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Bill No. 145 – The Fee Waiver Act

Mr. Forbes: Thank you very much, Mr. Deputy Speaker. It's a pleasure to rise and enter into the debate on Bill No. 145, *An Act respecting the Waiver of Fees and making consequential amendments to other Acts*.

And so it's an interesting piece of legislation and part of a suite of things that we're seeing from the Justice branch. And of course, you know, we were talking about class action lawsuits and different things last night and got to talking about waiver of fees. And I find that an interesting discussion because in terms of, especially, the minister alluded to folks who may not be able to afford the fees, and what can we do to make sure people have appropriate and fair access to justice in a timely manner?

And this is an important aspect of how we value that in our society, in our province, and our country. Everyone has access to justice. And it's not just a matter of those who can afford it, who can pay for it. And of course sometimes we wonder and we have raised questions, but why are there such high fees for, for example, residential tenancies claims? Why is there a fee at all? You know, we have a situation where these are renters who are making complaints.

And I'd be curious to know, but I'm sure Justice doesn't keep track of this, who actually comes in and makes the complaints. Is it the folks in the high-end rentals that are complaining about the fairness of their concerns? Now who knows? And it would be interesting to have some background on this.

I mean, it is interesting this government is taking, and we're glad to hear this after much urging on our behalf, that they are going to take a look at an anti-poverty strategy. But it has to be complete and full and look at all the costs that somehow people who are in vulnerable circumstances find themselves in. And one of those is as tenants, and what are the concerns that they have. And one of them we often hear is a barrier is the cost to . . . Cost is a barrier when they have concerns about what's happening in terms of their rental

accommodations, and whether it's getting their deposits back, some unfairness in terms of the rent increases, that type of thing.

So we have a concern about, first, why the fee in the first place when we're really thinking that everyone should have access to those arenas for concerns and complaints. But they do happen, and I'm just . . . I would be curious to see that if this would and if this has been brought up by Justice to Social Services to say, so what are people coming in and what are their concerns about justice? And where are the main ones that people are talking about?

And so we'll have that, we'll have that question for the minister, you know, that it's just not people on low income, but people who are the working poor or people who feel that they're caught up in circumstances where they may or may not be able to pay for a fee. But because they can't pay for their fee, then they're really denied access to justice.

So, Mr. Speaker, I'm just going to review the minister's comments because they're always informative, and they should be. But they do leave some gaps, as often we have questions.

For example the minister talks a bit about consultation but doesn't really mention who they consulted, how they conducted that. And we know that for this government, that is a spotty record at best because of the way that they do their consultations. It's not really accessible, and they don't really dig down deep to find out what are the barriers to getting fairness and getting fair access to justice.

So he talks about “. . . allowing for the waiver of administrative fees at courts and tribunals for lower income litigants,” and that implements “. . . various enhancements to the existing fee waiver program.” And so it talks about there's no fee waiver program for small claims court, talks about the Court of Appeal, Court of Queen's Bench, and “. . . there's no process to obtain a new waiver at the Court of . . .” So this will allow individuals to apply for a fee waiver at all three levels of court. So fair enough. That sounds like a good, good process.

It also talks about applying to tribunals that regularly adjudicate matters for members of the public and that's the Automobile Injury Appeal Commission and the Office of Residential Tenancies that are specifically named under this Act. But I'm not sure if there's others; he doesn't name others. But “. . . there will be a power to subscribe additional tribunals and government bodies where they may be appropriate.” And that's why I'm thinking the consultation that may happen about the anti-poverty strategy, you know, as well as bringing up people's incomes, it's what are the barriers they're finding to fair treatment? And I think this would be one where Justice should be listening, finding out where are people feeling that they're being denied access to justice because of costs, where costs are a barrier.

And then it talks about transferring “. . . administration of the fee waiver applications from the Saskatchewan Legal Aid Commission to individual courts and tribunals.” And so that's relatively straightforward.

It talks about the “. . . processes will be kept simplified in order to ensure eligible individuals as well as courts . . . are not negatively impacted by administrative processes or delays.” And the simplified criteria will be set out in regulations and that “. . . there will be discretionary authority to grant fee waivers in special circumstances to individuals who do not meet the regular qualifications.” So he wants to make sure that it’s “. . . flexible enough to respond to unique circumstances of individual litigants.”

Now he doesn’t talk about any kind of time frame that they must be dealt with in two weeks or a month. So the question is . . . So you can apply and it doesn’t talk about how you can apply and how the process will be. Will it be electronic? Can you do it on a website, or is it going to be done in person? Is it a paper process? How will that be done? How will we take into account different language barriers? Will it be done in a whole host of languages?

I know if you check out the Human Rights Commission’s website, you’ll notice that they have many, many different brochures and information in all sorts of different languages. And so I’m wondering if this is going to be the case. So while it’ll be simplified, will it be more . . . Will it be quicker? That’s often an issue. You know, if fines have to be paid or different things have to be dealt with, you want to make sure that it’s done in a relatively expedient manner. And so this is something that we really need to deal with. And so, you know, I think this an important issue.

He goes on to talk about:

. . . under current rules, a litigant must apply for a fee waiver for the Court of Queen’s Bench prior to taking any other steps in a proceeding. As a result, individuals who are unable to apply for a fee waiver prior to issuing a claim are prevented from receiving a fee waiver even if that individual does not have the means to pay the court fees.

So that will take care of that and that’s very important. And it will also allow for self-represented litigants to apply for these fee waiver certificates. So that’s consistent with Ontario and British Columbia, so that’s important. And notes that currently only if individuals are represented by legal counsel are fee waivers available. So this is really, really important.

So I think there are some interesting things here that we’ll be looking for. It talks about how this:

. . . has been informed by the work of the Law Reform Commission of Saskatchewan and the recent decision of the Supreme Court of Canada in *Trial Lawyers of British Columbia v. Attorney General of British Columbia*. The Ministry of Justice has . . . consulted with the Saskatchewan legal community and has found widespread support . . .

So I’m wondering if he has consulted with the Regina Anti-Poverty Ministry. They might have some insight into, what are the other tribunals that might be impacted by this? What are some of the real cost barriers that people are facing? So I think this is important.

My colleague from Riversdale talked about CLASSIC [Community Legal Assistance Services For Saskatoon Inner City Inc.] and how CLASSIC has identified several circumstances where costs have been a barrier and how we need to do more to make sure those barriers are taken away so people do have access to justice. But I'm also wondering if he had consulted with the Saskatoon Anti-Poverty Coalition. They might have an opinion on this as well.

And I think of Equal Justice For All, if this government has consulted with Equal Justice For All. Of course this is a government that really would hope that Equal Justice would go away. They took the funding away for Equal Justice For All, and I think it's really . . . [inaudible interjection] . . . Oh, I've hit a nerve. I've hit a nerve, Mr. Speaker. I didn't think people were listening.

But just to be clear, I know this government is no friend of Equal Justice For All. They've taken the funding away. And yet this is a group that does really good advocacy work. And I'm not sure . . . and we need to find out more. We'll have questions about, how does this impact on the Social Services Appeal Board, you know, where we know, and we know this government, we've asked questions of this government. They set aside a certain amount of money that people can pay Equal Justice For All a small amount as an individual basis to help them as advocates when they go before, you know, the Social Services Appeal Board.

But when we asked for the stats, about how many times was it used, this government didn't know. Didn't know; it couldn't provide those answers in estimates. You would think, you would think when we're in estimates, that the government would have access to that information. Couldn't provide that information.

We were just curious because, you know, the government had taken away a small global grant to Equal Justice for All. And as well they got rid of Welfare Rights in Regina just a few years prior to that who were doing good work representing low-income and people on social services before the appeal board and other areas such as the Residential Tenancies office. But got rid of that advocacy group. And with Equal Justice for All, they're getting a small, token fee as an individual, per individual, but they're not sure how many times it's actually being used. And I know those folks are on a shoestring budget but are doing really, really good work.

So, Mr. Speaker, I just find it interesting, this government in their convoluted way of raising fees, if you have a concern about rent, if you want to go to the Rentalsman and make a concern, you have to raise the rent. But now they're . . . raise the fee. But they're going to waive that fee for certain people. But we're not sure how long it's going to take and what the process is. And you know, I think we needed more clarity from the minister on this piece of legislation that he has before us.

While on first blush it looks like a good piece of legislation, there are certain gaps and inconsistencies. And as I say, particularly around the consultations, did they talk to the people who actually are impacted, impacted by these situations where they cannot access justice, and whether it's in the courts, the three levels as the minister talked about, or

whether it's these two tribunals that he mentioned and that there may be more coming.

But at the end of the day if this government really was interested in supporting people, low-income people, there were a couple of major tells, if I can use that word, where they got rid of welfare for Welfare Rights in Regina. And Equal Justice For All, they put into a very dire strait by removing their funding. And while the government can't say, we're good friends, when you have good friends like that, holy smokes. I don't know, when you have problems, that's an odd way of expressing support by taking away major, major funding. That's really an odd way of showing it.

So we have some concerns about this, but we will raise them. And I know my colleagues will want to talk further about this. We will have lots of questions in committee. And I will go back, I will go back to these groups and say, what do you think about *The Fee Waiver Act*? Are there some amendments we should be talking about? Is this a complete Act? You know because quite often we will see, Mr. Deputy Speaker, amendments. We may see an amendment to *The Fee Waiver Act* in the new year because the government has not completely done all its work, and it's now realized maybe there's some things that we should have added to this.

So I think that we need to take some time and really fully consider what the impacts are of this piece of legislation, what are the unintended consequences. And I mean, is it really hitting the mark that the minister wanted to accomplish? You know, I'm just curious about that. Is it going to really hit the mark that he wanted to do? And what is it really based on? What is it really based on? So we will have lots of questions about this piece of legislation. But at this point, Mr. Deputy Speaker, I would like to adjourn debate on Bill 145, *The Fee Waiver Act*. Thank you very much.