STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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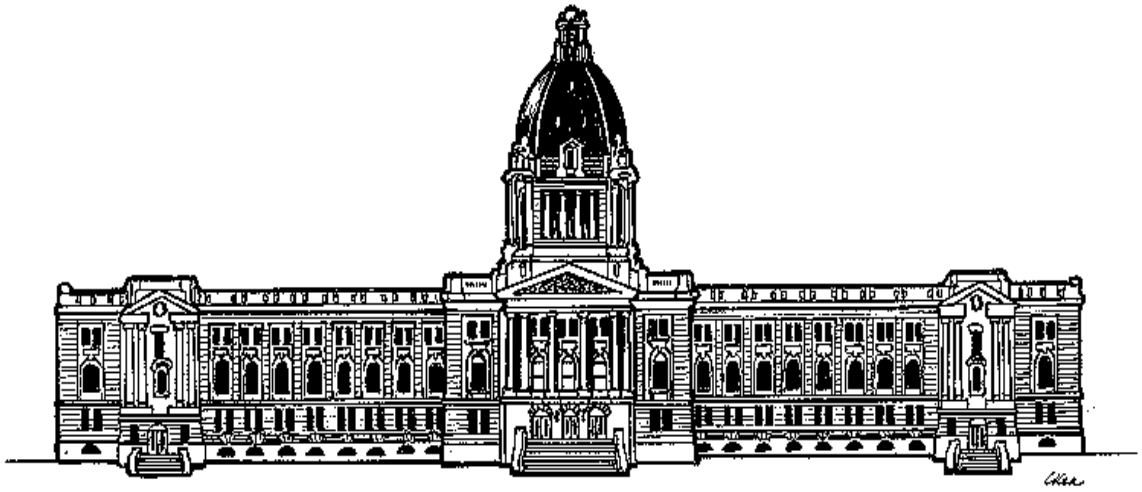

Legislative Assembly of Saskatchewan

Twenty-sixth Legislature

STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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Moose Jaw North

Mr. Kim Trew, Deputy Chair
Regina Coronation Park

Mr. Greg Brkich
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Mr. Wayne Elhard
Cypress Hills

Ms. Deb Higgins
Moose Jaw Wakamow

Mr. Delbert Kirsch
Batoche

Published under the authority of The Honourable Don Toth, Speaker

[The committee met at 15:00.]

The Chair: — Good afternoon. This is the Intergovernmental Affairs and Justice Committee that's meeting this afternoon. I'm the Chair, Warren Michelson, and with me is the committee: Wayne Elhard, Delbert Kirsch, Greg Brkich, Michael Chisholm, Kim Trew, Deb Higgins, and we also have Mr. Frank Quennell in the Chamber here.

Bill No. 127 — *The Assessment Management Agency Amendment Act, 2009*

Clause 1

The Chair: — We have before us five Bills that we'll be considering this afternoon. We'll be starting out with consideration of Bill No. 127, *The Assessment Management Agency Amendment Act* of 2009. I welcome Minister Harrison and his delegation. Mr. Harrison, if you'd like to introduce them and have some opening comments, you can do them now.

Hon. Mr. Harrison: — Sure. Thank you very much, Mr. Chair. Great to be here today. Officials with me here today: on my left, Van Isman; on my right, Mr. Norman Magnin, director of municipal finance. Van is the deputy minister, of course, and on the far right, Christine Lindsay, our senior policy analyst.

I know I made pretty extensive comments on Bill No. 127 during second reading and I'm not going to go into much detail. I know there's five Bills before the committee here today and I know members, I'm sure, have questions. And we're looking forward to getting to that right away.

The Chair: — Thank you, Mr. Harrison. Are there any questions? Yes, Ms. Higgins.

Ms. Higgins: — Thank you very much. I know you had made the comment, Mr. Minister, that you had made extensive comments on the Bill in second reading. Could you give us just a *Reader's Digest* version of what the comments were?

Mr. Harrison: — Sure. We can go through . It was basically just laying out the changes that we were going to be making in this Bill to *The Assessment Management Agency Act*. I'll go through. There's a number of changes. We're going to be reducing the size of the . . . proposing to reduce the size of the SAMA [Saskatchewan Assessment Management Agency] board from 11 members to seven members, with the members nominated by the Saskatchewan School Boards Association no longer a part of the committee, or a part of the board, to reflect the changes made in how education property tax is collected. Additionally, these changes will save SAMA about $100,000 annually.

There's going to be an approval step required at the governmental level for significant policy change that SAMA would be potentially undertaking. And I know members have raised some issues with regard to that. And we can answer those questions once we get into that.

We've changed the funding provision level. The notional allocation from government and municipal share was 65/35 where it has been traditionally, where it has been in the last couple of years has been a 60/40 . . . [inaudible interjection] . . . sorry 70/30, and that's where we're going to be. That was the notional allocation. It's been 65/35 and we're going to be legislatively recognizing that as well.

And we're going to be making some technical amendments with respect to entry on to property which are very much in line with the authorities that are granted to employees of Crown corporations, for instance.

Ms. Higgins: — So a question then just for clarification: you're going to 65/35 or 70/30?

Hon. Mr. Harrison: — Yes, and on that question it's going to be recognizing the 65/35 figure which has been what the actual allocation has been over the past number of years.

Ms. Higgins: — Okay, thank you. Has there been any more municipalities that have come into using SAMA for assessments?

Mr. Magnin: — The only municipality that has come back to SAMA is the town of Kindersley. That was about two years ago. Opting in and out hasn't been something that's been commonly happening in the province. It was taken up really in about 2000, 2001. That's when the bulk of municipalities opted out of SAMA, but as of recently there's been one town that opted out of SAMA; that was Shellbrook. And then of course Kindersley went back. So it's not commonplace in the assessment community.

Ms. Higgins: — I know Moose Jaw actually has made the change in the last couple of years also to utilize SAMA under contract, is it not? And I'm not sure what the difference is.

Mr. Magnin: — Yes. Four major cities in the province, in conjunction with legislation, have never been under SAMA's jurisdiction for assessment services. So the city of Moose Jaw, Regina, Prince Albert, and Saskatoon have always had their own independent assessment service departments. And they're still recognized in legislation of having that authority.

So when one of those four major cities decides that they want or can no longer support an assessment department in their own municipal confines and want to use SAMA, SAMA has to enter into a contract with them because of the legislation that's set up. So there's specific provisions in legislation that allows the city of Moose Jaw to do that, so that's why it's set up in that kind of a format.

Ms. Higgins: — Okay. What will the new makeup of the board be?

Mr. Harrison: — Well there's going to be two members nominated by SUMA [Saskatchewan Urban Municipalities Association], two members nominated by SARM [Saskatchewan Association of Rural Municipalities], two persons representing the province, and the board Chair who will also be appointed by the province.

Ms. Higgins: — So sorry. Two from SARM, one appointed

board Chair by . . . That's a provincial appointment.

Hon. Mr. Harrison: — Yes. There's going to be two representatives from SUMA, two representatives from SARM, two nominated by the province, and the board Chair who will also be nominated by the province.

Ms. Higgins: — When the . . . I mean we're still looking at school divisions and we still have the provincial mill rate of 10.08, I believe it is . . . [inaudible interjection] . . . Pardon me?

Hon. Mr. Harrison: — Sorry. Depending on the property class — 10.08 depending on the type of . . .

Ms. Higgins: — Oh, right. Depending on the property class, but . . . So it's provincially set, the mill rate is. It still has a big effect on school divisions across the province and it's still a fair chunk of funding for school divisions that relies on property tax. So why are you removing all of the SSBA [Saskatchewan School Boards Association] representation from the board?

Hon. Mr. Harrison: — Well we had consulted with the Saskatchewan School Boards Association along with the other stakeholder groups involved in the process. And it was felt that it would be appropriate to change the composition of the board in that the school boards would no longer be actually setting mill rates. As you'd indicated in the preamble to your question, those rates are now set by the province and it was felt that it would be appropriate that the SSBA would no longer have representatives on the SAMA board for that reason.

Ms. Higgins: — So, Mr. Minister, do you feel this may be a bit of a premature decision because we are still two years away from a permanent education funding formula? There's always a possibility that something may change over the next two years. We've seen a number of things that have changed this year with a shift in the financial situation of the province. So I'm wondering if this decision may be a little premature.

Hon. Mr. Harrison: — No, I don't think it is. I think this is an appropriate decision that is a reflection of how we've moved forward in terms of funding education with a provincially set mill rate. And I think that was the feeling that came out of the consultations we did as well, is that would be an appropriate change.

Ms. Higgins: — Was there consultations done with the school board association when the provincial mill rates were set?

Hon. Mr. Harrison: — That question would probably be better asked of the Minister of Education who is responsible for that not, not my ministry.

Ms. Higgins: — Of all the changes that are being proposed, that's the main one that I have heard concerns expressed over is that the SSBA will no longer have any representation, and that many feel in fact that it's important to them how SAMA operates. The assessments are important to them and the operation of the school divisions. So it is still a concern of school boards out there.

I don't know if any of my colleagues have questions. So there are no further questions, Mr. Chair.

The Chair: — Are there any further questions or comments from the committee? Seeing none, clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 23 inclusive agreed to.]

Clause 24

The Chair: — I recognize Mr. Elhard.

Mr. Elhard: — Thank you, Mr. Chair. I would move an amendment to clause 24 for Bill No. 127.

The Chair: — Would you care to read that into the record, please, Mr. Elhard.

Mr. Elhard: — I would be happy to read it into the record if I could.

Amend clause 24 of the printed Bill:

(a) by striking out subsection 165(3.1) of *The Cities Act*, as being enacted by Clause 24 of the printed Bill and substituting the following as section 3.2:

"(3.2) Subject to any modification made pursuant to subsection 22(12.1) of *The Assessment Management Agency Act*, each assessment must reflect any decision of the appeal board that has been issued with respect to the property that is the subject of the assessment, unless the decision has been appealed pursuant to section 33.1 of *The Municipal Board Act*"; and

(2) in subclause 200(4)(b)(i) of *The Cities Act*, as being enacted by Clause 24 of the printed Bill, by adding "pursuant to section 165(3.2)" after the words "appeal board".

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

Some Hon. Members: — Agreed.

The Chair: — Carried. Clause 25.

Ms. Higgins: — Sorry. Is there an opportunity to ask questions on the amendment?

An Hon. Member: — There should be. Absolutely.

An Hon. Member: — There was. It's been carried.

An Hon. Member: — We'll go back. We'll go back.

Ms. Higgins: — Could someone please explain the changes and why the amendment is being put forward?

Mr. Magnin: — When Bill 127 was put onto . . . made public, the cities of Saskatoon and Regina reviewed the provisions that were there, and they had concerns that the provisions maybe weren't clear enough and might impede the current appeal process. We as a ministry didn't think that it would be impeded, but they wanted to make sure that the appeal process runs smooth and that there would be no issues when decisions, particularly Saskatchewan Municipal Board appeals, went to the Court of Appeal. They didn't feel that it was . . . made any sense for a Saskatchewan Municipal Board decision to be applied if something was still being appealed to a higher level court.

We decided to assist the cities and make sure that the appeal process did run smoothly and that it was clear, so we went ahead and made these provisions. So now when an appeal goes to the Court of Appeal, instead of it automatically being put into place for the next taxation year, it will recognize that that appeal is now at the Court of Appeal level, and that decision won't be put into place until the Court of Appeal has ruled and made a decision concerning that appeal.

[15:15]

There aren't a number of properties that go to the Court of Appeal because it's only a matter of law. It's usually not a matter of valuation. So the instances that it will occur aren't frequent and the assessment service providers that are typically involved are very well aware of which properties are affected and impacted, so they keep on top of it pretty good. They just were worried that an appellant, one of the professional tax agents could possibly use it as a loophole and try to get some benefit on their behalf for their ratepayers before an actual ruling was put into place.

So this just clarifies it, makes sure everything runs smooth, and there's no, you know, questions or arguments when things start going to the Court of Appeal. But otherwise the appeal process as it is remains the same. There isn't any changes onto how people go about doing things. It's just adding clarification.

Ms. Higgins: — Thank you very much for the explanation.

The Chair: — Anything else?

Ms. Higgins: — No, that's it.

The Chair: — Clause 24 as amended, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 24 as amended agreed to.]

Clause 25

The Chair: — I recognize Mr. Elhard.

Mr. Elhard: — Mr. Chair, I move an amendment to clause 25 for Bill No. 127. The amendment reads as follows:

Amend Clause 25 of the printed Bill:

(a) by striking out subsection 195(4.1) of *The Municipalities Act*, as being enacted by Clause 25 of the printed Bill, and substituting the following:

"(4.1) Subject to any modification made pursuant to subsection 22(12.1) of *The Assessment Management Agency Act*, each assessment must reflect any decision of the appeal board that has been issued with respect to the property that is the subject of the assessment, unless the decision has been appealed pursuant to section 33.1 of *The Municipal Board Act*"; and

(b) in subclause 230(4)(b)(i) of *The Municipalities Act*, as being enacted by Clause 25 of the printed Bill, by adding "pursuant to subsection 195(4.1)" after "appeal board".

The Chair: — Will the committee take the amendment as read?

Some Hon. Members: — Agreed.

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

An Hon. Member: — Do you have a question?

Ms. Higgins: — Well I guess I would just ask as clarification, I would assume it's pretty well identical . . .

Hon. Mr. Harrison: — Yes, it's identical for all three.

Ms. Higgins: — Thank you.

The Chair: — Is it the pleasure for the committee to adopt the amendment?

Some Hon. Members: — Agreed.

The Chair: — Clause 25 as amended. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 25 as amended agreed to.]

Clause 26

The Chair: — I recognize Mr. Elhard.

Mr. Elhard: — I would move an amendment to clause no. 26 for Bill No. 127. The amendment reads as follows:

Amend Clause 26 of the printed Bill:

(a) by striking out subsection 193(4.1) of *The Northern Municipalities Act*, as being enacted by Clause 26 of the printed Bill, and substituting the following:

"(4.1) Subject to any modification made pursuant

to subsection 22(12.1) of *The Assessment Management Agency Act*, each assessment must reflect any decision of the appeal board that has been issued with respect to the property that is the subject of the assessment, unless the decision has been appealed pursuant to section 33.1 of *The Municipal Board Act*"; and

(b) in subclause 226(5)(b)(i) of *The Northern Municipalities Act*, as being enacted by Clause 26 of the printed Bill, by adding "pursuant to subsection 193(4.1)" after "appeal board".

The Chair: — Is there any comments or questions about the amendment? Ms. Higgins.

Ms. Higgins: — Again this I would assume just adds the further clarification that you'd spoke of earlier. It doesn't make any other changes? No? Okay.

The Chair: — Will the committee take the amendment as read?

Some Hon. Members: — Agreed.

The Chair: — So clause 26 as amended, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Clause 27, coming into force, is that agreed?

An Hon. Member: — Was clause 26 amended . . . [inaudible interjection] . . . It was amended.

An Hon. Member: — Clause 26 was amended.

The Chair: — Clause 26 as amended, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Yes, I thought we did that.

[Clause 26 as amended agreed to.]

[Clause 27 agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts the following: Bill No. 127, *The Assessment Management Agency Amendment Act, 2009.* Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 127, *The Assessment Management Agency Amendment Act, 2009* with amendment.

Mr. Brkich: — I so move.

The Chair: — Mr. Brkich moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Thank you, Minister Harrison. Thank you and your officials for assisting us in the consideration of Bill No. 127. We will now take a five-minute intermission to set up for the next Bill consideration.

[The committee recessed for a period of time.]

Bill No. 104 — *The Summary Offences Procedure Amendment Act, 2009 (No. 2)*

Clause 1

The Chair: — Well welcome back. We're here with Minister Morgan in consideration of Bill No. 104, *The Summary Offences Procedure Amendment Act, 2009 (No. 2)*. Welcome, Mr. Morgan and your officials. If you would like to introduce your officials and have a few opening comments, please do them now.

Hon. Mr. Morgan: — Thank you, Mr. Chair. I am joined at the desk by Chris Hambleton of the legislative services branch, and Ken Acton with courts and civil justice division. Mr. Chair, this Act amends *The Summary Offences Procedure Act, 1990* to allow for service of tickets by mail in circumstances where the tickets cannot reasonably serve at the time of the offence.

Examples of such circumstances include, firstly, charges that cannot be laid for a moving traffic offence until accident reconstruction has been done. Secondly, where a citizen complains that an offence has occurred and the police investigate the matter before issuing a ticket. Thirdly, where a mistake on a ticket means it must be withdrawn and reissued. Fourth, abandoned vehicle charges. And fifth, hunting, fishing, and parks offences that require additional investigation after initial observation of the situation by a peace officer.

Currently in these circumstances, peace officers in the area where the offence occurred must send the ticket to enforcement personnel in the place where the person being charged with the offence resides so that the person can be found and personally served with a ticket. This is time-consuming and can be expensive. In the case of hunting and fishing offences, a significant number of tickets are issued to out-of-province and out-of-country offenders.

The proposed provision authorizes regulations that will provide for the specific method of service, which will either be certified mail or registered mail. Notwithstanding these amendments, personal service will continue to be an available option and may remain the most attractive method of service in many circumstances.

This change responds to a request from the Saskatchewan Association of Chiefs of Police that the province consider allowing service of any ticket by mail where on-the-spot service is not possible or reasonable. This change could result in a significant reduction of police time spent arranging for personal service by or for another enforcement agency.

[15:30]

An accompanying change will allow for a hearing after conviction where the person was convicted in trial without

being present and the person claims they did not receive the ticket sent by mail. Providing for a hearing after conviction gives the accused an opportunity to argue that service did not occur and that they did not have a fair opportunity to be heard at trial. Thank you. We'd be pleased to answer any questions.

The Chair: — Thank you, Mr. Minister. Are there any questions of the minister? Mr. Quennell.

Mr. Quennell: — Thank you, Mr. Chair. A lot of the discussion in second reading in the Chamber, Minister, as you're probably aware, surrounded concerns about due process. And I take it it's the ministry's position that there's no risk of unconstitutionality here because of the ramifications to an individual who it turns out was not served because they no longer need to be personally served once this legislation takes effect. Could the minister or an official outline the ministry's thinking in that regard as to the constitutionality and the due process concerns?

Hon. Mr. Morgan: — I'm going to let one of the officials provide a more detailed answer. But it's the position of the ministry that the provision to allow the individual to effectively open the matter up and speak to it after the conviction's been entered adequately addresses the constitutional concern. We appreciate that an argument may be advanced at some time. But I'll also, you know, let the official give you a more detailed answer.

Mr. Hambleton: — Thank you for that question. The constitutional law branch was consulted in the lead-up to the Bill and advised that in 1996 we had a Supreme Court decision directly on point, looking at the constitutionality of a situation where a summary offence ticket was served and the situation arose that you highlight: the person claims they didn't receive the ticket.

And the Supreme Court ruled in essence, and just briefly, that as long as they were satisfied that the accused did receive the notice of the ticket and the date of the proceeding and that they further to that had an opportunity to dispute the service, that it satisfied the Charter concerns. In any event, they indicated off the top that personal service in these situations with these tickets was not a constitutional requirement in any event.

Mr. Quennell: — Would you happen to have the citation for that case?

Mr. Hambleton: — It's R. versus Richard. It's a 1996 decision. I apologize. I don't have the *S.C.R.* [*Supreme Court Reports*].

Mr. Quennell: — That's more than enough, thanks. I don't have any other questions.

The Chair: — No other questions. Any other comments or questions regarding Bill No. 104? Seeing none, clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 6 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: Bill No. 104, *The Summary Offences Procedure Amendment Act, 2009 (No. 2).* Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 104, *The Summary Offences Procedure Amendment Act, 2009 (No. 2)* without amendment. Mr. Elhard.

Mr. Elhard: — I so move.

The Chair: — Mr. Elhard has moved. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. That concludes Bill No. 104.

Bill No. 114 — *The Small Claims Amendment Act, 2009/Loi de 2009 modifiant la Loi de 1997 sur les petites créances*

Clause 1

The Chair: — We will now go into consideration of Bill No. 114, *The Small Claims Amendment Act, 2009.* Noted that this is a bilingual Bill. Mr. Minister, do you have any opening comments or any change of officials?

Hon. Mr. Morgan: — I would like to . . . Mr. Hambleton will be leaving now and I would like to thank him for his co-operation and assistance today. I'm joined on the next Bill, Mr. Chair, by Ken Acton and Mary Ellen Wellsch, senior Crown council, legislative services branch.

Mr. Chair, I'm pleased to be able to offer opening remarks concerning Bill 114, *The Small Claims Amendment Act, 2009*. Committee members, *The Small Claims Amendment Act, 2009* is intended to make some prudence to the process of having a case heard at the small claims court and to enhance the effectiveness and efficiency of our small claims system.

The first change clarifies the power of a judge at a case management conference. The amendment will explicitly add the power to order a judgment against a party who fails to appear at the conference. Secondly, the amendments will require that the document that begins a claim, the summons, must be served personally or by registered mail.

A new section is being added to permit a judge to consider evidence that may not, strictly speaking, be considered legal evidence under the law but that the judge considers to be credible and trustworthy.

Finally, the amendments place a 90-day time limit on the ability to apply to set aside a judgment that has been obtained by default. There will be limited flexibility for the application to be made beyond 90 days if there are "exceptional circumstances."

This legislation is the result of extensive consultations with the court, the court staff, and users of the small claims court. With

those opening remarks, I welcome your questions regarding Bill 114, *The Small Claims Amendment Act, 2009*.

The Chair: — Thank you, Mr. Minister. Is there any questions, comments?

Mr. Quennell: — Thank you very much, Mr. Chair. Because these are courts dealing with civil matters, I don't imagine there's any constitutional concern about change in methods of service.

Hon. Mr. Morgan: — None whatever.

Mr. Quennell: — None whatever. And I take it from the minister's comments and from how this court sort of progressed over time that, as well as the consultation in respect to certain matters such as what evidence can be heard, this legislation to a certain extent I suspect — and the minister may or may not be able to confirm this — codifies what is actually the practice of the court in some respects. Where some of the times best practices by the court get ahead of the legislation.

Hon. Mr. Morgan: — I think in a general sense, yes. The one example that was, sort of is referred to during the consultation is a Bill over a defective consumer good, and then there's a repair estimate that comes from somebody, under the strict rules of evidence, the person would have to bring for the person that made the estimate. And in the event that that's not challenged aggressively or with a competing estimate, then I think the court would . . . It's fair for a small claim for them to have the jurisdiction to accept that type of evidence. And I think that was likely what it was intended to address. There may be certainly other things, but where it would be difficult, cumbersome or whatever for that . . . I don't know if the officials want to add something to that or not.

Ms. Wellsch: — No. I think that pretty well covers it.

Mr. Quennell: — I tend to believe that some of the mediation work that was being done by the court was being done by the court prior to this legislature providing the formal explicit authority to do that. And I'm not complaining about that. But to a certain extent — I think particularly with this court and on small claims matters — the Assembly's trying to keep up with the good practices of the provincial court judges that are doing that work.

Hon. Mr. Morgan: — The practice has been that on the first return date, the matter usually doesn't go to trial on that date — that it's usually in effect a case management conference or pretrial settlement conference. And I don't have the stats. It's the number that has settled at that level. But it would be the vast majority of them, I would think, would be settled on the first return date.

Mr. Quennell: — Mr. Chair, I don't have any further questions.

The Chair: — No further questions. Mr. Elhard.

Mr. Elhard: — Mr. Chair, I'd like just some information for my own interest's sake and maybe for clarification. I'm looking at section 15 amended where it talks about:

> A summons issued pursuant to this Act must be served:
>
> (a) by personal service on the person . . . [or]
>
> (b) by registered mail . . .

But I see in subsection 1.1 in that same area that all documents may be served by other means:

> . . . including registered mail, certified mail, fax, courier and personal delivery.

Can you give me an indication of why there is that different level of service allowed in the Act?

Ms. Wellsch: — The reason is, the summons is the document that starts the proceedings and it's the most important for the defendant to be notified that there are proceedings started against him or her. Once the summons has been served, the defendant is aware that there will be other documents coming forward. And those other methods can be used because the defendant is expecting them.

Mr. Elhard: — So the test for delivery is at a different level, basically.

Ms. Wellsch: — Yes, it is.

Mr. Elhard: — Thank you.

The Chair: — Seeing no other comments, clause 1, short title, is that agreed?

[Clause 1 agreed to.]

[Clauses 2 to 10 inclusive agreed to.]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts the following: Bill No. 114, *The Small Claims Amendment Act, 2009.* This is a bilingual Bill. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 114, *The Small Claims Amendment Act, 2009* without amendment.

An Hon. Member: — I so move.

The Chair: — Mr. Kirsch has moved. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Thank you very much.

Bill No. 102 — *The Personal Property Security Amendment Act, 2009*

Clause 1

The Chair: — We will now move into consideration of Bill No. 102, *The Personal Property Security Amendment Act, 2009*.

Mr. Minister, are you ready to make some comments on that?

Hon. Mr. Morgan: — Yes, thank you, Mr. Chair. The purpose of the . . . I'm joined today by Darcy McGovern, senior Crown counsel, legislative services branch.

The purpose of *The Personal Property Security Amendment Act, 2009* is firstly to address a series of technical legal issues surrounding simplification of "the conflicts of laws" provisions that are engaged when people or their personal property cross jurisdictional boundaries; and secondly, to update the language and procedures in *The Personal Property Security Act, 1993* to match the improved procedures and modern terms now utilized in the land registry process.

The Personal Property Security Amendment Act, 2009 will introduce conflicts of laws provisions that will use the jurisdiction of incorporation of the registered head office of a corporation to provide more easily determined rules for establishing jurisdiction in conflicts of laws situation. It will introduce rules to determine location of general partnerships, unlimited partnerships, and trusts for conflicts of laws situations.

The procedural changes in this Bill will eliminate the requirements that the forms be contained in the regulations, and also to provide authority to establish or revise certain fees and use registry information consistent with public policy — Information Services Corporation's customer service objectives, pricing framework, principles, and strategy — which will be based on similar amendments in *The Land Titles Amendment Act, 2008*.

It will also change the requirement on the secured party from providing to the debtor a copy of a financing statement to providing a copy of the verification statement to reflect changes in the personal property registry system. We'll also update the language regarding registry searches and printed search results to reflect similar language in *The Land Titles Act, 2000*. And finally, to introduce discretionary power for the registrar of the personal property registry similar to the discretionary power given to the registrar of titles pursuant to *The Land Titles Act, 2000*.

Saskatchewan has long been the leader in personal property security matters, thanks to the leadership provided by Professor Ron Cuming at the University of Saskatchewan. These changes are made in an effort to ensure that Saskatchewan's legislation will remain model legislation in Canada. Thank you. We'd be prepared to answer questions.

[15:45]

The Chair: — Thank you, Mr. Minister. We will now entertain any questions. Mr. Quennell, please.

Mr. Quennell: — Thank you, Mr. Chair. I don't have any specific questions, but the minister did touch upon a general question I have. This is a Bill that deals with a very special area of the law. I expect that I may be wrong, but the minister and I had the same professor for secure transactions, and he was one of the outside experts in this area. Another would be Justice Jackson, but of course she's not available to the executive or the legislature in these matters because she serves on the Court of Appeal and . . .

Hon. Mr. Morgan: — And even asking questions of her spouse does not get you an answer from her either. As it should be.

Mr. Quennell: — Well and that's the minister's more particular problem than mine. And then I think somebody else has developed some expertise — and I don't seem to want to suggest this list is exclusive — is a former law partner of mine, Don Layh, who practises in Langenburg, Saskatchewan, but primarily a secured property type of practice. As a matter of fact, recently an author of a book, I take it, in the area.

That's all preamble to the question about, and not wishing to suggest that there isn't expertise within the ministry, because I know there is. That's all preamble to a question about, what outside counsel was sought in respect to drafting these amendments?

Mr. McGovern: — Thank you for the question. Professor Cuming of course was very much involved in the recommendation that initially went to the Uniform Law Conference of Canada. With these particular changes, they were highlighted with respect to the conflict of law provisions. They were highlighted by Professor Cuming to the Uniform Law Conference of Canada as priority provisions for amendments by all of the attorney generals in Canada. They of course then were adapted specifically to the Saskatchewan legislation and myself and Professor Cuming were in discussion in terms of how that would be implemented with respect to this legislation. So he's very much current with this proposal.

For the information of the member, Saskatchewan will be the third provincial jurisdiction to implement this conflicts legislation on virtually the same wording, the first being Ontario and actually just this spring BC [British Columbia] has passed legislation to provide for those conflict provisions as well. So we'll be the third province and that will be virtually word for word.

Mr. Quennell: — Mr. McGovern anticipated my next question, and no problem with that. And how soon do we expect the majority or the rest of the provinces to be making similar amendments? Because conflict of interest or conflict of law rules work best if they're harmonized across the country.

Mr. McGovern: — That certainly is the case. And this summer at the Uniform Law Conference there'll be another push with respect to the other jurisdictions to indicate that three of the major jurisdictions with respect to this legislation have moved forward to promote that with each of the jurisdictions to move forward. It's difficult for me to say when other provinces will move forward with their legislative lists, but it's being identified as a priority and we're certainly hopeful that it will become the majority with respect to the standing personal property legislation and then we'll be in the best position to proceed.

Mr. Quennell: — Thank you. I don't have any further questions.

The Chair: — Thank you. Is there any other comments or questions from any of the members? Seeing none, clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[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 the following: Bill No. 102, *The Personal Property Security Amendment Act, 2009*. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 102, *The Personal Property Security Amendment Act, 2009* without amendment.

Mr. Chisholm: — I so move.

The Chair: — Mr. Chisholm moved. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Thank you very much.

Bill No. 124 — *The Legal Profession Amendment Act, 2009*

Clause 1

The Chair: — We will go on for consideration of Bill No. 124, *The Legal Profession Amendment Act, 2009*. Mr. Morgan, you have opening statements if you please.

Hon. Mr. Morgan: — Thank you, Mr. Chair. I'm joined by Susan Amrud, Q.C. [Queen's Counsel], executive director, public policy division; Mary Ellen Wellsch, senior Crown counsel, legislative services branch.

I'm pleased to be able to offer the following remarks concerning Bill 124, *The Legal Profession Act*, 2009. Committee members, *The Legal Profession Amendment Act, 2009* was introduced at the request of the Law Society of Saskatchewan. This proposed legislation has the full support of the Law Society.

First the Law Society's duty and objects will be clearly articulated in the legislation. The amendments will streamline the discipline process that is conducted by the Law Society by firstly, providing authority for the benchers of the Law Society to delegate non-decision-making functions to the professional staff of the Law Society; secondly, permitting a hearing committee to impose any appropriate penalties including suspension and disbarment of the lawyer; and thirdly, separating the investigative and adjudicative functions of the Law Society.

As well, amendments will allow the conduct investigation committee to appeal a dismissal of a complaint or a penalty to the Court of Appeal. Other amendments will remove the requirement that lawyers always need the permission of the Law Society to resign as a member; secondly, to alter the rules for closing trust accounts when a small amount is held for a client who cannot be found; will change the limitation period for prosecution of unauthorized practice of law by non-lawyers from one year to two years; and finally, will increase the membership of the Law Foundation by two members.

With those opening remarks, I welcome your questions regarding Bill 124, *The Legal Profession Amendment Act, 2009.*

The Chair: — Thank you, Mr. Minister. Is there any questions or comments? Mr. Quennell.

Mr. Quennell: — Maybe a hybrid question/comment, Mr. Chair, since you're inviting comments as well as questions.

From my own discussions, I understand that this has the full support of the benchers of the Law Society, this piece of legislation, this proposed Bill. And it appears to me to effectively streamline particularly the disciplinary procedures which provides for better protection of the public.

The way that the progress of this legislation was explained to me was negotiations between the Law Society and ministry lawyers . . . And I don't have any concerns, and I want to make that clear in prefacing my question. But I do want the minister's assurance that the ministry recognized that in amending legislation for a self-governing profession that the ministry's primary concern was protection of the public interest and not facilitating the ease of the practice of the profession or even facilitating ease of governing the profession, which are more properly concerns probably of the benchers but not of the minister.

Hon. Mr. Morgan: — The point is a valid point. In dealing with the large number of self-governing professions we have, we often refer other groups to *The Legal Profession Act* or members of the Law Society for assistance. The legal profession is one of the oldest self-governing professions in the province, and we often use them as a model and in fact, to some extent, use them as consultation for other issues. So we're very conscious of the fact that everything we do here is going to be looked at as a model by other professions and by the ministry officials as to what should happen elsewhere. So we're very conscious of the precedent that it sets.

The comment you make about public protection is one that I think is paramount, not just in our minds but in the minds of the Law Society members as well. They're very proud of the fact that no member of the public has ever lost any money because of the defalcation by a lawyer, that their protection has always worked.

And we bear that in mind in making the changes that they've requested, and although this is a streamlining process, I don't believe there's anything in the amendments that would or could adversely impact on the public. In fact I think the public protection is probably enhanced by the extended period on the discipline and by allowing the streamline process where things are dealt with in a slightly more expeditious manner.

Mr. Quennell: — Mr. Chair, I agree with the minister. I think the streamlining probably, to the extent that it makes it actually easier to discipline, investigate and discipline members of the Law Society, provides for greater protection of the public. So I don't have that concern, and actually I did not have any concern that the ministry did not have public interest as its paramount, paramount concern. But I think it's worth having it on the record.

So I thank the minister and the officials in respect to this legislation and in respect to the other legislation that we heard today. I don't have anything further.

The Chair: — Thank you, Mr. Quennell. Are there any other comments? Mr. Elhard, please.

Mr. Elhard: — You know, I don't want to be a burden to the minister, but I just need another piece of information for my own use. I noticed under section 2 amended, subsection (3), there's a definition for the word competence. It means, and I'm reading from the Act: ". . . except in subsection 49(3), bringing adequate skill and knowledge to the practice of law including the management of a practice**".**

Now I can understand the phrase knowledge of the practice of law. But how do you define management of a practice, and how rigorous is that definition going to be applied in terms of competency?

Hon. Mr. Morgan: — It's taught to some extent in law school, the basics of accounting. It is regarded as conduct unbecoming a solicitor not to pay the general bills of your practice. So if you don't pay a paycheque to your support staff or don't pay your rent, that not only would result in, you know, whatever civil action that person may take, but that could result in a professional discipline complaint against a lawyer.

So the issues of managing a practice from the financial aspect is taught as well as the proficiency that's required in managing files. The Law Society has and will appoint somebody to give a lawyer assistance if they've been dilatory on how a file is conducted or failing to return phone calls or respond to a client's needs.

The public has high expectations of lawyers, and if those aren't met, that could very well lead to a complaint. And the Law Society deals with it usually through some practice direction or assistance and ultimately with disciplinary proceedings. So the management of the law practice is an integral part of the practice of law, and that's why it's specifically included.

Mr. Elhard: — Thank you, Mr. Chair. That's all.

The Chair: — Thank you, Mr. Elhard. Any other concerns, comments, questions? Seeing none, short title, is that agreed? Clause 1.

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 39 inclusive agreed to.]

[16:00]

The Chair: — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts the following: Bill No. 124, *The Legal Profession Amendment Act, 2009*. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 124, *The Legal Profession Amendment Act, 2009* without amendment.

Mr. Elhard: — I so move.

The Chair: — Mr. Elhard has moved. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Thank you very much.

Mr. Minister, thank you for your endurance and your help with going through these Bills. And thank you to the committee members for proceeding with the Bills on the agenda. I would now entertain a motion to . . .

Hon. Mr. Morgan: — Mr. Chair, before you break, I would just like on record, on behalf of all members of the committee, thank the officials for their assistance in preparing and drafting these Bills and their assistance in presenting them today.

The Chair: — You're most welcome. I would entertain a motion to adjourn.

Mr. Brkich: — I so move.

The Chair: — Mr. Brkich. Thank you very much. Thank you.

[The committee adjourned at 16:02.]