



STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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**STANDING COMMITTEE ON INTERGOVERNMENTAL
AFFAIRS AND JUSTICE**

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Mr. Kim Trew, Deputy Chair
Regina Coronation Park

Mr. Greg Brkich
Arm River-Watrous

Mr. Michael Chisholm
Cut Knife-Turtleford

Mr. Wayne Elhard
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Ms. Deb Higgins
Moose Jaw Wakamow

Mr. Delbert Kirsch
Batoche

[The committee met at 20:00.]

The Chair: — Well good evening, ladies and gentlemen. This is the Intergovernmental Affairs and Justice Committee. Welcome to this evening's Bill presentations. I am the Chair of the committee, Warren Michelson. And I'd like to introduce the members of the committee: Wayne Elhard, Delbert Kirsch — who is being substituted tonight for Denis Allchurch, so good evening, Denis — Greg Brkich, and Michael Chisholm, and Kim Trew, who is the Deputy Chair, and Deb Higgins. I mentioned substitutions, and Mr. Frank Quennell is also here, who will be asking questions along with committee members tonight.

Bill No. 129 — *The Enforcement of Money Judgments Act*

Clause 1

The Chair: — Today we're in the Assembly with reference to Bill 129, the enforcement of money management Act as well as Bill No. 130, *The Enforcement of Money Judgments Consequential Amendments Act, 2009*. These are the Bills that will be under consideration tonight.

We have with us Minister Morgan and his official. Before we begin, Mr. Minister, would you please introduce your officials, and if you have any opening remarks, you're welcome to do them now.

Hon. Mr. Morgan: — Thank you, Mr. Chair. These Bills, as you are aware, are related Bills. What I was going to suggest we do is, for purposes of questions, is have the questions go for both Bills at the same time. I realize they have to be voted separately.

I am joined tonight by Darcy McGovern, senior counsel with legislative services.

As members may be aware, the procedure for the enforcement of money judgments in Saskatchewan has not changed significantly for decades. It has never been consolidated into a cohesive, comprehensive procedure. Instead a number of outdated Acts such as *The Executions Act* and *The Exemptions Act* combine to create an inconsistent and difficult legislative framework that requires a great deal of expertise and effort to use, with little certainty of success.

This Bill is based on a draft Bill prepared by professors Ronald Cuming and Tamara Buckwold of the University of Saskatchewan as well as on legislation recommended by the Uniform Law Conference of Canada or ULCC. This Act will repeal *The Executions Act*, *The Exemptions Act*, *The Creditors' Relief Act*, *The Absconding Debtors Act*, and *The Attachment of Debts Act*. It will introduce a new comprehensive, modern, and effective money judgment and enforcement process.

Under the proposed Act, a judgment will have to be recorded in the judgment registry to use the new enforcement process. This will create a province-wide searchable public registry where all judgments that are capable of immediate enforcement will be recorded and priority will be determined.

This Act will also update the exemption protection available to debtors in the enforcement process to ensure that Saskatchewan's traditional debtor protection regime is rationalized and fundamentally retained. It is only right to ensure that someone who follows the rules through the judicial process and obtains a money judgment be able to effectively enforce that judgment. This Bill will enforce that.

Mr. Chair, there is a companion Bill. That is *The Enforcement of Money Judgments Consequential Amendments Act, 2009*. It amends other pieces of legislation. One of the Acts amended by that Bill is *The Enforcement of Maintenance Orders Act, 1997*. The Act is amended to reflect the new, improved process. The existing special priority for the enforcement of maintenance orders is preserved. Those enforcing maintenance orders will continue to be able to choose how best to enforce an order for payment, and to use a variety of methods to do so.

As noted in my comments regarding the main Bill, the intent of this new process is to assist those who have played by the rules and successfully completed the judicial process to effectively enforce the judgment. These consequential amendments to the affected bilingual Acts will also assist in that objective. Mr. Chair, I understand that there are two House amendments that are going to be made. Perhaps we should have those read at this point in time.

The Chair: — Yes, that's a good idea. I'll recognize Mr. Chisholm, please.

Mr. Chisholm: — I have the copies of the proposed amendments here. The first amendment relates to clause 46 of the printed Bill, and it's basically an editorial, if that's the right word, change. It's the correct placing of the apostrophe on the word "lessees." So it reads as follows:

Amend subclause 46(2)(c)(i) of the printed Bill by striking out "lessees' interest" and substituting "lessee's interest".

It's the apostrophe. Do you have a copy of it? Great. So that I think is quite straightforward.

The second amendment is regarding clause 172 of the printed Bill, and it's to:

Amend clause 2(u.1) of *The Land Titles Act, 2000*, as being enacted by clause (f) of Clause 172 of the printed Bill by striking out "and the abstract directory" and substituting "the abstract directory and the grant directory".

Hon. Mr. Morgan: — Mr. Chair, both of these amendments are of a minor nature and a technical nature, but by having them read in now, then any questions, we can deal with both Bills and both amendments at once when we go forward to vote, assuming that everything goes as we hope it will. We won't need to worry about having an intervening discussion as how it may have affected some of the other answers that are there. In any event, we're certainly prepared to answer questions this evening.

The Chair: — Thank you, Mr. Minister. The members have a

copy of the amendments, so we will go into any questions. Mr. Trew, you have a question?

Mr. Trew: — Yes, I do. Thank you very much, Mr. Chair. Minister and Darcy, welcome. How many judgments . . . Like this is an Act respecting enforcement of judgments for the payment of money and making consequential amendments to this and other Acts. How many judgments were made in the last year that you have records for, that your ministry has records for? That might be 2009 or 2008. I'm just looking for, in a typical year, how many judgments have been made?

Hon. Mr. Morgan: — It would certainly be in the thousands because we've got judicial centres, Queen's Bench centres in all the major centres as the Queen's Bench . . . or the small claims rules as well. And a lot of them are what are called default judgments, where they're done by a collection for an outstanding debt. They're not contested by the debtor, so the default judgement would be rendered. So there would be a massive number of them. Some might get paid. A lot of the people ultimately go bankrupt or move on. But there would be, I'm guessing, literally thousands in any given year. We could give you a more exact number, but we'd have to canvas each of the registries.

Mr. McGovern: — And if the member's question is focused on is this the Bill that'll do a lot of the heavy lifting going forward, that certainly that is the case that, as the minister mentions, the judgments from the courts that are with respect to the dollar values would be enforced under this Act. And then in addition, under the definition of the Act, and if an administrative tribunal says that their ruling with respect to a dollar amount is enforceable as if, once it's registered, as if it were an order of the court, that this too is the reinforcement process for that.

So if that's the thrust of the member's question, then certainly that is the case. This is the Bill that will do the yeomen's work in terms of enforcement for money judgments in the province.

Mr. Trew: — Thank you. I do want a bit closer answer. I'm not looking to the one but, you know, thousands could be 2,000 or it could be 98,000. And I really would appreciate having a bit of a handle on that without . . . I'm not anxious to tie up the ministry's people for weeks on end.

Hon. Mr. Morgan: — Mr. McGovern has indicated he'll make inquiries of court services and will either be able to give you the number of judgments or possibly the number of writs of execution which should be the enforcement process. And we'll get you the information that's available.

Mr. Trew: — Thank you very much, Minister and Mr. McGovern. That's what I have for now, Mr. Chair.

The Chair: — Thank you. Mr. Quennell, did you have some questions?

Mr. Quennell: — Yes, I have a few, I think. First of all this is an intriguing project, and I'm not sure that we're going to do it justice tonight actually. First of all on the preservation orders . . . Well first of all I have to say that this is the type of thing that gives young lawyers the advantage over old lawyers because this will become the law. People will be taught this.

And there'll be a lot of people of the generation of the minister and I walking around thinking we know what the law is, and those Bills have been repealed or will be soon . . . That legislation, those Acts will be repealed, I should say.

Preservation orders, they appear from my reading of it to be injunctions preserving property and the right of action prior to the plaintiff commencing an action. And maybe Mareva isn't the right parallel but seemed similar to that concept. And my question, I guess my general question is, why? Why not just require creditors to commence actions? This buys them a certain period of time, a short period of time if the application's *ex parte* in a longer period of time if it's on notice of motion. But what's the government's intent with this concept?

Mr. McGovern: — Thank you, Mr. Chair, to the member. The preservation orders are somewhat of a *sui generis* proposal with respect to this, and they do pick up both prejudgment and post-judgment remedies.

If I'll draw the member's attention to subsection 10 of section 5 where it provides that it may be granted, on application, by a judgment creditor as well. And the overall purpose of the provision is to deal, both in a prejudgment circumstance and a post-judgment circumstance, with the potential dissipation of assets and to provide more clarity in terms of what will be required for that type of injunctive relief.

The member will have noted under subsection 5 that some of those elements that are present in the common law with respect to injunctive relief are certainly there. And the court grants the preservation order if it's satisfied that the action would, if successful, result in the judgment. That if it's not granted, there would be dissipation or destruction or concealment of assets, other than for reasonable living expenses, that the action prosecuted without delay. And as well, there is requirement under subsection 7 to provide security.

But I think one of the main, one of the most important distinctions here as well is that this also serves the prejudgment garnishment function under the existing process as well which occurred without any judicial scrutiny. And I think the key point from a policy perspective in 5(2) is that an application for a preservation order be made to the court only by a plaintiff in an action commenced in Saskatchewan. So you've commenced the proceedings, and then the plaintiff would result in an enforceable judgment. So from that perspective we do. We are looking here for an actual process of judicial approval as opposed to the circumstances where you can seize assets before the matter has ever been before a court.

And that was viewed as, well as the member will be aware, that has been the subject of judicial comment before, saying that that power, which many provinces don't have at all, was ripe for abuse in both provincially and internationally with the non-suit concerns that are occurring on international enforcement. That was viewed as inappropriate. And so I think it's a consolidation on that front that you see not only the injunctive relief, but some of the other measures being combined in one process that is subject to judicial scrutiny.

Mr. Quennell: — So significant changes to the ability to pre-judgment garnisheeing as part of this process.

Hon. Mr. Morgan: — Essentially the pre-judgment garnishee process is gone and replaced with this one. I think we were one of the few jurisdictions that had a pre-judgment garnishee process that allowed for the seizure without any kind of court review of the process. You swore the affidavit. The money was effectively taken out of somebody's account. So I think when I saw that this was in it, I thought specifically about, you know, would that have been something that we would have wanted to have preserved? And I think probably most people would say it was something that was capable of, you know . . . It was a nice convenience but probably abused more often than appropriately used.

[20:15]

Mr. Quennell: — The money was seized, as the minister says, without a judgment in place, but a judgment had to be in place and an order of the court for payment out. So it had an effect of preserving the property. It didn't enrich the plaintiff without a judicial order.

I'm not arguing that we should have maintained the procedure that we had previously under *The Attachment of Debts Act*. And the minister quite rightly points out, as does Mr. McGovern, that that was, if not a unique, an unusual procedure for Saskatchewan when you looked across the country at the other provinces. So in that respect we are, we are moving towards what other provinces do. But I take it from Mr. McGovern's comments that the overall provisions for preservation orders may be a little bit unique to the province of Saskatchewan. And is this a development of Professor Cuming and Professor Buckwold, or did this part of the order come from the unified commercial code draft Bill?

Mr. McGovern: — Certainly this was included in the paper that was prepared by Professor Cuming. But the discussion was also included in the Uniform Law Conference of which I was a part of and which Professor Cuming, for that matter, was a part of. And I'll have to just pull out the Uniform Law Conference piece to confirm that.

But the provinces of Newfoundland and the province of Alberta are the two provinces that have gone the furthest along this model of legislation in general terms and with respect to the preservation order piece. Alberta would have pre-dated the Uniform Law Conference process, so they wouldn't have had it. And I'll just check on the uniform law report.

The uniform Bill also has the concept of preservation orders. That's correct.

Mr. Quennell: — Not necessarily in this exact form, I take it?

Mr. McGovern: — I can certainly say not in this exact form, but I think it would be generally along the same idea.

Mr. Quennell: — And in this respect, there are other provinces that have adopted or are adopting similar measures, I take it from your comments?

Mr. McGovern: — The Uniform Law Conference Bill was preceded by the Alberta Law Reform Institute report. They sort of started the ball rolling, if you will, and went with legislation

that was a consolidation of all the 1930s debt legislation into a more modern piece. That development led the Uniform Law Conference to initiate its process to pass a piece of uniform legislation that it recommended to the Attorneys General. Newfoundland was the first province, I think, and that responded directly to that process, and we would be the second province or the third — depending on how you count Alberta — to move down this line. I know British Columbia has given it serious study and has indicated they're looking at it. But beyond that, I'm not sure.

Mr. Quennell: — This isn't an area that we're particularly concerned about harmonization though, is it? Most of these creditors and debtors will both be acting within the province, and we're not really concerned about a conflict of law situation as much.

Hon. Mr. Morgan: — A conflict of laws situation would arise more in the nature of the debt or the substantive cause of the action rather than in collection process. It's used once the order is made for collection against a Saskatchewan debtor or assets within this jurisdiction. I think it would be desirable if the provinces chose to . . . [inaudible] . . . would make it easier if you had a judgment that you were . . . [inaudible] . . . provincially registering or following whatever other process that you do.

But because the Bill is directed at Saskatchewan assets, I don't think it necessarily need be there. But I think most provinces will look at the ULCC draft and will go from there.

Mr. Quennell: — Not an overwhelming concern about either lagging behind or being ahead of the curve in a case of legislation like this?

Mr. McGovern: — I think it's more than fair to say that, unlike some pieces where we'll say until, you know, ten jurisdictions have signed on, we wouldn't be proclaiming the Act in force. You're correct in saying that's not the case here. We have a made-in-Saskatchewan package that certainly we can proceed with. And as the minister said, we'd encourage other provinces to step forward into this automated world, but as far as the needing other provinces to sign on before it's enforced, we don't need that.

Mr. Quennell: — And when it comes to some of the exemptions, there would have been idiosyncrasies across the country for the last 90 years or 80 years in some cases. Yes?

Mr. McGovern: — The uniform Bill contemplates that. It says that it didn't purport to achieve uniformity with respect to exemptions for that very reason.

Mr. Quennell: — The other section that rather caught my eye — and I'd be interested in the origins of this and where we may find similar legislation across the country — is this disclosure, sort of discovery section which again I think . . . [inaudible interjection] . . . The voluntary questionnaire and the sheriff questionnaire and . . .

Hon. Mr. Morgan: — You're talking sections 13 and 14?

Mr. Quennell: — The voluntary questionnaire starting with

section 12 and 13, yes, and 14.

Mr. McGovern: — I think that Newfoundland is a province that's, as I mentioned, was one of the first provinces to take that approach, and they have specifically included this process of the voluntary questionnaire in section 64 of their Act. Section 65 is the sheriff questionnaire, and they proceed to examination. And their indications have been that it's been a very positive method of promoting full disclosure and a method where you need to share that information among other enforcing judgment creditors, while at the same time ensuring that, where necessary, you can proceed to an examination, essentially an examination in the aid of execution where there's been a lack of compliance or a lack of co-operation.

Mr. Quennell: — The examination in aid of execution, the procedures for that I believe are set out in the Queen's Bench rules. And how do those interrelate with these sections, or how will they?

Mr. McGovern: — There will be some necessity to seek changes from the Queen's Bench court with respect to some of the rules with respect to examination on the money judgments side. Section 14 sets out the examination of the judgment debtor and provides for essentially the appointment process, with the goal of course being to keep that as direct and simple as possible so that it can be used where necessary while at the same time with the regulations that need to be developed to ensure that there won't be any abuses with respect to the examination process.

Mr. Quennell: — I'm sorry. I didn't catch . . . But the ministry is planning a dialogue with the Queen's Bench, the rules?

Mr. McGovern: — Well as you're aware of that process, in terms of indicating whether or not any changes would be desirable in the anticipation of the passage of the legislation.

Mr. Quennell: — And has that process started in anyway?

Mr. McGovern: — Yes, as you know, in terms of a formal process that would necessarily wait until the legislation was passed, but there has been informal discussions with respect to the progress of the legislation and the process in that regard.

Mr. Quennell: — Passed or proclaimed before the formal process could start?

Mr. McGovern: — Necessarily it would have to be after it's passed as opposed to proclaimed because the goal would of course be that on the date of proclamation everybody needs to be ready to hit the floor running, so to speak.

Hon. Mr. Morgan: — As you're aware, Court of Queen's Bench creates its own rules, so I think their practice is that they watch Bills as they progress through the House to determine what impact it might have on the rules or on their need for resources or training or whatever. So I suspect they're watching with some significant interest.

An Hon. Member: — Bated breath.

Mr. Quennell: — On a different . . . I had a punchline for that,

Mr. D'Autremont, but I'm not going to use it.

On a different matter, I had a discussion with an individual about whether matters could be dealt with expeditiously in the Court of Queen's Bench — the minister may suspect what matter that was — and to which my response was two words: simplified procedure. But I hope that discussions go well in respect to that.

Now proclamation isn't on Royal Assent here. That would be, that would be unwise, I take it. I'm trying to find the proclamation section. Yes. I expect the ministry may not be proclaiming all parts at the same time.

Mr. McGovern: — Back to proclamation, I think I would . . . It's a good chance to outline for the committee that it's recognized that with this type of major change to the enforcement legislation in the province that there's a couple stages that have to be gone through prior to proclamation. We would be looking at the development of the regulations once we have the wording of the Act final. Finalize that, in of itself, will be a relatively major undertaking. We will want to ensure that the legal community, both with respect to the practising lawyers and with respect to the sheriffs in our own court services branch — for example, that process — that education and training occur in that regard.

So it's more than fair to say that we're not, by any means, looking at an immediate proclamation. We'll be into the next fiscal year before we'll be in a position to proclaim and proceed.

Mr. Quennell: — Mr. McGovern raises an interesting point. I think I touched upon it about my comment regarding the advantages of young lawyers over older lawyers or more experienced lawyers. And that's of course those that will be educated in this legislation as a matter of course and those who will be coming to it after having a great deal of experience with the legislation, the Acts that are repealed.

What are the ministry's plans for education in the profession in respect to this significant consolidation and modernization of this area of the law?

Mr. McGovern: — And what we'd like to be able to do is to . . . As the member's aware, the Law Society has engaged a new process with respect to the delivery of education for lawyers in general. We will be in contact with them and have already indicated at the mid-winter meeting, for example, that — to the members there when we were speaking to this legislation — that there would be a need to ensure that there'd be education be provided.

ISC [Information Services Corporation of Saskatchewan] is another venue for providing specific training with respect to the actual registration component as opposed to the legal theory and the regulations that will have to occur. And so we're viewing this as an initiative that will have to move forward on more than one front over the next several months to ensure that the training is available throughout the process.

Mr. Quennell: — We could move on to issue of exemptions. And I was particularly looking at the list of exempt property,

section 93, which is on page 63. Some of this list is familiar to me, and some of it I think is new. And could either the minister or Mr. McGovern sort of highlight which go back to the '20s and '30s and which ones the ministry are adding, which items the ministry's adding and why?

Hon. Mr. Morgan: — I think we deleted the reference to two oxen.

Mr. Quennell: — I wasn't asking for the ones that were deleted. I don't know. Is the cream separator still there?

Hon. Mr. Morgan: — Pardon my humour. I'll let Mr. McGovern answer the question.

You've already noticed it's a significant transplant from the existing exemptions legislation. It would have been a worthwhile exercise to go through to try and update and have a truly modern list, but I think the effect of that would have been to have polarized or politicized the passage of the legislation to the point where it would have got stalled or would have . . . so the decision was to use the existing legislation, however many issues there may be with it, because at least there was a comfort level with it. People understood it, and no one could say that anybody had taken or tried to make it pro-debtor or pro-creditor. It was following the existing path that was there. So anyway I'll let . . .

[20:30]

Mr. McGovern: — Thank you, Minister. That's correct. It's the same template. There are some different provisions that are either restated or there's some that are entirely new. And the member will also notice one of the changes that it includes is that, where previously there were specific dollar amounts in the Bill . . . and I'm looking at *The Exemptions Act*, for example, where it had talked about in 2(1)2: "furniture and household furnishings and household appliances, to the extent of \$4,500" for example was the dollar limit in the existing exemptions Act.

And now in the provisions, you'll note that it provides for prescribed amounts. One of the criticisms that occurred that has always been present with respect to an Act like *The Exemptions Act* — which, you know, includes "grain, flour, vegetables and meat, whether prepared for use or on foot," very old provisions — is that the dollar limits become rapidly out of date. And it's a difficult Act to keep up to date unless you do that through the regulations.

In terms of highlighting for the committee what some of the new provisions were, in (a) you'll see that there's a prescribed amount with respect to clothing and jewellery. In (b) is a new provision, "medical and dental aids or other devices required or ordinarily used by the judgment debtor or a dependant of the judgment debtor due to physical or mental disability."

This is in reaction actually to a decision that was made by Mr. Justice Maurice Herauf before he became a Queen's Bench justice and was acting in his role as a bankruptcy clerk in which he indicated that because of the wording of the previous provision, he was forced to conclude that a vehicle that had been specifically changed over for the purposes of medical assistance, because it wasn't used for a profession, for

employment purposes, wasn't covered by the exemptions. And he had specifically suggested that that would be something that should be entertained in a modern exemptions Act so that these types of medical aids could be picked up.

Mr. Quennell: — We didn't have a rash of people seizing prosthetic devices in Saskatchewan then?

Mr. McGovern: — No, but it's fair to say that there's a harassment aspect that the Act does address.

Hon. Mr. Morgan: — Yes, and if we have one situation that Registrar Herauf had made a determination on, on a vehicle that was equipped, you know, while addressing that issue, it's appropriate to include the other devices that . . .

Mr. Quennell: — No, it's not a controversial add at all, I'm sure. I'm sorry, Mr. McGovern; I interrupted you.

Mr. McGovern: — You could say the same thing with respect to . . . You'll notice domestic animals kept solely as pets again that don't exceed in (d), burial plots in (i). Your comment that we don't have a rash of those I think is again applicable, but of course it's that apocryphal case in which someone's . . . you know, the argument that someone threatened to seize the family pet to create undue leverage, or a burial plot. And this takes that off the table. We're not suggesting that there had been a large rash of those, but it's appropriate that those be specifically named.

Mr. Quennell: — It wasn't a criticism. I was going to commend the minister and the ministry for adding pets. A high percentage of North Americans consider them — I can't remember what the number was — but consider them members of the family, so they certainly should be exempt from seizure just like one's children. People feel very strongly there. And the burial plots, burial plots as well, I think. That's a good add.

Hon. Mr. Morgan: — I would rather include pets in this than include them for travelling on an aircraft, but that's a different issue.

Mr. McGovern: — Two others that I would feel compelled to specifically raise for the committee is with respect to (e), the motor vehicle exemption. Previously it had provided that "where it is necessary for the proper and efficient conduct of the execution debtor's business, trade, calling or profession." And as the member will recall, that led to a lot of litigation about what in fact met that criteria.

Alberta's process, and the process that's suggested here, is to say well let's perhaps recognize that a motor vehicle in Western Canada is not an unreasonable exemption as long as there's a prescribed value over which you can't exceed. So you don't get a Lamborghini, but having a vehicle that is under a specific dollar value is not viewed as inappropriate.

The final point that I would raise for the committee is with respect to (l) which is the "interest in one house, house trailer or equivalent . . . and the land on which it is permanently situated, with a value that does not exceed the prescribed amount". That of course is the exact same as the \$32,000 limit right now.

What's a little bit different, though, is in subsection (2) where — since the Neuls decision in the Court of Appeal upheld an approach that has been judicially taken in Saskatchewan for 70 years or so — whereby an occupied, an active residence is not subject to seizure in Saskatchewan so that if someone's living in the home, that house isn't subject to seizure, and then you sell it and get \$32,000 back.

And so what this has done in subsection (2) is provide that as long as the house is maintained by the judgment debtor as an active residence, it won't be subject to seizure. And that's not a . . . I think that's a status quo statement of the law in Saskatchewan as it has been for decades.

Mr. Quennell: — I know the minister may be reluctant to discuss plans for regulations because those discussions may not have taken place in cabinet yet, but does the ministry have a sense of what the prescribed amount should be for a motor vehicle? Is the ministry looking at, you know, sort of an average price for a motor vehicle in the province of Saskatchewan, whatever that might be, or an amount slightly above that?

I appreciate your comments of the Lamborghinis and Porsches, and so I know what would be above that amount. But are you looking at an amount less than, in some of these cases, than the average would be? I don't know what the average would be for a pet, so I'm not sure I could ask that question about the prescribed amount there, but for houses and cars.

Hon. Mr. Morgan: — We haven't had a discussion about it, and it's probably something that would take place during the consultation. The particularly ill that was there was situations where people were driving luxury automobiles, you know, and probably with a minimal connection to their employment or their calling. And they were driving a, you know, Mercedes Benz, whatever. There was certainly, there was certainly situations where you'd get a call from a trustee in bankruptcy or something that was . . . So you know, I don't think the idea would be that you would want to be unduly harsh, so you'd probably pick average or slightly above, but I think that's something that may come from the consultations.

Mr. Quennell: — Okay. In respect to this issue and the legislation entirely, in respect to regulations, consultations with whom? Who would you see as the appropriate stakeholders besides financial institutions and perhaps the Law Society?

Hon. Mr. Morgan: — Probably it's insolvency practitioners, you know, an insolvency association. I think we'd want to try and be a consumer's association. The opposition . . . And I think we would want to have a fairly broad consultation. I don't know how diverse the views might be, but I think it's where we're going into an area that's a significant update, so I think the broader the input.

Mr. Quennell: — Well some of these areas, I guess, you're going to be able to determine, I think, for widely held kinds of property some kind of averages within the province. And off the top of my head that would seem to be kind of an appropriate guideline.

Now is there any other portion of the Act that is like preservation orders or the disclosure part, in that it's not an

update as much as a modernization of procedure and new to this legislation in effect?

Mr. McGovern: — I think in terms of the consultations, you know, that we conduct in speaking to the bar, you know, the points that are often raised is under the provision with respect to the seizure of employment income, that right now one of the main concerns that procedurally people have is the whole concept of debt due and accruing due and the need to serve the garnishee summons at a precise time sufficient in which to trigger that legal requirement. What this Bill will provide for is the continuing seizure of employment income for a period of up to one year. That's viewed as being an important change within the legal community.

From a priority perspective, one of the main aspects of the whole piece is that it integrates judgments into the general priority schemes of the PPR [personal property registry] and the land titles registry.

Previously you had a system that was vulcanized between judicial districts where the writ book was kept. You didn't have enforcement, and you had to actually seize property before it attached. What this process will do is provide for . . . and certainly this is Professor Cuming's, you know, main initiative in this regard is to say, well judgements, once a judgment has been rendered and it is registered under this process in a modern PPR type fashion, it then becomes integrated into the priority scheme on not just an inter-parties basis but with respect to other parties. And this sort of registration of a judgment would receive recognition against other interests against the property of that individual.

And so that's a fairly technical but important legal change from the perspective of the profession. I think the reality of payments into the process, when you have enforcing creditors, what we're doing in this process is much like a creditors' relief process where you're saying that all enforcing creditors will share on a pro rata basis with respect to the funds, and that includes funds that are received through the seizure process of income in the nature of garnishments. So that's a process that is much more democratically spread out in terms of this process.

So those are some of, I think, the main points that the practising bar certainly pay specific attention to.

Mr. Quennell: — Thank you very much. A collateral issue which occurred to me now when Mr. McGovern was talking again about attachment of debts, the previous New Democratic Party government and the Saskatchewan Party government has continued with the normalization and regulation of payday lenders in the province of Saskatchewan from a point where quasi criminal, before the amendments to the Criminal Code, and not . . . [inaudible] . . . not quite underground but not quite above ground either. And that, for better or worse, is now part of the financial services industry in the province of Saskatchewan.

My belief that part of the appeal or a large part of the appeal of cash chequing services is to debtors who are avoiding bank accounts that can be garnished either by spouses or a maintenance enforcement office or other creditors. I don't imagine there's a solution for that problem in this legislation.

Perhaps there is and I missed it.

But does the ministry see that as a concern that we have now put in place . . . I'm not critical of that, of course . . . [inaudible] . . . on the balance, the balance of costs and benefits, that it was the right thing to do. But now that we have legitimized that business, I think we have to acknowledge part of what service it provides. And that's really an invasion of attachment of bank accounts, in many cases by creditors who are justly owed money and, in often cases, spouses for maintenance of children, and if the ministry has given any thought of how to address that type of issue.

[20:45]

Hon. Mr. Morgan: — The legislation was drafted in the context of the payday lenders being a lending institution rather than merely a cheque cashing service. And I don't know whether our consultation with that industry would indicate how many of their transactions would involve merely cashing a cheque. And I don't know, and we'll probably have to look at — maybe Mr. McGovern can answer it — whether serving an order on the payday lender would catch the money when they would cash the cheque. And I suspect that it might by serving the order on them. It's a continuing order. They would receive the cheque, cash it, and before they would be able to give cash back to the individual, the order would exist. I don't know. I'll defer to Mr. McGovern as to whether that actually would catch it and under the current legislation would probably not catch it.

Mr. McGovern: — And I'm afraid I'm not going to be too much help for the committee on that, given my own familiarity with the payday loans provisions. Certainly the Act does provide for seizure of money within a deposit account context, but as the minister has said, it'll depend on terms of the relationship, and I'm not able to speak with any expertise in terms of whether that's done.

I would remind the committee that one thing to keep in mind is that unlike, for example, *The Personal Property Security Act*, in a secured lending circumstance, which a lender would put themselves into with most individuals, this legislation will most often be in a circumstance where you're outside that secured creditor perspective and you're in fact into the judgment enforcement process. I'm not sure if that helps you with your question.

Mr. Quennell: — Well the minister seemed a little bit more optimistic that it might work under this legislation.

Hon. Mr. Morgan: — I think what we'd probably say with some fairly good certainty that the existing legislation wouldn't catch it. To the extent that a creditor-debtor relationship exists between the pay loans company and the person cashing the cheque, it might. I suspect the reality of it is that the person would go in to cash it. The lender would say, you don't want to cash that here; we've just been served with an order on behalf of creditor X. And they would move on to another, look for another place to have the cheque cashed.

Mr. Quennell: — I don't have an easy solution to the problem, but I think it's a problem that I expect that the maintenance enforcement office is well aware of.

I think those are all my questions. Members of the committee may actually have questions, and I would thank members of the committee for their indulgence and patience in allowing me to monopolize the time so much this evening.

The Chair: — Thank you, Mr. Quennell. Are there any other questions? Mr. Chisholm.

Mr. Chisholm: — Yes, I've got a quick question. Maybe I'm just taking advantage of the fact that you're here, but this actually came up to my constituency office. When it talks about garnishees, it talks about prescribed amounts. How often do those amounts change over a period of a number of years?

This situation was someone who was garnisheed, and their lawyer told them that there'd been no change in the minimum amount that they were . . . the maximum amount they were allowed to keep in a payroll period for 30-some years. And that just seemed a little bit unreasonable, and I didn't know if it was true.

Hon. Mr. Morgan: — Good question. The previous limits were set out in the legislation, and it was so many dollars per month for a single person, so much for a person with a spouse, and so much for the additional dependants. And it was badly out of date. So by taking it out of the Act and leaving it in regulations, it could be updated more frequently or done with some consultation without having to go through a real complex process. So we can't guarantee that future governments may be as diligent as we might want them to be to do it, but at least it's a lot easier process than a legislative change.

The Chair: — Thank you. Ms. Higgins.

Ms. Higgins: — Thank you very much, Mr. Chair. I do have one question. Right at the very beginning in your opening comments, you talked about a new and improved process. While I understand the process of improving it on the business end, will people that deal with this legislation or any of the Acts that are mentioned, will they notice an improved process in service delivery to them?

Hon. Mr. Morgan: — I presume that the benefit that those . . . You're referring of course to the people on the debtors side. So the Act is crafted to help collect the debt, so to the extent that it makes it easier to collect the debt, I mean they're served better in that their debt might be paid, but there's some additional certainty to them.

The exemptions, to follow Mr. Chisholm's question, would be, the exemptions would be updated on a more periodic basis so the amount of money they would be entitled to retain would be refreshed more often. And the exemptions that are listed here, even though they may not be as up-to-date as we want, are certainly a significant step forward where they might be — like they're allowed to keep the medical devices, the pets. So there's a number of things that would be exempt here that would not be exempt as the law is today.

Ms. Higgins: — What brought this to mind was *The Enforcement of Maintenance Orders Act* and if there's anything that the person looking to enforce a maintenance order would see streamlined or make it more accessible or a better process to

go through because it can be very difficult that a number of . . .

Hon. Mr. Morgan: — It maintains the priority of a maintenance order that's actually dealt with in the consequential portion. So the priorities that are given to maintenance orders would continue to exist. The person receiving it will still have to go through the registration process which some people say is cumbersome, but it's something they only go through once, and they provide the information. And it's by providing that information that enables the maintenance office to do their work. So I don't think this legislation is going to help those people to a great extent but certainly will not . . . [inaudible] . . . them.

Our maintenance office is the second best in the country on a statistical basis. The only one that collects more effectively is Quebec, and Quebec's system is one where you are automatically deemed to be registered unless you specifically opt out. Ours is the other way around, where you have to opt in to use the process. So usually people don't opt in until there is a problem or arrears.

So in support of ours, I say that we have the best one under the regime they're working under, and I think that we do a superb job of collecting maintenance orders to the extent that money is available. You know they use the intercept program where money is captured that comes from an unemployment insurance payment, a GST [goods and services tax] refund, income tax refund. We limit their ability to renew their driver's licence and/or register a vehicle. So it's a pretty aggressive method.

They also have got the benefit now, that other creditors don't have, of being able to serve a continuing garnishee on a bank or on an employer so that if you serve the garnishee where you think the person might be going to work, even though they haven't got a job there, that garnishee lives. If they get a job there two or three weeks or a month later, it catches the income. So it's a good system and it's been refined a lot. So I give Lionel McNabb and the folks there a lot of credit.

Mr. Quennell: — Minister, sorry I guess I wasn't . . . In response to your answer, that difference between garnishees for what I'll call ordinary creditors and maintenance garnishees, that difference continues even with this legislation?

Mr. McGovern: — Sorry, do you mean in terms of priority?

Mr. Quennell: — No, in terms of continuing guarantees.

Mr. McGovern: — They continue to have a permanent garnishee process. As mentioned previously, there's a one-year garnishment process that's introduced for general judgment creditors. But the existing ability with respect to garnishment, that the minister mentioned, continues plus they continue to have the special priority with respect to any funds that are available.

Mr. Quennell: — Ordinary creditors are going to become closer to — in the Canadian garnishee respect — closer to maintenance enforcement garnishees, but the priorities won't change. Okay.

The Chair: — Thank you. Are there any other questions from

the committee or any other members? Seeing none, we will proceed to vote on the clauses. Now as this Bill has 254 clauses, is leave granted to review portions of the Bill by parts? Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Agreed. Carried. Part 1, clause 1, short title, and clauses 2 to 4, is that agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 36 inclusive agreed to.]

The Chair: — Part 6, clauses 37 to 56, this includes clause 46 that was amended. I'd like to handle the amendment first, if we could. Are there any questions or comments needed for clause no. 46? If not, is clause 46 . . . Oh I'm sorry. Mr. Chisholm.

Clause 46

Mr. Chisholm: — I will repeat the amendment. It was kind of an announcement the first time, but to actually make the amendment if that's okay.

The Chair: — Please.

Mr. Chisholm: — The amendment reads as follows:

Amend subclause 46(2)(c)(i) of the printed Bill by striking out "lessees' interest" and substituting "lessee's interest".

The Chair: — Clause 46 as amended, is that agreed?

Some Hon. Members: — Agreed.

[Clause 46 as amended agreed to.]

The Chair: — Going back to part 6, clauses 37 to 56 including clause 46 as amended. Is that agreed?

Some Hon. Members: — Agreed.

[Clauses 37 to 136 inclusive agreed to.]

The Chair: — Part 15, clauses 137 to 248 which includes clause 172, the amended clause. Mr. Chisholm, would you like to read that for the records again, please?

Clause 172

Mr. Chisholm: — I would propose the following amendment relating to clause 172:

Amend clause 2(u.1) of *The Land Titles Act, 2000*, as being enacted by clause (f) of Clause 172 of the printed Bill by striking out "and the abstract directory" and substituting " , the abstract directory and the grant directory".

The Chair: — Clause 172 as amended. Is that agreed?

[Clause 172 as amended agreed to.]

[Clauses 137 to 254 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. 129, the enforcement of money management Act. Is that agreed?

Some Hon. Members: — Agreed.

[21:00]

The Chair: — Carried. My error. Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: Bill No. 129, *The Enforcement of Money Judgments Act*. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 129, *The Enforcement of Money Judgments Act* with amendment. Mr. Chisholm.

Mr. Chisholm: — I so move.

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

Some Hon. Members: — Agreed.

The Chair: — Carried. Thank you.

Bill No. 130 — *The Enforcement of Money Judgments Consequential Amendments Act, 2009/Loi de 2009 portant modifications corrélatives à la loi intitulée The Enforcement of Money Judgments Act*

Clause 1

The Chair: — Next on the agenda is Bill No. 130, *The Enforcement of Money Judgments Consequential Amendments Act, 2009*. This is a bilingual Bill. We will now consider clause 1, short title. Mr. Minister, you had some remarks on that? I will ask the committee if there is any other questions or, Mr. Minister, if there is something you wanted to . . .

Hon. Mr. Morgan: — There is not, Mr. Chair. The remarks I had with regard to that I made at the beginning, and then when we opened the floor I think we were discussing both Bills, so I don't think there's anything else.

The Chair: — I think we understand that. Is there no other questions in regards to Bill No. 130? Seeing none, we will proceed to vote on the clauses. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 8 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. 130, *The Enforcement of Money Judgments Consequential Amendments Act, 2009*. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. I would ask a member to move that we report Bill No. 130, *The Enforcement of Money Judgments Consequential Amendments 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.

Hon. Mr. Morgan: — Mr. Chair, I'd like to thank a couple of people before you adjourn and go to the next matter.

This Bill has been a long time through the workup process, so I'd like for the record to recognize and thank Professors Cuming and Buckwold. And also this Bill started before the last change in government. So the member from Saskatoon Meewasin, when he was minister of Justice, brought this forward, so we thank him for that. But mostly Darcy McGovern, who indicated that this was a 10-year project, so it was a significant portion of his career. So I think we would all want to thank him for the grey hairs that this has given him. So thank you.

The Chair: — Thank you, Mr. Minister, and thank you, Mr. McGovern. It's going to feel like you're on holidays now that you don't have to contend with this. Thank you to the committee for your endurance. Is there any other matters to be brought forward?

I would entertain a motion for adjournment.

Mr. Elhard: — Mr. Chair, I just have a comment. I know it took 10 years of the lives of people associated with this piece of legislation. And in spite of the scintillating legal discussion that existed on the floor tonight . . . You never should miss an opportunity for a learning experience, and I learned tonight that the word exigible is actually in the dictionary. I thought it was a misprint in the Bill. So thank you to the minister and his staff for allowing that small moment-of-learning opportunity.

The Chair: — Thank you, Mr. Elhard and thank you to the committee. I would entertain a motion to adjourn.

Mr. Brkich: — I so move that this committee now adjourn.

The Chair: — Mr. Brkich so moves. The committee is now stands adjourned.

[The committee adjourned at 21:05.]