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HANSARD

Wednesday, October 17, 1979 — 7:30 p.m.

Thursday, October 18, 1979 — 1:30 p.m.

Speaker: The Honourable Donald Taylor

Yukon Legislative Assembly

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DEPUTY SPEAKER — Geoffrey Lattin, MLA, Whitehorse North Centre

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(New Democratic Party)

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(Independent)

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Wednesday, October 17, 1979 - 7:30 p.m.
Whitehorse, Yukon

Mr. Chairman: I shall call Committee of the Whole to order.

Hon. Mr. Lang: Mr. Chairman, I have a minor amendment to put forward. It has to do with the numbering of the particular section. I move that the Ordinance be amended in Clause 62 to page 45 by deleting sections (2), (3) and (4) which follow subsections (1) and (2) and substituting, therefore, numbers (3), (4) and (5) because there has been a mistake in the numbering.

Amendment agreed to

On Clause 62(1)

Hon. Mr. Lang: There are subsection (2)s. We are just renumbering them.

Mr. Byblow: Just a clarification again, on "owner or occupant", if in the case of a rental where you have, for example, a mobile unit situated in the back of the property that belongs to the person who is renting and it is declared as such, or it is known as such, in the proceedings of the assessment, to whom is the tax notice sent for that piece of property, to the owner of the larger piece of property, or to the owner of the second piece of property?

Hon. Mr. Lang: First of all it would probably be sent to the owner of the property because the assessor would undoubtedly think that it belonged to the individual who had the property, or, secondly, if it came to his attention that it was owned by somebody else, the improvements would be assessed to that particular individual. If the first individual we referred to saw that on his assessment notice he could appeal it and then subsequently it could be charged against the individual that you have referred to. Is that not correct, Mr. O'Donoghue?

Mr. O'Donoghue: Notice will be sent to both of them. I was trying to cut down the time of debate by giving you a quick answer. Each person will get a notice. The section says he shall mail a notice to either/or. If he has notice of both, he will mail to both.

Mr. Byblow: Perhaps I could then enquire, who has the right of appeal then?

Mr. O'Donoghue: Both, Mr. Chairman.

Mr. Byblow: Then it would be up to the Appeal Court to determine from whom the taxes would be collectable.

Mr. Smith: The example that Mr. Byblow used, a piece of property, I assume with a dwelling on it, with a mobile home on it, mobile homes are treated specially. They could be anywhere. If it was known by the Assessor that the mobile home was owned by someone different than the owner of the property it was sitting on, then a notice would go to the owner of the property for that part of his and another notice would go to the owner of the mobile home.

Mr. Penikett: Mr. Chairman, I notice the Member from Mayo gesturing wildly. I think perhaps that he wants to speak on this point.

Mr. Byblow: I have the matter cleared up adequately for my understanding.

Mr. Chairman: If there are no further questions shall subsection (1) clear?

Clause 62(1) agreed to

On Clause 62(2)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)

Clause 62(a)(b)(c)(d)(e)(f)(g)(h)(i)(j) agreed to

On Clause 62(3)

Mr. Fleming: One moment, Mr. Chairman, I am not quite clear on this, "...parcel as a block, or parts of a block...". I was wondering how they can possibly do that without giving the full description of each parcel. What would they use as the description for that property if it was two or three parcels?

Mr. O'Donoghue: Mr. Chairman, it will give a full description of the first parcel and then lot 2, lot 3, lot 4, lot 5 bearing the same description and variation.

Mr. Penikett: Mr. Chairman, we had some discussion earlier in the Bill about this kind of situation, I think the Minister was explaining. In reference to the small lots in Mayo, I wonder if you could explain how this could affect Mayo in this section.

Hon. Mr. Lang: Mr. Chairman, perhaps the Honourable Member

from Mayo could probably explain it in a better manner. Actually what it does, Mr. Chairman, I think that the Honourable Member is referring back to the section that allows, under legislation, for the assessor to assess a number of lots as one unit as opposed to individually that are of a smaller nature, such as thirty foot lots in Mayo. Subsequently, it would be advantageous to the individuals who owned those properties.

I think that the Honourable Member fully agrees in view of the situation in Mayo that we should have a section of that kind in the Ordinance, does he not?

Mr. Penikett: Absolutely, Mr. Chairman.

Mr. Tracey: I have a question in regard to law in this matter. If any person requests that the assessor assess two lots under one tax notice, two lots as contiguous lots, would that in any way effect his ability to sell one of those lots at a later date?

Mr. O'Donoghue: No, Mr. Chairman.

Mr. Fleming: Along the same lines, in the amalgamation of two lots, before the assessor could do this, is there not some form or somewhere that you have to go first to have those two lots amalgamated together rather than just to say that the assessor can do it?

Mr. O'Donoghue: What the assessor has joined together, the assessor can put asunder.

Hon. Mr. Lang: Mr. Chairman, in fairness to the question by the Honourable Member, I think that it is fair to say that it is left to the assessor. I am sure that he would not be prepared to join properties unless he was approached. Is that not correct, Mr. Smith?

Mr. Smith: Mr. Chairman, not necessarily approached with his opinion. But just because the assessor joins them together as one entry on the assessment roll, that would in no way affect their legal entity. If they are two separate properties in the Land Titles Office, they remain two separate titles.

Clause 62(3) agreed to

On Clause 62(4)

Clause 62(4) agreed to

On Clause 62(5)

Mr. Penikett: I have just a small technical point. When we are talking about bringing these lots together, it is conceivable that a property owner might have a group of land where he only has a building on one piece of land, but nothing on the rest, and might want to treat it as one piece of land for the purpose of this Ordinance. How would this section affect land on which differing tax rates would apply when clearly that might be the case? The one parcel of land has a lot of improvements on it. The other parcel has none.

Hon. Mr. Lang: I think that is fairly evident. In Subsection 3 of Section 62, parcels of land to which differing tax rates apply shall be dealt with separately in the tax notice. Therefore, they would be separate identities. You would not be able to amalgamate them for assessment purposes. Is that not correct, Mr. Smith?

Mr. Smith: I am not sure that I understand Mr. Penikett's question.

Mr. Penikett: The Minister has explained it to me. Clause 62(5) agreed to

On Clause 63(1)

Clause 63(1) agreed to

On Clause 63(2)

Mr. O'Donoghue: There is a mistake in Subsection (2). It should be, in the fourth line, "other than taxes, placed on the tax roll for collection." Could the House deem that to be a misprint?

Mr. Chairman: That being the case, we will have to bring in an amendment on Subsection (2), and as that is the case, we should stand it over until the amendment is brought in. Is that agreeable?

Clause 63(2) stood over

On Clause 63(3)

Clause 63(3) agreed to

On Clause 63(4)

Clause 63(4) agreed to

Mr. Falle: On this subsection (4), this day to day clause. Would somebody explain that to me?

Mr. Chairman: Where do you see that, Mr. Falle?

Mr. Falle: On 63(4)? I am sorry, you have passed it. I am behind you.

On Clause 64(1)(2)

Clause 64(1)(2) agreed to

On Clause 64(3)(a)

Mr. Byblow: Could I have explained what the intention is behind section (a)?

Hon. Mr. Lang: Mr. Chairman, this allows the taxing authority to request that taxes be paid over installments as opposed to a certain date.

Mr. Fleming: Mr. Chairman, I would like to have a little more clarification on that. I did not like the sound of it, if you do not mind.

Mr. O'Donoghue: This is just to establish a scheme similar to the scheme with the utility tax which provides for payment by small payers of a taxation bill in regular monthly installments or in three monthly installments, and those that are paid in advance will attach interests, those that are paid in arrears will forfeit interest, and the whole could be melded into a reasonable scheme for the benefit of the people who are paying installments.

Mr. Byblow: Mr. Chairman, would that be set by regulation then, the actual specifics?

Mr. O'Donoghue: Regulation by the Commissioner, bylaw by the municipality, and that is the way it goes. It is a new system permitting this.

Mr. Penikett: I would like to speak to a point. I know that the experience has been in Whitehorse, who could quite easily administer such a system, there are a number of taxpayers who would prefer to pay a little bit every month rather than have to go for one lump sum every year.

If we were able to give them some benefit for paying some taxes in advance, as well as charging other people for their arrears on a similar basis, you would make the administration of such a scheme, I think, not only easy but it would be to the benefit of taxpayers in that situation.

Mr. Fleming: I would like to get a little more clarification on it. In other words, now at the present time, by the end of July, that date is set, practically the middle of the year, the taxes are due for that year, from last January to the end of December that same year; therefore, the day after they are due and payable of course, you accrue interest, or the government approves that interest on it.

Now under this scheme it would be possible, would it not, that you could pay quarterly of the year and there would be then, of course, interest from say, if it was a three month period, the interest would start then, would it not? So you could feasibly be paying more interest if you did not pay to the end of the year. Oh, it is added.

Thank you.

Mr. O'Donoghue: It would gather interest at the first half of the year and balance off at the end so a person would get a saw-off.

Mr. Byblow: This discussion has brought to light the wording of a section we have just completed. If I could impose on the Chairman to make reference to 63(4) with respect to the interest that we have just spoken about, it really is not clear there that that interest could not be compounded on a daily basis, and I would assume that that is not the intention.

Mr. O'Donoghue: No, Mr. Chairman. That is not the intention of Subsection (4).

Clause 64(3)(a) agreed to

On Clause 64(3)(b)

Mr. O'Donoghue: On Subsection (b), this is the interest payable by the authority to the person who has paid in advance.

Mr. Byblow: Should not that reference, Mr. Chairman, in (b) refer to paragraph (a)?

Mr. O'Donoghue: Yes, that is correct. Just a mistake, Mr. Chairman.

Hon. Mr. Lang: We will take that as a typo, Mr. Chairman.

Mr. Falle: If I can impose on you to come back to 63(4), that is what I was babbling on about when I asked it and I was told that I was too late. If it does not mean compounded day by day interest, then I would like to know why it is there if that is not the intention?

Hon. Mr. Lang: Mr. Chairman, 63(4) and 65(2) are tied together. It does not say "compounded", it says "accrued". It is on a daily basis in respect to the interest rate. You are charged every day interest and over-all, Mr. Chairman, when you pay your bill, the interest rate is such and such and you are going to pay the imposed penalty on it. The change that we have done is that we have gone

from ten per cent to the prime lending rate. The municipality or the Government of the Yukon Territory are not good lending institutions and you are getting a cheaper rate than what you do if you borrow money from the bank. If I may add, Mr. Chairman, at the request of the municipality.

Mr. Falle: You stipulated ten per cent here but this day to day thing really bothers me. It may not be the intention but it is there in the Bill.

Mr. O'Donoghue: Mr. Chairman, it is only a legal expression. It is to justify when the man pays his taxes on say, the seventeenth of the month, the official can calculate interest up until the thirtieth of the previous month and then seventeen more days, work it out and then he pays his bill. It just means continuously.

Mr. Penikett: There are two points there, Mr. Chairman. I gather, sometime ago, there was a thing invented called a computer. In fact, there are places like the municipality of Whitehorse that can virtually punch a button and tell you what the taxes or the interest you would be paying in such a thing right up to the day. They have to be able to do that otherwise it makes nonsense of the calculations. That is all it means.

The other point made by the Minister should not be overlooked. Under the old law, I cannot remember what the municipality would charge for this. Nine per cent. Clearly what would happen is someone, if they were able to use that nine per cent money, it was obviously cheaper than going to the bank account at current interest rates. They just put off paying their taxes forever because it was pretty cheap money to borrow compared to the bank. Clearly, that was a change that had to be made. It was absurd for the municipalities to be left in a situation where they were operating as a lending institution which they were not created to do.

Clause 64(3)(b) agreed to

On Clause 64(c)

Clause 64(c) agreed to

On Clause 65(1)

Clause 65(1) agreed to

On Clause 65(2)

Mrs. McGuire: Clause 65(2). I just want to ask, is this part increased the next day by penalty by the amount equal to ten per cent? Penalty, is that considered interest?

Hon. Mr. Lang: No, Mr. Chairman if you have not paid by July the second of the year, you are automatically given an imposition of ten per cent penalty so if your taxes are one hundred dollars, it is one hundred and ten dollars and then from that, Mr. Chairman, the lending rate would apply.

Mr. Penikett: Mr. Chairman, is it intended that the interest apply to the amount owing or is it the amount plus the ten per cent penalty?

Mr. O'Donoghue: It is the new amount; it is the amount plus the interest. The \$100 becomes \$110 and then it is taxed at the rate of ten per cent which is actually \$11.

Mr. Falle: Is that not compounded interest?

Mr. O'Donoghue: Not at that point, Mr. Chairman. **Mr. Fleming:** They can charge you interest the next day. You just have a debt of \$100 today. You pay a minimum tax.

Mr. O'Donoghue: The interest accrues day by day. On day one you owe \$100, on day two the penalty assessed is up to \$110, on day three you get one three-hundred and sixty fifth part of interest at ten percent per annum.

Mr. Fleming: On the day that it is due, as I understand it, if you go in and pay it, you are fine. You go in the next day, and you will owe \$100 but you are a day late, you owe \$110. And, by that nightfall, if you do not pay it then, by the next morning you are going to owe \$110 with the bank interest attached to that the next morning. Right?

Mr. O'Donoghue: One day difference, which is one three-hundred and sixty fifth part of ten per cent per annum.

Clause 65(2) agreed to

On Clause 66(1)(a)

Mr. Penikett: Mr. Chairman, I am sure that it is my fault, but I do not read as well as the officials here write. I know that there was a problem in the old Ordinance, particularly for municipalities collecting or nailing down and identifying and locating mobile homes, for example, that owed taxes and relocated themselves somewhere else, perhaps, in the Territory. I am sure that you have taken care of that problem somewhere in here. I wonder if you could point it out to me where that is done.

Mr. Smith: Mr. Chairman, later on in the Ordinance.

Clause 66(1)(a) agreed to

On Clause 66(1)(b)(c)(d)(e)(f)

Clause 66(1)(b)(c)(d)(e)(f) agreed to

On Clause 66(1)(g)

Mr. Byblow: Why is there a set order of application to any amount paid?

Hon. Mr. Lang: To give the authority to the municipality as well as the Government, with respect, if there is money owing, to what is to be paid first and in the order of what is to be paid. It is clearly outlined in this section.

Mr. O'Donoghue: Apart from the specific question, it is a very important principle of law, the right of a person to whom a debt is paid to attribute that payment to one or other of the debts of the person who is paid, perhaps to secure their credit.

A person may come into a person's business and pay a sum of money and say, "that is my payment for rent." The person may be a shopkeeper, so he takes it off a bill in the shop, or a bill somewhere else. The creditor always has the right to attribute the money paid to him to the particular debt that he is owed by that person. This is the exercise of that right, in this order, which is the most advantageous order for the government, or the municipality, as the case might be.

Mr. Byblow: Very illuminating, Mr. Chairman.

Mr. Penikett: There is also another, very good, practical reason. It is not unknown for delinquent taxpayers to walk into municipal offices and suggest that they would like to make a payment on the interest, which, of course, is not the way the municipality would necessarily like to have it applied.

Mr. Smith: I was only going to try to clarify some more reasons why it is necessary that this be passed. Just to give an example, if Mr. Byblow owns a piece of land and last year's taxes were not paid on it, because he did not own it last year, but he did not bother to check to see if they were paid before he bought it. Taxes must stay with the land. He comes in to pay his taxes and says, "I am not those paying last year's taxes, they were not mine." But this says that they must be applied to the arrears first.

Clause 66(1)(g) agreed to

On Clause 66(2)(a)

Hon. Mr. Lang: This definitely outlines that no one has the authority to waive the collection of taxes. In (b) and (c), you can see that. I think it is an important section, Mr. Chairman, because it says that everyone is in this together, and everyone must pay. There is no flexibility, whatsoever.

Clause 66(2)(a) agreed to

On Clause 66(2)(b)(c)

Clause 66(2)(b)(c) agreed to

On Clause 67 (1)

Mr. Byblow: Just out of curiosity, is this a standard application across the country that taxes follow property all the time?

Hon. Mr. Lang: Yes, Mr. Chairman.

Mr. Penikett: Perhaps, I could ask Mr. O'Donoghue what is the prospect for recovering such taxes if, for example, a mobile home has left the Territory?

Mr. O'Donoghue: No.

Clause 67(1) agreed to

On Clause 67(2)

Clause 67(2) agreed to

Mr. Chairman: This completes Clause number one. We have several sections to step over. Therefore the whole clause is stood over until we clear up these sections.

Section 1 stood over

On Section 2

Mr. Byblow: Are we to assume that sections of the existing Taxation Ordinance between (67) and (82) stand as they are?

Hon. Mr. Lang: Correct.

Mr. Chairman: Is there any further discussion on Clause 2?

Section 2 agreed to

On Section 3

Mr. O'Donoghue: Does the House understand what is happening here? We are talking about a situation of apportioning taxes between two pieces of the same property, as a result of a request to the assessor to apportion the liability. This gives the right of appeal against an adverse apportionment to the assessment review board. This system of appeal has not existed before.

Mr. Penikett: I was wondering, Mr. Chairman, if Mr. O'Donoghue

could give us a case in point that might illustrate it for us. Would such a situation be if someone, during the tax year, sold out part of a piece of land or something?

Mr. O'Donoghue: Another example would be a person who had a duplex, living in the whole of it himself, he let one portion of it and said, "You will pay your share of the tax," and then he would have the assessor apportion the taxes. A person who had an argument about it could appeal. It is a fairly frequent situation in city property, not so much in rural areas.

Section 3 agreed to

On Section 4

Section 4 agreed to

On Section 5(1)(2)

Section 5(1)(2) agreed to

On Section 5(3)

Mr. Tracey: I would like to refer back to the question that Mr. Penikett made to the Legal Advisor. If somebody moves a trailer off this land, according to this Ordinance, the Government would have the right to recover from this person, and yet he said that if the trailer was moved out of the Territory we would not have the right to recover this, or you would not be able to recover this tax. Is that right?

Mr. O'Donoghue: The right remains but tax proceedings are not normally enforceable between one jurisdiction of Canada and the next, or between one country and the next. No jurisdiction looks kindly on a tax for tax collection purposes by one jurisdiction into another. Nobody helps anybody, nobody gives any assistance. The chances were what Mr. Penikett asked, the chances are zilch.

Mr. Penikett: I thought that the question that Mr. Tracey was going to ask was one that might be of concern. If somebody has a trailer on my land, and they do not pay their taxes, is there any sense under these provisions here that the owner of the land might be subject to the unpaid taxes on that trailer?

Mr. O'Donoghue: I do not know, Mr. Chairman.

Mr. Penikett: Could I suggest that might be something that the Minister might want to check out. I can think of a couple of examples where some land owners might be royally shafted if they had a group of delinquent trailer owning taxpayers on their property who then moved out. They might find the Crown wanting possession of their property without them really having any ability to do anything about it.

Mr. O'Donoghue: We are prepared to look at it, Mr. Chairman, but so far the situation has been that a run-away trailer had gone with his taxes on his back and the landlord has been cleared.

Mr. O'Donoghue: If you ask me to look into it, we may be imposing burdens on land owners they do not expect.

Hon. Mr. Lang: I think it is fairly clear. If the Honourable Member wants us to pursue it further, fine, but I think that it is fair to say that if we go back to a couple of other sections in respect to whom the assessment notice is sent, and the tax notice, that is the key. If I have a mobile home, and I am the recipient of that particular tax notice, and I leave with my trailer, I am the one that they are pursuing, as far as the tax collector is concerned. It is not against the land, because everybody knows that I own that improvement.

This goes back to the section on mobile homes that the Honourable Member is referring to, if he refreshes his memory. I think it is covered in the specific sections in respect to that. In respect to jurisdiction, I could not comment on that, but I think we do have it covered, at least to the best of our ability.

Mr. Penikett: Mr. Chairman, I am not questioning the structural purity or the beauty of this legislation, whatsoever. I just want an assurance, if it can be given, that land owners would not in fact find liens against their property all of sudden, by virtue of such a case.

Mr. O'Donoghue: Without giving a positive assurance, it has never happened so far, and the Assessor assures me that it is not the intention to do this in the future. Would the Honourable Member be satisfied with that assurance?

Mr. Penikett: I have the highest regard for the word of the officials of this government.

Section 5 agreed to

On Section 6

Hon. Mr. Lang: Mr. Chairman. This is an important section. We are attempting to shorten the period of time in respect to the lien procedure. Originally it could extend as long as four years. Now we are down to, I believe, three years prior to the expiration of the period of time. Is that not correct? Maybe it is two and three then. We are going down to two years as opposed to three years, shortening the period of time for this particular section, at the request of

the municipalities, once again, because they have been having a lot of trouble in some of the municipalities, at the present time, in respect to delinquent taxpayers, and not being able to take the necessary steps to either force them to pay or at least to put that property back on the market so that someone else can purchase it.

Mr. Penikett: Could I ask the Minister a tangential question about that? Without mentioning any names, particularly, it occurs to me that there might be one or two municipalities in the territory, that, as a result of these procedures, might end up with a lot of land on their hands, that they perhaps do not really need. In such an event, would the Minister be interested in acquiring such lands, so that the cash positions of such municipalities were not really depleted?

Hon. Mr. Lang: Mr. Chairman, I do not think we would want to be prepared to purchase land unless we were going to utilize it. We are in the business of developing land and selling it and not in the real estate market. I think it is fair to say, at the same time, Mr. Chairman, at least that land would be available for sale by the particular taxing authority. I would ask Mr. Smith who has seen these lien procedures go through just exactly how it does work.

Mr. Penikett: Recently the Minister has shown a commendable interest in developing land banks in the Territory, by design or not. That is fine. It occurs to me in one place in the Northern Yukon, not mentioning the place, but quite conceivably, through these procedures, could end up with a lot of land on its hands which it might not have a market for. I just wondered if the Minister considered that possibility.

Hon. Mr. Lang: Mr. Chairman, at this time no.

Mr. Smith: Mr. Chairman, perhaps I can enlighten the Members on the meaning of this section 6. What could happen if these sections are all approved is that if you do not pay your taxes in 1979, in January of 1980, the taxing authority can file a tax caveat against it. If they are still not paid a year after that time, then they can start proceedings to take that property for non-payment of taxes.

Section 6 agreed to

On Section 7

Mr. O'Donoghue: This is just a subsection which is directly related to the section 6.

Section 7 agreed to

On Section 8

Section 8 agreed to

On Section 9

Mr. Penikett: Mr. Chairman, perhaps the Minister will briefly explain that. I can understand some of the reasons for time extensions, previous exemption. The Minister gave us a little speech about the collector not being allowed to waive any of the liabilities, et cetera, et cetera, et cetera, for everybody must be treated equally. Could the Minister just briefly explain the kind of circumstances under which he would envision these powers being used.

Hon. Mr. Lang: Mr. Chairman, if a situation arises where you are having a situation with the assessment roll and you are unable to complete it in time, then that particular section would apply.

If you have a problem in respect to the timeframe for the Assessment Review Board to have that many appeals, you could extend that time. Prior to this time, by legislation, we have been bound in by fourteen days, and that is it. It sometimes made it very difficult, in retrospect, in many instances, it is perhaps unfair to the taxpayer because it has caused some people not to be assessed when they should have been assessed that year, and help take the burden off the other taxpayers.

Section 9 agreed to

On Section 10

Mr. Penikett: Mr. Chairman, I would like the Minister to explain exactly what this means.

Hon. Mr. Lang: Mr. Chairman, there are going to be conflicts between this legislation and the Municipal Ordinance for example, in respect to dates and this kind of thing; therefore, what we are saying is that this particular piece of legislation, if there is a conflict, will prevail over the other one. We are working on it at the present time, and we will be trying to amend it as quickly as we can.

Mr. Penikett: I am still interested in hearing Mr. O'Donoghue because this suggests that this Ordinance ranks very high in the hierarchy of the legislation of the Government, perhaps even higher than the Ordinance to Perpetuate a Certain Ancient Right and the Boiler and Pressure Vessels Ordinance and the Income Tax Ordinance and all those others.

Perhaps I could have an explanation.

Mr. O'Donoghue: It does not really mean what it says because as everyone knows, each successive Ordinance is stronger than the earlier Ordinances. This, in dealing with all of the Ordinances dealing with property, establishes the right of the liens and the right to collect taxes, so that no property might transfer from one person to another which could defeat the right given to the Government or the municipalities by this Ordinance. This is intending to make clear to a judge interpreting the law, that this is the desire of this House. It is a clear statement of the law which may not be perfect but it is the best we can do.

Section 10 agreed to

On Section 11

Mr. Penikett: Mr. Chairman, I just wonder again if I could ask the Legal Advisor about the definition of an offence in this Ordinance. We have already got provisions for non-payment, and delinquency and so forth with interest payments and penalties and so forth. Is this for some such heinous offence as perhaps lying to an assessor or something like that?

Mr. O'Donoghue: I presume, some such thing. All of the other things are dealt with, the obligations and the penalties, and everything else. It is a standard type clause. I had thought that it was merely an inflation clause to increase the penalties. I cannot find an offence clause in the old Ordinance.

Section 11 agreed to

On Section 12

Mr. Fleming: Just a general question on the interest on unpaid taxes, at the end of July, or whatever date is set, we will say there is a ten per cent interest charge at that time. From there on one would be hit with bank interest rates, at the going rate. Is there not a law someplace that says that you cannot charge only a certain amount of interest on anything of this type, or even loans?

Mr. O'Donoghue: Yes, Mr. Chairman, there is a Federal law. It is an ancient law that dates from former Christian times, which makes it a penalty to commit usury. There is no definition of usury, as far as I know. I think it is up to 39 or 49 per cent.

Mr. Penikett: I think there is a new Federal law that puts the upper limit somewhere in the twenties. I suggest that with ten per cent, and bank rates right now approaching thirteen and fourteen and, it is not inconceivable in these days, fifteen per cent, it is actually possible that this Ordinance might put us in violation of that Federal Statute, I would think.

Mr. O'Donoghue: Not as it is presently drafted. There is a trick here. You add a ten per cent penalty, which is not interest, and then fourteen per cent on top of that. Although it looks like twenty-four per cent, it is only a ten per cent penalty and forty per cent interest.

Mr. Penikett: I would pay more than a dollar to hear Mr. O'Donoghue arguing that before a court.

Mr. Chairman: Order, please. Is there any further discussion?

Mr. Penikett: Mr. Chairman, you are still dealing with that particular section, are you not?

Mr. O'Donoghue: This is drafted in an unusual way, because of the necessity for this particular section. The assessment may not be completed on time, for the whole of this ordinance to be in force.

Section 12 agreed to

Mr. Penikett: Before we do anything rash, I wanted to find out, if I could, from the Minister, if, since the letter from AYC was tabled today, it was his intention first thing when we go back on the Committee, to go back to section 11(2) to which reference is also made in the letter?

Mr. Chairman: Mr. Penikett, would you kindly state that question again please?

Mr. Penikett: I wanted to ask the Minister if it was his intention when we go back into Committee on this Ordinance, if it was his intention to return to Section 11(2), which I think was stood over, to which reference was also made in the letter from the Association of Yukon Communities.

Hon. Mr. Lang: Anything that has been stood over is for the purpose of being looked at, and bringing possible amendments to the House. So it will definitely be discussed. I do not know which letter you are talking about. Is it the one about owner-occupiers?

Hon. Mr. Graham: Mr. Chairman, I move that you do now report progress on Bill Number 26, and beg leave to sit again.

Mr. Chairman: It has now been moved by Mr. Graham that the Chairman now report progress on Bill No. 26, and beg leave to sit again. Do you agree?

Motion agreed to

Hon. Mr. Graham: Mr. Chairman, I move that Mr. Speaker do now

resume the chair.

Mr. Chairman: It has been moved by the Honourable Mr. Graham that the Speaker do now resume the chair. Do you agree?

Motion agreed to

Mr. Speaker resumes the Chair

Mr. Chairman: Order, please. Is there any further discussion?

Mr. Penikett: Mr. Chairman, you are still dealing with that particular section, are you not?

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Mr. Chairman: It has now been moved by Mr. Graham that the Chairman now report progress on Bill No. 26, and beg leave to sit again. Do you agree?

Motion agreed to

Hon. Mr. Graham: Mr. Chairman, I move that Mr. Speaker do now resume the chair.

Mr. Chairman: It has been moved by the Honourable Mr. Graham that the Speaker do now resume the chair. Do you agree?

Motion agreed to

Mr. Speaker resumes the Chair

Mr. Speaker: I will now call the House to order. May we have the report from the Chairman of Committee?

Mr. Lattin: Mr. Speaker, the Committee of the Whole has considered Motion Number 20, as referred to the Committee of the Whole, and on the matter it has passed the following motion: That the Committee of the Whole not present any recommendations to the House concerning Sessional Paper 79-2-23.

The Committee has also considered Bill Number 26, An Ordinance to Amend the Taxation Ordinance, and directed me to report progress on same, and ask leave to sit again.

Mr. Speaker: You have heard the report of the Chairman of Committees. Are you agreed?

Some Members: Aye.

Mr. Speaker: Leave is so granted. May I have your further pleasure.

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member from Mayo, that we do now call it 9:30.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Mayo, that we do now call it 9:30.

Motion agreed to

Mr. Speaker: This House now stands adjourned until 1:30 tomorrow.

The House adjourned at 8:37 o'clock p.m.

Whitehorse, Yukon**Thursday, October 18, 1979****Mr. Speaker:** I will now call the House to order.

We will proceed at this time with Prayers.

Prayers

DAILY ROUTINE**Mr. Speaker:** We will proceed at this time with the Order Paper.

Are there any Returns or Documents for Tabling?

TABLING OF DOCUMENTS**Hon. Mr. Graham:** Mr. Speaker, I have for tabling a green paper on a proposal for adopting daylight saving time.**Mr. Speaker:** Are there any Reports of Special or Standing Committee?

Petitions?

Reading or Receiving of Petitions?

Introduction of Bills?

Notices of Motion for the Production of Papers?

Notices of Motion?

Are there any Statements by Ministers?

This then brings us to the Question Period. Have you any questions?

QUESTION PERIOD**Question re: Water and Sewer Service to Wolf Creek and MacPherson Lots****Mr. Penikett:** Thank you, Mr. Speaker. I have a question to the Minister of Municipal Affairs.

On Tuesday of this week, the Whitehorse Star carried an ad for the sale of residential and acreage residential lots in this City. The ad offers nine Wolf Creek lots and three MacPherson lots, with notice that the sale price included water and sewer services to the property line.

I would like to ask the Minister why these twelve lots were receiving water and sewer service denied their neighbours?

Hon. Mr. Lang: Mr. Speaker, I am sure that the advertisement that the Honourable Member is referring to is inaccurate, due to the fact that water and sewer is not available to those particular subdivisions. It is probably in reference to the remainder of the lots that are on sale in the ad.

Mr. Penikett: Thank you, Mr. Speaker.

I would like to ask the Minister how many of the twelve acreage lots offered were voluntarily turned back to the Government and how many purchasers, if any, were forced to return the land because they failed to fulfill the terms and conditions of the sale?

Hon. Mr. Lang: Mr. Speaker, it would be very difficult to tell. The point is that there is a timeframe given in respect to building a structure and if the individual has not made any commitment, then the land reverts back.

In most cases it is done voluntarily because the individual has seen that he or she does not want to build. But it would be very difficult for me to find out whether or not it was voluntary or otherwise.

Mr. Penikett: Supplementary, Mr. Speaker: can the Minister at least say if, to his knowledge, formal legal proceedings were commenced in the case of any of these lots to return them for failure to fulfill the terms of the agreements of sale?

Hon. Mr. Lang: Mr. Speaker, I would have to take that under advisement.

Question re: White Pass Inquiry

Mr. Byblow: I have a question for the Acting Government Leader. With respect to the announcement yesterday of the public inquiry regarding White Pass, I would ask if the Acting Government Leader is informed of when and where the inquiry will take place?

Hon. Mr. Lang: Mr. Speaker, once that information does come to our attention, as you know the initial announcement was made, we

will inform the House exactly what is going to take place.

Mr. Byblow: Respecting input from this House, Mr. Speaker, can the Acting Government Leader indicate if he will be calling for this House to articulate a position for presentation to the Inquiry?

Hon. Mr. Lang: Mr. Speaker, that is something that would have to be examined, but I am sure that if any Member wanted to go before any Inquiry, that they would be free to do so.

Mr. Byblow: In recognition, Mr. Speaker, of the information presented to the House last spring, would the Acting Government Leader consider having the Honourable Member from Whitehorse West appear on behalf of the Government before the Inquiry?

Hon. Mr. Lang: No, Mr. Speaker.**Question re: Teslin Television**

Mr. Fleming: I have a question for the Minister of Community Affairs. Is the Minister aware that Teslin TV is not operating quite as successfully as it should be, or not producing the picture that it should, going off and on in the evening and so forth. Is he aware of the situation there?

Hon. Mr. Lang: No, Mr. Speaker. It is my understanding that there is an individual in each community who has the responsibility if something is wrong with the TV to notify the Government.

I would have to take it under advisement, Mr. Speaker, and after this if that does come to the Member's attention, I would appreciate it if he would call me directly then we could take the appropriate action, rather than wait for Question Period.

Mr. Fleming: This is on the same question, a supplementary; can the Minister tell me if the repair work is a contract, an overall contract, to work on the TV during the year, or is it a situation where an electrician or whatever is needed goes out from time to time and is paid for each individual visit?

Hon. Mr. Lang: Mr. Speaker, I imagine that there is general maintenance, and on top of that, there would be costs that would accrue as there would be major repairs that would have to be done.

At the same time, I should point out that we are working on a position to put to the Government of Canada in respect to purchasing from, Telstat Canada, these particular receiving stations so that we do not have to continue on our annual lease with that particular Crown Corporation which my illustrious friend from Whitehorse West believes is in the best interest of the people of the Yukon Territory.

Question re: Two Mile Hill Intersection

Mr. Penikett: Mr. Speaker, I will dignify that remark with a question. I have a question to the same Minister. I wonder if the Minister of Municipal Affairs could report to the House on the Government's plans for upgrading the intersection at the top of Two Mile Hill.

Hon. Mr. Lang: Mr. Speaker, at the present time this is actively being discussed within the Department of Highways which is its prime responsibility because it is the Alaska Highway as well as the Department of Municipal Affairs.

The City of Whitehorse will be involved as well, but at the same time, I think it is fair to say, Mr. Speaker, that we are working at seeing whether or not we can get something going in respect to the Porter Creek access road to hopefully alleviate some of the traffic problems that will become more and more apparent as the years go by.

I think it is fair to say, Mr. Speaker, that if we can get the traffic from the Porter Creek area off on an entirely different road than the Alaska Highway, it will do much to resolve the problems that are there now and are going to become much more apparent within the next year.

Mr. Penikett: Mr. Speaker, given the Minister's reply, can you then say that negotiations for the construction of the Porter Creek alternative access route will then have a bearing on the timing of the redevelopment of the Two Mile Hill/Alaska Highway intersection.

Hon. Mr. Lang: Mr. Speaker, I think that it depends on just exactly what the City, working in conjunction with the two departments in question, can come up with in respect to the actual intersection at Two Mile Hill. But for the life of me, years ago I can recall when there was a traffic circle there and I never understood why they ever took it out. Perhaps, maybe this is what we should be going back to and there would be a minimal amount of costs, and at the

same time, it would alleviate some of the traffic problems and patterns in that particular area.

Mr. Penikett: Mr. Speaker, given the planned development in Hillcrest and the ever increasing rush hour traffic on the Alaska Highway, would the Minister consider accelerating the timetable for phase one of the Alaska Highway/Two Mile Hill intersection reconstruction?

Hon. Mr. Lang: Mr. Speaker, I am prepared to take that as notice.

Question re: Labour Standards Legislation

Mr. Byblow: Mr. Speaker, I have a question for the Acting Government Leader.

As the only surviving member, to this House that is, of the Special Committee to review Labour Standards Legislation, could the Acting Government Leader indicate the status of this committee's findings?

Hon. Mr. Lang: Mr. Speaker, that particular piece of legislation is not for the legislative programming for this particular Session.

Mr. Byblow: Mr. Speaker, would the Government Leader be able to indicate if Members of this House would be able to avail themselves of the transcripts of the public hearings that were held by this committee?

Hon. Mr. Graham: Seeing as how the Labour Standards Ordinance does come as part of my portfolio, I feel more qualified, perhaps, to answer that question.

We are, at present, reviewing the total Labour Standards Ordinance and, with the help of not only the transcripts of the public meetings held, as part of the last Legislature, but also of the questionnaires that were returned as a result of those public meetings, we will be coming out with a paper in the near future, hopefully within the next six months or so on the Labour Standards Ordinance.

Question re: Native Indian Reserves

Mr. Fleming: A question to the Minister of Community Affairs: does the Minister know what areas in Yukon were set aside or designated as reserves for native peoples in the past and up until this date, by the Federal Government?

Hon. Mr. Lang: I do not have the list, Mr. Speaker, but there are, I believe, approximately six to eight small areas that were set aside in the past.

Mr. Fleming: Supplementary, Mr. Speaker, yes. Would the Minister take it in hand to obtain, possibly, these for the House and for myself?

Hon. Mr. Lang: Yes, Mr. Speaker.

Question re: YTG Employment Application Forms

Mr. Penikett: Thank you, Mr. Speaker. I have a question for the Minister of Municipal Affairs, in his capacity as Acting Government Leader.

Can the Minister confirm my information that the Yukon Government employment application forms require a potential employee to state whether they have a criminal record or not?

Hon. Mr. Lang: Mr. Speaker, I will have to take that under advisement.

Mr. Penikett: Thank you, Mr. Speaker.

While the Minister is seeking advice on that question, I wonder if he would also accept the following question.

In view of the fact that there appears to be no time period stated on the application form on which a criminal record is considered relevant criterion for job applications, could he find out how long following a criminal conviction a citizen would wait before they would be considered for employment by this Government?

Hon. Mr. Lang: Mr. Speaker, I will find the information.

Mr. Penikett: Thank you, Mr. Speaker.

At the same time, would the Acting Government Leader also just check to see if the fact of a contractor's criminal record would be considered in the awarding of Government contracts?

Hon. Mr. Lang: Mr. Speaker, I will have to take notice to that question as well.

Mr. Speaker: Yes, perhaps this type of question would more properly fall within the Written Question category, if such information is sought in this line. Perhaps the Honourable Members could bear that in mind for the future.

Question re: Report on Continuing Education

Mr. Byblow: Mr. Speaker, I have a question for the Minister of Education.

In his address to the House last Tuesday, the Minister stated that the Report on Continuing Education was received and would be released very soon.

Could the Minister indicate what the problem is with releasing it?

Hon. Mr. Graham: Mr. Speaker, there is no problem whatsoever.

The people from the University of Alberta, that actually carried out the study, are presently in Whitehorse and will be meeting with the Government caucus tomorrow morning and, at some time after that meeting with the Government caucus, I am sure that we will release the report.

Mr. Byblow: Mr. Speaker, I would thank the Minister for his very informative answer.

On the same topic, in his address, again last Tuesday, the Minister indicated that there would be increased attention given to vocational needs of students in school, a complementary move, I would suggest. I believe that was an urgent message in last spring's educational debate.

Specifically, could the Minister indicate or advise the terms of reference and the composition of the advisory committee that would be overseeing this thrust of educational policy?

Hon. Mr. Graham: Mr. Speaker, outlining their terms of reference and the people and everything might take a considerable amount of time, so I will endeavour to make the Honourable Member aware through a written answer.

Mr. Byblow: On the same general topic, Mr. Speaker, I would inquire of the Minister whether his Department is considering expansion of vocational training facilities outside the school system?

Hon. Mr. Graham: Mr. Speaker, that will form part of the report from the University of Alberta team, and I will wait until that report is made available.

Mr. Penikett: Mr. Speaker, I would like to ask the acting Government Leader if the Government plans to table in this House the planning proposal by Pia Archibald on the Dempster Highway Corridor?

Hon. Mr. Lang: Mr. Speaker, is the Honourable Member referring to the one that he has already received?

Mr. Speaker: Order please. I do not think it is competent to ask question such as that. Perhaps the Honourable Member from Whitehorse West would like to rephrase his question.

Mr. Penikett: Mr. Speaker, this is a supplementary to my other question. I wonder if I could ask the Minister if the report to which we both refer will be referred to the Dempster Highway Planning Committee by this Government.

Hon. Mr. Lang: Mr. Speaker, I find it difficult to answer the question because I am not too sure which report we are speaking of. My understanding is that we are speaking of the same report that the Honourable Member has already in his possession, so, yes, I would assume that it would be going in that direction.

Mr. Penikett: Thank you, Mr. Speaker, I wonder if the Acting Government Leader could also tell me if, as yet, the Yukon has signed or if an agreement has been concluded on the International Convention on the Porcupine Caribou Herd?

Hon. Mr. Lang: It is my understanding, Mr. Speaker, and this is not my direct portfolio responsibility, but I understand that the answer is no.

Question re: Tourism Agreement

Mr. Byblow: Mr. Speaker, I have a question for the Acting Government Leader to clarify a topic. Can the Minister confirm whether or not there has been a signing of a sub-agreement between the Government of Canada and the Department of Tourism recently?

Hon. Mr. Lang: Mr. Speaker, I will have to take that as notice.

Mr. Byblow: Similarly under the same topic, Mr. Speaker, it is my understanding that a Deputy Head of the Department is addressing the Tourism Advisory Board next week on the specific topic of Tourism sub-agreements and perhaps the Minister would indicate if this House could receive some information if there have been, in particular, any fiscal commitments.

Hon. Mr. Lang: Mr. Speaker, it has come to my attention that no, there has been no subagreement signed.

Secondly, I would imagine that any discussion of that nature would be trying to explain just exactly how these types of agreements would work in conjunction with the Tourism Industry. But there would be nothing concrete, unless an agreement was signed

prior to that particular presentation being made.

Question re: Yukon Plan of Action for Women

Mr. Penikett: Thank you, Mr. Speaker. I have a brief question for the Minister of Education, in his responsibility for the department of person power.

When will the Government's Yukon Plan of Action for Women be ready for tabling in the House?

Hon. Mr. Graham: Mr. Speaker, I do not have a definite timetable, because of the fact that the Manpower Department is working on several papers at the present time, but I would hope it will be reasonably quickly.

Mr. Speaker: This then brings us to the end of the Question Period. We will now proceed to Government Bills and Orders.

ORDERS OF THE DAY

GOVERNMENT BILLS AND ORDERS

Bill Number 19: Second Reading

Mr. Clerk: Second reading, Bill Number 19, standing in the name of the Honourable Mr. Graham.

Mr. Speaker: Is the Honourable Member prepared to deal with Item 4?

Hon. Mr. Graham: I am, Mr. Speaker.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Mayo, that Bill Number 19 be now read a second time.

Hon. Mr. Graham: Thank you, Mr. Speaker.

Mr. Speaker, retirement savings plans are usually carried by the same kinds of company, the same companies, in fact, that carry life insurance, but, in addition, in the recent past, trust companies have become involved in the business.

In 1954, Ontario passed a law which did what we are hoping to do with this Ordinance. It was done at the request of the Association of Superintendents of Insurance of Canada, the Canadian Insurance Company organization.

Some provinces copied Ontario's law. At the end of 1972, a request was made to the provinces by the Trust Companies Association of Canada, who asked that the law be amended to include them. Basically, what both groups wanted was that a person who was a participant in a pension plan can name his beneficiary in the document with the plan itself.

In this way, the benefits, both to the person who is getting the money and the insurance company, would be the same as if it were life insurance money.

The Uniform Law Conference of Canada took the matter up and eventually, in 1975, produced a uniform act to cover both the needs of the insurance companies and the trust companies. Our law closely follows that uniform law, as drafted by the Uniform Law Conference of Canada.

This Ordinance also deals with the making of a will. A will, under the Wills Act, is only effective if it is done in a certain legal way. For example, either by a will which is duly witnessed by two independent witnesses, or a holograph will, a will in which the person does it in his own handwriting. This will can be written by himself, the person who is making it, but needs no witnesses to be legal in this jurisdiction.

The way that the will situation is handled is that a designation of a person to receive the money, if it is made in a will, is lawful and effective, even though, technically, the will might be invalid because it has only one witness or none at all.

In other words, they treat the writing of a designation in a will form as a thing independent from the effectiveness of the will for other purposes.

The purpose of this Bill, Mr. Speaker, as I have outlined, is to provide a convenient and effective method for the designation of beneficiaries of retirement savings plans and to make our law, in this respect, consistent with the law in the rest of Canada.

Thank you, Mr. Speaker.

Motion agreed to

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member from Hootalinqua, that Mr. Speaker now do leave the Chair and we resolve into Committee of the Whole.

Mr. Speaker: It has been moved by the Honourable Minister of

Education, seconded by the Honourable Member from Hootalinqua, that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

COMMITTEE OF THE WHOLE

Mr. Chairman: I shall call the Committee of the Whole to order. At this time we will have a short recess.

Recess

Mr. Chairman: I shall call the Committee of the Whole to order.

I have a motion on the floor but first, this afternoon, we are considering Bill Number 19, Retirement Plan Beneficiaries Ordinance.

I have a Motion on the Floor that we have Mr. O'Donoghue as a witness.

Motion agreed to

Mr. Chairman: Welcome, Mr. O'Donoghue.

I will now anticipate general debate on this Ordinance.

On Clause 1

Hon. Mr. Graham: Mr. Chairman, I think I have basically said everything in my Second Reading speech. I think the best thing to do is go through it clause by clause and if anyone has any questions — there are some sections, I admit, that are very difficult to decipher and consequently we have asked Mr. O'Donoghue to attend and hopefully explain some of them.

Mr. Penikett: On a procedural question, I read this Bill twice and normally, I have some fair understanding of what things are about having read them. I have got to say that I did not come away from reading this with any kind of an idea at all.

I wonder if I could suggest, with a Bill such as this where the language is such that is not obviously clear exactly what is intended, if rather than us asking a lot of stupid questions to try and find out what it is, we could begin the discussion of each clause with an explanation. I think that would save a lot of time.

Hon. Mr. Graham: This is acceptable.

Mr. Byblow: We are in general debate?

Mr. Chairman: That is correct.

Mr. Byblow: Perhaps to initiate the discussion as the last Member suggested, it is my understanding that this Legislation allows a person, in a retirement plan, to name a beneficiary, which, if I am interpreting this correctly, is not something that is permissible now under Legislation.

If this is the case then perhaps we can have that clarified. What is the status with respect to the naming of beneficiaries under registered retirement plans?

Mr. O'Donoghue: It is a technical matter. It is permissible, but it is not of any legal effect. When a person dies, his money is distributed either by a will, if he has made one; if he has made no will, it goes under the rule of intestacy, so much of a proportion to his wife, and so much to his children. If there are no wives and children, then it goes up to his father and his family and down to his brothers and sisters and their children.

A person without this cannot effectively block the will and have this go the way that he wants it by way of an agreement with an insurance company or a carrier of the plan. This permits him to do it, and carries it into legal effect.

Mr. Byblow: Is the Legal Advisor saying that without this Legislation, the benefits that would accrue to the beneficiary have to wait for the legal proceedings while the estate is probated?

Mr. O'Donoghue: Yes, Mr. Chairman.

Mr. Byblow: If I am still interpreting this correctly, what we are doing is tidying up procedures in the event of no will.

Mr. O'Donoghue: When a person dies, his property is distributed in accordance with a will if he has one, or under the rules of intestacy if he has not got one. This is a third method. If he signs an order to the insurance company or the carrier of the plan, give it to my wife, the wife will get it immediately when he dies, and it is outside the terms of the will and it is outside the terms of an intestacy. It goes directly to her.

Mr. Penikett: Mr. Chairman, is the Legal Advisor telling me that the insurance policies that I have had, one which names my wife beneficiary and one which names my son, that the insurance settlement, there is a retirement portion in the insurance policy, would not be allocated according to my wishes?

Mr. O'Donoghue: Mr. Chairman, under the Insurance Ordinance a

life insurance policy is capable of being designated to an individual such as a wife or son, and it would be carried out. The power doing that is the Insurance Ordinance, which makes that possible. The Insurance Ordinance does not capture retirement funds, or benefits under funds such as I described in this definition of "plan".

The Insurance Ordinance does not capture benefits under funds such as are described in this definition of "plan".

Mr. Penikett: I would just like to pursue this a little bit, because there are insurance policies now, such as one that I have, that have a retirement factor in them which is all complicated. I am sure an insurance professional could explain it, but if I am so fortunate as to live to a certain retirement age, this plan, which is basically life insurance, starts paying out some money.

Am I to understand then that that provision, were I to die during that retirement period or something, I guess then the insurance factor comes into effect and not the retirement thing.

Mr. O'Donoghue: I am not sure just exactly what the question is, but presumably the Honourable Member means that he is not going to retire in the next four years.

Hon. Mr. Graham: Mr. Chairman, I think that the definition of the word "plan" is all-important. Under this Ordinance, the plan is fairly broad and all encompassing. It takes in pension plans, savings plans, and various other plans, such as Registered Retirement Saving Plans, plans that an employee might subscribe to through a private company or a large corporation and that type of thing. Those are all included in the word "plan".

I think any, and correct me if I am wrong, insurance plans, life insurance plans or this type of thing that we presently have that have designations in them, still take place under those designations, without this Ordinance, under the Insurance Ordinance.

Mr. Byblow: Okay, Mr. Chairman, if I may, just to clarify several points: is it correct that the Public Service Superannuation Act permits a beneficiary to be named and is not effected by this Ordinance?

Mr. O'Donoghue: I could not say, Mr. Chairman. The Public Service Superannuation Act that the Territorial employees subscribe to is a Canada fund. We do not govern it in this legislation.

Mr. Byblow: Similarly, Mr. Chairman, there are certain retirement plans, by companies, that have provisions for naming a beneficiary. Is that correct?

Mr. O'Donoghue: They have, Mr. Chairman, because, in other jurisdictions, this law, or a similar law, has been passed.

So, the odds are, to be practical, that nobody would know that the beneficiary in Yukon was not entitled to get it, that it should go under a will.

But we need a tidy up effort to have our law the same as the rest of the provinces.

Mr. Byblow: One point that I am still not clear on is, in the event that a beneficiary is named in any plan that is in place now, would this Legislation change that status of the beneficiary?

In other words, going back to my original question, if a beneficiary is named in a specific plan now, does that beneficiary receive the benefits without the routine of court procedures of the estate?

Mr. O'Donoghue: Yes, Mr. Chairman.

Clause 1 agreed to

On Clause 2

Mr. Byblow: With respect to the definition of the word "annuity", can an annuity be extended to the beneficiary, under the terms of a plan?

Mr. O'Donoghue: Yes, some plans provide that an annual payment, pension or annuity, is paid to the person who subscribes, but a lesser sum will be paid to his wife after his death.

She does not have a right to it because she is not part of the contract. This will provide that legal right. He will designate her as the person to get the reduced pension.

Mr. Chairman: Any difficulty with the definition of "participant"?

Mr. O'Donoghue: I just point out for interest, Mr. Chairman, that "annuity" is defined as not necessarily being payable once a year. It is a technical definition.

Mr. Byblow: I would assume that the Legal Advisor is saying that an annuity can be bits and pieces in any form of a lump sum.

Mr. O'Donoghue: No.

Mr. Byblow: I just would like a definition of a "will" as applied to this.

Mr. O'Donoghue: This is a technical one. It says the "will" has the same meaning as in the Wills Ordinance".

A will, to be lawful in this jurisdiction, has to be made either with two witnesses, each of whom must be present and see the other person signing, as well as the signature of the testator to the will.

You can also make a holograph will in this jurisdiction which is a completely handwritten will in the handwriting of the person signing the will.

Both forms of will, in this jurisdiction, are lawful and are covered by the Wills Ordinance.

Clause 2 agreed to

On Clause 3

Hon. Mr. Graham: What this section basically says is that the man who is paying the money to the insurance company or the bank, or whatever plan he is purchasing, has the authority to designate who will receive the benefits of that annuity trust fund, or whatever, on his death, either by signing a form in which he states that such and such a person should receive that annuity for the insurance company or he can do it through a will and at any time he may revoke either the will or the designation to the insurance company through following the procedures made here, by making a later designation.

Mr. Byblow: That explanation is fairly clear. A specific with respect to Section (a), it says, "an instrument signed by him or signed on his behalf by another person in his presence and by his direction". I am interpreting that to mean the person who is designating, someone who is signing on his behalf, and nobody else. How does that stand up as a point of law? There is no witness.

Mr. O'Donoghue: It stands up, Mr. Chairman, because you are dealing with a person who is not able, for some reason, to do it by himself or for himself.

Mr. Byblow: My question, Mr. Chairman, is, I assume then that that "adequate" is a point of law, to have one person who is doing the signing, also be the witness for that act.

Mr. O'Donoghue: No, Mr. Chairman. We are not saying how it is to be witnessed or anything, we are just making it lawful for the instrument signed by him.

All of these designations will be witnessed, just as a will is witnessed.

Clause 3 agreed to

On Clause 4

Mr. Byblow: I hope the House does not mind my curiosity with respect to this, but if a designation in a will refers generally to a disbursement of a plan or, in this case, a retirement plan, could I have an example of how it generally can be termed?

Hon. Mr. Graham: Yes, basically, Mr. Chairman, I think that Section 4, throughout, the basic underlying principle is that they are saying whenever you make a designation you may, at a later time, revoke that designation. These are just providing the mechanics.

Generally or specifically, we have gone through this once or twice or three or four times before. It is generally, in a will or in a designation, if you say I would like to have my wife receive the benefits of the RRSP that I have at the Bank of Montreal, that is a general specification. If you have three or four, you might have to specify the RRSP number, 22-6-74, held at the Bank of Montreal. That would be a specific designation.

Mr. Fleming: Yes, Mr. Chairman, if I may,

In other words, for instance, if you made a will and you did not refer to that plan specifically, even though that will says in it in some area that so and so is to have all of my belongings in total, then if you did not mention the plan itself, this other one, he or she would not be eligible for the benefits from that plan, other than, I suppose, going to the public administrator or to the court?

Mr. O'Donoghue: Not quite, Mr. Chairman. You see, if you make a simple will and you say, "I leave all I die possessed of to my wife, Mary-Anne, who was very good to me for the last ten years," that would not, if you had a specific designation made earlier in the insurance company's office, would not capture the plan because that is not part of your goods and chattels to leave, you already designated it.

But if you said, "I leave all my goods and chattels, and I also hereby designate her as the beneficiary for this plan named here," or "for all of the plans in which I am a subscriber, I designate her," then that would be. You must mention the plan. It must be clear.

Mr. Byblow: Could the Legal Advisor correct me if I am assuming wrong. What you are saying is that if a plan designates a be-

neciciary, and a will in general, without specific reference to a plan, designates another general beneficiary for all worldly possessions, you are saying that the original plan designation is the one to whom the benefits go?

Mr. O'Donoghue: It is a better case to deal with the insurance company. We have had a few cases where a man was married and while he was living with his wife he designated her as the beneficiary for his insurance money. She then left him. Later he made a will leaving all he died possessed of to his new friend.

As a result, the new friend did not capture the insurance money, but he could have said specifically, "I leave my new friend all I die possessed of," and added in a sentence which said, "And I hereby designate her to get the insurance money." You have to name that specifically because the insurance money is not the man's; technically, it is not his to leave to anyone. He is one side of a contract with an insurance company. The money has not come into existence. He is merely the beneficiary of a contract which does not trigger until he is dead.

Mr. Penikett: I think that I understand that fairly well now. He is specifically saying something. Now, on the other hand where you say generally, if he had said "all of my plans", it would still be enacted in the same way.

Mr. O'Donoghue: Yes, Mr. Chairman.

Clause 4 agreed to

On Clause 5

Hon. Mr. Graham: This is, again, just a technical section, Mr. Speaker. It is just dealing with different cases but they all say basically the same thing. Correct me if I am wrong, Mr. O'Donoghue.

Clause 5 agreed to

On Clause 6

Mr. Byblow: On that clause, what is a "later designation", with respect to the beneficiary status of a plan?

Hon. Mr. Graham: It is very simple. The latest will you make that is validated, is the will which will be carried out by the courts, as long as it is valid.

Clause 6 agreed to

On Clause 7

Hon. Mr. Graham: Again, this section states that if you have designated a person as a beneficiary of an insurance plan or a plan in your will and you revoke the total will, then that designation will be revoked.

Clause 7 agreed to

On Clause 8

Hon. Mr. Graham: I think this is the one section that may be a little bit different, and again correct me if I am wrong, Mr. O'Donoghue, but this section states that if a will is invalid by way of the fact that you only had one person witnessing the signature or something to that effect, if, for any reason it is found invalid, the designation in that will, if you make a designation in that will for an insurance company, that designation is not invalid, by reason of the fact that the total will is invalid.

So, in other words, the will may be invalid, but the designation is valid.

Mr. O'Donoghue: That is exactly correct, Mr. Chairman.

Mr. Fleming: Mr. Chairman, what could be the case of a will that was made out by fraud, in this case, and was made by fraud in the first place and it designated something there to that effect and that will, of course, would be invalid when they found out about it. What about this section saying that the designation that was in that will is not invalid.

Mr. O'Donoghue: It has to be a valid designation. If the fraud consisted of something apart from the designation, it would not affect the designation, provided the designation is signed by the person.

Mr. Byblow: Mr. Chairman, I realize I might be bordering on the frivolous, but could the Legal Advisor indicate what would happen if, in the course of a person who died, had a plan to whom a beneficiary is clearly designated, there was no will and the estate was probated, but two years later a will shows up, which changes the beneficiary status of the plan, specifically, what would happen?

Mr. O'Donoghue: The first thing I will have to do is turn to the page and read what the section says. I have forgotten the section, Mr. Chairman. It says: Clause 12(1), "After the death of a participant

who has made a designation." I do not think that covers it.

I think that you might be back to the normal common law. That is that the person has died and payments commence under the plan, and therefore you would be in a law case because you would be two years' payments down the road before this would be discovered, then the question is: the inconsistencies of the Ordinance under section 13, if the benefit payments would have been different, if the designation had been made before the benefit payment was made, then the plan applies. That is what section 13 appears to say.

Mr. Byblow: I suppose, Mr. Chairman, and I will not belabour that particular point, but if a person seemingly dies intestate, and a will shows up later, that will change the whole distribution that is left.

Mr. O'Donoghue: No, Mr. Chairman. When a will has been distributed, validly, in most cases it is impossible to recall because the person cannot be forced to give back something which he has lawfully acquired. He has not stolen it; he has lawfully come into the possession of it, and you would be involved in a law case as to what the situation would be.

May I make a point, Mr. Chairman about Clause 9 which is in the same general area? When a man has made a will and married, his will is automatically invalidated. So you have that situation dealing in validity. When he divorces, it does not have the same effect. In some jurisdictions it does, but not in this jurisdiction.

Clause 8 agreed to

On Clause 9

Mr. O'Donoghue: What this is saying, the language is a bit difficult, is if a man makes an invalid will but does not know that it is an invalid will, and then sets out to revoke it, and there is a designation in this unknown invalid will, the revocation does in fact revoke the designation.

Mr. Fleming: In other words, Mr. Chairman, if this will is invalid, it is invalid, there is no question about any part of it.

Mr. O'Donoghue: If the will is invalid, but contains a designation, then irrevocation revokes that designation.

Mr. Fleming: So, it is invalid.

Hon. Mr. Graham: I think, Mr. Chairman, maybe Mr. Fleming is not getting it. If you make an invalid will, but make a valid designation, that designation is valid. This is just giving the authority to revoke that valid designation, even though the will is invalid.

I understand it about as well as you do. I have just been through it so many times I know what it means.

Mr. Byblow: Mr. Chairman, if I am reading this correctly, an invalid will that has a designation is, in fact, a valid designation, regardless of what superseding action has taken place.

Mr. O'Donoghue: Irrevocation, then, is a revocation.

Mr. Byblow: Right.

Clause 9 agreed to

On Clause 10

Hon. Mr. Graham: Okay, this is a reasonably simple one. If you have made a designation, you revoke that designation. It does not revive an earlier designation that you have made that you might not have revoked.

In other words, if you have made three designations in a row, the latest one is, in fact, the valid designation and if you revoke that valid designation, it does not revive the first two.

Clause 10 agreed to

On Clause 11

Mr. Byblow: Mr. Chairman, with respect to your Clause 11, what is the reference to the Wills Ordinance? Unfortunately, I am not familiar at all with it.

Mr. O'Donoghue: Mr. Chairman, when you make a will, a lawful will, it is only a piece of paper. It is not really a will until you die. That is what the Wills Act says, but a designation in that piece of paper, becomes valid from the moment you sign the piece of paper.

So, the last section dealing with, I designate my wife the beneficiary and you sign it. It does not become a will until you die, but it becomes a designation when you put your signature on it.

Clause 11 agreed to

On Clause 12

Mr. Byblow: I am just having some difficulty understanding its full import.

Hon. Mr. Graham: Mr. Chairman, Section 12 is a section that I believe is reasonably important to the insurance company's point

of view. It means that the beneficiary has no greater rights against the insurance company than the original person who was paying into that fund had against that insurance company.

In other words, Mr. Chairman, it says here that the person designated may enforce payment of the benefit payable to him under the plan. So in other words, if the beneficiary died and the designated person inherited the rights, he would only inherit the right payable to the original person, nothing extra.

Mr. Fleming: Mr. Chairman, perhaps the Legal Adviser will answer, is it not also protecting the insurance company or whoever has the thing in the sense that they also can put up a defence and say, no, if they feel they are being taken by someone.

Mr. O'Donoghue: Precisely, Mr. Chairman.

Clause 12 agreed to

On Clause 13

Hon. Mr. Graham: Mr. Chairman, this is one of the sections that I have some difficulty with. This says that where there is a conflict between the Ordinance and a plan itself, the Ordinance prevails in all cases except one. That case is where the new designation is made after the start of the benefit payments, if the benefit payments would be different, if the designation had been made before the start of the payments.

Mr. O'Donoghue: Provided, of course, the benefit payment would have been different under what you are doing before and what you are doing now.

Mr. Byblow: Under this section is it saying that if a benefit payment has been made in error, there is a retroactivity clause.

Mr. O'Donoghue: No, Mr. Chairman, it is not dealing with that situation. It could deal with this situation where a person comes to his retirement and he has designated himself. Then he wants to change it and designate it to his wife. He has drawn a couple of years pay, or whatever. If it is made afterwards and the benefits are going to be different, then he is bound by the term of the contract he signed in the first place. Otherwise he can switch. You have got to provide whether the Ordinance permitting a change in designation applies, or a plan which prevents it.

Clause 13 agreed to

On Clause 14

Hon. Mr. Graham: This is just to make sure that there is no conflict between the various sections of the Insurance Ordinance that this applies to and, in fact, this Ordinance.

Clause 14 agreed to

On Clause 15

Mr. Byblow: Before we leave this, I would like to know if the import of this Ordinance is that a beneficiary must be named in any plan. Why I ask that is if a beneficiary does not have to be named, does common law prevail?

Mr. O'Donoghue: No, to the first question; yes, to the second question.

Mr. Byblow: It is clear then that you do not have to name a beneficiary under the terms of this Ordinance.

Mr. O'Donoghue: No, Mr. Chairman.

Clause 15 agreed to

On Preamble and Title

Preamble and Title agreed to

Hon. Mr. Graham: Mr. Chairman, I move that you report Bill Number 19, Retirement Plan Beneficiaries Ordinance, out of Committee of the Whole without amendment.

Mr. Chairman: It has been moved by Mr. Graham that Mr. Chairman do report Bill Number 19 without amendment.

Motion agreed to

Hon. Mr. Graham: Mr. Chairman, I move that Mr. Speaker do now resume the Chair.

Motion agreed to

Mr. Speaker resumes Chair

Mr. Speaker: I will now call the House to order.

May we have a report from the Chairman of Committees?

Mr. Lattin: Mr. Speaker, Committee of the Whole has considered Bill Number 19, Retirement Plan Beneficiaries Ordinance, and direct me to report same without amendment and beg leave to sit again.

Mr. Speaker: You have heard the report of the Chairman of

Committees. Are you agreed?

Some Members: Agreed.

Mr. Speaker: Leave is so granted.

May I have your further pleasure?

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member from Hootalinqua, that we do now call it 5:30.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Hootalinqua, that we do now call it 5:30.

Motion agreed to

Mr. Speaker: This House now stands adjourned until 1:30 p.m. Monday next.

The House adjourned at 2:58 o'clock p.m.

The following Sessional Paper was Tabled on October 18, 1979:

79-2-36

Green Paper on Feasibility of Adopting Daylight Saving Time in Yukon