, specifically authorize small claims judges to settle matters before them during these case management meetings or to otherwise seek to expedite resolution of the dispute, authorize the disposal of trial exhibits after the expiry of any possible appeal from a small claims judgment.

The new case management process is intended to provide a province-wide additional alternative to dispute resolution capacity for the court, while at the same time reducing the number of matters that proceed to trial as well as narrowing those issues that are required to be adjudicated.

We share the commitment of the committee ensuring that the Small Claims Court remains a people-friendly court that is easy and inexpensive to access.

The Chair: — Questions? Mr. Morgan.

Mr. Morgan: — Madam Chair, this is a companion Bill to one we dealt with earlier. We are supportive of any process within Small Claims Court that can improve efficiency and make the system more user friendly for litigants that are not lawyers.

We are supportive of the case management process and pleased to see that the process that had been somewhat fragmented and varied across the province will now be reduced to a piece of legislation that will be a directive for all the judges and will probably give the judges a far greater capacity to try and settle cases.

And we're pleased as well that it allows for production of documents, notice of production of exhibits, etc., and also allows for a person to obtain costs for their time off if they're a successful litigant and have had to incur out-of-pocket costs to travel or attend which may well serve as a strong disincentive to people bringing frivolous or vexatious claims. So, Madam Chair, we are pleased to proceed further with this Bill.

The Chair: — Is clause 1, short title, agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

The Chair: — This is another lengthy Bill, so with the leave of the committee we could vote clause 2 to 26 as a block. Is that agreed?

Some Hon. Members: — Agreed.

[Clauses 2 to 27 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: The Small Claims Amendment Act, 2005. Could I have a member move that the committee report this without amendment? Mr. Toth.

Mr. Toth has moved that Bill No. 111, The Small Claims Amendment Act, 2005 be reported without amendment. Is the committee ready for the question?

Some Hon. Members: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — The motion is carried.

Bill No. 102 — The Mandatory Testing and Disclosure (Bodily Substances) Act

Clause 1

The Chair: — The next Bill before us is Bill 102, The Mandatory Testing and Disclosure (Bodily Substances) Act. The minister has any comments to make on this Bill?

Hon. Mr. Quennell: — Yes, Madam Chair, just briefly again. The Mandatory Testing and Disclosure (Bodily Substances) Act seeks to help protect those emergency health workers and good Samaritans in our community who risk so much in protecting us. This Bill provides for a procedure for the compulsory taking of bodily samples, the analysis of those samples, and the limited disclosure of personal health information derived from the analysis.

The Bill applies only if the source individual refuses to provide a sample voluntarily and if the exposed individual came into contact with a potentially infectious bodily substance of the source individual in specified circumstances, i.e., that is, Madam Chair, as a crime victim or while providing emergency services to the source individual.

The Bill has been written to provide that the order to be tested will only be available where the donor refuses to provide a sample voluntarily and the doctor's report expresses the view that there is a significant risk of transmission, and the tests would provide medically beneficial information to the applicant. The results of the tests would be held confidential for the purposes of this Bill only, and it will be an offence under the Bill to disclose the results of a testing order or the source individual except in accordance with the Bill.

The Mandatory Testing and Disclosure (Bodily Substances) Act is based largely on the uniform Bill as recommended by the Uniform Law Conference of Canada.

The Chair: — Thank you. Questions? Mr. Morgan.

Mr. Morgan: — Madam Chair, we spoke in favour of this Bill at second reading in the House. And I had indicated in the House that we had drafted a private member's Bill that was very close to this. This Bill is based on the Uniform Law Conference of Canada Act, so we're pleased to see that the government looked at that as a source document for this.

We recognize the hard work and commitment that are made by emergency workers and that would include police, firefighters, paramedics, EMTs [emergency medical technician], hospital staff, good Samaritans, and others that are victims of crime. This Bill will give some protection and some . . . some protection for people who are either accidentally or intentionally through a malicious act exposed to bodily fluids that may be contaminated with HIV [human immunodeficiency virus] or hepatitis or another contaminant. We feel that this is a small measure of protection that we can give to our emergency workers, our police officers, and want to be very supportive of that.

The fact that this Bill is based on the Uniform Law Conference of Canada Act should not be seen as something that we can say, oh yes we will adopt this without question and without review. We have had the opportunity to circulate the Bill to a number of police forces through the province and have received some input and some questions on this Bill. We certainly want this Bill to pass this time, but we want to raise some of the issues now, so we flag them for the department so that as we go forward we may be at some time in the future looking for amendments.

The one that has been a recurring question that has come up is

the cost of testing. Under this particular Bill and under the draft that was prepared by . . . the Canadian draft, is that the cost of testing is borne by the applicant. We've questioned this earlier, and we've been told by a number of police forces that their collective agreement would provide that the employer would be responsible.

We think that it may be worthwhile to consider an amendment or be wary of this as we go forward to ensure that the employer does in fact bear the cost of this, and we wonder whether there was consideration given to allowing the cost of testing to be in the discretion of the court. There may well be a person that causes a problem that could very well be in a position to pay or should pay for this testing. And I would like to hear comments from the minister in this regard.

Hon. Mr. Quennell: — Our understanding of the collective agreements for example that police officers have, or for another example firefighters have, that the employer would be bearing the cost. We've had conversations with some police chiefs that lead us to believe that that's not going to be an issue, that of course the police service would bear the cost of the application.

In respect to costs of going to court, discretion of the court to award costs, that's always there. It remains there. But it was felt that these applications should not be made lightly, and they should be taken seriously by the applicant. This is an area of course that, as Mr. Morgan says, should be monitored as we go forward with this legislation, and if there's a difficulty with this particular part of it, well then we can return to it.

Mr. Morgan: — Yes. The specific example that was brought forward was raised by a police officer. He raised the issue that there a number of other people that are affected by this other than police officers. Police officers and firefighters will likely have a collective agreement that will give them some assistance, but we do have a number of police forces that are not governed by a collective agreement that are some of the municipal ones, so they may have . . . I think there's some municipalities that have; some there may not. If I'm wrong on that, that's . . . [inaudible] . . . There's also the issue of hospital staff that may not be covered.

But the specific example that was raised by a police officer was, what if a police officer asks for assistance from a civilian? The civilian participates and is bit. And, you know, the officer would be protected, but there would be no avenue for the good Samaritan to recover either from the police force even though the civilian was asked to participate or whatever, that, you know, there is no other option. There's a statutory obligation on the part of the applicant to pay for the cost. So it would appear not to even be any discretion on the part of a police officer or a municipality to cover that cost. So those are the concerns that we have, and I don't know whether you wish to respond to those or not.

Hon. Mr. Quennell: — Again I think we have to monitor how the legislation works in practice. It is based upon legislation that was drafted by the Uniform Law Conference of Canada in response to a concern that was . . . a national concern that was being addressed by a parliamentary committee until the decision was made that this didn't fall within federal jurisdiction, that this fell into provincial jurisdiction over health matters. But still some guidance has been given to provinces as to how they might proceed from the Uniform Law Conference of Canada.

Once this legislation is passed in Saskatchewan there will only be two provinces in the country that have passed this legislation — Saskatchewan and Nova Scotia. Nova Scotia has not yet proclaimed its Act. Saskatchewan may be the first to proclaim the Act and we'll be a pioneer in this legislation. I guess it will be our responsibility to see how it works on the ground.

Mr. Morgan: — That leads to . . . My next question is, presuming that this Bill will pass this committee today and will be brought . . . [inaudible] . . . would your intention, Minister, be to have this Bill receive Royal Assent and come into force during this sitting?

Hon. Mr. Quennell: — The Act comes into force on proclamation. The only work that would need to be done I think before proclaiming the Act is around the regulations that would prescribe what diseases would be covered under the Act, the definition of a qualified analyst where these regulations are set out in section 18. And we will need to consult with the medical profession in the province of Saskatchewan on these regulations. But once that work is done then we'll be in a position to proclaim the Act.

Mr. Morgan: — I presume that that's been underway at the same time this has been going on, that you're not waiting for the Bill to pass. We'd certainly be disappointed to have the Bill come forward this far and not have that work underway — to list the diseases and identify the analyst. Certainly my expectation is that this Bill gets brought into force virtually immediately. And I don't know how long the legislative draft folks may take. But I would want to urge the minister and the department officials to get at this. We're certainly going to be putting a lot of pressure on.

Hon. Mr. Quennell: — Well, and the examples I gave are two of the examples. I mean you can look at the whole list in section 18. I don't think Mr. Morgan wants me to read the entire list of regulations. But I expect that we would be proclaiming this legislation this year.

Mr. Morgan: — It would certainly be our hope that you will work expeditiously on it. And it's something that we may be discussing in question period if it's not done in a timely manner because our goal is to see this in force. This is a Bill that we had intended to bring forward, and we certainly do not intend to see it dragged out or prolonged.

Our goal is to ensure and take every step that this is going to be giving an immediate benefit to police officers. So we don't feel that there's a significant cost issue to the department or to the government, and we don't think that regulations should be difficult to put into place. And if they're not underway, I would want to encourage the department to start that work immediately.

Hon. Mr. Quennell: — First of course, I'm always willing to answer the member's questions either here or in question period. Secondly, this is a top priority of the government. We'll be working on these regulations. We want to make sure they

work. We want to make sure they're effective. We want to make sure we have full consultation with the medical community to the extent that they're affected and they provide expertise.

And as for moving this Bill along quickly, I would have quite happily gone straight from my second readings speech to committee if that had been the will of the legislature. But I know some members wanted to speak about it, and some members wanted to consult with the community which they've done. And those are valid purposes for taking time to do things, as is consulting with the medical profession on some of the regulations.

Mr. Morgan: — Minister, another area of concern that's been raised is the nature and the timeline for the application. The Bill does not allow for an application to be brought until there's been a refusal on the part of the person from whom you want to obtain the . . . [inaudible] . . . and the Bill requires that the application be brought before a Queen's Bench justice. We presume that this was to ensure that the civil liberties of the person from whom you obtain the . . . [inaudible] . . . are well and adequately protected.

Our concern is what provisions will be made by way of establishing a protocol to ensure that a Queen's Bench judge is available on short notice or for a *ex parte* application. The type of person that you may wish to obtain a sample from may well be somebody that is not apt to stay in the jurisdiction of the court or to make themselves available. My assumption would be that a significant number of these applications would be brought on an *ex parte* basis, and there would be a very real concern that these people would leave and presumably we should have a protocol in place to allow for these applications to be brought on on a weekend or late at night.

My concern is that I do not wish to give the police officers an incentive for holding somebody in custody that would not otherwise be held in custody and certainly don't want to cast aspersions on that towards the police officers. But I could certainly understand an officer being very understandably upset if he wanted to obtain — he or she wanted to obtain — a sample from an individual who was summarily released and then absconded or left the jurisdiction. And I'm just wondering what assistance the department has . . . plans to give those people.

Hon. Mr. Quennell: — Well the rules around an application of our testing order are in section 3 of the Bill and they provide for notice to the individual — three days notice to the individual — of the application, except where the court is satisfied that notice can't be given within a reasonable time or that it's impossible or impractical to give that notice within a reasonable time.

A balance is being struck here between the concern of the individual who might have been in contact with an infectious disease and the right of the . . . rights of the source individual, and that if we were to strike a different balance, well then we could authorize involuntary blood samples to be taken at the scene, for example. And we have chosen not to do that and that's not the advice that was given by the Uniform Law Conference when they drafted the Bill.

Mr. Morgan: — That wasn't my question nor was it my suggestion that that happen. The question was: what are we going to do to ensure that the applications can be brought on an emergency or short-term basis before the person from whom you want to obtain the sample? Will there be phone numbers of local registrars made available? Will there be a Crown counsel to try and assist in preparing the application? If it's midnight on Friday night of the long weekend, what comfort can we give that police officer that that individual is not going to be released and gone?

I appreciate that you've chosen — and it was a conscious decision — not to give the power to a Justice of the Peace who may be available on short notice. But if we are going to support that, and we intend to, then what are we going to do to ensure the availability of a Queen's Bench judge?

Hon. Mr. Quennell: — I mean the standard Queen's Bench rules on applications is you draft up your notice of motion for your application, you serve it on the respondent with the appropriate notice — which here is three days and that's not that unusual a time period — and then you're in court in three days.

Now you can have that period of time waived if you can persuade a court — and it would be on an *ex parte* application, obviously, according to subsection (3) of section 3 — you could persuade a court that that's not . . . that that can't be done, that you cannot give the notice within a possible and practical . . . to give the notice within a reasonable period of time. That would clearly be an *ex parte* application.

We can't direct the court as to priorizing applications, but we can certainly work with the courts to ensure that this legislation works effectively.

Mr. Morgan: — Mr. Minister, my question isn't how an *ex parte* application works. I'm well aware of it. I'm assuming that a significant number of these applications will be brought *ex parte* because of the nature of the type of people that will be brought . . . I mean the Act requires a notice period and then lists the exception. A number of these applications, and probably a very significant number, will fall within the exception. The people that will bite or spit upon a police officer are the very ones that are going to leave the jurisdiction.

So my question is what are we going to do to ensure the availability of either a Crown counsel to draft the application and the availability of a registrar and a judge to ensure that those applications are granted before the people . . . or at least reviewed by a judge before those people leave?

Hon. Mr. Quennell: — Again the applications that are given without notice would be given without notice upon persuading a judge that giving notice to the source individual within a reasonable time is impossible or impractical. We shouldn't assume that the source individual is usually going to be detained or that the source individual is necessarily going to have been charged with anything. I mean, one of the groups that supported this legislation, called for this legislation, were the firefighters. They don't, I don't think, anticipate being infected by people who are in the process of committing a criminal act, for example.

Mr. Morgan: — Minister, you've identified the ones that are the situation that will go through the normal procedure. My question is — and I'm repeating it for the fourth time — the individuals that where the source individual is likely to flee and they want to bring the application on an *ex parte* application, what is your department going to do to help those police officers that have an individual . . . It's like, what protocol are you going to establish for them? I mean, we don't have a problem with what the Bill says. We're just saying, how are you going to apply it? How are you going to help these officers do it at 10 o'clock at night or 1 o'clock in the morning?

Hon. Mr. Quennell: — If we are advised and we haven't been advised by police services or firefighting services that they would as a service have difficulty preparing an *ex parte* application, then we could provide them with assistance.

Mr. Morgan: — And then that question number one is, what is the department going to do to do it? And my question, is it your intention to provide a series of after-hours phone numbers? And then what about access to the courts on a weekend? I mean, this is a Queen's Bench application. It's not a Justice of the Peace application where you've got a list of phone numbers at every . . .

Hon. Mr. Quennell: — I guess the question is, no. I don't anticipate that we will be . . . Well we don't have a process in place for dragging Queen's Bench justices out of their beds at 2 in the morning on Saturday or Sunday morning for an application that could be heard Monday morning.

And if it turns out that these are not the exceptional circumstances that we expect they will be, that this legislation is used in great volume, well then we'll have to address those type of issues. But we don't anticipate those concerns.

Mr. Morgan: — Minister, it is certainly my hope that it's a Bill that does not have to be used. It is my expectation though that when the Bill does have to be used, that there are appropriate resources and an appropriate protocol in place. I'd like to invite you and your individuals as you're drafting the regulations — which I'm also disappointed aren't under way — that you give some consideration to that as well.

Madam Chair, I have no further questions and I'm ready to proceed. I think my . . .

The Chair: — Mr. Toth.

Mr. Toth: — Thank you, Madam Chair. Mr. Minister, does this address the question that's been out there — and I'm not sure if it has been addressed to date — where, say, people working in emergency services are called in to transport a patient from one hospital to the next? They're dealing with a situation where the individual may be suspect for, say, a disease that could be fairly severe if they're not very careful.

And I know in chatting with EMS [emergency medical services] workers, they've been in situations where medical personnel weren't even able to inform. And I don't know if that's changed or if this is going to change it and allow physicians or emergency workers who have and know that an individual they're working with, as they transfer them to another group of emergency workers, are going to be able to inform that group of EMS workers to be careful and make sure you handle this patient delicately, if you will.

Hon. Mr. Quennell: — Well one of the ways in which an individual might come into contact with the body substances that's specifically mentioned in the Act is while providing emergency health care services.

This isn't meant to be occupational health and safety legislation though. I would add that. This is primarily for the protection of individuals who are providing assistance in emergency or are victims of crime.

Mr. Toth: — So what you're saying is if it is a . . . well for example, say someone from an accident scene is taken to a health centre. And while they're at the health centre, through blood testing, there's an indication that there might a specific, this person might be carrying a specific disease. And they're being transferred to a tertiary centre, that the attending physician would not have the ability to pass on that information so the EMS workers are made aware of the fact that they need to treat this patient with care so that they don't accidentally be contaminated.

Hon. Mr. Quennell: — In Mr. Toth's example, there's a blood test already at the hospital. There's already a sample. This legislation isn't necessary in those circumstances.

The Chair: — Mr. Chisholm.

Mr. Chisholm: — I just have a question on . . . Have you anticipated what kind of an education program will be introduced once this legislation has passed so that the policemen, the firemen, the people on the street know that this is not . . . the rules have changed? This is now new. This is . . .

Hon. Mr. Quennell: — I expect that many firefighters and police officers know this legislation is before the legislature today. Shortly after I became Minister of Justice, I had an annual delegation from the firefighters of Saskatchewan and one of their requests of government was this legislation. When I had my second meeting with them as Minister of Justice a year later, this legislation had been introduced into the House. I believe that the police and firefighters are aware of the legislation. They've been asking for it, particularly firefighters have been asking for it. There were firefighters and police chiefs and police officers at the announcement when we introduced the legislation, at the public announcement, the press release. But certainly the procedures that are set out in the Act will be made known to police services and other emergency workers in the province.

Mr. Chisholm: — And the general public?

Hon. Mr. Quennell: — Well I don't anticipate we'll be taking out ads about the legislation so I'm not sure what detail we could provide to the general public in any general public release. Except that through the media we have already advised the public of the intent of the Act, how it's supposed to work. I think we had a number of good questions from reporters and I think some of those issues were covered in the press. So there has been some public discussion of this legislation. And we'll

also be advising doctors of how the legislation works. So they'll probably get that information from a physician if they feel they've contacted or may have contacted an infectious disease as well.

The Chair: — Any further questions? Seeing none, is the short title clause agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

The Chair: — There are again several clauses to this Act. Would the committee agree to voting clause 2 to clause 21 in a block?

Some Hon. Members: — Agreed.

[Clauses 2 to 22 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: The Mandatory Testing and Disclosure (Bodily Substances) Act. Could I have a member move that this committee report the Bill without amendment? Mr. Toth.

Mr. Toth has moved that Bill No. 102, The Mandatory Testing and Disclosure (Bodily Substances) Act be reported without amendment. Is the committee ready for the question?

An Hon. Member: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — Motion is carried.

Bill No. 110 — The Seizure of Criminal Property Act

Clause 1

The Chair: — The next Bill is Bill No. 110, The Seizure of Criminal Property Act. If the minister has some comments to make again.

Hon. Mr. Quennell: — Yes. Madam Chair, I've been joined by Murray Sawatsky. He's the executive director of law enforcement services, community justice division.

This Bill is brought forward at the request of the chief of police association of Saskatchewan. The purpose of The Seizure of Criminal Property Act is to provide that where property is a product of or is owned by an individual committing unlawful acts, that property would be subjected to forfeiture by order of the court.

The Bill provides that a police chief in Saskatchewan can apply to the Court of Queen's Bench for an order forfeiting the proceeds of any unlawful activity. In this context, proceeds of unlawful activity means any activity that would constitute either a provincial or federal offence where the property in question is obtained in whole or in part, indirectly or directly, through such activities.

Under this new civil process, rather than reviewing the forfeiture of illegal properties an aspect of the punishment for a crime, this Bill recognizes that property that is being used for or which is a product of unlawful activities should not be retained by an individual who is committing these crimes. I would also note that parties with an interest in that property would have an opportunity to be heard prior to liquidation to ensure that all legitimate interest holders are protected.

In Saskatchewan we have recently implemented both The Pawned Property (Recording) Act — that was in the spring of 2003 — and The Safer Communities and Neighbourhoods Act in the spring of 2004. The Criminal Enterprise Suppression Act and The Seizure of Criminal Property Act are being presented as the next steps in this government's ongoing commitment to improving safety in Saskatchewan communities and to creating a hostile environment for organized crime.

The Chair: — Questions? Mr. Morgan.

Mr. Morgan: — Minister, I'm wondering where this Act came from, what the source was. Is there a similar Act in another jurisdiction, or is it borrowed from another province or the federal government?

Hon. Mr. Quennell: — The Bill's brought forward, as I said, at the requests of the chief of police association for Saskatchewan. The Seizure of Criminal Property Act is similar to legislation in Manitoba.

Mr. Morgan: — What Bill in Manitoba?

Mr. McGovern: — Madam Chair, to the member, it's The Criminal Property Forfeiture Act. And Ontario also has civil forfeiture legislation, and for your information as well, there was a first reading Bill in British Columbia that's very much on the same topic.

Mr. Morgan: — Are those pieces of legislation similar in that they allow the application to be brought by the police chiefs or are the applications brought in the name of the Crown?

Hon. Mr. Quennell: — That's certainly how it works in Manitoba. It's brought by the police chief.

Mr. Morgan: — In Manitoba as well? That's the only other jurisdiction that is brought by the police chief, is that correct?

Hon. Mr. Quennell: — No, Manitoba and Saskatchewan would be both the police chief. Ontario . . .

Mr. Morgan: — The only other one besides Saskatchewan is Manitoba. Is that correct?

Hon. Mr. Quennell: — Yes.

Mr. Morgan: — Why would we want to allow the police chiefs to have this? Why would this application not be brought in the name of the Crown or in the name of the AG [Attorney General] or in the name of the department? Why would we

want this type of tool to be given to the police chiefs without having any involvement on the part of the provincial Department of Justice?

Hon. Mr. Quennell: — The police are the ones investigating the criminal organizations and the other unlawful activity in the province. And we feel that they are the best able to decide when and in what circumstances the tool provided by this legislation and its companion piece will be most useful and least likely to threaten ongoing investigations.

They are also empowered to bring other civil applications to shut down businesses run by criminal organizations in the companion piece. But with the sense that this is not necessarily going to be part of a criminal sentencing or part of a criminal trial and will impact potentially on police investigations, that the police chief is the best person to decide when this application should be made.

Mr. Morgan: — Minister, a criminal prosecution is brought in the name of the Crown, and ultimately the minister or the Attorney General is ultimately responsible for the conduct of the department. This Bill will have the effect of removing that accountability. And I'm wondering why the department would want to avoid responsibility for something that's a very significant tool, and sort of a marked departure from what has taken place in the past.

Hon. Mr. Quennell: — We are not here creating criminal law or adding to criminal law. That's not within our jurisdiction. What we want to do, what we did with The Safer Communities and Neighbourhoods Act for example, is use civil tools that are open to the province to create a hostile climate for crime.

We are not removing the responsibility of the Crown or the Attorney General or any responsibility that those parties have for criminal prosecutions. Nor are we changing the relationship between the Minister of Justice and the chiefs of police. There is some overarching responsibility for prosecutions on the part of the Attorney General. There is also some overarching responsibility for policing in the province on the part of the Minister of Justice. And neither the prosecutors' accountability or the chief of police accountability is changed by the Act.

Mr. Morgan: — Minister, with respect, section 25 of the Act is a blanket immunity provision that protects police services, police chiefs, and the Crown. Clearly there's an intention to avoid liability on the part of the province, and you've given some significant protection to the police chiefs.

What I'm concerned about is then — with greatest respect to the police chiefs of this province — is if there is an abuse of application brought or there's problems with somebody having incurred large expenses in defending this under this civil process, who ultimately bears, who ultimately bears the cost? Where's the accountability back on the province? I'm frankly very troubled by the transfer of this to the police chiefs and the total lack of involvement by the provincial government.

Hon. Mr. Quennell: — Firstly, Madam Chair, unlike legislation in some American jurisdictions, this law does not allow the police chief to seize anything without a court order.

Secondly, to obtain a short-term order to preserve the property, the police chief must convince the court that there are reasonable grounds to believe that property is forfeitable and that an order is needed to preserve the property until the forfeiture hearing can be held.

Thirdly, as in other civil proceedings, while a short-term order may be obtained at first without notice to preserve the property, such an order must be renewed in court every 10 days with notice given to the other parties.

Fourthly, as with final orders forfeiting the property, the court may refuse to give the order if it would clearly not be in the interest of justice. Finally the court retains its usual discretion to order costs against the police chief.

So it's not an issue of police chiefs having unfettered authority to interfere with property rights. At every step, this matter is reviewed by the court.

Mr. Morgan: — Minister, what you're really saying is, trust the police chiefs. Trust the courts. And by the way while you're at it, leave me out of it. That's what you're really saying.

Hon. Mr. Quennell: — What I'm saying is that the intent of this legislation is to create a hostile climate for crime while protecting people's property rights through the use of the courts. I am saying the government does trust the police chiefs. I am saying the government does trust the courts. The intended result of this legislation is to create a hostile climate for organized crime in this province. If the member believes that the result will be different, then he should act accordingly.

Mr. Morgan: — Minister, what you've done here is you've taken a situation that we had before the passage . . . or before the introduction of this Bill where we had federal legislation that gave some assistance for the seizure of property. That was done as a criminal remedy, and there had to be, generally speaking, proof beyond a reasonable doubt.

What we've done is we've now taken this issue, and we've said that we have proof on the balance of probabilities rather than proof beyond a reasonable doubt. We've left the province out of it. And I can imagine, Minister, you standing back saying as you have with other issues — the province isn't responsible for this; this is an independent issue; it's before the courts — and not giving any degree of involvement. And you could very well have an innocent person or a person that should not be the subject of this action being dealt with or having their rights very substantially trammelled on.

And what I'm troubled by, Minister, is the fact that you have left yourself out of the loop, where you would be before, and you've also changed the onus of proof by a very substantial amount.

Hon. Mr. Quennell: — Well, Madam Chair, if the member can imagine me saying that I am not going to tell the court what order to give upon an application, well his imagination's correct. I mean clearly these are decisions to be made by a court. And although in some American states they allow the police chiefs to make these decisions without going to a court, here in Saskatchewan these decisions will be made by a court.

And I don't know what that member is referring to when he says that the Department of Justice that maintains a relationship, provides services to the court, maintains an overall responsibility for prosecutions, and overall responsibility for the police is removed from any of those responsibilities by this legislation. I just don't agree that that's the case.

The Criminal Code allows for the forfeiture of proceeds and instruments of crime as part of the punishment of a person. That's outside the jurisdiction of the province. That's the punishment for a person who's convicted of a serious crime. Saskatchewan's legislation does not require criminal conviction or punish a person for a crime. Instead it uses a civil court proceeding to prevent property in the province being used to engage in certain profit making and potentially violent offences, or from being kept by those who obtain it through any unlawful means. And it uses the courts to do that, Madam Chair.

Mr. Morgan: — Minister, my next question, it deals with the constitutionality of this Bill. I think there is a very strong argument that could be advanced that this is an intrusion on the area of criminal law on the part of the province. And I'm wondering whether there would be a . . . whether you have obtained an opinion as to whether this law would withstand a constitutional challenge.

Hon. Mr. Quennell: — Madam Chair, this legislation does not accuse or punish anyone of or for anything. Instead it prevents provincial property law from being used to protect illegal profits or to invest in criminal activity. Under Canada's Constitution the provinces have the authority to legislate in the areas of crime prevention and property rights.

Without getting into any actual legal opinions with respect to whether or not forfeiture of property constitutes criminal proceedings, we take a great deal of comfort from the December 16, 2004, unanimous decision of the Supreme Court of Canada in Martineau vs. Canada Minister of National Revenue. In that case, forfeiture under the Customs Act was considered in some detail in the context of whether or not a person facing a forfeiture order under that Act constituted a person charged with an offence and whether or not such civil forfeiture was somehow criminal in nature.

With respect to the argument that, since the conduct in question may have penal consequences, that conduct for all purposes must be considered of a penal nature, the court stated. The fact that a single violation can give rise to both a notice of ascertained forfeiture and a criminal prosecution is irrelevant. The appropriate test is the nature of the proceedings, not the nature of the act. Associate Justice Cameron of the Saskatchewan Court of Appeal stated the following, and is cited with approval in *Wigglesworth*, supra at 556:

> A single act may have more than one aspect, and it may give rise to more than one legal consequence. It may, if it constitutes a breach of the duty a person owes to society, amount to a crime, for which the actor must answer to the public. At the same time, the [actor] . . . may, if it involves injury and a breach of one's duty to another, constitute a private cause of action for damages, for which the actor must answer to the person he injured. And that same [actor] . . . may have still another aspect to it: it may also involve a breach of . . . duties of one's office or calling, in which [case] . . . the actor must account to his professional peers.

Having concluded that it's in the nature of proceedings, not the nature of the act, that constitutes the appropriate test or review, the court goes on to state that the ascertained forfeiture is a civil collection mechanism. The argument has been made that the purpose of ascertained forfeiture, like that of criminal prosecution, was to punish the offender in order to produce a deterrent effect and address the wrong done to society.

The court disagreed, concluding first if the offender were not the actual owner of the seized property, he or she would not in principle be punished by the forfeiture thereof. Second with respect to the issue of a deterrent effect, actions in civil liability and disciplinary proceedings are also aimed at deterring potential offenders. Nevertheless they do not constitute criminal proceedings. Third, they know that forfeiture does not take into account the principles of criminal liability or sentencing.

To reiterate — the removal of property which is either the proceeds of crime or the instrument of crime is not a punishment as a holder of that property does not rightfully own it. The fact that the conduct in question may also lead to criminal punishment as noted by the Supreme Court does not prevent the same action from also having civil consequences. Saskatchewan, like the provinces of British Columbia, Manitoba, and Ontario, is of the view that the provincial jurisdiction concerning property and civil rights is properly exercised legislation of this type.

So if the opinion of the Supreme Court of Canada is a legal opinion, yes we have one.

Mr. Morgan: — Madam Chair, my question was more simple than the long answer we got. My question was, has the minister obtained an opinion, and is he prepared to provide it to us?

Hon. Mr. Quennell: — Asking the Minister of Justice if he has legal opinions when he's surrounded by lawyers advising him and discussing matters with him every day is like asking fish if it went for a swim today.

Mr. Morgan: — Perhaps I'll rephrase that if the question is merely the source of humour. Minister, if you have obtained a written opinion from your department for purposes of this legislation, are you prepared to provide us with a copy of it?

Hon. Mr. Quennell: — We don't table written opinions, legal opinions. But it is clearly the opinion of my department involved in drafting this Bill that the Bill is constitutional and would stand to a Charter challenge. I appreciate the member's patience for long answers is short now. So if he doesn't want the answer and why we believe it would stand for a Charter challenge, I won't provide it.

Mr. Morgan: — If the minister is prepared to table the opinion, that's fine. If the minister wants to read it in in its entirety, that would be fine as well.

Hon. Mr. Quennell: — I won't be tabling an opinion, but I will be providing an answer to the question. As recently noted in the

Martineau decision, because this is neither criminal nor penal law, the Charter rights that apply in that context do not apply here, the presumption of an individual's innocence until he or she is proven guilty for example. Nowhere in the Charter does it say that property is presumed to have been innocently obtained. If it did the police would not be able to restore stolen property to its rightful owner unless they were able to convict the thief, and we all know the proper police perform this important service all the time.

In fact the framers of the Charter deliberately excluded property rights from section 7 of the Charter, leading to the general inference that economic rights as generally encompassed by the term property are not within the parameters of the section 7 guarantee. And there's a Supreme Court case on that point.

The criminal organization presumption is needed because members of such groups go to great lengths to transform their profits into property that seems legitimate. And it simply reverses the onus to those who have the information and evidence about the origins of the property. It recognizes that these individuals have chosen to intertwine all aspects of their life with criminality. The presumption only applies to a proven member of a group that's been proven to organize for the purpose of committing serious offences that will benefit the group or its members financially. The Charter should not be found to protect the right to engage in organized crime.

The government's purposes in passing this legislation are extremely compelling, and the legislation has ample procedural safeguards for innocent third parties and to prevent unjust applications of the law.

Mr. Morgan: — Madam Chair, we are generally supportive of the purposes of this Bill. As you're well aware from the nature of the questions, we have concerns about some of the methodology and whether it will in fact be able to sustain a court challenge. And we look forward to this Bill being carefully monitored after it's in force.

We have concerns about what will happen with the forfeited assets after they have been seized. It is our hope and expectation that there is a protocol or a methodology established that will deal appropriately with proceeds of crime. We recognize that merely going to the Crown is not particularly something that the public will be overly supportive. It would be our hope that it would first go to support the victims of crime and thereafter going to the resource that would be used to help law enforcement continue to work against organized crime.

We have a very substantial problem in this province with youth gangs. We have the second highest total number of youth gangs. And according to Criminal Intelligence Service Saskatchewan, we have over 1,300 youth gang members. We are second only to Ontario which has 12 times the population. I don't know whether this Bill will give any great amount of assistance to police chiefs and to municipalities in dealing with that issue. But we're certainly wanting to give it its best shot to see whether it does do something to reduce crime in that area.

And to the extent that it does produce revenue, Madam Speaker, we're expecting that the proceeds will be used. And we may be coming back at some time with private member's Bill or alternate legislation that will prescribe specific formulas to ensure that the proceeds as recovered are dealt with in a priority, first with victims of specific crimes, then dealing with whatever issues are necessary to enhance crime prevention elsewhere and law enforcement.

I think we're ready to vote on this Bill, Madam Chair.

The Chair: — The minister want to respond to that last comment?

Hon. Mr. Quennell: — On the issue of the proceeds, I appreciate the member's suggestion — which I think he'll be glad to hear is not an original one — that some of the proceeds would go to the victims of crime. And as you'll see as to where the proceeds might go, there is an ability in the regulations to send them to a prescribed entity. So that is certainly something that the government may want to follow up on.

The Chair: — Mr. Chisholm.

Mr. Chisholm: — One question, it is my understanding that the RCMP [Royal Canadian Mounted Police] in the province themselves had a proceeds of crime division that would confiscate vehicles, money, those kind of things. Is that in effect going to mean that that will now go to the province, where it was staying within the . . . My understanding it was staying within the RCMP, and they were using those funds to hire additional people and do more work. That's my understanding.

Hon. Mr. Quennell: — The proceeds taken by the RCMP and forfeited within the criminal process won't be affected by this legislation. There's an agreement between the federal government, and I assume all the provinces, not just Saskatchewan, as to using those proceeds for crime prevention and police services within the province. Sometimes I think it's sometimes contentious as to which province those proceeds should be applied in because of the, you know, the cross-border nature of some crime.

Mr. Chisholm: — Thank you.

The Chair: — If there are no further questions then, short title. Is that agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

The Chair: — Again, this Bill has many clauses. Is it the will of the committee to go vote as a block 2 to 26? Is that agreed?

Some Hon. Members: — Agreed.

An Hon. Member: — Madam Chair, did you . . . I think you got agreement to vote as a block, but I don't know that you asked for the vote on them.

The Chair: — Okay, I was trying to shorten the process even more. Okay. Is it agreed that we vote as a block then?

Some Hon. Members: — Agreed.

[Clauses 2 to 27 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows: The Seizure of Criminal Property Act.

Do I have a member to move this committee report, this Bill, without amendment? Mr. Chisholm, were you saying that? Mr. Chisholm has moved that the Bill, The Seizure of Criminal Property Act be reported without amendment.

Is the committee ready for the question?

An Hon. Member: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — The motion is carried. Thank you to the minister.

Bill No. 109 — The Criminal Enterprise Suppression Act

The Chair: — Next Bill is Bill 109, The Criminal Enterprise Suppression Act. The minister has some opening comments for this Bill.

Hon. Mr. Quennell: — Again, Madam Chair, this Bill as well is being brought forward at the request of the Saskatchewan Association of Chiefs of Police as an additional method through which they can address organized crime issues. The sole purpose of this Bill is to continue to provide tools to Saskatchewan's policing community to undercut the activity of criminal organizations.

The Criminal Enterprise Suppression Act provides that if a court is satisfied that the owner or manager of a business is a member of a criminal organization, the court on application by the chief of police can cancel and withhold provincial tax, liquor or other licences needed to operate their business, and/or prohibit the premises from being used to store or distribute liquor. Under this Bill our police services will be able to address the purportedly legitimate businesses operations that are being controlled or owned by a member of a criminal organization.

Once again we are seeking to use civil procedures to address those who would seek to profit from criminal operations. This process occurs under the direction of the court and is careful to provide the property owner with the right to answer the allegation of wrongdoing in a court of law. Mr. Speaker, this Bill, along with the criminal property forfeiture Act represent the next step in this government's continuing commitment to create a hostile environment for organized crime in the province of Saskatchewan.

The Chair: — Questions? Mr. Morgan.

Mr. Morgan: — Yes, Madam Chair, I would like to move an amendment to this. I move, seconded by the member for Cut Knife-Turtleford:

That following section 2(2)(c) of Bill 109, An Act respecting Civil Remedies against Organized Crime, the following new section be added:

Court's Consideration [it would be a new section] 2.1:

For the purpose of any order issued by a court pursuant to this Act, the court shall take the following considerations into account:

(a) the seriousness of the degree of injury to the public will result if no order is issued;
(b) the seriousness of the unlawful activity that is occurring or that may occur and its overall impact on public safety;
(c) the degree level of impairment or intrusion into an individual's civil rights;
(d) whether or not the order will bring the administration of justice into disrepute;
(e) any other consideration that the court considers in the circumstances whether or not the issue is raised by the parties to the application.

Madam Chair, I so move and would like to speak briefly to that amendment. But perhaps you need a short adjournment to make a copy.

The Chair: — We'll take this as read. You wanted . . .

Mr. Hagel: — Has the minister seen a copy?

The Chair: — Okay. Do you want to make your statements, Mr. Morgan, while we are copying the amendment?

Mr. Morgan: — Pardon me?

The Chair: — Would you like to begin your statements while we're copying the amendment?

Mr. Morgan: — The Bill itself is one of the most troubling pieces of legislative drafting that I've seen. There's is no purpose clause in the Act. There's nothing on which a court is to consider in whether to grant the application.

On the last Bill, I spoke at some length about having the powers in the police chief rather that in a Crown. You could conceivably be in a position where you had a convenience store corner arcade where the manager of that institution belongs to a criminal organization without the knowledge of the owner of the business, and there would certainly be the potential, Madam Chair, for an application to be brought by a police chief saying that the business is a nuisance, it's a hangout for children, there's a manager there that belongs to a youth gang or a criminal organization. The owner of the business may have no knowledge of that. And then the court is put in the awkward position of having to determine the equities on a balance of probability as to whether or not to shut down this business.

Once again with greatest respect to the police chiefs, I'm not sure that that's a tool we wish to give them. We want to ensure that there be an appropriate tool given to police chiefs where police chiefs would have the ability to show that there is a tie to that property, to some kind of criminal activity rather than

merely an individual that is employed there in a management capacity.

During third reading of this, I likened this Bill to using a chainsaw as a fly swatter. You're not likely to hit the fly, and you're probably leaving the potential for a lot of other collateral damage that's there. It's a troubling aspect.

I briefly discussed this with the minister as to whether there was a willingness on the part of the government to include a purpose clause or failing that, a list of considerations for the court to look at. The minister indicated that they weren't likely inclined to look at something else like that, so what we have done was we have proposed this as an alternative and would like to encourage the members opposite to support this amendment.

I understand as well, Madam Chair, that the government will be proposing amendments on a variety of other Bills and may well be looking to the opposition to support some of those amendments or at least allow them to go ahead. And what happens on this may well be an indication of our willingness to look favourably at other amendments that come up in committee.

We once again want to emphasize that we want to co-operate with the government in fighting crime, ensuring that we have police officers that are there. We also want to support the appropriate passage of Bills through the House, and we look at co-operation as something that goes across party lines and look at the . . . that we want to deal appropriately and fairly with everything that comes forward and would like this amendment to get some fair consideration on the part of the minister. And so I'll certainly have other questions with regard to this, but perhaps the minister would like to respond to the motion.

The Chair: — Before the minister responds, we didn't give you an opportunity to have an opening statement to the Bill before the amendment was introduced, if you want to do that as well.

Hon. Mr. Quennell: — Madam Chair, I had a brief moment to review the proposed amendment and although I don't disagree with the intent of much of it, I think directing Queen's Bench judges not to make orders that bring the administration of justice into disrepute is maybe overly paternalistic.

I have difficulty with the proposition that the Act as it now stands is overly broad or vague and requires a purpose section.

It is important to remember that it is the most senior member of the relevant police agency that will start the court process — that is the police chief. And we are confident that any Saskatchewan chief of police would be taking action under this Act only where it's appropriate to do so and only after advice by their legal counsel. We do not accept that the police chiefs of Saskatchewan will be using chainsaws to swat flies.

Also this law does not allow the police chief to do anything without a court order. To obtain an order the police chief must convince the court that the owner or manager — that is the person who is actually operating the business — is a member of a criminal organization as defined by the Criminal Code of Canada.

Madam Chair, and if I may read that definition of what a criminal organization is, Madam Chair:

> [A] "criminal organization" means a group, however organized . . .

And I'm reading from the Criminal Code of Canada, Madam Chair:

> . . . that
> (*a*) is comprised of three or more persons in or outside Canada; and
> (*b*) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.

Serious offence is defined in the Criminal Code for these purposes as:

> . . . an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, or another offence that is prescribed by regulation.

As well as the owner or manager of the business having to be a member of a criminal organization as defined in the Criminal Code, as I have just read into the record, the police chief must also convince the court that the business is not only being used for an unlawful purpose or two or more people have conspired to commit an unlawful act or acts that would likely cause injury to the public, then the court may make an order to restrain those activities. The court will of course retain discretion or refuse to give the order if it would clearly not be in the best interests of justice. And as I said earlier, the Court of Queen's Bench in Saskatchewan does not have to be directed to serve the interests of the administration of justice in my view.

Finally the court retains its usual discretion to order costs against the police chief. The Criminal Enterprise Suppression Act, which is very similar in its drafting to the Manitoba remedies against organized crime Act, does provide discretion to the Court of Queen's Bench with respect to orders under the Act but only in very clear circumstances.

If we look at each of the four order-making sections in turn, section 4 of the Act provides that, if the court is satisfied that a respondent is a member of a criminal organization and owns or manages a business, the court may make an order. A criminal organization is defined in terms under the Criminal Code of Canada.

And as I previously cited, section 467.1 of the Criminal Code of Canada provides that a criminal organization means a group, however organized, that is comprised of three or more persons in or outside of Canada and has as one of its main purposes or activities the facilitation or commission of one or more serious offences. Serious offence being defined as an indictable offence under this Act or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more or another offence as proscribed by regulation. Sorry, Madam

Chair?

The Chair: — . . . motion here.

Mr. Hagel: — Yes. Madam Chair, with respect to the minister and members of the committee, not a motion, but if I could ask leave of the committee, I'm conscious of the time and if I could ask leave of the committee to postpone votes on agenda items until I return. I request leave of the committee.

The Chair: — Is the committee agreed?

Some Hon. Members: — Agreed.

The Chair: — Okay. Thank you. Now is it the committee's wish to continue discussion on this Bill, or shall we move to another one?

Mr. Morgan: — Madam Chair, my wish is to continue on this one and move through the Bills in order and then come back and vote is my expectation.

The Chair: — Okay. We'll go back to the minister then.

Hon. Mr. Quennell: — Accordingly when this criteria is met that's criteria as to criminal organization and serious offence, the court may discharge this discretion and make an order. Such an order is only made after an application is made under The Queen's Bench Rules for Saskatchewan. Rule 441(2) provides that:

> Where under any statute an application may be made to . . . [a] court or to a judge, such application shall be made by [a] notice of motion unless the statute or the rules otherwise provide.

Rule 447 then provides that:

> Unless the court gives special leave [or] *ex parte* to the contrary, there must be at least three days [notice] between the service . . . notice of [the] motion and the day named in the notice for hearing . . .

A respondent may of course be represented at the hearing at that application.

Similarly under section 6 of the Act, where someone who meets the same criteria set out for section 4 has applied for a licence, that licence may also be denied at the discretion of the court.

If we look at section 8:

> If the court is satisfied that a respondent owns or manages a business that, to the knowledge of the respondent, is being used to advance an unlawful activity, the court may make an order . . .

Section 2(1)(j) defines unlawful activity to mean:

> . . . an act or omission . . . [as] an offence pursuant to:
>
> (i) an Act of any province or territory of Canada or an Act of . . . Parliament of Canada; or
>
> (ii) an Act of a jurisdiction outside Canada, if a similar act or omission would be an offence pursuant to an Act or an Act of . . . Parliament of Canada if it were committed in Saskatchewan.

Accordingly where the respondent knowingly uses a business to advance an unlawful activity, the court has the discretion to take certain steps in an order. This direction is clear. Again such an order could only be made after the hearing of an application by both parties pursuant to the rules of court.

Under section 10 of the Act, we deal with circumstances where:

> [a] . . . respondent has [(1)] conspired with . . . [someone] to engage in an unlawful activity;
>
> . . . the respondent knew or ought to have known that the unlawful activity would . . . result in [the] injury to the public; and
>
> . . . injury to the public has resulted, or . . . [is] likely [to] result, from the unlawful activity.

Injury to the public is itself defined to include any unreasonable interference with public health, safety, comfort, or convenience; any unreasonable interference with public enjoyment of property; and any expense or increased expense incurred by the public, including expense or increased expense incurred by the Crown or . . . [inaudible] . . . of Saskatchewan or a municipality.

Once again we are talking about a circumstance where a group of individuals has conspired to conduct an unlawful activity that they knew or ought to have known would result in injury to the public, an injury to the public has actually resulted or will be likely result from the unlawful activity. This is not simply that three people have committed an offence, but rather they have conspired to do so and in doing so knew that they would be causing injury to the public.

Finally it should again be noted that application is made by the chief of police and his legal counsel, not by any police officer within a service. By ensuring that the top administrative officer for a police service supports an application, we are confident that the appropriate discretion will be used in seeking an application. Needless to say, the exercise of discretion by the Court of Queen's Bench following the clear direction under the Act is something we have strong confidence in as well.

The Chair: — Mr. Morgan.

Mr. Morgan: — Minister, the problem that I have with section 8 is there's a distinction in this legislation between the business and the respondent. The respondent is the person that is either convicted of or a member of a criminal organization, notwithstanding they may be acquitted. But the respondent is the person who is part of the criminal organization.

The business itself is and could very well be an entity separate from the respondent. And under this application or this Bill, you could bring an application against a respondent, and then the person that owns the business may not even be a party to your application.

Hon. Mr. Quennell: — In section 8, the court needs to be satisfied — not the police, not a police officer, not the police chief. The court needs to be satisfied that a respondent owns or manages a business being used to advance an unlawful activity.

Mr. Morgan: — And if the owner of the business doesn't know what's going on in the business, the owner of the business doesn't even get any notice that this application has taken place unless the court decides it's necessary. Why don't we put some specifics in so there's some direction for the court?

Hon. Mr. Quennell: — I don't see where the amendment addresses the issues of notice in any case.

Mr. Morgan: — That's my concern with the Bill. If you allow the amendment, the judge at least knows that there has to be annexes to the property, and the judge has some things on which to base his deliberations on.

But even if you leave the amendment out of it completely, how does the business owner know that, if he isn't aware — he or she is not aware — that the business is being used for an illegal purpose because of management?

You have an out-of-province business owner — a Mac's or 7-Eleven, Wal-Mart, whatever. And there's some illegal activity going on through a person that's in a managerial capacity. How is that owner going to even have notice that their property may well be subject . . . They may lose the right to have a liquor licence, the right to have their business name registered . . . Looking specifically at section 8(b).

Hon. Mr. Quennell: — Well I'm looking specifically . . . Sorry, Madam Chair. I'm looking specifically at the amendment, and I don't see where these issues are addressed in the amendment at all, if it's the amendment that we're discussing.

Mr. Morgan: — Look at the Bill and leave the amendment aside if you want to talk about . . . You know, the amendment gives the court some consideration and some direction.

Hon. Mr. Quennell: — As far as the Bill is concerned, Madam Chair, the Bill as un-amended, the court has a number of options under eight other than shutting down the business. It has the option in the scenario described by Mr. Morgan of requiring the respondent, who's only the manager, to cease managing the business or requiring that the respondent is prohibited from managing a business and making the order specific to the respondent. And that is certainly open to the court where the only respondent is the manager.

And again I suppose the position of myself and of the Department of Justice is the same as in respect to the other Bill that we just discussed previously to this, that it is the intent and the expected result of this Bill that applications will be made — in clear cases — by the police chief, and that the Court of Queen's Bench in Saskatchewan will conduct itself as it has historically done and use this legislation properly in the way that it's intended to be used. And that will create a hostile climate for organized crime in the province.

And that's, I mean, that is the intended effect of this legislation. That's the reason why the association of police chiefs support this legislation, call for this legislation. The options to the court, in respect to where the manager is the only respondent for whatever reason, can be to limit the order to the management of the business in the ways that I set out.

Mr. Morgan: — Minister, the fact that it includes an acceptable remedy in the order doesn't mean that the unacceptable one will just not ordinarily be granted or sought. My concern is to avoid abuse with this piece of legislation. And I'm thinking specifically, you know, that we should be requiring notice to any party that'd be affected by it, rather than leave that for the courts. And hopefully the courts would do that.

But I think there should be something . . . As a government, as draftspeople of the legislation where you are fundamentally affecting people's rights . . . and I certainly accept the argument it's for the laudable purpose of trying to create a hostile environment for crime. But I think before we trammel on those rights, we want to be able to give the court as clear a direction as we possibly can, and would like to invite the minister to consider that.

Coming back briefly to the amendment, I think the amendment is the type of amendment you can make that amendment or a similar amendment to a number of different places in the legislation. At least with this amendment the judge is required to do a balancing act and look at the seriousness to the degree of injury. So if you did have a large business venture that was carrying on without the knowledge of the owner and there was a number of other jobs that were affected, they could say oh yes, the seriousness of the degree of injury to the public resulted in no orders to issue. Yes, there's a balance on the right of the business to carry on, and that may give the courts some direction as to which of the variety of remedies that are there, the seriousness of the unlawful activity that is occurring, and the overall impact on public safety.

Well if it's of a relatively minor nature — and I'm not saying that any crime is minor — but if it's of one that's of less serious nature, they may not want to grant that. They may want to say yes, we're entitled to use that as a balance and say we're not going to shut down a business that has 5, 10, 50, or 100 employees; we're not going to consider that.

And then 2.1(c): the degree level of impairment or intrusion into an individual's civil rights. An individual could well be a person. It could be a corporation. And we would look at that as a factor that the court would specifically be called upon to say yes, there are other entities that are affected. There are individuals that are not parties to the action that are affected. And they should certainly look at those type of things. And then it also says, you know, they can look at other considerations as well.

And I appreciate the Court of Queen's Bench's very broad, inherent jurisdiction. But I certainly think the motion is well founded and gives the court at least a starting point, what to look at. My preference would have been if this would have been a better drafted piece of legislation from the start.

Given what we have to work with, I think the amendment may

well be what's necessary to try and salvage the basic purpose of what we're trying to do, which is to eliminate or reduce crime and give the police and the courts a direction as to how to do that.

Hon. Mr. Quennell: — Well, Madam Chair, I'm not sure how many times the member is allowed to speak to his amendment. But again the purpose of legislation is set out in its long title. And the long title of this Bill is An Act respecting Civil Remedies against Organized Crime. And that is the purpose that gives direction to the court.

Again in the legislation, in the Bill, it refers to a criminal organization — a criminal organization which is just turning organized crime around on its head, putting the criminal as the adjective instead of as the noun in respect to crime. A criminal organization is defined within the Act as having a meaning that it has within the Criminal Code. And within the Criminal Code, a criminal organization has as one of its main purposes or main activities the facilitation or commission of one or more serious offences. A serious offence is defined as an indictable offence under this Act — or any other Act of parliament — for which the maximum punishment is imprisonment for five years or more.

I don't think the Bill is overly broad. I don't think it's vague. I think it has teeth in it, and I think it's trying to deal with a serious problem. And I think the problem can be found in the definitions that are used in the Act in respect to what a criminal organization is, in respect to what a serious offence is, Madam Chair.

Mr. Morgan: — Where are you at with drafting regulations pursuant to section 22?

Hon. Mr. Quennell: — I would expect after the Bill is passed, we'll be in a position to proclaim it very soon, Madam Chair.

Mr. Morgan: — Are they drafted now?

Hon. Mr. Quennell: — I don't think there are any regulations before the Lieutenant Governor in Council at this moment. No.

Mr. Morgan: — Is there a draft prepared or . . .

Hon. Mr. Quennell: — There's a regulation-making power within the Act or provision for making regulations. We're not persuaded that any regulations are required in respect to defining, enlarging, or restricting the meaning of any word or expression used in the Act or in respect to any other matter. And so we would not be waiting for regulations to be passed before proclaiming the Act.

Mr. Morgan: — Minister, I've looked at Bill 110 and Bill 109. And this Act allows the application to be brought by the Crown, and Bill 110 does not. I'm wondering why you would have included that in one piece of legislation but not in the other if they're companion pieces . . . Actually I see that it is in both.

Hon. Mr. Quennell: — It's in both Acts. Yes.

Mr. Morgan: — Is that something the Crown would ever likely use or be inclined to use?

Hon. Mr. Quennell: — Well the Crown may, in the place of police chief, make the application. I don't think that would be our usual practice. No.

Mr. Morgan: — Madam Chair, I don't know if any of the other members of the opposition have questions with regard to this Bill. The concerns that I expressed with the previous Bill and the issues with youth crime would repeat for these as well. And I don't have any further questions with regards to this. And I presume what your intention, Madam Chair, is to come back and vote this . . . Mr. Hagel's return.

The Chair: — The minister have anything further to say before we move on to the next Bill?

Hon. Mr. Quennell: — I guess the concluding comment I would make on these two Bills is that the issue of gangs has been raised both in the legislature and in the committee. And in my conversations with the police chiefs in Saskatchewan, I'm appreciative of the fact that gangs are not the only type of organized crime in the province. And that there's also a continuum for organized crime over time, that it moves from general disorganization to gang-like activity to more enterprise activity and then inserting itself into legitimate businesses. And that if we want to pretend that our organized crime problem is only a gang problem and that gangs don't mature into organized crime businesses that launder money and subvert legitimate business activity and use it illegitimately, then I think we're being naive about the risks that our province faces in respect to organized crime.

The Chair: — Thank you. Then seeing no further questions and having leave of the committee not to vote at this time, we'll move on to consideration of Bill 100, The Police Amendment Act, 2005.

Bill No. 100 — The Police Amendment Act, 2005

Clause 1

The Chair: — The minister again may want to make comments on this Bill.

Hon. Mr. Quennell: — Yes, Madam Chair. The Police Amendment Act, 2005 provides for fundamental changes to the public complaint investigation decision process. These amendments were recommended by a joint steering committee consisting of Saskatchewan Justice, the Federation of Saskatchewan Indian Nations, Métis Family and Community Justice Services, Regina Police Service, Saskatoon Police Service, and the RCMP.

The changes include formalizing the input and participation of the Métis and First Nations communities in public complaint, discipline, and complaint investigation process by expanding the existing office of the complaints investigator into a more representative police complaints commission, appointed following consultation with Métis Family and Community Justice Services and the Federation of Saskatchewan Indian Nations.

A key element of the new complaint process is the requirement for every appointment to the five-person panel to be the product

of consultations with the Federation of Saskatchewan Indian Nations, the Federation of Saskatchewan Police Officers, the chiefs of police association, and municipal police boards.

Another key element is that every complaint regarding a police officer and every investigation with respect to a possible criminal offence with respect to a police officer will be subject to the direction of the Police Complaints Commission. The Police Complaints Commission will then determine whether that investigation should occur by that Police Complaints Commission itself through its investigative arm, by the police service against whom the complaint was made, by the police service with an outside observer, or by a separate police service.

In addition to the changes to the public complaints process, the Bill will also authorize the Lieutenant Governor in Council to annually issue commissions under the Great Seal of Saskatchewan to police officers on their first appointment to any of the ranks of inspector, superintendent, deputy chief, or chief.

The Bill will also implement new rules respecting cross-border policing to provide clear appointing and governance authority in cases where an out-of-province police officer needs to continue an investigation in Saskatchewan or when a Saskatchewan police officer must leave the province for similar reasons. These changes implement the uniform cross-border policing Act that was adopted by the Uniform Law Conference of Canada at its 2003 meeting.

And finally the Bill introduces a requirement that where a serious injury or death has occurred while a person was in public custody . . . or police custody, excuse me, or as a result of a police action, the municipal police service or RCMP detachment concerned will be required to consult the deputy minister of Justice so that an investigation observer can be appointed from another police service or RCMP detachment to monitor the investigation and to provide a report back on that investigation to the deputy minister.

The Chair: — Questions? Mr. Morgan.

Mr. Morgan: — Thank you, Madam Chair. Under section 48 and section 46, there seems to be some issue as to when complaints are deemed to be public complaints. And I'm wondering if the minister or his officials might want to comment on when and why a complaint does become public or what criteria we'd use when a complaint would not be regarded as a public complaint.

Hon. Mr. Quennell: — Which sections were you referring to?

Mr. Morgan: — Under section 48 a public complaint can be made, and then there's internal complaints that are made pursuant to sections 54 and 55. And then there's sort of a . . . there's a deeming provision. I think it's 54(3) and 55(2) where they become public complaints. And we're sort of wondering . . . I'm just sort of troubled by when and how complaints become public complaints and when they become internal complaints.

Mr. McGovern: — Madam Chair, to the member, the distinction that's made with respect to whether a matter's internal or whether it respects a public complaint that perhaps the member's referring to — and I'm just thinking of the section numbers — if I could refer the member to section 26 of the Bill which is section 54 being amended in the full Act, it deals with the circumstance where you have, for example an allegation that occurs internally with respect to an investigation. And at that, in subsection (2) it sets out a criteria that:

> . . . [where] the matter to be investigated pursuant to (1) directly relates to a member of the public, the chief shall, as soon as . . . [practical], advise the PCC . . .

And then under 54(3) of that same amendment:

> If the PCC is of the opinion that it is advisable to do so, the PCC may declare the matter to be a public complaint . . .

And so that's one distinction that's made so that the matter's brought up internally as, for example, it could be brought up internally through the police process by one member with respect to another member. But if that issue was with respect to a member of the public — for example if I said to Murray that I saw Murray being rude to a particular individual, and we were both police officers at that point — then it involves a member of the public and there's a requirement that the chief bring the PCC [Public Complaints Commission] involved.

Is that the question that the member was raising?

Mr. Morgan: — Well I guess where it says that if they deem it advisable to do so, they may declare the matter to be a public complaint. And there doesn't appear to be criteria when it becomes an internal matter and when it becomes a public, and it just says if they deem it to be advisable.

And I'm just sort of wondering, you know, we have two sources of complaints, one from members of the public and one, whatever the variety of issues that are internally. And I'm thinking in terms of a police officer, how does he know what he's sort of addressing? Does he think, oh yes, I'm going through the public complaints process through the PCC; I'm dealing with this as an internal disciplinary matter. And the two seem sort of blended, and then it just sort glosses over and says, if they deem it advisable to do so.

Mr. McGovern: — I can refer you to 54(2) in terms of the trigger with respect to whether a matter would become a public complaint and treated as a public complaint, would be whether the event directly involves a member of the public.

And so the choice being if the conduct in question actually involves a member of the public as opposed to — again using Murray as my example — if we're both police members in police services. If we get into a fight in uniform at the police station, obviously that's a matter that could lead to disciplinary offences. And that would occur under 54(1) . . . 54.1 below where if the matter isn't involving a matter of the public and therefore not to be treated as a public complaint, then it would proceed under 54.1, if that answers the member's question.

Mr. Morgan: — Well where I'm going with this is that whether the complaints are held in public or not, we certainly

are supportive of the process being open and transparent and publicly accountable, and I think that's a laudable goal. But the internal complaints are not; the public ones are. So I'm just wondering whether there's . . . You know what thought was given and possibly thought that 56(9) might be amended to sort of something to say a hearing is open to the public and then instead of deciding at what point the public is there.

And then my next question is, at what point you would involve the local police association?

Mr. McGovern: — With respect to the current provisions in The Police Act which the members refer to 56(9) in specific, 56(9) right now states that the hearing's open to the public to representers of the local police association and to the complainant. Those are also the provisions that would apply with respect to any hearing that's conducted under the Act.

There is an issue and it's a live issue with respect to the Saskatchewan Federation of Police Officers that they have brought forward previously. And it's the balance on the issue of . . . Under 56(7) for example it states that a member who's the subject of a hearing is entitled to appear and be represented either by legal counsel or by an agent. So clearly from a lawyer's perspective, agent could include representation by the local police association, in effect the professional association for the member. So they could actually appear for that individual if the member so chooses. Similarly under 56(9) they can be in the room.

I think the open issue that has been raised by the federation is whether or not by right the federation should have status independent of the member to appear at the hearing. And that's something that the federation has brought forward to the department and has been debated I guess, given that you're in the certain circumstance where the member has chosen not perhaps to have the association represent them and whether at that point it's appropriate in legislation to specifically provide that the association would have separate status. The Act certainly permits the hearing officer to have . . . it states that the hearing's open to the public, including to representatives of the local police association. But that's where it stops I guess.

Mr. Morgan: — Well I actually have a couple of issues. One I think that when you have an internal complaint that does not affect a matter of the public, my expectation would be that that would remain a closed hearing. It's an internal disciplinary matter and wouldn't go further. Now I don't whether the Bill satisfactorily addresses the police officers' concerns in regard to that.

And certainly I expect that where there is a public complainant, then we're in a different forum. But where it becomes internal, where there is not a member of the public involved, then I see no reason why we wouldn't be supportive of them being treated as a disciplinary matter and kept . . .

Hon. Mr. Quennell: — This legislation doesn't change that fact that both types of complaint hearings were already public before this legislation was passed. The position of the police federation that certain hearings might be closed is a relatively new position for them and is contrary to the way that most professions are moving — Law Society for example, and the medical profession — towards more public hearings and a standard of having public hearings so that the public can see that the work of the disciplinary bodies in those cases can withstand the scrutiny of the light of day, of public oversight.

Mr. Morgan: — Madam Chair, and to the minister. The status of the police association to appear at a hearing, either an internal or a public hearing, the Bill and the existing Act I don't think address their right to appear as a separate party to a hearing unless I'm . . . And I'm wondering what the discussions were or what consultation took place to determine the rights of the association.

And I'm thinking of the type of situation where a member has chosen not to involve the association, but yet there are other members affected by either similar or related circumstances, a number of complaints against a number of officers. The first one goes and . . . I'm thinking about inconsistent results. I'm thinking about whether it becomes a broader issue or whether it's something that may become the subject of other negotiations or grievance with regard to other members. And I'm wondering what position was put forward by the federation, and I'm wondering what the department's response was with regard to that.

Hon. Mr. Quennell: — I think the department's response was set out by Mr. McGovern in when he stated that where the individual affected — the individual about which the complaint has been made — does not care to be represented by the association. Then the concern would be, I think, on the part of that person that the association in having standing would be in conflict potentially to him.

And I don't think that there is a simple answer to that. I think that's something we continue to have to look at. And that's why we didn't make any changes in that respect in this legislation, because I think that's a valid concern to not bring the police association in when the individual that's actually involved in and who's career, reputation, is up for discussion, scrutiny, doesn't care to have the association there. I don't think that's a final answer, but it was important to mean, to make changes to The Police Act and to not to wait to continue that discussion and debate.

Mr. Morgan: — On the other hand, it may be of some significance to the association to have their position put forward or their position heard at a hearing because of precedent it may create or it may affect other officers. I'm not advocating that you do it. I'm just saying it may be appropriate to consider some methodology to determine whether when and if it's appropriate.

Madam Chair, Minister, the timeline lines that are established that are there they talk in terms of under 38(7) of a six-month timeline and I'm wondering whether that timeline is appropriate. And it talks about enlarging the timeline. I'm wondering whether it would not be appropriate to have more fixed timelines.

And if I read the legislation correctly the limitation period effectively is six months from the date of discovery rather than the date of the offence. I have concerns actually with the timeline, as to when the complaints can be received, and also

the timelines for a decision to be rendered. And I'll deal with them sort of both at once because my concerns on timelines are the same for both.

Once a complaint, whether it's a public complaint or an internal complaint, has been lodged, you have effectively placed a very significant cloud over the ability of the member to function. The member may be on an administrative leave, may be suspended without pay, may be continuing to function — but has that cloud over them. They're not sure whether they're going to be able to continue their career. And it would certainly be our position that we would want to see timelines that were fair and appropriate, but certainly would allow a sufficient time to prepare and deal with the things.

And then once an argument has been made before the PCC, that there be some specific timelines for those decisions to be rendered. I have significant concerns with decisions that have been reserved for many years before the Labour Relations Board. I don't know how long these types of decisions may take.

We've talked to some police officers that have expressed serious concern about matters that have been held up for an extended period of time, and we would hope or expect that at a next draft or a next round of the things, that there would be very specific and definite timelines both with regard to when the complaint be made, and governing the entire process from the time the investigation takes place, to notifying the officer, and when a decision is rendered.

Hon. Mr. Quennell: — We appreciate that there have been concerns raised about some matters, including timelines, by the Federation of Saskatchewan Police Officers. And I want to start off by saying that we value the work that police officers do in the province. I think that's been represented by the legislation we've brought before the legislature in this session, and brought before this committee in respect to both protecting them and providing them with the tools to do their jobs.

The concerns raised by the Federation of Saskatchewan Police Officers don't arise from this Bill. And I am pleased to say that the Saskatchewan federation of police officers has been a participant in the revisions to the complaints process before this committee, and today I think is supportive of these revisions.

There are other revisions that they would have liked to have made to the legislation, but as I've said, it was important to reform an outdated police complaints process. And we'll continue to have those discussions about other changes that we can make.

The Federation of Saskatchewan Police Officers is to commended for, I think, the progressive and collaborative stance they have taken on this Bill. This legislation reflects a consensus amongst police services, the Federation of Saskatchewan Police Officers, and the Aboriginal community. And I think it's just an excellent job of good government and good politics, Madam Chair.

But we appreciate that there are issues with the legislation. Those issues remain on the table. But they are not the focus of the amendments before the committee today. The focus of the amendments today is to improve the police complaint process.

I would note for the committee that clause 38(5)(b) provides that copy of the complaint must at the outset be provided to the member who is the subject of the complaint. In other words, whoever initially receives the complaint must send a copy of the complaint to the member complained against.

Section 37(1) of the Act does provide that this copy requirement may be waived through the application to the Chair of the Saskatchewan Police Commission, or:

> . . . the chairperson is of the opinion that not granting the waiver may jeopardize a police investigation or the security of police operations; and
>
> . . . there are no other reasonable steps that may be taken to avoid jeopardizing . . . [the] police investigation or the security of police operations other than . . . granting . . . the waiver.

But the waiver would be granted on terms and conditions and only under those specific circumstances.

Section 41 provides every 60 days the complainant and the member complained against must receive reports on the status of the investigation into that complaint.

And section 42 provides that where there is an alteration or an expansion of the complaint or charge against a member as a result of investigation, that member must be provided with written notice of that expansion or alteration.

Once the investigation is complete and the charge has been brought, the resolution provisions of the Act kick in. For example, the mediation provisions in section 43.1 and informal resolution under section 46 may be utilized.

If, however, the matter is to proceed to a hearing, section 56(3) provides that a hearing must be commenced within 60 days of the appointment by the minister of a hearing officer.

Subsection 56(4) states the member must receive 10 days written notice with respect to the time, place, and purpose of any such hearings. Subsection 56(7) goes on to state that the member is specifically entitled to appear and be represented by legal counsel or an agent at such a hearing.

Furthermore subsection 56(9) states that the hearing is open to the public, to representatives of a local police association, and to the complainant for the reasons that we've previously outlined.

Subsection 56(9.1) does provide that members of the public and the representatives of the local police association may be excluded where the hearing officer is of the opinion that the evidence may prejudice an investigation or the security of police operations or unduly violate the privacy of a person other than the member whose conduct is the subject of the hearing. And again we're trying to strike a balance here.

So there are a number of safeguards built into the legislation. Some of them require steps to be taken within time, including

reports back to the member complaint against be provided on a regular basis.

Now the issues about how long investigations take and whether there can be a fixed period within which a hearing officer may provide a decision, I think once this police complaints commission has an opportunity to act and operate, we can have a better idea of what is, what is practical in those regards. And as I've said, we want to and we need to bring a reform to the police complaints process. But we have told parties that this is not necessarily the final product in respect to issues that have not been dealt with in this particular amending legislation.

Mr. Morgan: — I'm glad the minister acknowledges that this is a work in progress. And I would certainly invite police forces, police associations, to continue to make representations. And I'm hoping that that's an indication of the minister that he continues to be receptive or will continue to be somewhat receptive on this.

It talks in term of that the complaint be given to the member as soon as is practicable. I'm thinking that we should say something more specific and under no circumstances later than a specific number of days. And I don't know what consultation took place. I'm pleased that that section has been there, that they're required to provide a copy of the complaint. That's a big start. And our expectation is that it would take place in an extremely timely manner and that the usage of the words, as soon as is practicable doesn't tend to delay that.

The next issue that I want to raise is the issue of leave to appeal, that we have to apply for leave. If we have an appeal process, why wouldn't we just allow an appeal process? Why would we allow a leave provision? And my point with this is that there is no timelines on how long there's a determination on a leave to appeal. And I understand that there's been some leave applications that have been before the Commission for a number of years, which I think is unacceptable for an officer that's been affected one way or the other.

Hon. Mr. Quennell: — The question that the member asks arises from section 69 of the current Bill. This amendment — this amending legislation doesn't make any change to that. So the situation that the member describes is the current situation in that you would have to seek permission to appeal to the Police Commission. And so this Bill doesn't change that circumstance.

Mr. Morgan: — I'm well aware of that. My concern is that that's something that has been raised every time we talk to police officers. And my question is, if you're amending it, doing a number of the other housekeeping things that are there, why that one wouldn't have been looked at or included?

Hon. Mr. Quennell: — And there is a circumstance — and I think the member may have referred to it in his earlier question — before the courts as to I guess the refusal to hear an appeal. I don't want to comment on that case but I want to wait for that case before we amend this particular section or look at amending this particular section.

Mr. Morgan: — Minister, I think it wouldn't hurt to be proactive rather than wait. Unfortunately that seems to be the . . . too often the pattern is that we wait and we're in a reactive situation. We have a situation now with the police officers that's not acceptable. Why we wouldn't want to address it through a legislative change when we're doing them is a mystery to me, but I will certainly be watching that and dealing with it as time goes on.

There's been recommendations that there should be ongoing reviews of the legislation, and I'm assuming that your indication that you regard this as a work-in-progress is an indication that you're planning to have ongoing, ongoing reviews of this legislation, that you're looking for further input.

Hon. Mr. Quennell: — We are continuing to consult, particularly with the Federation of Saskatchewan Police Officers as to other changes that they might . . . well that they do want to see and that might effectively improve the legislation. I think the changes — well, I shouldn't say I think — the changes that are being made to the Police Complaints Commission in its makeup, in its powers, in how investigations will now be conducted, I think we are satisfied that we have struck a balance and we have acceptance by the relevant stakeholders.

But there are parts of the Act that were not addressed. Of course we continue to have discussions about parts of the Act that were not addressed by these reforms.

Mr. Morgan: — Section 14 deals with mediation. Would your intention be that this would be done through a mediation services or through private mediators? Or how would this be implemented? And where I'm going with it is, what are the resources being set aside for mediation?

Hon. Mr. Quennell: — The current provisions in the Act surrounding mediation don't prescribe what mediation the parties have to use. We're not opposed to parties making use of mediation services but we wouldn't require them to use mediation services.

Mr. Morgan: — What about bearing the cost?

Hon. Mr. Quennell: — The current practice is the police service bears the cost of mediation and again that's not being changed by this legislation.

Mr. Morgan: — Minister, the uniform cross-border policing Act is implemented as part of this legislation. Has that been implemented in any other jurisdiction?

Hon. Mr. Quennell: — I know that it has been implemented in Manitoba. Manitoba expressed . . . Manitoba Attorney General expressed considerable enthusiasm for the cross-border policing provisions at the meeting of federal and provincial and territorial Justice ministers at the end of January this year, as did I. So it has been implemented in one of our sister provinces.

Mr. Morgan: — I think I saw a picture in the *Lawyers Weekly* where it referred to you as being the Manitoba Minister of Justice. I don't know if you saw that or not, but maybe you're wearing two hats.

In any event, when was it implemented in Manitoba and is that

the only other jurisdiction?

Mr. McGovern: — Madam Chair, to the member, going by my recollection the Uniform Law Conference of Canada put this forward as a proposal at the New Brunswick meeting which would have been two years ago. So it would have been last year that Manitoba had passed this legislation, by my recollection.

Mr. Morgan: — My question is, and it's probably premature, I'm wondering whether any of the other jurisdictions have any experience with how it's worked so far. But until there's been several that have implemented, I guess it's too soon to tell how that's . . .

Mr. McGovern: — It would be too soon.

Mr. Morgan: — And, Minister, I don't have any other questions other than you have stated that you believe that you've conducted extensive consultation. We've heard back from a number of individual police officers, police forces that are troubled by what they perceive as things being incomplete and not addressing an adequate complaints or internal disciplinary process.

We feel that we want to ensure that the public is adequately protected by an open and transparent system. And we want to also ensure that the officers' rights are not trammelled by excessive delays, lack of rights to representation, lack of involvement of their professional associations, and that appeals and the other processes are dealt with in a timely and an appropriate manner.

It's a difficult balance. I'm not sure that this Bill addresses all of those concerns. We recognize it as a starting point and look forward to further input from police officers. Unless somebody else has more questions, I have nothing further.

The Chair: — Any further questions? Seeing none then, short title, is that agreed? Clause 1?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

The Chair: — This Bill also has from 2 to 37, if we could agree to vote clauses 2 to 37 as a block. Is that agreed?

Some Hon. Members: — Agreed.

[Clauses 2 to 38 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows: The Police Amendment Act, 2005.

Could I have a member move the motion that the committee report this Bill No. 100, The Police Amendment Act, 2005 without amendment. Mr. Chisholm. Thank you.

Mr. Chisholm has moved that Bill No. 100, The Police Amendment Act, 2005 be reported without amendment. Is the committee ready for the question?

An Hon. Member: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — The motion is carried.

Bill No. 109 — The Criminal Enterprise Suppression Act

Clause 1

The Chair: — We'll revert back then to our Bill 109, civil remedies against organized crime. We have an amendment on the floor. Is there further consideration or discussion of the amendment? Mr. Hagel.

Mr. Hagel: — Madam Chair, just before voting on the amendment, could I ask for a very, very brief recess just to allow us to be able to discuss . . . This came to us without notice and the opportunity to consult in advance.

The Chair: — Is that agreed? Five minutes.

Mr. Hagel: — That's lots.

The Chair: — The committee stands recessed for five minutes.

[The committee recessed for a period of time.]

The Chair: — We're back in committee. The process for Bill 109, civil remedies against organized crime, is we will vote the clauses individually and then after that we'll entertain the new clause, which is the amendment.

The short title, clause 1, is that agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

The Chair: — Now there is clauses 2 to 22. Can we vote those with the leave of the committee as a block?

Some Hon. Members: — Agreed.

[Clauses 2 to 23 inclusive agreed to.]

The Chair: — Now we have the amendment. Is there a further discussion on the amendment?

Mr. Morgan: — Take it as read.

The Chair: — Take it as read? Any further discussion? The committee is ready for the question then?

Some Hon. Members: — Question.

The Chair: — The question then on the amendment to add a new clause to the Bill 109. All in favour of the amendment?

Some Hon. Members: — Agreed.

The Chair: — Opposed?

Some Hon. Members: — Opposed.

The Chair: — The Chair has to vote then, right? Then the Chair will vote with the government. So the amendment is defeated.

Then Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: The Criminal Enterprise Suppression Act. Can I have a motion from a member that the committee report Bill 109, The Criminal Enterprise Suppression Act without amendment. Mr. Hagel.

Mr. Hagel has moved that Bill 109, The Criminal Enterprise Suppression Act be reported without amendment. Is the committee ready for the question?

Some Hon. Members: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — The motion is carried. The last Bill before the committee is Bill 119, The Election Amendment Act, 2005. The minister has an opening statement.

Bill No. 119 — The Election Amendment Act, 2005

Clause 1

Hon. Mr. Quennell: — Briefly, Madam Chair, The Election Amendment Act, 2005 implements the recommendations of the all-party review committee on The Election Act. This committee, comprised of representatives from all three major political parties, as well as the Chief Electoral Officer, was mandated to identify issues with the operation of the existing Act and to recommend amendments.

The Bill implements the unanimous recommendations of the committee including changes to authorize the development of a permanent electronic voters list, simplified authorization on advertisements, standardized treatment of surplus fund, provide that election signs will be permitted in residential properties, require access for candidates to be permitted to condominiums, provide for facsimile submission of nomination papers in an emergency, treat polling as an election expense, increase the rebates to candidates, increase the rebate to registered parties, provide that the Chief Electoral Officer will appoint returning officers, provide that the returning officer is not to break a tie vote, authorize security assistance for enumerators, simplify absentee voting, and provide for the reservation of a name for a political party.

While the majority of the changes in the Bill are procedural in nature, changes are also made to accommodate recent electoral-related Supreme Court decisions regarding prisoner voting rights and reducing the number of candidates required to constitute a fully funded political party from 10 to 2. Thank you.

The Chair: — Questions? Mr. Morgan.

Mr. Morgan: — Madam Chair, we recognize that this Bill was produced by a committee process that produced a number of significant changes to this legislation. We note that they go a long ways to depoliticize the election process and allows for the creation of a permanent voters list. And we're pleased to support this.

The Chair: — Seeing no further questions, then, is clause 1 agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

The Chair: — Again this Bill has many clauses. Is it agreed with the leave of committee to vote clauses 2 to 54 as a block?

Some Hon. Members: — Agreed.

[Clauses 2 to 55 inclusive agreed to.]

The Chair: — Thank you very much. I'll now . . . Since it's well past the hour of 5, the committee is adjourned. Oh, right. Can I have a member move that the committee report Bill 119, The Election Amendment Act, 2005 without amendment. Mr. Borgerson.

Mr. Borgerson has moved that Bill 119, The Election Amendment Act, 2005 be reported without amendment. Is the committee ready for the question?

Some Hon. Members: — Question.

The Chair: — Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — The motion is carried. Now being well past the hour of 5, the committee is adjourned.

[The committee adjourned at 18:09.]