



# **STANDING COMMITTEE ON HUMAN SERVICES**

**Hansard Verbatim Report**

**No. 30 – April 27, 2006**



**Legislative Assembly of Saskatchewan**

**Twenty-fifth Legislature**

**STANDING COMMITTEE ON HUMAN SERVICES  
2006**

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Saskatoon Eastview

Mr. Wayne Elhard, Deputy Chair  
Cypress Hills

Mr. Lon Borgerson  
Saskatchewan Rivers

Ms. Joanne Crofford  
Regina Rosemont

Mr. Don Morgan  
Saskatoon Southeast

Mr. Peter Prebble  
Saskatoon Greystone

Mr. Milton Wakefield  
Lloydminster

[The committee met at 15:00.]

**Bill No. 32 — The Victims of Crime Amendment Act,  
2006/Loi de 2006 modifiant la Loi de 1995 sur les victimes  
d'actes criminels**

**Clause 1**

**The Chair:** — I would call the meeting to order. The first item of business today on the agenda for the Standing Committee on Human Services is consideration of Bill No. 32, The Victims of Crime Amendment Act, 2006. I'll invite the minister to introduce himself and his officials, and if there's any opening comments to the Bill, to make them at this time.

**Hon. Mr. Quennell:** — Thank you, Madam Chair. To my left is Andrea Seale, Crown counsel, legislative services branch. To my right is Pat Thiele, assistant director of victims services, and Murray Selinger, manager of compensation and restitution, victims services.

This Bill contains seven changes to The Victims of Crime Act, 1995. First includes a list of guiding principles approved in 2003 by ministers responsible for victims services, setting out how victims of crimes should be treated. This amendment will acknowledge the needs of victims and ensure they have a voice in the criminal justice process.

Second, the general application period for compensation claims will be changed from one to two years from the date of the victim's injury or death. The minister will be authorized to extend this period where it is reasonable to do so. This amendment will ensure that compensation will be available to all victims in appropriate circumstances.

Third, the application period for victims of sexual abuse will begin to run on the date the crime is reported to police. Presently the application period begins to run for a sexual abuse victim when he or she understands the nature of the injuries and recognizes the effects of this conduct. This provision is difficult to apply. The amendment will make the application period clear. As with other applications, the minister will have the ability to extend the application period where appropriate.

Fourth, the amendments will allow the provision of compensation to immediate family members of homicide victims for the costs of counselling after the victim's death. There's a need for crisis counselling in the short term, after which it is available free through the regional health authorities.

Fifth, the application form will be removed from the regulations. Having the minister approve the application form will make it easier to amend as necessary.

Sixth, the minister will be allowed to refuse or reduce the compensation in limited circumstances. This will be possible where the victim's injury or death occurred while he or she was participating in a criminal offence or where the applicant is not providing information requested by the minister within a reasonable time after the request is made. The purpose of the first provision is to allow for a refusal or reduction of compensation where the victim was involved in a crime such as

a drug deal, home invasion or assault. The purpose of the second is to encourage co-operation in the application process.

Seventh, an appeal process will be provided in the legislation. An applicant will be able to request that the minister reconsider his or her decision respecting compensation, and the minister will be required to do so. If the applicant is not satisfied following this recommendation, he or she may appeal to an appeal committee which will make the final decision.

**The Chair:** — Questions by members? Mr. Morgan.

**Mr. Morgan:** — Thank you, Minister. I'm wondering if you can tell us a little bit about the history of these amendments, whether these were done as a result of situations rising within Saskatchewan or whether this was a result of things that took place in other provinces where we're trying to bring our legislation into line with neighbouring provinces.

**Ms. Seale:** — I think the answer probably is a little bit of both. The principles relating to the treatment of victims of crime are principles that were agreed to by the ministers all across the country with respect to victims services, and other provinces either have these or will be adding them to their legislation.

With respect to the application period being changed to two years with the possibility of extension, that's more in line with other provinces. Ours was one year, or is one year now and is being changed to two years plus the extension. Most provinces do allow an extension, and some have a one-year period and some have a two-year period.

**Mr. Morgan:** — I also have had questions and MLAs [Member of the Legislative Assembly] will receive a lot of questions from victims of property crime, and this Bill doesn't address restitution, and I know that's part of your responsibilities. Does the province track restitution orders that are made and whether they're paid?

**Ms. Seale:** — I'll have to let Murray answer that question.

**Mr. Selinger:** — Thank you. We do have a restitution program in the victims services program. We do monitor restitution orders that are part of a probation order where restitution is the only condition. Probation orders with other conditions including restitution are monitored through the Corrections and Public Safety department. So we are monitoring restitution orders for collection. And if the offender doesn't pay, they'll be breached, and they'll have to go back to court for that.

**Mr. Morgan:** — What you're saying is the only ones that are monitored now through your agency are the ones where they're part of a probation order, not just ones where a judge has chosen to make it.

**Mr. Selinger:** — The orders under 738 or 739 of the Criminal Code which are stand-alone orders, those are normally paid directly to the victim. We would have no idea whether or not the victim's been paid or not because they don't go through the court system.

**Mr. Morgan:** — Of the restitution orders that you look at, do

you know in a dollar value the number of dollars in a year that are made in restitution orders?

**Mr. Selinger:** — No. I could certainly get that to you.

**Mr. Morgan:** — Is it a difficult thing to obtain or is it?

**Mr. Selinger:** — I don't think it's that difficult, no.

**Mr. Morgan:** — I guess what I'd like to know is the number of orders that are made in a year, the total dollar value of the orders that are made, and what success we have in ensuring that they're paid. And in the cases where they're not paid, how many of them are breached?

The appeal committee that's being set up where somebody that is unhappy with the minister's order, is that something that took place as a result of something in other provinces, or is that something unique to Saskatchewan?

**Ms. Seale:** — Most provinces have an appeal committee in their legislation, and usually the appeal ultimately goes to either a board that's set up under the legislation or to a court. So we were a little bit out of step in that. We have right now an informal process in the victim's manual for an internal review. But I guess we were trying to get into step with other provinces by having a more formal appeal in our legislation.

**Mr. Morgan:** — Because this has been passed, we don't know how many people are going to avail themselves of it. But I wouldn't mind knowing how many people expressed dissatisfaction or unhappiness at the decisions that were made. And I say that not looking for things to criticize, but with victims, there's always all of the sensitivities that are there. And I'm sort of in an overall sense wanting to know whether people are satisfied with the program.

**Mr. Selinger:** — I think for the most part we don't get very many appeals for compensation because it's pretty straightforward that we're basically reimbursing victims for actual expenses occurred. Where applications would get denied would be because if it wasn't a scheduled offence or the expense wasn't eligible. So there's not that many that actually come forward for appeal.

**Mr. Morgan:** — The ones that MLAs hear about are sometimes the ones where it's violent offences or offences against a person. But the ones that we hear about on a chronic and repeated basis are property crimes where it's been a break-in or a stolen vehicle or graffiti or vandalism. And there's a sense on a lot of members of the public that we're not dealing with that, either through victims of crime or through restitution orders. And I'm wondering whether you hear those complaints as well.

**Mr. Selinger:** — Some of the car thefts, we have referred them to the restitution brochure that we do have, that we provide them, that if their offender is caught that they do have the opportunity to ask the prosecutor to submit that in court for the restitution of their, I guess, their insurance deductible. But because our legislation . . . We have 18 police-affiliated programs around the province that assist victims, and they are telling them that, you know, property crimes under this

legislation is not eligible. So they wouldn't apply. So we don't really hear that much of it in our office.

**Mr. Morgan:** — More likely the MLAs would hear that rather than your office.

**Mr. Selinger:** — That would be possible.

**Mr. Morgan:** — The other issue that I have is where there's a stand-alone restitution order made, and it's effectively a judgment given to the victim, and the victim is on his or her own to try and enforce that judgment. So the province has no way of knowing whether those are paid. Is that . . .

**Mr. Selinger:** — That's correct, yes, if it's paid to the victim.

**Mr. Morgan:** — No method of tracking the dollar value of those judgements in any department or anywhere else or whether they're paid?

**Mr. Selinger:** — Right.

**Mr. Morgan:** — If a person is charged with another offence and they're convicted, their record would be given to the judge, if my understanding is correct. And that record would show that there was a restitution order made, but the judge would have no way of knowing whether that is satisfied unless the victim . . . [inaudible] . . . to know that . . .

**Mr. Selinger:** — Yes. Unless it was a probation order, they wouldn't know if it was paid or not.

**Mr. Morgan:** — Is there a consideration being given to amending the legislation so that judges know whether a probation order is made or whether we would monitor them on behalf of . . . It's huge amounts of money that are there, and I guess our concern is whether they're being paid because I think it brings the law into disrepute if they're created and . . .

**Mr. Selinger:** — They would have to make all the payments payable to the court, and then the court would have to pay the victim. And that probably would be the only way that you could monitor that.

**Mr. Morgan:** — Madam Chair, I don't have any further questions on this Bill.

**The Chair:** — Seeing no other questions then for this Bill, clause 1 short title is that agreed?

**Some Hon. Members:** — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 17 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: An Act to amend The Victims of Crime Act, 1995. Could I have a member move that we report this Bill without amendment?

**Mr. Prebble:** — I move that we report the Bill without

amendment.

**The Chair:** — Mr. Prebble, thank you. All in favour?

**Some Hon. Members:** — Agreed.

**The Chair:** — Agreed. Thank you to the minister.

**Bill No. 31 — The Miscellaneous Statutes (Accounting Professions) Amendment Act, 2006**

**Clause 1**

**The Chair:** — The next item up on the agenda is consideration of Bill No. 31, The Miscellaneous Statutes (Accounting Professions) Amendment Act, 2006. The minister has one new official. Can he introduce that person and then . . .

**Hon. Mr. Quennell:** — Andrea Seale remains with me, and Larry Boys joins me and is sitting to my right, manager, financial management branch, Department of Finance. And the Chair sometimes reminds the officials that the first time they speak that they give their name.

**The Chair:** — Thank you to the minister for that. And if you have any opening remarks to the Bill, we can do that too.

**Hon. Mr. Quennell:** — I have another opening statement beyond that, Madam Chair.

**The Chair:** — Okay.

**Hon. Mr. Quennell:** — Over the last several years, significant strides have been made to ensure that legislative references to duties to be performed by accountants include certified general accountants and certified management accountants in addition to chartered accountants. This omnibus Bill will complete the task by amending six Acts and four regulations that contain unnecessary restrictions.

The six Acts that are being amended are The Automobile Accident Insurance Act, The Builders' Lien Act, The Legal Profession Act, 1990, The Municipal Hail Insurance Act, The Mutual Medical and Hospital Benefit Associations Act, The Saskatchewan Grain Car Corporation Act. The four regulations that are being amended are the Helium and Associated Gas Regulations, 1964; the Oil Shale Regulations, 1964; the Petroleum and Natural Gas Regulations, 1969; the Subsurface Mineral Regulations, 1960.

The amendments reflect the fact that members of the three recognized accounting professions may perform the duties imposed by the legislation. During preparation of this amendment Act, the Certified General Accountants Association, the Society of Management Accountants of Saskatchewan, and the Institute of Chartered Accountants of Saskatchewan were consulted. These agencies are supportive of the omnibus legislation.

**The Chair:** — Questions by members, then. Mr. Morgan.

**Mr. Morgan:** — The three accounting professions that are affected by this I understand all have their own legislation

recognizing them as being self-governing bodies. And is this the first time that legislation has been passed that allows them to hold and maintain trust funds on behalf of third parties?

**Ms. Seale:** — First I'll introduce myself since I didn't last time. I'm Andrea Seale from legislative services at Justice. I don't know all the other pieces of legislation that deal with accountants. This Bill is simply meant to close a few gaps that were left over. And already the Act that you're referring to does refer to chartered accountants being able to do so, and it's just expanding that list of accountants to include the other two. So it's not a change in the sense that chartered accountants are new. Chartered accountants were already in the provision that's being changed, and we're just sort of closing the circle, I guess, as I say.

**Mr. Morgan:** — What we've done in this Bill is we've identified three different groups of accountants, and we are now giving them the statutory authority under a variety of pieces of legislation to hold third party funds. And so I guess I'm wanting to know whether there's a regulatory process in place within each of those self-governing organizations to do the same thing that happens to the Law Society where they audit trust accounts and have a complaints department or are able to deal with their monies for defalcation.

**Ms. Seale:** — Disciplinary processes and that sort of thing?

**Mr. Morgan:** — Well I presume they have disciplinary processes. What I am concerned with really is defalcation with regards to the funds.

**Mr. Boys:** — Larry Boys from Finance. I'm not aware of that particular provision in the various pieces of legislation. I think this particular function would be one that's not real common in terms of the accounting professions.

**Mr. Morgan:** — Yes, I'm not aware of accountants holding money on behalf of third parties. And while I have great, great faith in most accountants, I also have great faith in most lawyers. And I know every year the Law Society loses money.

And I would be reluctant to see this Bill brought into force without knowing that those agencies that are looking after the self-governing entities would have methodologies and methods in place to ensure that appropriate structures are in place to be able to monitor their members in the same fashion that the Law Society would. And I take it from what you're saying that that has not yet been done.

**Mr. Boys:** — I'm not aware of it in a specific legislation of the accounting organizations. I can certainly . . . I've got the Acts with me. I can have a review as we're proceeding with some other questions.

**Mr. Morgan:** — Yes, I don't want to hold up the legislation if it's already in place. But I am reluctant to see the Bill passed unless there is adequate protections, either within the legislation that imposes a responsibility on the self-governing authorities and if not, then I would think it would be appropriate that the Bill would be withdrawn until that would be in place because I would not want to . . . by statute of power, somebody to hold third party funds without knowing that there's a governing

method in place or even a method to recover it on behalf of the third parties.

While you're having a look at the legislation, I'm wondering as well how these changes came to place. Was this as a result of consultative process with the professions? Was it a request that was brought forward?

**Ms. Seale:** — It was a request by the certified general accountants. And then we consulted with the other two groups to see if there were any concerns, and also with the departments that are responsible for the various pieces of legislation.

**Mr. Morgan:** — Is there companion legislation in other provinces?

**Ms. Seale:** — I don't know about that. I know that in Saskatchewan, we have every time where we come across a problem with not including the CGAs [certified general accountant] and the CMAs [certified management accountant], we've been amending legislation on a piecemeal basis. And because this issue has been raised in the past, so over the last number of years a number of pieces of legislation have been amended. When the CGAs came to us, we undertook to see how many pieces of legislation remained with the restrictions — and these are the ones that were there — and decided to do an omnibus Bill just to finish it off.

**Mr. Morgan:** — Madam Speaker, I'm not prepared to vote on this Bill till we know what the situation is with regard to that other legislation. I don't know whether we want to take an adjournment or deal with another piece of legislation and come back to this one.

**The Chair:** — Do you anticipate that you would be able to get that answer for Mr. Morgan within this session before 5 o'clock?

**Mr. Boys:** — Yes.

**The Chair:** — Yes? Okay we'll just adjourn this one and move on to the next one and come back to this one.

**Bill No. 37 — The Miscellaneous Statutes (Directors' and Officers' Indemnification and Insurance) Amendment Act, 2006**

**Clause 1**

**The Chair:** — Again the minister, if you have any new people introduce them, and your opening statement on this Act.

**Hon. Mr. Quennell:** — Thank you, Madam Chair. I'm joined by Darcy McGovern and Maria Markatos, Crown counsel, legislative services branch, Saskatchewan Justice.

The Miscellaneous Statutes (Directors' and Officers' Indemnification and Insurance) Amendment Act, 2006 updates the indemnity and insurance provisions contained in The Business Corporations Act, The New Generation Co-operatives Act, The Credit Union Act, 1998, and The Crown Corporations Act, 1993. The proposed changes will not reduce the individual or corporate liability to third parties for such directors, officers,

or corporate bodies but will instead serve to strike a balance between the interests of the public and the recruitment of qualified individuals to act as officers and directors.

The amendments are intended to track recent changes made to the Canada Business Corporations Act and will include changes to authorize indemnification to any individual who serves at the request of the corporation as a director or officer of another entity in which the corporation has no shares or debt.

As well the amendments will add costs incurred in an investigation proceeding to the lists of proceedings for which indemnity may be provided and authorize the advancement of costs for indemnification prior to completion of final settlement or a final decision. This will broaden the scope of protection of officers and directors but will continue not to adversely affect the public or reduce liability in any way.

The amendments will also mandate indemnification where there's a finding of no fault by the court rather than only where the court actually directs indemnification, thereby saving those free from fault from the requirement of a court application for indemnification.

Further the amendments will remove restrictions on a corporation purchasing liability insurance for actions taken other than in good faith by officers and directors.

Finally, the amendments provide that an officer or director is not only free from liability but has also met his or her duty of care by relying in good faith on financial statements or reports of professionals.

**The Chair:** — Questions by members? Mr. Morgan.

**Mr. Morgan:** — As I indicated, when this Bill was in the House, the question that I have is the consultation that took place and also the roots of this Bill, whether it came from other provinces or whether it came about from situations within this province.

**Mr. McGovern:** — Madam Chair, to the member. First, my name is Darcy McGovern with Saskatchewan Justice.

The impetus for the legislation largely was the Canadian business corporations Act which obviously is federal legislation. And in response to that federal legislation, we had members of the bar in Saskatchewan that identified for us that they were noticing that when they compared the provincial framework legislation around these issues to the existing federal legislation, that in their view, in the provincial bodies, officers and directors faced higher risk than did their counterparts at the federal level. And so they felt that that was something that could create a chill with respect to recruitment for those officers and directors. So that was information we received from individual counsel.

What we did was to take that out as a matter of consultation with the Canadian Bar Association, with the legislation law reform committee that Professor Heavin heads up for the executive of the Canadian Bar Association. At her request, we also met with Canadian Bar Association, business south, the meeting here with Credit Union Central, registrar of credit

unions which is Jim Hall — he has the governance capacity with respect to the credit unions — Crown Investment Corporation.

We met as well with the director of the corporations branch which is of course Phil Flory who, in this context, is the director under the business corps Act, is the director under The Non-Profit Corporations Act, is the registrar under the co-operatives and the new gen co-operatives Act. So he has that central governance role with respect to the duty issues, as well as with the civil law in Saskatchewan Justice.

So it came forward on a few fronts in that regard, but I think the response to the federal legislation led to the Saskatchewan response.

**Mr. Morgan:** — Are other provinces enacting similar legislation?

**Mr. McGovern:** — In Western Canada, we've noticed that Alberta for example most recently — in 2005 — made amendments to their legislation, in particular to include the advances provision. As you'll know, the provision in Saskatchewan previously did not provide that where an officer or director was as a result of their work with the corporation involved in litigation, either derivative litigation or directly, the way the legislation operated, the indemnification provisions didn't operate until the completion of that action.

And as members will know, some of these actions can take quite a long time. And so you put a director and officer in a position where they are having to self fund for an extended period. And the change that this Bill makes, as with the federal Bill and now in Alberta, is to provide specifically for that advancing provisions.

In British Columbia they've made similar changes in their Bill — which looks to be 2004 at the bottom of their page — which deals with advancing of funds as one of the issues but also deals with a few of the other entity liability provisions as well . . . if that answers your question.

**Mr. Morgan:** — The Bill is permissive. It uses the word, the corporation may indemnify. So would a corporation likely amend its bylaws so that it would be included in the bylaws? Would they do it by way of a contract with the director or in their articles of incorporation? If you were a director, what would your expectation be before you would sit on one of these boards?

**Mr. McGovern:** — The Act isn't directive in that context. It doesn't say specifically how that relationship would be set up. And the options that you gave obviously are all alternatives in that circumstance. But it's one of the issues that we do have. We have a provision in the amendments to the business corporation Act that, as you say, speaks in permissive terms that you may indemnify.

You will have noted as well that there was a change made with respect to the provision that requires indemnification or entitlement, and that's the issue of where an officer or director was not judged to have committed any fault or omitted to have done anything. In that case the legislation is directive or creates

an absolute entitlement — put it that way — with respect to the application. In the other situations, as you mentioned, it is not directive, and it would be up to the corporation.

**Mr. Morgan:** — Is the department going to do any form of public education to let these boards and these corporate entities know that this is something that is now available to their directorships?

**Mr. McGovern:** — What we would propose to do is to work with the established communications through the business corporations branch and through Phil's office in terms of letting the corporate bodies know of the changes to the legislation as well, of course, to the Justice website.

**Mr. Morgan:** — And to the Law Society as well?

**Mr. McGovern:** — We certainly can do that.

**Mr. Morgan:** — I think it's worthwhile. The Law Society does seminars, and I think they have one coming up on non-profit corporations.

**Mr. McGovern:** — Certainly.

**Mr. Morgan:** — Is there case law in Saskatchewan where there's been a problem with directors' liability that would be addressed by this legislation?

**Mr. McGovern:** — We haven't been responding specifically to a case law issue as much as we have to the federal legislation and to the concerns raised by the bar.

**Mr. Morgan:** — You've made reference to the shortage of directors or the willingness to attract quality directors. Is that based on a study or research that's done, or is that anecdotal?

**Mr. McGovern:** — That's anecdotal from the members of the bar who brought that forward.

**Mr. Morgan:** — I've read differing statistics on that. There was a US [United States] study that was done in the late '90s that said there was an ever-increasing number of people willing to serve on non-profit boards. But I think I share your concern — if I was contemplating sitting on one, I would want reasonable protection. Certainly what's contemplated here is within that scope.

Madam Chair, I don't have any further questions.

**The Chair:** — Seeing no other questions then, is short title agreed?

**Some Hon. Members:** — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 6 inclusive agreed to.]

**The Chair:** — Thank you. Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: An Act to amend certain Statutes with respect to Indemnification of and Insurance for Directors, Officers and

certain Other Individuals.

Could I have a motion to move this forward without amendment, report this Bill without amendment?

**Mr. Prebble:** — I so move, Madam Chair.

**The Chair:** — Mr. Prebble, thank you very much. All agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — So that's done then.

**Bill No. 36 — The Miscellaneous Statutes (Directors' and Officers' Indemnification and Insurance) Amendment Act, 2006 (No. 2)/Loi corrective (indemnisation et assurance au profit des administrateurs et dirigeants) de 2006 (n° 2)**

**Clause 1**

**The Chair:** — The next item up for business on the agenda is the consideration of Bill No. 36, The Miscellaneous Statutes (Directors' and Officers' Indemnification and Insurance) Amendment Act, 2006 (No. 2). The minister.

**Hon. Mr. Quennell:** — Thank you, Madam Chair. The Miscellaneous Statutes (Directors' and Officers' Indemnification and Insurance) Amendment Act, 2006 (No. 2) updates the indemnity and insurance provisions contained in The Non-profit Corporations Act, 1995 and The Co-operatives Act, 1996 in the same manner as in the previous Bill. This is a separate Bill only because it amends bilingual legislation and must proceed as a separate bilingual Bill.

As with the previous Bill, the proposed changes will not reduce the individual or corporate liability to third parties for such directors, officers, or corporate bodies but will instead serve to strike a balance between interests of the public and the recruitment of qualified individuals to act as officers and directors.

**The Chair:** — Mr. Morgan.

**Mr. Morgan:** — Thank you. Thank you, Madam Chair. Most of my questions were answered on the previous Bill, and of course my concerns apply to this Bill as well.

The Canada Business Corporations Act was amended in 2001. You had indicated that this Bill was not introduced as a result of any specific case law that you were trying to address. So I'm wondering why it would have taken five years from 2001 until now to produce this Bill if there wasn't a case that you were . . . Clearly you didn't think the status quo was satisfactory. Why would the five-year process be there?

**Mr. McGovern:** — In terms of the department response it came most directly to our attention as a result of a CLE [continuing legal education] conference that was conducted regarding officers and directors in the 21st century. And John Hampton of PCS [Potash Corporation of Saskatchewan Inc.] who had made a presentation indicating that there were differences that were extant between the two pieces of legislation. And at that point that allowed us to start to take a

look at it.

The legislation as you know, the CBCA [Canada Business Corporations Act] Bill was passed at the end of 2001. We found at this point under that legislation that there hasn't been much in the way of litigation on these points. It's a new Bill; it's starting to come up. Certainly it's something that we think that we've tried to respond on when private counsel brought it forward, but as always I guess it's something that could have come forward at an earlier date.

**Mr. Morgan:** — The purpose of both of these two Bills is to reduce exposure to directors of a corporation, not necessarily take away public's right but to reduce exposure. I note that Alberta has amended their corporations Act to allow for the incorporation of unlimited liability corporations. I would . . . I don't know whether you're aware of that or . . . Where the individual shareholders are, under that corporate shell, liable for all of the debts of the corporation the same way they would be under a partnership.

Alberta introduced the legislation because it would offer greater opportunities for financing of corporate ventures because the individual shareholders are liable; and that it would give them better tax treatment because they could be treated in the same fashion as incomes trusts or partnerships. And I'm wondering whether that's something that's under consideration. Specifically where I'm going is this is exactly the opposite direction of this and it's another corporate vehicle.

**Mr. McGovern:** — The issue of unlimited liability partnerships for example and corporations has been discussed in the context of the Uniform Law Conference, and it is something that is, as you've mentioned, an issue that is being debated. The balance that we're seeking to strike with this change is intended to address the circumstance where a duty of care has been met by the corporate officer or director and that they have in that situation taken the reasonable steps of relying on the expert advice that was available to them. And in that circumstance then taking decisions and acting in that regard.

And the comfort that's meant to be provided with respect to this legislation is simply that, where you've acted appropriately and you've met your duty, the corporation should back your actions. Whether that's for another entity — which is one of the expansions that's being made at the legislation — or whether that's by advancing funds on an interim basis, as long as you continue to comply.

And so that's the focus in this legislation. With respect to whether additional expansions are required in different directions, that's certainly something I can take back to the department.

**Mr. Morgan:** — Yes, my question is . . . And I realize there may be political sensitivities, but I'm aware that that type of an investment vehicle is being now passed or has been passed in our neighbouring province to the west. And I guess what I'm wondering, whether your department has a recommendation made or whether there's legislation coming forward on it. If you're not in a position to answer it that's . . . I accept that but I . . .



**Mr. McGovern:** — I think what we would say at this point is that it's certainly something that we would continue to look into but we don't have legislation that's in the wings in that regard.

**Mr. Morgan:** — Madam Chair, I don't have any further questions on this Bill.

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

[Clause 1 agreed to.]

[Clauses 2 to 4 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: An Act to amend certain Statutes with respect to Indemnification of and Insurance for Directors, Officers and certain Other Individuals (No. 2). Can I have a motion to move that . . . to report that to the legislature without amendment?

**Mr. Prebble:** — I so move.

**The Chair:** — Mr. Prebble, again. Thank you. All in favour?

**Some Hon. Members:** — Agreed.

**The Chair:** — Agreed. The next item up for business then is consideration of Bill No. 41, The Partnership Amendment Act, 2006.

**Hon. Mr. Quennell:** — Madam Chair, you want to return to the miscellaneous statutes accountancy professions Act. I think we're . . . you're prepared to do that?

**The Chair:** — Certainly. Okay. We'll let you lead then with your answer for the question posed.

#### **Bill No. 31 — The Miscellaneous Statutes (Accounting Professions) Amendment Act, 2006**

##### **Clause 1**

**Ms. Seale:** — We looked at the three pieces of legislation governing the chartered accountants, certified general accountants, and the certified management accountants. The chartered accountants and the certified general accountants both have provisions which I will read to you in a minute. The certified management accountant does not.

The sections for the chartered accountant legislation are clause 13(1)(y). And for the certified general accountants, clause 14(1)(o). And the wording in each case is exactly the same. It allows making regulatory bylaws, quote:

creating and administering a special fund by special levy on members for the purpose of reimbursement in whole or in part of persons sustaining pecuniary loss by reason of the misappropriation or conversion by any member of money or other property entrusted to or received by the member in his or her professional capacity;

With respect to the certified management accountants not being

included, we'd point out that the provision in The Builders' Lien Act that we're talking about also refers to some other individuals that also would not have this sort of provision, and that would be the architects and the contractors and any person with experience in the construction industry. So the lawyers and engineers would be kind of in a special category in that regard I guess.

It does say that the trust will be held jointly by the owner and one of these other people, so hopefully the owner will pick somebody that he or she thinks is trustworthy. But as I say, the CMA Act does not have the provision.

**Mr. Morgan:** — The Builders' Lien Act requires the owner to be one of the parties to the trust. So I don't have a great concern with The Builders' Lien Act, and it requires under that piece of legislation for both of them to be signatories to it.

But I do have a problem because we've listed a number of other pieces of legislation that they could or might hold funds on behalf of. And what I'd like to do is . . . I'm not prepared to recommend to my colleagues to support a Bill where we've got an entity that doesn't have a provision in it. And I'm wondering whether the minister would be prepared to make an amendment to the CMA legislation that would include such a provision so that we can offer the same safeguard to the public.

**Ms. Seale:** — Just for clarification, are you referring to other provisions in this Bill that refer to trust funds?

**Mr. Morgan:** — Well it listed a number of other Bills that we would be holding funds on behalf of the third parties. The other ones that are there are, you know, you may be holding funds relating to municipal hail insurance, from mutual medical . . . It's the ones that are on . . .

**Ms. Seale:** — Our interpretation of the other provisions is that they do not refer to holding trust funds, just The Builders' Lien Act.

**Mr. Morgan:** — There's arbitrator issues, and I'm not sure where else without going through the provisions of it, but they may well hold funds for another cause other than just a builders' lien holdback.

**Hon. Mr. Quennell:** — We don't believe that's the case for this legislation.

**Mr. Morgan:** — The minister I think may be right on this. But my concern is if we're allowing a designated accounting entity to do it that is not governed in the same fashion as the two that are there, I have concerns of whether we're allowing members of the public to be unnecessarily put at risk.

**Hon. Mr. Quennell:** — Madam Chair, the provisions other than the builders' lien provisions which have of course trust funds where the owner is one of the people required to hold the funds in trust — and Mr. Morgan says he doesn't have any difficulty with that for that reason — the other provisions relate to providing audits and financial statements and not holding trust funds.

These are powers that we have given certified management

accountants in a number of other pieces of legislation. And there are six outstanding Acts and four outstanding regulations to which we would extend this. It's not the first legislation where we've provided for some consistency amongst three groups. And it's providing consistency in respect to providing financial statements and audits. So I appreciate the member's concern; I don't think it's well placed in respect to this legislation.

**Mr. Morgan:** — We have a situation where we have two designated accounting professions who have provisions in their Act to prevent against . . . or to provide protection for the public against defalcation. We have a third one which by statute the minister proposes to include as somebody that shall hold funds. And if funds are missing or there is an intermingled trust account that that person operates, how do we ensure that the public is protected?

**Hon. Mr. Quennell:** — Madam Chair, what I think the minister just said, to speak about myself in the third person, was that we're not authorizing them to hold funds in this legislation. Again I appreciate the member's concern if we were, given the reading of The Certified Management Accountants Act that we just heard. But we're not. Except for in respect to builders' lien — which we acknowledge, I think, all of us — it's not a difficulty because of the way those trust accounts are handled. Mr. Boys may be able to clarify somewhat.

What I would take from this conversation is that we should look at the certified management accountants' governing legislation with the idea that if we want consistency in respect to what they can do, perhaps they should be governed the same way and have the same regulatory power in respect to their members' behaviour as does the chartered accountants and the certified general accountants. And I think that's a good suggestion. However there is no reason to hold up this legislation for that reason. Mr. Boys, do you have anything add?

**Mr. Morgan:** — The way I read this Bill is that these people will become trustees. And if they're not holding funds, I don't know why we would use the word trustees for them holding funds. To me they're . . . that's exactly what they're doing, is holding funds with regards to a lien holdback. And if they administer those funds or have them under their control if they sign on a . . . How can they be a trustee if they don't? I'm troubled by this, and I'm reluctant to support the Bill in that form and would like to invite the minister to consider an amendment.

**Hon. Mr. Quennell:** — And again that's in respect to the builders' lien which I thought the member had no concern about.

**Mr. Morgan:** — Well I don't know whether there's other monies that they may hold, but I think anybody that holds any money on behalf of a third party where it's authorized by statute that . . . If it's part of a professional designation, then we should be ensuring that they've got a provision to protect against defalcation.

**Mr. Boys:** — Madam Chair, perhaps I can provide some additional information and clarification. As the minister has indicated, there certainly is one of the Acts that does refer to the

holding of trust funds. But when you look at the specific provisions of the other Acts and the regulations, it primarily tries to get at the issue of providing assurance on financial information or financial statements.

And so if you look at, for example The Automobile Accident Insurance Act amendment, it is removing the restriction to limit the audits to chartered accountants and broadening that to include any one of the accountants under the three pieces of legislation. So it's either the CA [chartered accountant], CMA, or CGA. And when you look at . . . There's a similar provision that relates to The Municipal Hail Insurance Act.

I believe there's another one for The Saskatchewan Grain Car Corporation Act where the specific provisions are designed again to not relate to trust accounts or holding funds, but it's basically verification and confirmation of the financial statements or financial information. And I believe that was the intent of this legislation, was to basically provide some equity or fairness to the three groups.

And so I'm happy to try to provide clarification on any specific item here other than, you know, we have discussed the builders' lien issue, and we acknowledge that that's an issue.

**Mr. Morgan:** — Madam Chair, I don't have any further questions at this time.

**The Chair:** — So then seeing no further questions, short title clause 1. Is that agreed?

**Some Hon. Members:** — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 12 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: An Act to amend certain Statutes and regulations with respect to Accounting Professions, Bill No. 31.

Can I have a motion to move this forward and report it to the House without amendment?

**Mr. Borgerson:** — I will so move.

**The Chair:** — All in favour?

**Some Hon. Members:** — Agreed.

### Bill No. 41 — The Partnership Amendment Act, 2006

#### Clause 1

**The Chair:** — Thank you. Then back to consideration of Bill No. 41, The Partnership Amendment Act, 2006. The minister has new officials and probably an opening statement.

**Hon. Mr. Quennell:** — Thank you, Madam Chair. To my left is Tim Epp, Crown counsel, legislative services branch; to my right, Phil Flory, registrar of corporations.

The scope of The Partnership Act is not currently broad enough to accommodate all those who recently wish to become partners or limited partners within the meaning of the Act. The Act provides a partnership is the relationship between persons carrying on business in common with a view for profit. However the term person is not currently defined in the Act.

The result has been that entities such as Indian bands or other limited partnerships cannot become general partners or limited partners within the meaning of the Act. This has unduly restricted the business model options for Indian bands and limited partnerships and those who would like to enter into partnerships with such entities.

The proposed amendments make it clear that individuals, corporations, limited partnerships, and Indian bands can be general partners under part I of the Act. In addition individuals, corporations, other limited partnerships, and Indian bands will now be eligible to be partners in a limited partnership as well. This Bill includes a further amendment that will require that individuals must have obtained the age of majority in order to be eligible for partnership.

These amendments provide a timely and meaningful response to concerns raised by the Saskatchewan business community and will assist Saskatchewan businesses by providing additional business model options. This is particularly important in the context of the growing contribution to the provincial economy of businesses conducted by First Nations in this province.

**The Chair:** — Mr. Morgan.

**Mr. Morgan:** — Madam Chair, the opposition wants to go on record at this time as being highly supportive of our First Nations partners in this province participating fully and in a meaningful way in the economy. And this is a small step to recognize that they may wish to trade under a business name or a firm name or under the name of the band. And there's no reason why they can't do this — shouldn't have done this — and possibly it's something that the province should well have done decades ago. Having said that, I'm glad to see that it's here now, and we're very pleased to be supporting that.

The questions that I have are the prohibition that's now being included against individuals that are under 18 years of age, I'm wondering was there an issue with underage individuals wanting to become partners in a business or has this happened?

**Mr. Flory:** — There were a number of specific problems where Indian bands attempted to register and were not able to simply because of the deficiencies in the legislation. So there's certainly a lot of increased activity on First Nations.

**Mr. Morgan:** — . . . and if not, I'm wondering whether the 2.1 that deals with the prohibition against people under age 18 . . .

**Mr. Flory:** — Yes. In the question of minors as well, I believe we've had several instances where farming operations have been . . . the principals of the farming operation have been minors. Where instead of a husband and wife registering the partnership, they have registered . . . two or three of the children have been forming the partnership. And we've had three or four instances of that situation arising.

**Mr. Morgan:** — Will the department amend the forms to include a declaration that they're over 18? I'm wondering how the department will know if somebody's under 18.

**Mr. Flory:** — I'm sorry. What was the question?

**Mr. Morgan:** — I'm wondering how the department will know if somebody's 18. Will the forms for registering a partnership be amended to include . . .

**Mr. Flory:** — In fact one of them, one of them was just signed by an X. And the other, for the signature of the person, it was obviously a child's signature on the forms.

**Mr. Morgan:** — I hope nobody looks at my signature. The question I have is are you going to include a declaration or some information so that the people that are signing know that they have to be 18? Or you just leave . . . Will it be left in the Act?

**Mr. Flory:** — We weren't planning on any particular declaration, no. Just make it a statement of law.

**Mr. Morgan:** — Would people not be reasonably well protected by The Age of Majority Act, that any contractual dealings that they would have had under 18 would be void? I'm just sort of wondering whether there's case law or whether there's a problem, whether it's just sort of trying to address potential mischief.

**Hon. Mr. Quennell:** — Well I think the concern is that you've made a contract with somebody who you think it is enforceable against, and it's not because they were in fact a minor. And there was no prohibition against them being a partner in the business.

It's not so much for the protection of minors. I think it's for protection of people doing businesses with partnerships where minors are partners and there hasn't been a prohibition in law.

**Mr. Morgan:** — Madam Chair, I have no further questions with this Bill.

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

**Some Hon. Members:** — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 5 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent to the Legislative Assembly of Saskatchewan, enacts as follows: An Act to amend The Partnership Act. Could I have a motion to report this Bill to the House without amendment?

**Mr. Prebble:** — I so move, Madam Chair.

**The Chair:** — Mr. Prebble. Thank you. All agreed?

**Some Hon. Members:** — Agreed.

**Bill No. 35 — The Interpretation Amendment Act, 2006/Loi de 2006 modifiant la Loi d'interprétation de 1995**

**Clause 1**

**The Chair:** — The next item up for business before the committee is consideration of Bill No. 35, The Interpretation Amendment Act, 2006. I think the minister has the same officials he's had once before but probably has an opening statement.

**Hon. Mr. Quennell:** — Thank you, Madam Chair. The Interpretation Amendment Act, 2006 updates the indemnity and insurance provisions contained in The Interpretation Act, 1995 for statutory corporations that are created by legislation other than The Crown Corporations Act, 1993 or other general incorporation statutes, such as The Business Corporations Act.

It makes the same changes for these statutory bodies as the previous Bills made. Again I would note that the proposed changes will not reduce the individual or corporate liability to third parties for such directors, officers, or corporate bodies but will instead strike to serve a balance between the interests of the public and the recruitment of qualified individuals to act as officers and directors.

In addition to the changes regarding officers and directors, a further general interpretation amendment will add the ability to use regulations that define terms that are used in an Act but not otherwise defined if that Act has general regulations-making authority.

Also there are amendments of a technical or a housekeeping nature to update definitions and correct a previous error made by a consequential amendment to the French version of this Act.

**The Chair:** — Mr. Morgan.

**Mr. Morgan:** — One of the significant aspects of this Bill is the protection that it offers to officers and directors where they rely on a legal opinion or the opinion of an auditor. Has there been contemplated changes to any of the legislation dealing with the legal profession or the auditors to provide a higher standard to ensure that the information that is being relied on is prepared in an adequate or proper sense?

I'm thinking specifically of the situations in Enron where there was some board members were acting on statements that had been provided in good faith. So there was flaws with some of the financial information, and we got into the publicly traded corporations with the Sarbanes-Oxley laws

**Mr. McGovern:** — I think, Madam Chair, to the member, this legislation doesn't specifically speak to that. And I know the member is aware of that. I think this is part of the balance that we had discussed.

One of the senior legal counsel in Justice, Tony Koschinsky, refers to it as a governance revolution whereby you have on the one hand increasing steps that are taken at different levels to ensure that where an officer, director, or member of a corporation acts consciously to create an offence or acts

consciously to create a . . . or in a negligent fashion, that the corporate veil be pierced in that circumstance and that they would be held personally responsible for actions improperly taken.

And the member will be aware of federal Bill C — I'm just thinking if it was — 54 or 45 in which the Criminal Code was recently amended to broaden the definition of organization so that more directly the criminal culpability with respect to actions knowingly taken within a corporate structure would come back to that individual.

And so we're on the other end of that equation with our piece, though I think they're moving both forward at the same time to say that — where they have acted properly upon the information provided, it met their duties of care — that in those cases the corporation would continue to work with them.

**Mr. Morgan:** — When this series of Bills is passed, how consistent will our legislation be with Ontario, Manitoba, Alberta, and BC [British Columbia]?

**Mr. McGovern:** — In terms of Manitoba, Manitoba hasn't, it is our understanding — and Maria can correct me if I'm forgetting the detail — Manitoba hasn't moved forward to the same extent that British Columbia for example has. British Columbia would be the example of a province that's going to be closest to us.

Where we will be very much at the national standard is with the Canadian business corporations Act, that we parallel those provisions in the CBCA to a large degree after this. And this is where the legal counsel in the province had pointed us saying that we think this is the standard that's been struck at the national level that the province should move towards. And after our consultations internally, that's where we've gone.

**Mr. Morgan:** — Did you say, has Alberta gone to this standard as well?

**Mr. McGovern:** — Alberta — I mentioned before — has with respect to advances but hasn't with respect to all aspects of the Bill. And so the extent to which they will be moving in the future of course would be speculation.

**Mr. Morgan:** — Is the expectation that there was a uniform model put forward, or is it just a matter of copying the federal legislation?

**Mr. McGovern:** — This isn't a Bill where we have a uniform Act that's being recommended to the provincial AG [Attorney General]. This is a situation rather the latter where as you've suggested the Canadian business corporation Act has been passed, and we are reacting to that.

**Mr. Morgan:** — Your rationale I presume for that is to prevent a desire on the part of people to incorporate provincially and not to have a distinction so that that's not a factor to incorporate provincially or federally. Is that your logic?

**Mr. McGovern:** — That's I think part of that for sure. There's that aspect. There's also the aspect that we mentioned before in terms of individuals who are familiar with both systems. They look at the one system and realize of course that their protection

as officers and directors may be higher under that process. And that's the recruitment point that you had mentioned previously.

**Mr. Morgan:** — Do we have a case on this province at this time or a case that's pending that you're aware of dealing with directors' liability that would be affected by this legislation?

**Mr. McGovern:** — No, not to my knowledge. And the way the provisions are structured, the duty of care in each case didn't change specifically. What changed rather was how officers and directors are held liable with respect to the corporation in that regard . . . or sorry, how they are indemnified by the corporation in that regard. But with respect to third parties who are bringing actions, there would be no change.

If we had actually made changes to the duty of care to that language, that would have been an issue that we would have had to address more directly.

**Mr. Morgan:** — Well there is some differences because it allows the corporation to indemnify, but if the corporation can't or won't or doesn't have sufficient resources, the liability would still exist against the individual. And if there was an unsatisfied judgment against the corporation . . .

**Mr. McGovern:** — That's correct, as would be the case now.

**Mr. Morgan:** — So we're not reducing in that regard. Then the other change is that they will actually reduce their liability to third parties if they've relied on one of the documents that you refer to as trusted advisors or professional advisor.

**Mr. McGovern:** — And the important distinction in terms of the legislation . . . And you'll see that in this draft as well as the other two Bills, the circle that's being completed is that those provisions already provide that there will be no liability for an officer or director who has met their duty of care. And in legal terms of course you understand that the distinction that's made between liability and having met your duty of care. The language in the provincial legislation previously had indicated you're not liable, but it hadn't taken the extra step that the federal legislation had said, and you have met your duty of care.

And in this Bill, for example, the distinction where that's most clear is in section 3 where it provides quite simply, "has complied with his or her duty set out in . . . section (6) and' . . ." And the reason why we can do that in this Bill is because that's the provision that says, where they've met this criteria, they are not liable. Now they will be not only liable; they will also have met their duty of care in that regard.

**Mr. Morgan:** — Madam Chair, I think we're ready to vote this Bill.

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

**Some Hon. Members:** — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 7 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: An Act to amend The Interpretation Act, 1995. Could I have a member move we report this Bill to the House without amendment?

**Mr. Borgerson:** — I so move.

**The Chair:** — Mr. Borgerson. All agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Thank you. Committee will now go into camera . . . [inaudible interjection] . . . Oh sorry.

**Mr. Morgan:** — Madam Chair, before we break, I would like to thank all of the officials that came out with the minister today. We appreciate their work and their professional competence in asking the questions. So thank you.

**Hon. Mr. Quennell:** — On my own behalf and on behalf of the officials, you're welcome.

**The Chair:** — Thank you. We're now going in to camera to discuss the committee's draft fifth report.

[The committee continued in camera.]

[The committee adjourned at 17:33.]