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SENT VIA E-MAIL

Ministry of Justice and Attorney General
Legislative Services
Government of Saskatchewan
800 – 1874 Scarth St.
Regina SK S4P 4B3

Attention: Darcy McGovern

Dear Sir:

Re: Draft Bill Re: The Operation of Public Registry Statutes Act

David Gerecke
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I am writing on behalf of the CBA (Saskatchewan) to provide comments on The Operation of Public Registry Statutes Act. As we had discussed previously, it is not our intention to comment on whether the privatization of ISC represents good policy. Rather, our discussion will focus on whether the Act adequately protects the public interest, and on any potential language issues we noted.

These comments are the product of a working group I brought together at the CBA's request, consisting of Clayton Barry, Mike Russell and Eric Johnson. These comments are on behalf of the CBA, as opposed to any particular section.

Our broad comment is that it is not possible to say with confidence that the public interest is appropriately protected by the Act, because so much is left to the service agreements. Without reviewing a form of service agreement that would be close to what would be entered into with ISC, one cannot determine whether service, confidentiality, cost and other critical factors will be adequately enforced. One would certainly wish to ensure that standards are maintained at a high level and are not permitted to be eroded or compromised over time.

In addition to that broad comment, we do have some comments and questions, as follows.

The most significant concern of our group relates to section 4(3), which sets out the provisions that may appear in a service agreement. We note that the language in section 4(3) is permissive ("may") rather than mandatory ("shall"). In our view, many of the items in section 4(3) should be required to be in any service agreement. Those concerns are potentially heightened by section 4(4), which appears to provide that service agreements need not be be

tabled with the legislature until after they are entered into, so there may be no opportunity to scrutinize them until after they are already binding.

If it is truly the government's intention that service agreements will be finalized before they are made available for public review then, to ensure the protection of the public's interests in the registries, we would recommend that many or most of the items in section 4(3) be made mandatory, and that additional detail be included where possible.

There is a drafting concern that was noted by our group. Section 2(1)(g)(i) defines a public registry act as an Act designated by subsection (2) with respect to which a service agreement has been entered into. Section 4 enables the entering into of service agreements in respect of public registry statutes. Although it might not be a likely interpretation, we view these provisions as creating a potential circularity problem, in that an Act is not a public registry act unless a service agreement has been entered into concerning it (which, on a strict interpretation, would make it impossible to enter into service agreements in respect of Acts that did not already have service agreements). We recommend that, if possible, the reference to "with respect to which a service agreement has been entered into" be removed from the definition of public registry statute.

In section 12(1), we noted the words "supposed exercise", which appear twice. Can you advise as to what would be considered to be a "supposed exercise" of a power? Do you have confidence that those words would not provide protection where perhaps there should be no protection? We did not notice those words in other immunity provisions of the new Act.

For clarification, although the government would own records, we presume that ISC would have custody of them? Would this include archival records, such as from the old Land Titles offices?

What are the circumstances that are anticipated as to when the suspension of a registry might occur?

Delegation was also discussed by our group. We are aware that one or more of the existing statutes contain some delegation powers, but what there the circumstances that are anticipated as to when powers might be delegated by a registrar or director? Will there be limits on that delegation? We note that the Act provides for the delegation of powers and duties by a registry officer, and agent of the Crown, to an employee of the private service provider. Our concern is that actions taken by an employee pursuant to delegated powers may not be subject to the same safeguards and scrutiny as any actions taken by the registry officer.



We hope that the foregoing comments and questions are of some assistance to you.

Yours truly,

MILLER THOMSON LLP

Per:


David Gerecke
DGG/

c. Heather MacMillan-Brown, Clayton Barry, Mike Russell, Eric Johnson

