



STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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**STANDING COMMITTEE ON INTERGOVERNMENTAL
AFFAIRS AND JUSTICE**

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Mr. Russ Marchuk
Regina Douglas Park

Mr. Kevin Phillips
Melfort

Mr. Warren Steinley
Regina Walsh Acres

Mr. Corey Tochor
Saskatoon Eastview

[The committee met at 14:59.]

The Chair: — Good afternoon and welcome to the Standing Committee on Intergovernmental Affairs and Justice. My name is Warren Michelson. I am the Chair of this committee. Along with me are committee members Doyle Vermette, the Deputy Chair; Yogi Huyghebaert; Russ Marchuk; Kevin Phillips; Warren Steinley; and Corey Tochor. Substituting for Doyle Vermette this afternoon is John Nilson, and substituting for Warren Steinley is Paul Merriman.

We will begin the consideration of two bills this afternoon. We will now consider Bill No. 132, *The Public Guardian and Trustee Amendment Act, 2014 (No. 2)*. We'll start with clause 1, short title.

Bill No. 132 — *The Public Guardian and Trustee Amendment Act, 2014 (No. 2)*

Clause 1

The Chair: — Mr. Minister, welcome here, and if you have any opening remarks, please introduce your officials. And you may make your opening remarks following that.

Hon. Mr. Wyant: — Thank you very much, Mr. Chair, and thank you to the committee. With me today is Ron Kruzeniski, Public Guardian and Trustee; Mary Ellen Wellsch, senior Crown counsel; and Betty Ann Pottruff, counsel for children.

Mr. Chair, I'm pleased to offer opening remarks concerning Bill 132, *The Public Guardian and Trustee Amendment Act, 2014 (No. 2)*. Mr. Chair, this bill has been introduced, along with *The Queen's Bench Amendment Act, 2014*, to establish a new program for counsel for children in the Ministry of Justice.

Bill 132 amends *The Public Guardian and Trustee Act*. Under the new program enabled by this bill, the Public Guardian and Trustee will establish a list of specially trained lawyers throughout the province who can act as lawyer for a child in child protection proceedings. This will occur when the Court of Queen's Bench or the Provincial Court orders that the child be represented because the views or interests of the child may not be adequately represented by parties before the court.

The Public Guardian and Trustee will also have the power to appoint a lawyer for a child without a court direction if there is a request from another individual. We expect that those requests could come from the Advocate for Children and Youth, a relative, or even the child him or herself.

The bill sets out factors that the court and the Public Guardian and Trustee are to consider when deciding whether the child needs representation. Those factors are: any difference between the interests or views of the child and the interests or views of the parties to the protection hearing; the nature of the protection hearing, including the seriousness and complexity of the issues; the ability of the child to express his or her interests or views; and the views of the child regarding representation. The bill provides that the Public Guardian and Trustee and the lawyer appointed to represent the child are entitled to disclosure and access to the child. These rights can be enforced by court order.

They are also entitled to address the court, file written submissions, and call and examine witnesses.

Bill 132 also amends *The Provincial Court Act, 1998*. The amendment will give specific power to the Provincial Court to direct the Public Guardian and Trustee to appoint counsel for a child in child protection cases. The court will follow the same criteria in making that determination as the Public Guardian and Trustee and the Queen's Bench court will follow when directing or making appointments.

The ministry plans to complete the preliminary work, including the creation of a manual for use by the lawyers, forms, processes, and then begin recruiting lawyers to service as counsel for children. Through the Law Society of Saskatchewan, expressions of interest will be sought. Then lawyers will be screened and trained. Training is expected to take place this fall so that the Act can be proclaimed and implementation accomplished by the fall of this year.

Mr. Chair, those are my opening remarks. I welcome any questions with respect to Bill 132, *The Public Guardian and Trustee Amendment Act, 2014 (No. 2)*.

The Chair: — Thank you, Minister Wyant, and welcome to the officials. I'll just remind the officials in the event of answering any questions, please state your name for the purpose of Hansard. The floor is open for questions. We'll recognize Mr. Nilson.

Mr. Nilson: — Thank you, Mr. Chair. And good afternoon to the people, I guess, from a few different offices that are here. Can you explain why this particular provision is coming forth now? Have there been any specific cases that have raised major concerns, or have there been recommendations from people that this should happen?

Hon. Mr. Wyant: — Well certainly, Mr. Nilson, the Advocate for Children and Youth has been asking for the establishment of a program. The child welfare review had also — which was chaired by Bob Pringle — called for the establishment of a program for counsel for children in child protection proceedings. That's what's being advanced.

Mr. Nilson: — Okay, and on reviewing the information here, this program specifically gives the power to the Public Guardian And Trustee to step in when there's a necessity. Or does it always require a Provincial Court judge's request to initiate the official use of this program?

Hon. Mr. Wyant: — Well the appointment can take place by either an appointment by an order by a Court of Queen's Bench judge or a Provincial Court judge with the amendment. It can also take place with . . . The appointment can be initiated by the Public Guardian and Trustee. It can also be initiated by the Advocate for Children and Youth if they think it's necessary in a child protection hearing for the child to have that representation.

Mr. Nilson: — Could you explain the procedure of how this might happen — say there's a 16-year-old that requests on his or her own that they would like to have independent counsel in

a protection hearing — so I can see how this might flow both within the Department of Justice, Department of Social Services, and the various courts and the Public Guardian's office?

Hon. Mr. Wyant: — Once there's a suggestion that a child needs to be represented in a child protection hearing, the legislation sets out certain criteria that the court needs to give some consideration to. So those are the criteria which will be looked at to determine whether or not in fact a child is in need of protection or a lawyer, needs a lawyer in a child protection hearing. If that determination is made, then a lawyer will be appointed by the roster which is maintained by the Public Guardian and Trustee.

Mr. Nilson: — Okay. So within a hearing that's taking place, it's possible then that a child could say, I need a lawyer or I think I need a lawyer. Would it be the judge that listens to them or the lawyer for the Ministry of Social Services or like, how does this get initiated? Because I think, you know, that's one of the questions that people have.

Hon. Mr. Wyant: — Perhaps I'll ask Betty Ann Pottruff to answer the question so that it's specific.

Ms. Pottruff: — Thank you, Minister, and members. Because there are two paths to appointment, the process is slightly different. There could be a proceeding in front of the courts, either Provincial Court or Queen's Bench, where during the proceeding it becomes clear to the judge that in fact counsel for the child would benefit making a decision in the case, or one of the parties before the court indicates in fact that they think the child requires counsel, in which case an order would be made. That order would come then to the Public Guardian and Trustee office, and then counsel would be appointed from the roster to address the order of the court.

The other way, which I think is probably going to become more common over time, is in fact there's a request from a member of the public: either the child themselves; a social worker; one of the parties to the proceeding; the child and youth advocate, as you've heard; or someone who knows the child and the situation and they contact the Public Guardian and Trustee's office. There is a form that we will be developing that they can fill out to explain what the situation is and why they think counsel is needed.

And so we have the information about the child and the case worker and all of that. And based on that, we will then make an assessment as to whether or not this is a situation where in fact counsel for a child would assist in having the child's views heard in the matter. At that point we will then contact counsel and obtain counsel's agreement to represent the child. Counsel will probably at that point contact the child, if they're old enough to state an opinion, to make sure that they are willing to be represented by counsel. And then the matter will proceed from there. We'll give notice to the court that counsel has been obtained and that they are counsel of record in both the court-ordered situation and the situation where we do it from a referral process.

Mr. Nilson: — So from what I've heard, I understand the first process. And the other process involves the Public Guardian

having the discretion as to whether or not the child needs a lawyer. Is that correct? Is there an appeal of that process?

Ms. Pottruff: — Yes, we will certainly have an appeal. It's actually the children's counsel which will probably make that decision. But by and large, if it's a situation that involves a legal proceeding or legal rights of the child, and it's clear that the child's interests or views could be best put forward by having counsel, then there's not likely to be a denial. It's just to make sure that in fact there's a legal issue or some role for counsel to play.

Mr. Nilson: — Okay. So the inherent right of the Court of Queen's Bench to appoint counsel has been around obviously for centuries. And so is that right in any way being changed or abrogated by this legislation?

Ms. Pottruff: — No is the short answer. And what's being put in place is simply a process so that their orders, once made, flow to the Public Guardian and Trustee for us to find the roster lawyer to represent someone.

Mr. Nilson: — How many court-appointed lawyers for children have there been in protection cases over the last numbers of years? If you could perhaps give me a rough number each year for the last five years.

Hon. Mr. Wyant: — The service is currently being provided by Pro Bono Saskatchewan. There was 46 referrals in 2012 with service only provided in 39 cases. In 2013, there were 52 referrals.

Mr. Nilson: — Thank you for that information. So one of the questions obviously arises as to who pays the lawyers that are appointed. And I think the old practice — maybe it's the present practice now — was that that money came out of the court budget. Is this legislation being put in place to deal with that specific budgetary issue? I'll just leave it at that.

Hon. Mr. Wyant: — Well the Ministry of Social Services will be responsible for the payment of the legal fees associated with the appointment of counsel in these cases. So that's who will pay for the legal services for the lawyers that were appointed from the roster.

Mr. Nilson: — So that will be a change then, that it will no longer be in the Justice budget. It'll be in the Social Services budget. Is that correct?

Hon. Mr. Wyant: — That's correct. Well to the extent that it was different before, it will be Social Services that pays for these legal accounts.

Mr. Nilson: — Now this legislation only relates to protection hearings. Is that correct?

Hon. Mr. Wyant: — That's correct.

Mr. Nilson: — What happens with those case where a judge may appoint a lawyer for a child when it's not a protection hearing but the child has an interest in the case?

Hon. Mr. Wyant: — In a circumstance where the judge would

appoint a lawyer in a proceeding which wasn't a protection hearing, then those costs would be absorbed by court services. But certainly if there was an appointment that was made in those circumstances, that would be a cost to the ministry.

Mr. Nilson: — So how many cases are there like that in an average year?

Hon. Mr. Wyant: — We don't have an exact number. It would be very, very few, perhaps one or two a year.

Mr. Nilson: — Okay. That's what I expected. But the reason I asked the question is that there still is that option for a judge of the Court of Queen's Bench to see a situation where legal counsel is needed for children or a child in a proceeding other than a protection proceeding.

Hon. Mr. Wyant: — That is not being abrogated by this legislation.

Mr. Nilson: — Okay. Now the process whereby counsel are acting for the Ministry of Social Services, will those lawyers have the ability to bring advice forward to the provincial guardian about getting a lawyer for a child in a proceeding? Because it strikes me, from what I know about these kinds of cases, that's often the person who identifies the need early on in a process. So will that continue?

[15:15]

Hon. Mr. Wyant: — It will.

Mr. Nilson: — Okay. So will there be a limit on the budget for the lawyer who's been appointed by the Public Guardian and/or guidelines or something to that effect? Because we know that some cases may end up becoming fairly large or significant cases, and I know that you have a limited amount of budget set aside for this particular process.

Hon. Mr. Wyant: — There'll be no limit. Perhaps what I might . . . The tariff is going to be set at the legal aid tariff. That will be the rate that will be paid to lawyers who are on the registry. We're estimating that, based on some historical information, that the average cost is going to be about \$2,500 per file. So based on the numbers which we have, then that's kind of what the budget numbers will be. But certainly there'll be no limit and counsel won't be hamstrung by that, especially with respect to complicated and difficult cases.

Mr. Nilson: — If a legal aid lawyer is appointed to do this job, will they then be compensated out of the fund, or will those kinds of cases be handled under the legal aid fund money?

Hon. Mr. Wyant: — It's not anticipated that there will be any legal aid lawyers on the roster. There will be an expression of interest which is set out, and then those lawyers which are accepted through that process will be on the roster. Typically legal aid lawyers are on the other side of these files.

Mr. Nilson: — Okay. In the sense that they're lawyers for one of the parents.

Hon. Mr. Wyant: — That's right.

Mr. Nilson: — Yes. Okay. That's logical, but I can foresee the possibility that that may come. How many rosters will you have? Will you have a northern one and a southern one, or will you have one in each of the cities in the province, or how will this work?

Hon. Mr. Wyant: — Perhaps I'll let Betty Ann just answer that quickly.

Ms. Pottruff: — It will be a roster for the province, but we'll ask that the counsel who are on the roster indicate which centres they're prepared to represent children in so that we'll know who's available for the North and who's available for the South, etc.

Mr. Nilson: — Okay. The whole process sounds like it's a workable process. I think obviously we'll all learn as it develops. Are there similar kinds of representation programs for children in need of protection in other provinces that have been able to provide information to you when you've developed this particular program?

Hon. Mr. Wyant: — Well I'll let Betty Ann kind of answer a little bit more of this, but I will say that all other provinces have a program where they provide counsel to children in child protection hearings. So I'll let Betty Ann follow up on that, but certainly there'd be some information that we could get from other provinces in terms of developing our protocols and our processes and procedures.

Ms. Pottruff: — Yes. We work quite closely with Alberta at this point in terms of the program that they offer, and theirs is quite similar in terms of the roster of lawyers and the training and the manual that we're developing.

Mr. Nilson: — Okay. Thank you. I think this is a good program, and I don't have any further questions about the bill. Thank you for that explanation. I think it'll help counsel as they try to figure out what it is later. Thanks.

The Chair: — Thank you, Mr. Nilson. Are there any other comments or observations about this bill? Seeing none, we'll proceed with the voting off of Bill No. 132, *The Public Guardian and Trustee Amendment Act, 2014 (No. 2)*.

Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[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 the following: *The Public Guardian and Trustee Amendment Act, 2014 (No. 2)*. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That's carried. I would ask a member to move

that we report Bill No. 132, *The Public Guardian and Trustee Amendment Act, 2014 (No. 2)* without amendment. Mr. Phillips. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That is carried. Thank you.

We will now consider Bill No. 133, *The Queen's Bench Amendment Act, 2014*. This is a bilingual bill. We will start with clause no. 1, short title. Minister Wyant, if you have any opening remarks, you may present them at this time.

Bill No. 133 — *The Queen's Bench Amendment Act, 2014/Loi de 2014 modifiant la Loi de 1998 sur la Cour du Banc de la Reine*

Clause 1

Hon. Mr. Wyant: — Thank you very much, Mr. Speaker. Again with me, Ron Kruzeniski, Public Guardian and Trustee; Mary Ellen Wellsch, senior Crown counsel; and Betty Ann Pottruff, counsel for children.

I am pleased to offer opening remarks concerning Bill 133, *The Queen's Bench Amendment Act, 2014*. Mr. Chair, as I mentioned in my opening remarks for Bill 132, this bill will help establish a new program for counsel for children within the Ministry of Justice. Like Bill 132, Bill 133 amends the powers of a court, this one being the Court of Queen's Bench. While the Court of Queen's Bench historically has ordered that counsel be appointed for children in child protection cases, this amendment will specifically require the judges to use the counsel for children program in the Office of the Public Guardian and Trustee. It will also provide common criteria for making such a direction. Mr. Chair, with those opening remarks, I welcome any questions with respect to Bill 133.

The Chair: — Thank you, Mr. Minister. Mr. Nilson, you may proceed.

Mr. Nilson: — Thank you, Mr. Chair. I just have a couple of questions about this legislation because it really does follow what we've just been looking at. But my specific question is that you just stated, and I know you'd stated earlier in your second reading speech, that this somehow limits the powers of the judges of the Court of Queen's Bench. Is that actually what's going on here, or is it just set some guidelines for the judges?

Hon. Mr. Wyant: — It directs the . . . As you know, the Court of Queen's Bench also already has that inherent jurisdiction. You've already mentioned that. This will direct how those appointments will be made and that counsel for children will be, the lawyer, that will be the roster which will be referred to when those appointments are made. So it simply allows the court to make the appointments using this particular program based on the criteria which is set out in the legislation.

Mr. Nilson: — So the answer is then that this legislation limits the judges to appointing a lawyer only in this way, not in any other way?

Hon. Mr. Wyant: — Only with respect to the appointment of lawyers for children in child protection hearings.

Mr. Nilson: — Yes. Okay. But it does do that. Is that a power that . . . Well I guess I'm just wondering whether that is something that you can actually do in legislation or if this is a strong directive, if I can put it that way, but there still might be some ability for a judge to get around that if in fact they didn't agree with the use of the lawyers on the roster managed by the Public Guardian?

Hon. Mr. Wyant: — Well I suppose they'll still have their inherent jurisdiction. So to the extent that a judge wanted to appoint, you know, outside this process, it doesn't diminish their ability to do that. The expectation of course is, and with consultation with the Court of Queen's Bench, that this would be an appropriate process for appointing children in child protection hearings. But to the extent that they still have the inherent jurisdiction, they will still have that.

Mr. Nilson: — Okay. Thank you. That's the only question I had. Thank you.

The Chair: — Well thank you, Mr. Nilson. Any other comments on Bill No. 133? Seeing none, we will proceed with the voting of Bill No. 133, *The Queen's Bench Amendment Act, 2014*, a bilingual bill. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That's carried.

[Clause 1 agreed to.]

[Clauses 2 and 3 agreed to.]

The Chair: — Thank you. Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts the following: *The Queen's Bench Amendment Act, 2014*, a bilingual bill, without amendment. Yes, a bilingual bill. Carried. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Okay, that's carried. Thank you. I would ask a member that we report Bill No. 133, *The Queen's Bench Amendment Act, 2014*, a bilingual bill, without amendment. Mr. Marchuk so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — That is carried. Thank you. This concludes the two bills we had for consideration this afternoon. This committee now stands adjourned until . . . I'm sorry. I guess we have to have an adjournment motion.

Mr. Tochor: — I so move.

The Chair: — Mr. Tochor so moves. All in favour?

Some Hon. Members: — Agreed.

The Chair: — That's agreed. That is carried. This committee

now stands adjourned until tomorrow, April 29th, 2014 at 7 p.m.

[The committee adjourned at 15:26.]