



The Yukon Legislative Assembly

Number 39

2nd Session

24th Legislature

HANSARD

Wednesday, November 14, 1979 — 1:30 p.m.

Speaker: The Honourable Donald Taylor

Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake
DEPUTY SPEAKER — Geoffrey Lattin, MLA, Whitehorse North Centre

CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
Hon. Chris Pearson	Whitehorse Riverdale North	Government House Leader — responsible for Executive, Council office, Public Service Commission, Finance and Pipeline.
Hon. Doug Graham	Whitehorse Porter Creek West	Minister responsible for Education, Justice, Information Resources, Government Services
Hon. Dan Lang	Whitehorse Porter Creek East	Minister responsible for Highways and Public Works, Municipal and Community Affairs, Yukon Housing Corporation, and Yukon Liquor Corporation.
Hon. Meg McCall	Klondike	Minister responsible for Health and Human Resources and Workers' Compensation Board.
Hon. Peter Hanson	Mayo	Minister responsible for Renewable Resources, Consumer & Corporate Affairs, Tourism & Economic Development.

Government Members

(Progressive Conservative)

Al Falle	Hootalinqua
Jack Hibberd	Whitehorse South Centre
Geoffrey Lattin	Whitehorse North Centre
Grafton Njootli	Old Crow
Donald Taylor	Watson Lake
Howard Tracey	Tatchun

Opposition Members

(Liberal)

Iain MacKay	Whitehorse Riverdale South
Alice P. McGuire	Kluane

(New Democratic Party)

Tony Penikett	Whitehorse West
---------------	-----------------

(Independent)

Maurice J. Byblow	Faro
Robert Fleming	Campbell

Clerk Of Assembly
Clerk Assistant (Legislative)
Clerk Assistant (Administrative)
Sergeant-at-Arms
Editor of Hansard

Patrick L. Michael
Missy Parnell
Jane Steele
G.I. Cameron
Lois Cameron

Whitehorse, Yukon**Wednesday, November 14, 1979 - 1:30 p.m.**

Mr. Speaker: I will now call the House to order. We will proceed at this time with Prayers.

Prayers

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

DAILY ROUTINE

Mr. Speaker: Are there any Returns or Documents for Tabling?

TABLING OF DOCUMENTS

Mr. Speaker: I have today for tabling a report by the Auditor General of Canada on accounts relating to the Government of the Yukon Territory.

Hon. Mr. Graham: Mr. Speaker, I would like to table the answer to a question Mr. Penikett asked on October 23 concerning corporal punishment and I also have an answer to a question asked by Mr. Njootli of the Minister of Health on November 1.

Mr. Speaker: Are there any Reports of Standing or Special Committees?

Presentation of Petitions?

Reading and Receiving of Petitions?

Introduction of Bills?

Notices of Motion for the Production of Papers?

Notices of Motion?

NOTICES OF MOTION

Hon. Mr. Lang: Mr. Speaker, I would like to give notice re: the appointment of Mr. Doug Graham to the Advisory Committee on Finance.

Hon. Mr. Graham: Mr. Speaker, I have a motion, seconded by the Member from Whitehorse West,

THAT the report of the Yukon Elections Board entitled Recommended Amendments to the Elections Ordinance, 1977, be referred to the Standing Committee on Rules Elections and Privileges.

I also have a motion, seconded by the Honourable Minister of Municipal and Community Affairs,

THAT the Special Committee on Constitutional Development consists of the following Members: Douglas Graham, Howard Tracey, Allan Falle, Tony Penikett and Alice McGuire.

Hon. Mr. Lang: Mr. Speaker, I would like to inform the House that tomorrow will be a day of continuing debate on the motion for an Address in Reply to the Speech From the Throne.

Mr. Speaker: Are there any Statements by Ministers?

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

QUESTION PERIOD

Question re: COPE Agreement in Principle

Mr. MacKay: Thank you, Mr. Speaker. My question is to the Minister of Renewable Resources. Is the Minister aware of Clause 14(2) of the COPE Agreement in Principle between the Inuvialuit and Government of Canada? Is the Minister aware that it was agreed in that that the status quo respecting wildlife legislation and regulation would be maintained during the period of negotiation to a final settlement?

Hon. Mr. Hanson: Mr. Speaker, I cannot answer for agreements between Canada and the Northwest Territories.

The laws we pass in this House concern the concerns within the borders of Yukon. We have no agreement, or no signatures on the COPE Agreement. That is between the Eskimo people of the Northwest Territories and the Government of Canada and it is unsigned.

We have attended none of these talks, are not a partner to the

Agreement, so, therefore, are not bound by an agreement in our Territory by outside governments.

Mr. MacKay: Will the Minister then confirm that, regardless of any mention of the Government of Yukon in this Agreement, his Department will continue to make changes in legislation and regulations governing the use of wildlife?

Hon. Mr. Hanson: Mr. Speaker, I am representing the people of Yukon and it is for the people of Yukon that this House is here.

I do not know about any other agreements that we are not a party of. We will pass ordinances concerning the people of Yukon and those are the people within the boundaries of Yukon.

Mr. MacKay: Is it the Government's position then to either ignore or reject the COPE Agreement as it exists right now?

Hon. Mr. Hanson: Mr. Speaker, I keep on trying to explain to the Honourable Member across the floor, we are not party to any agreement, so we neither accept or reject. We are not party to it.

The Honourable Member, I think, is just getting carried away, as he has in the past, and trying to make me say something that I have no right to say.

Question re: Energy Development Funding

Mr. Penikett: Thank you, Mr. Speaker. I have a question for the Minister of Economic Development.

Can the Minister explain if he has directed his officials to settle for no Federal funds at all under the Conservation and Renewable Energy Development and Demonstration Program, if the Federal Treasury Board is unwilling to provide Incentive Grants funding?

Mr. Speaker: Order, please. I think that question is almost so hypothetical as to not deserve a reply. However, I will allow the Minister to answer it.

Hon. Mr. Hanson: Mr. Speaker, I am amazed sometimes, but I will answer nevertheless.

The agreement has not been reached on any terms, as yet. When we get, later on, into the Capital Budget, the Honourable Member will see that we are budgeting for such an agreement.

It looks good, from what I have been told, but we have not reached an agreement. We are still negotiating.

Mr. Penikett: Thank you, Mr. Speaker. As I understand the negotiating position of the Yukon Government, it is an all or nothing proposition concerning the Incentive Grants portion of the negotiations. Can the Minister say, in light of what he just said about the negotiation, if the Government is rigid on the question of Incentive Grants and if it, in fact, is maintaining an opening bargaining position in respect to this money.

Mr. Speaker: Order please. The question again is hypothetical. There are too many "ifs" in these questions and perhaps the Honourable Members can ask questions about specific things without getting into the area of hypotheticals.

That question I will have to rule out of order.

Question re: YTG Employee Travel Arrangements

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

I raised the matter last spring of Government policy respecting travel arrangements for employees and clients of various departments insofar as affecting travel agencies. I understand that the problems have been attended except for cases in the Department of Education and Health and Human Resources. I also understand the Minister has received recent communication on this and I am inquiring if he is attending to a more equitable distribution of travel business between agencies, especially in communities where these agencies do exist.

Hon. Mr. Graham: Thank you, Mr. Speaker. Yes, I can confirm that the Department of Education is, in fact, working on a policy whereby the business that originates in communities should be given to a travel agent, if any, in that community. We have not as yet worked out a definite policy and presented it to the Cabinet but we hope to do it in the very short future.

Question re: Game Ordinance

Mr. MacKay: My question is to the Acting Government Leader, Mr. Speaker.

In view of his Government's apparent stand of not recognizing the existence of the COPE agreement as it affects the Yukon, will

the Government be proceeding to ask for Royal Assent to the recently amended Game Ordinance which went through the House here?

Hon. Mr. Lang: Mr. Speaker, I find that the question that the Honourable Member has put to my colleague as well as the question just now put to myself a little bit out of line. The reason I say that, Mr. Speaker, if the Member recalls correctly, we did go through an election approximately a year ago and the Progressive Conservatives did take a stand in respect to the COPE Agreement.

That stand was that we did not recognize that particular Agreement in view of the fact that there was territory involved there that was Yukon Territory that would, in effect, Mr. Speaker, give large sections of territory within the Yukon to absentee landlords from the NWT.

I think it is fair to say the position that we have taken is a wise one. There is no thought in our mind that Royal Assent will not be given to the Game Ordinance.

Mr. MacKay: Since the COPE Agreement, Mr. Speaker, was signed by the Government of Canada and that the Commissioner, or the Administrator, is the Government of Canada's representative in the Yukon, does the Government not anticipate that under the letter of instructions given to the Commissioner, he will be unable to give Royal Assent to this Bill?

Hon. Mr. Lang: Mr. Speaker, no. It is my understanding that the present Government of Canada has not signed the agreement that is tentatively to be put into place. I understand that they have had discussions with the people involved with that particular agreement. Whether or not it goes ahead is another question. As far as I am concerned, Mr. Speaker, I can see no difficulty and as far as we are concerned, Royal Assent will be given to that particular Bill. I would like to think that my colleague across the floor would agree with it.

Mr. Speaker: There being no further questions, we will proceed on the Order Paper to Orders of the Day under Motions Other Than Government Motions.

ORDERS OF THE DAY

MOTIONS OTHER THAN GOVERNMENT MOTIONS

Mr. Clerk: Item No. 2 standing in the name of Mr. Penikett.

Mr. Speaker: Is the Honourable Member prepared to deal with Item No. 2?

Mr. Penikett: Next sitting day, Mr. Speaker.

Mr. Speaker: So ordered.

Mr. Clerk: Item No. 3, adjourning debate, Mr. Penikett.

Mr. Penikett: Next sitting day, Mr. Speaker.

Mr. Speaker: So ordered.

We will now proceed to Public Bills and Orders, other than Government Bills and Orders.

PUBLIC BILLS AND ORDERS

Mr. Clerk: Second Reading, Bill No. 101, Mr. Penikett.

Mr. Penikett: Next sitting day, Mr. Speaker.

Mr. Speaker: So ordered.

Mr. Speaker: We will now proceed to Government Bills and Orders.

GOVERNMENT BILLS AND ORDERS

Bill Number 37: Second Reading

Mr. Clerk: Second Reading, Bill Number 37, standing in the name of the Honourable Mr. Lang.

Hon. Mr. Lang: Mr. Speaker, I move seconded by the Honourable Member from Old Crow that Bill Number 37, An Ordinance to Amend the Liquor Ordinance be now read a second time.

Mr. Speaker: It has been moved by the Honourable Minister of Municipal and Community Affairs, seconded by the Honourable Member from Old Crow, that Bill Number 37 be now read a second time.

Hon. Mr. Lang: Mr. Speaker, I would like to begin by speaking to the principle of the Bill, by pointing out that this is a departure from the past, in respect to this Legislature being prepared to grant, over a period of time, to all intents and purposes, prohibition in a particular area in the Yukon Territory.

I want to emphasize that, from this side of the House, the major reason that we are prepared to consider it for this particular area is because of its transportation facilities, which is strictly by air, as opposed to any access by road.

The introduction of the amendment to the Liquor Ordinance is presented to you in order to forbid any person in Old Crow from consuming or possessing beer, liquor, wine and all other alcoholic beverages.

As mentioned earlier, a plebiscite will be held in Old Crow, on December 5th, to obtain the wishes of the residents of Old Crow. We will have to wait until that time to determine whether or not we could bring this particular piece of legislation into place.

As you know, the piece of legislation before you does have a coming into force date to be fixed by the Commissioner and that prerogative will be left with the Executive Council.

The ban on liquor, Mr. Speaker, will give the people of Old Crow a breathing space for two years and an opportunity to find a way to assess the situation, in respect to the very real problems that they are confronting in respect to alcohol.

I think that we could put it into place if the plebiscite does come out with a majority to just to see how it will affect the community and, hopefully, they will resolve a lot of their problems over that period of time, of course, once again, Mr. Speaker, depending upon the outcome of the plebiscite.

Mr. MacKay: I think I can say, as well, that we, on this side of the House, will be supporting this amendment to the Liquor Ordinance.

We agree that, subject to the wishes of the Old Crow people, that such a ban on liquor could and should be imposed in order to be able to give these people some breathing space.

I also agree with the two year time limit on it, because I think that, should the will exist two years from now to re-impose the ban, that that should be really expressed at that time by the people of Old Crow and it should not be a ban ad infinitum.

So, I will be agreeing with this Bill in principle and supporting it through Committee, Mr. Speaker.

Motion agreed to

Bill Number 23: Second Reading

Mr. Clerk: Bill Number 23, standing in the name of the Honourable Mr. Lang.

Hon. Mr. Lang: Mr. Speaker, I move, seconded by the Minister of Justice, that Bill Number 23, First Appropriation Ordinance, 1980-81, be now read a second time.

Mr. Speaker: It has been moved by the Honourable Minister of Municipal and Community Affairs, seconded by the Honourable Minister of Education, that Bill Number 23 be now read a second time.

Hon. Mr. Lang: Mr. Speaker, it is with a great deal of pleasure that I present the Capital Estimates for the 1980-81 year.

In the past, the Capital Estimates have always been presented in the Spring Budget Session and always have been the source of great debate by previous Legislatures, on the principle that our contractors were prohibited from taking full advantage of the short Yukon construction season.

With the presentation, Mr. Speaker, of these Estimates during this Session and, hopefully, ultimate passage, our Government will be able to prepare our tender documents and put them out for early call and thereby allow our contractors full advantage of our summer season and, in many cases, ensure completion within the year.

A major point, Mr. Speaker, that must be raised is the fact that the projects over one million dollars must have Treasury Board approval. The early passage of this Bill, we are optimistic that we will be able to obtain that early approval and can proceed accordingly.

In conclusion, Mr. Speaker, we feel that this is a major departure from the past, for the good of the Yukon, will aid our contractors and also ensure the taxpayers receive full value for their tax dollar.

Mr. MacKay: Thank you, Mr. Speaker. First of all, before souring the grapes, I would like to congratulate the Government on bringing forward this legislation in the Fall Session, so that, indeed, Yukon contractors will have the ability to know well in advance what kind of contracts are going to be available and how much may be available for it. So, I congratulate them for it.

I should express some disappointment, I think strong disappointment in some respects, as to the total amount of the Budget. It had been anticipated, I think, by most people, that the Government

would make a great effort to bring forward as many projects as possible prior to the beginning of construction of the pipeline.

This is more doubly needed, in view of the fact that the Yukon economy, at this time, is not in the healthiest condition and that any money that could be spent at this time in the next year or two, I think, would have good dollar value for, because the contractors need the work and would, in fact, not be bidding at the highest rate. They would be bidding as keenly as they could to obtain the work.

So, I think that for these two reasons it would have been good to see, especially since we have such an eminent voice in Treasury now, it would have been good to see some more money put into the Capital Budget, in order to be able to accelerate the Yukon Territorial Government's capital expenditures in anticipation of the pipeline, which is due, I think, to begin activity in late 1981.

Mr. Penikett: Thank you, Mr. Speaker. I just have one brief word.

I think it is, as the Minister said, not a bad idea to bring the Capital Budget before us at this time. Obviously, I think all MLA's are at somewhat of a disadvantage in doing this, in that we cannot accurately compare previous year's spendings with the projections. But, I think for the reasons outlined by the Leader of the Opposition, it is important that we, in fact, serve notice of these projects and get as many of them underway as possible, because I am committed, philosophically, to the view that where the private sector is, in fact, not spending enough in the economy, the private sector has an important role to play in picking up the slack.

I am pleased to see there seems to be some indication that that view is shared on the other side of the House.

One of the curious things about this piece of legislation, I might just make this parenthetical point, that it is perhaps an interesting reflection of the relative strengths of the Ministers in this Cabinet. We may have something more to say about that in Committee, but I will note that the two Ministers from Porter Creek have done very well by their Departments and wish them well in the future.

Mr. Fleming: Thank you, Mr. Speaker. Yes, I will rise to congratulate the Government in this effort.

It has been five years now since I have been in this House asking for this very thing. So, I would like to congratulate them today on bringing something forth that I have been really, really looking for for a long time.

Motion agreed to

Bill Number 35: Second Reading

Mr. Clerk: Second Reading, Bill Number 35, standing in the name of the Honourable Mr. Graham.

Hon. Mr. Graham: I move, seconded by the Honourable Member for Hootalinqua, that Bill Number 35, An Ordinance to Change the Name of the Magistrates Court and to Amend the Magistrates Court Ordinance, be now read a second time.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Hootalinqua, that Bill Number 35 be now read a second time.

Hon. Mr. Graham: Mr. Speaker, the purpose of this Bill is twofold. First of all, we would like to establish in legislation the position of Chief Judge of the Yukon Territory. The Chief Judge of the Territorial Court would replace the present senior Magistrate in Yukon and would ensure that the Chief Judge has the necessary authority to supervise and administer, not only other judges, territorial court judges, but justices of the peace in the Territory.

The second principle that we hope to change in this Bill is the name of the Magistrates Court to the Territorial Court. This has not been possible to this date because of the fact that in the Yukon Act, I believe it was, the words "Territorial Court" and "Territorial Judge" were used in reference to the Supreme Court of the Yukon Territory. Now that this usage has lapsed, we felt it was time to bring in a change to the Magistrates Court Ordinance to bring about the name change and to actually dignify the positions that these gentlemen in the Territory now do hold.

Motion agreed to

Bill Number 36: Second Reading

Mr. Clerk: Second reading, Bill Number 36, standing in the name of the Honourable Mr. Graham.

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member from Hootalinqua, that Bill Number 36, Justice of the Peace Court Ordinance be now read a second time.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Member from Hootalinqua, that Bill Number 36 be now read a second time.

Hon. Mr. Graham: Thank you, Mr. Speaker. At present the Justices of the Peace administration in the Yukon Territory falls, in the main, on the public service of the Territory and appointments are made directly through the former Executive Committee to the Commissioner. No machinery, at this point, exists for approving or qualifying justices of the peace.

We hope that by forming a council such as we have with the Supreme Court Judge, the Chief Judge of the Territorial Court and the Minister of Justice on the Council will help to alleviate some of the problems that we have had in the past in training, disciplining, when necessary, and selecting justices of the peace throughout the Territory.

This Ordinance should reorganize the justices of the peace into a court under the leadership of the Chief Judge of the Territory. Hopefully, the establishment of this Council will enable us to use a nonpolitical Council to evaluate and to, as I said, discipline, when necessary, justices of the peace in the Territory.

Mr. MacKay: We will be supporting this Bill in principle, Mr. Speaker, and I think, actually, in detail as well.

I think it is important, the two or three points that the Minister made, perhaps, to reiterate our support that the more separation you can get between the judiciary and the political system, the healthier our democracy is.

The needs for a better trained JP system has, I think, been obvious to some of us for some time and, indeed, a heated debate took place about that kind of thing in this House during this Session so seeing this Bill come forward, at this time, is very appropriate. The need for being able to review the appointments of JPs is also apparent to us here and we will be supporting the Bill.

Mr. Penikett: Thank you, Mr. Speaker. I would like to join, or add my support to the sentiments expressed by the Leader of the Opposition and the Minister sponsoring this Legislation. I think the important principle of separation of powers is one that is essential to our judicial system. I think in a small community like ours it is much harder to achieve than in a larger community.

I think that the Leader of the Opposition has suggested that sometimes people on the Bench find themselves in conflict situations. I think they do, but not in the sense of financial conflicts but of conflicts of their roles in the community because justices of the peace obviously play more than one role in the community.

I have been concerned, historically, with the method by which some justices of the peace came to be appointed. It appeared to my layman's view that sometimes there appeared to have been a nomination from some local policeman and the Commissioner's Order happened to have been typed by someone fairly junior either in the court office or somewhere else and the appointment seemed to be almost a formality.

I think the selection of the justices of the peace ought to be done by people who do it with great care to the people's qualities, not necessarily their learning, and I say this to the Minister of Economic Development, their qualities as an impartial objective, serious and sensible person. I think those are the kind of admirable qualities which we should be looking for in a justice of the peace.

I think in terms of their training and the development of their skills, the Council that is proposed will be an admirable way of overseeing and advising and consulting on their work. They are the people who are on the front line in terms of the justice system in the Territory and what they do has a critical bearing on the social health and the social climate in many of the communities.

Mr. Speaker: Is there any further debate?

Motion agreed to

Bill Number 32: Third Reading

Mr. Clerk: Third Reading, Bill Number 32, standing in the name of the Honourable Mr. Graham.

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Minister of Municipal and Community Affairs, that Bill Number 32, Matrimonial Property Ordinance be now read a third time.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Minister of Municipal and Community Affairs, that Bill Number 32, Matrimonial Property Ordinance be now read a third time.

Motion agreed to.

Mr. Speaker: Are you prepared to adopt the title of the Bill?

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Minister of Municipal and Community Affairs, that Bill Number 32 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the Honourable Minister of Education, seconded by the Honourable Minister of Municipal and Community Affairs, that Bill Number 32 do now pass and that the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I shall declare that Bill Number 32 has passed this House.

May I have your further pleasure?

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

Motion agreed to

Mr. Speaker leaves the Chair

COMMITTEE OF THE WHOLE

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

Recess

Mr. Chairman: I shall call Committee of the Whole to order. This afternoon we will start on Bill Number 13, Boiler and Pressure Vessels Ordinance. There was one section stood over. I direct you to Pages 19 and 20.

On Clause 35

I have an amendment here by Mr. Lang that Bill Number 13 entitled Boiler and Pressure Vessels Ordinance be amended in Clause 35(1) at Page 19 by striking out subsection 35(1) and substituting the following therefor:

The holder of a certificate of competency, the classification of which authorizes him to act as an engineer, may sketch, construct, install, test, inspect, operate, repair, maintain, use and give advice on all things pertaining to any power, heating or pressure plant in which he is employed, but shall not perform any pressure welding unless he holds a certificate of competency permitting him to do so.

Hon. Mr. Lang: Mr. Chairman, a couple of points: the Member from Campbell raised the point in respect to the definition section and just exactly what the pounds per square inch were in respect to the 103 kilopascals referred to in the Ordinance. I have been advised that it does equate to 15 p.s.i.

I would hope that the Member would take that message back to the two or three individuals who discussed it with him. I think it is a question of different types of ways of converting metric into arithmetic equation. My understanding of it is that there is a European way of doing it and the American way of doing it. I have been assured that it is 15 p.s.i and it is consistent across the nation as far as the provinces are concerned.

The other point, Mr. Chairman, you will recall in this particular section, we held it over due to the fact that it said "any welding" and it should be that our major concern is high pressure welding. That is the reason for the amendment.

Clause 35 agreed to

Preamble and Title agreed to

Mr. Chairman: I now declare that Bill Number 13 has cleared the Committee of the Whole.

Hon. Mr. Lang: Mr. Chairman, I move that you do now report Bill Number 13, Boiler and Pressure Vessels Ordinance, with amendment, to the Assembly.

Mr. Speaker: It has been moved by Mr. Lang that the Chairman do now report Bill Number 13, Boiler and Pressure Vessels Ordinance, with amendment, to the Assembly.

Motion agreed to

Mr. Chairman: We will now proceed to Bill Number 12, Medical Profession Ordinance. We have as a witness this afternoon, Mr. Spray.

Yesterday we finished Clause 13 and this afternoon we will be starting on Clause 14, General Requirements.

Hon. Mr. Hanson: Mr. Chairman, I would suggest that you just go ahead and start there and he will be down in a minute.

Mr. Penikett: Mr. Chairman, to save time, we would be prepared to proceed and give the Government the undertaking that we will

not defeat them on any votes, in the absence of some of their Members.

Mr. Chairman: I welcome Mr. Spray, as our witness this afternoon, and also Mr. Graham.

On Clause 14(1)

Mr. Penikett: Yes, Mr. Chairman, I have given Notice of an amendment and I would like to move it now, if I may.

Mr. Chairman: Go ahead, Mr. Penikett.

Mr. Penikett: That Bill Number 12, Medical Profession Ordinance, be amended in Clause 14(1)(d), by deleting the words "of good character and".

Mr. Chairman: It has been moved by Mr. Penikett that Bill Number 12, entitled Medical Profession Ordinance be amended at Clause 14(1)(d) at page 12 by deleting the words "of good character and". Any discussion on the amendment?

Dr. Hibberd: I wonder if I could ask the Chair that we defer consideration of this for the moment and carry on with the subsequent sections?

Mr. Penikett: That is agreeable, from my point of view, Mr. Chairman.

Mr. Chairman: Perhaps we should defer all of Subsection (1) then at this time.

Clause 14(1) stood over

On Clause 14(2)

Clause 14(2) agreed to

On Clause 14(3)

Clause 14(3) agreed to

On Clause 14(4)

Clause 14(4) agreed to

On Clause 15(1)

Clause 15(1) agreed to

On Clause 15(2)

Clause 15(2) agreed to

On Clause 15(3)

Clause 15(3) agreed to

On Clause 16(1)

Clause 16(1) agreed to

On Clause 16(2)

Clause 16(2) agreed to

On Clause 17(1)

Clause 17(1) agreed to

On Clause 17(2)

Clause 17(2) agreed to

On Clause 17(3)

Clause 17(3) agreed to

On Clause 18(1)

Clause 18(1) agreed to

On Clause 18(2)

Mr. MacKay: I am sorry to destroy the steady rhythm of passing sections, but if (2) allows for some person to be exempt from paying a fee and I am wondering under what conditions that might ever occur?

Hon. Mr. Graham: Mr. Chairman, this would exempt a person from paying his full fee, in the event of the fact that he only came up here to replace someone on a locum, or something to that effect. So, if he were only in the Territory for a month or two, it would enable the Council to only assess him that portion of his fees.

Clause 18(2) agreed to

On Clause 18(3)

Clause 18(3) agreed to

On Clause 18(4)

Clause 18(4) agreed to

On Clause 18(5)

Clause 18(5) agreed to

On Clause 18(6)

Clause 18(6) agreed to

On Clause 18(7)
 Clause 18(7) agreed to
 On Clause 18(8)
 Clause 18(8) agreed to
 On Clause 18(9)
 Clause 18(9) agreed to
 On Clause 19(1)
 Clause 19(1) agreed to
 On Clause 12(2)

Hon. Mr. Graham: Mr. Chairman, I would like at this time to go back to Clause 12(2). I have the amendment requested by Members of the House last night.

This is the Clause on page 11, where we substituted the word "shall" for the word "may", at the request, I believe, of Members of this House.

Mr. Chairman: It has been moved by the Honourable Douglas Graham that Bill Number 12, entitled Medical Profession Ordinance, be amended in Clause 12(2), at page 11, by removing the word "may", in line 1, and substituting the word "shall".

Amendment agreed to
 Clause 12(2) agreed to
 On Clause 14(1)

Hon. Mr. Graham: Mr. Chairman, now, if we may, I would like to move on to Clause 14(1)(d), the amendment proposed by Mr. Penikett.

We are ready to discuss it.

Mr. Chairman: I have read the amendment. Mr. Penikett.

Mr. Penikett: Mr. Chairman, I will not repeat my inflammatory remarks from yesterday. I will, however, say that this kind of provision concerns me greatly.

I would just like to give you an example. When I was sixteen I started my working career. There was a provision under my terms of employment at that time with a certain banking institution in this country which required me to maintain my association only with persons of good character. When one attempted to find out what these people were who were not good characters, I think I would say with no offence to anyone sitting in this House, that at least half the people in this House probably, from the point of view of the bank at that time and at that age, might not have been considered good characters by virtue of the fact that they did not customarily wear white shirts and ties in the course of their employment.

My father, I think, not too facetiously, might have observed that he might never have been allowed to practice medicine in Yukon by virtue of some of his friendships and his political views under such a clause.

I think there are some sufficiently small minded people around who might consider that good character would include such things as people who hung around with New Democrats. I happen to think that is a fine fraternity, but I know there are people who differ in that opinion and they may consider that the kind of people with whom I associate are not good characters and judge someone accordingly.

I do not want to, Mr. Chairman, because we are speaking on the public record here, deal with some particular cases in this jurisdiction and in others where this kind of provision has been used, or potentially could have been used, I think, to a real detriment to the community and to the detriment of a perfectly legitimate practising member of the profession. I think that gets to be highly inappropriate, but I think some Members will know of the case to which I refer.

I would hope that this kind of Clause, which cannot be precisely and legally defined, would be removed because I think, under usual circumstances, it could not do any damage, but there may be the exceptional case where someone who may be a bit socially maladjusted but an exemplary physician might be refused practice because of some personal opinions about whether or not his character was acceptable.

I am concerned about the wording: it is loose; it is general; it is moral, and I think we cannot legislate that kind of thing. It is something that basically leaves a bad taste in my mouth and I would like to see it removed.

Dr. Hibberd: Mr. Chairman, as we do not apply these criteria to this Assembly, I am sure that we can delete them as the necessary requirements to the medical profession as well.

Amendment agreed to
 Clause 14(1) agreed to
 On Clause 20(1)

Mr. MacKay: A question for information, I think that, under (b), again I am trying to visualize this as a situation where somebody has a qualification, is on the Register, this contemplates them losing that qualification for some reason? Is that possible?

Mr. Penikett: Mr. Chairman, surely this takes into account a provision where someone may be a medical practitioner but, for a number of years, goes and runs a hot dog stand or something. Quite properly, his professional skills have deteriorated to the point where the Council might have serious reservations about his ability to practise, but he may have maintained himself on the Register. Is that not the case?

Mr. Spray: Mr. Chairman, because we have certain qualifications in here such as Licentiate of the Medical Council of Canada and the Fellowship in the Royal College of Physicians and Surgeons, we are attempting to provide a clause in here on the off-chance that one of these qualifications requires annual updating or some such other thing.

At this point in time, I am not aware of it, but, because we are dealing with outside qualifying agencies, we must provide a qualification in here to drop that person from the Register.

Mr. MacKay: So, the reference to qualification is purely an academic qualification; it is nothing to do with any of the other sections.

Hon. Mr. Graham: Mr. Chairman, it should apply to any of the requirements under Clause 14. If he is charged with a criminal offence, then obviously he is going to be removed from the Register, if he is convicted.

Clause 20(1) agreed to
 On Clause 20(2)
 Clause 20(2) agreed to
 On Clause 20(3)

Mr. MacKay: Yes, again I just need some clarification of this section. This section would only apply to somebody who is struck off the Register for reasons either of non-payment of his fees, or what is enumerated in section (1).

I am wondering about somebody who is struck off and who then reapplies. Does it go back to square one, in other words, and apply and go through Section 14 and the one before that, I forget, 12. Or would this section operate over and above that?

I guess what I am concerned about is that somebody who wants to get back into practice in the Yukon, has had his name struck off for one reason or another, would he not then be in the same position as any other new physician coming to the Territory or would he fall under this section only?

Hon. Mr. Graham: Mr. Chairman, as I understand it he would be then in a position, the same as any other physician who wished to become a physician in the Yukon.

Mr. MacKay: This section just contemplates somebody appealing the rulings under 20(1). Is that correct?

Hon. Mr. Graham: I think that is correct. That was the intent.
 Clause 20(3) agreed to
 On Clause 20(4)
 Clause 20(4) agreed to
 On Clause 21(1)

Mr. Penikett: Mr. Chairman, clearly what is contemplated here is some lengthy absence, not someone who may slip across the border into Northwest Territories in an emergency or on some consultation or something. This is someone who has, in fact, been away for some period of time, practising. Perhaps gone to Africa on with CUSO or something.

Hon. Mr. Graham: That is correct, Mr. Chairman.

Mr. MacKay: Yes, I guess I should not worry too much about all these neo-criminals that we are contemplating hiring. But I do notice that we have a possible prohibition of anybody who has a charge pending against him rather than somebody who has already been found guilty. I am wondering if that was the intent of the Ordinance to do that. I think that you can have a criminal charge for some things that, perhaps, would not affect his ability to practise. Maybe he was involved in a drinking accident or something like that.

Hon. Mr. Graham: I think, Mr. Chairman, when I first read that I

must confess that all criminal charges did not occur to me because I read it in that he is not the subject of an inquiry into his ability to practise medicine, that he is not subject to criminal charges pending within Canada and I assumed that criminal charges that were pending would be as a result of his practice of medicine; therefore, the question that you just brought up, never occurred to me.

Mr. Penikett: Mr. Chairman, surely we would be concerned about, perhaps, someone who has some charges against them, I do not know, a criminal abortionist or something like that. Surely we would not object to a psychiatrist coming here if he had a prosecution or criminal charge pending for say, possession of marijuana or something like that, I do not know, I am trying to think of something that might not really affect their practice.

Hon. Mr. Graham: I think, Mr. Chairman, that Subsection 21(2), "The Council may waive the requirements of subsection (1) at their pleasure" is an indication that they think much the same way or they will think much the same way. If it is a criminal charge not associated with the practice of medicine it should not make any difference.

On Clause 21(1)

Mr. MacKay: I will agree with that Section if that is, if we are all agreed that is what it means. I guess the final safeguard is that if somebody is refused registration, they could always take it to court.

Mr. Spray: That is correct.

Clause 21(1) agreed to

On Clause 21(2)

Clause 21(2) agreed to

On Clause 22(1)

Mr. Chairman: I have an amendment here by the Honourable Douglas Graham, that Bill Number 12, entitled Medical Profession Ordinance, be amended by deleting "(4)" in the first line of subsection 22(1) and inserting "(2)" therefor.

Amendment agreed to

Clause 22(1) agreed to

On Clause 22(2)

Clause 22(2) agreed to

On Clause 22(3)

Clause 22(3) agreed to

On Clause 23(1)

Mr. MacKay: Yes, I do not want to be facetious or anything like that, but I am concerned about what might be different between the generally accepted standards of the medical profession in the Yukon Territory and the generally accepted standards of the medical profession in Canada. Are we setting a separate and distinct standard here? I am looking at Clause 23(1)(a).

Hon. Mr. Graham: Well, Mr. Chairman, I do not see what the problem is. Would you like to see us change "Yukon Territory" to "Canada"?

Mr. MacKay: I would like to see it changed to "Canada". It is not a big point. I am just suggesting that that might be a more appropriate sample to lean on, rather than just the Territory.

Mr. Penikett: Mr. Chairman, the implication behind Mr. MacKay's question, as I understand it, is that the standards could be, for perfectly understandable reasons, lower here than in Canada. I wonder, though, if it may be a serious problem in this connection.

It seems to me that, clearly, if we are talking about standards, there may be a mean standard for psychiatrists or brain surgeons or something and we may be lucky enough, at some point in the Territory, to obtain the services of one such person. They may be just recently out of medical school, but they certainly would not meet the average generally accepted standards of the medical fraternity, as a whole, in Canada because the mean standard would probably be much higher than their qualifications. We might only be able to get someone very early in their practice.

It is a quibbling point, but it seems to me that we probably should be fairly realistic about not the personal qualities of the people we will get in the Territory but we will not always have the people who are at the very top of the medical profession because they have other economic reasons for practising elsewhere. In fact, they might be attracted to larger centres.

To have to suggest "Canada", it seems to me also very hard for the Council to ever define what those really are. The generally accepted standards, perhaps you might be able to decide from Alberta by calling an Alberta Council, but I doubt beyond calling

the doctors' union office in Toronto, I do not know where it is--the Canadian Medical Association, is it?--in Ottawa to be able to find out really, perhaps they would know what the generally accepted standards are.

It seems to me that it would be very difficult to define.

Dr. Hibberd: Mr. Chairman, I think that the profession in general is acutely aware that there are standards that are applicable to a situation such as here versus a situation in a teaching centre. This is meant to take that into consideration. If we do not have to have the standards of neuro-surgical care here to be able to practise good medicine in the Territory, that is precisely what is meant. That applies of course to other areas away from a teaching centre.

I think it is a general principle. You could say "either" actually. You could say, "The practice of medicine in Canada at this kind of a centre", or you could say "the Yukon". It means the same thing, but it is certainly easier to define, as you have suggested, if you leave it as the Yukon Territory.

Mr. MacKay: This is a very sensitive area to get into because I do not think anybody feels that they are getting any less standard of care right now in the Yukon than they would if they were living in any small town in Alberta or BC. I appreciate that you would not want to have to measure up against St. Paul's Hospital or Vancouver General versus the standards here because obviously we do not have the numbers of the capital resources to provide that.

Nonetheless, I am concerned about a person who is appointed to investigate this, whether or not another member of the profession is practising in accordance with generally accepted standards of the medical profession of the Yukon, has he got a clear enough standard to adhere to in that. Perhaps, if there is only one practitioner in that community of expertise, such as a surgeon or a neuro-surgeon or some such specialist, what would be the generally accepted standard of the Yukon Territory if he was the only doctor practising in that area? It is very hard to define.

Dr. Hibberd: Mr. Chairman, I think the profession, generally, is aware that this is a serious problem, as far as smaller communities are concerned.

We tend to take the opposite point of view, that standards of medical care in the smaller community must be more rigid, must be higher, because he has no other resource to fall back on, whereas, when you are in a major centre, there are inter-referrals that will maintain that standard when one is looking at the other.

But, when you do not have such a resource to fall back on, it is important that the one person who is there has that kind of a capability.

So, what happens is we who are in the smaller centre are more acutely aware of the problems that they might run into and we are more interested in maintaining a high standard than those people who look at us from a teaching centre. They are much more compassionate and they would say, well, you cannot do this, you cannot do that. Or, I can understand how you should not be able to do this.

We do not accept that. We want to see high standards in these smaller centres and we work towards that principle. So, if anything, this will allow us a higher standard than would be imposed on us from an outside jurisdiction.

Mr. MacKay: I sincerely hope that that is the case and the only problem I have is that it has been pointed out by a member of the YMA that, in the past, discipline imposed from outside has tended to be somewhat harsh, more harsh than perhaps the members would have dealt themselves, as between themselves.

That was really why I was voicing this concern, that that proposition was made, again by a past president of the YMA, that imposing an outside discipline on the Territory would create a harsh or unrealistic expectation because the practitioners from outside did not understand what went on in Yukon.

What the Member from South Centre has said is the complete opposite. He is saying that you try and maintain a higher standard. You can understand why I am a little concerned about this section, though, when I am getting two completely different approaches to it.

I am wondering, as a suggestion, whether the words "the medical profession in the Yukon Territory and Canada", could be tacked on. It would give whoever is looking at it the idea of the first standard being Yukon and a secondary measuring stick being the rest of Canada.

Mr. Spray: Mr. Chairman, I suppose that we could, as Dr. Hibberd said, relate to another community identical to Yukon, but it is almost impossible to do so.

What we are saying here is standards of the medical profession

in Yukon, at a given point in time, under the circumstances that that medical practitioner was faced, at that point.

If we have a request for an investigation, because of a complaint of standard of care, the Council must be able to take into consideration the circumstances and the opportunities that that medical practitioner had the diagnostic equipment being available, et cetera.

What is applicable to a doctor in Vancouver and what standard care he must provide is not necessarily applicable to a doctor in Mayo, who, under emergency circumstances, may not have the opportunity to consult with another physician, to have access to the diagnostic equipment that a doctor in Vancouver would.

That is why we considered that it would be dangerous to put in "in Canada", because it varies from point to point in Canada. Whereas, in the medical sense, "in the Yukon Territory", the Council can come right down to a point within Yukon, considering the circumstances that that doctor was faced with at that point in time.

Mr. MacKay: I agree with what the witness' proposition is and I understand what you are trying to achieve by this section, for the doctor in Mayo and for the doctor who is faced with totally different circumstances than he might face practising on West Broadway in Vancouver. There is no question that that should be allowed for in the legislation.

But then there is the other problem of what about the specialist who is practically the only specialist in the Territory, who is practising at a standard that would not be acceptable elsewhere in Canada, but because he is the only one practising in the Territory, would have some appeal under this section to say, well, the standard for Yukon is the standard for Yukon, I admit.

That is the other side of the coin.

Hon. Mr. Graham: Mr. Chairman, I can see, however faintly, a little bit of logic in the argument, but I do not see enough logic there to change this section. I cannot agree with it.

Mr. Penikett: Let us be realistic, Mr. Chairman, you would have to be crazy to be a psychiatrist and want to practise in Yukon. That might disqualify you anywhere else.

It seems to me that we should be realistic about it and see that in some specialities that the generally accepted standards of Yukon would be the ones that apply. Over a period of time, in the next 100 years, we may find there is a general rule that the psychiatrists that we have here practising, from this point on, are, by generally accepted community standards, crazy, but that is the only kind we can get and I am sure we will learn to live with it and love it.

Clause 23(1) agreed to

On Clause 23(2)

Clause 23(2) agreed to

On Clause 23(3)

Clause 23(3) agreed to

On Clause 23(4)

Mr. MacKay: I thought I saw an amendment coming through for that somewhere, something to the effect that "as soon as possible" would be added on to the end of the Clause.

Mr. Chairman: We have an amendment on Clause 25.

Clause 23(4) agreed to

On Clause 24(1)

Mr. MacKay: Could I have some explanation from the Minister of why it takes three members of the medical profession to lodge a complaint and only one from the general public? It seems to me a medical practitioner might be more qualified than a member of the public to make a complaint.

Is this something within the profession that is generally accepted?

Dr. Hibberd: Mr. Chairman, it does not really require it to set it in motion. Any citizen can set the procedure in motion. If a complaint is registered it must be considered. But it is to avoid spurious complaints or one doctor trying to get after another type of thing. It must be a credible thing in the profession to make it carry further, so it must be considered by three to have any weight.

But you could not do that for any member of the public. If they feel they have a legitimate complaint about treatment they have received, then they should have an opportunity to bring it to the attention of the Council. Is that clear?

Mr. MacKay: I understand what you saying, but I do not agree with it.

Dr. Hibberd: But that is not to say that a member of the medical profession himself cannot, as a private citizen, register a complaint. He could.

Hon. Mr. Graham: Mr. Chairman, I think that it is also important to notice that the Council may, on its own motion, and we are saying it shall, if any three members band together and sign a request, then they have to initiate an inquiry; whereas, one member of the public who does request an inquiry must back up that request by a certain amount of proof, acceptable to the Council before they must initiate an inquiry.

Mr. MacKay: I am not too unhappy with the section. I just make this statement that I think, as a member of a profession, that the laying of a complaint against another member would not be done lightly and that, again, if you are talking about a doctor in an outlying area, it might be very hard to find three practitioners who feel sufficiently qualified to be able to make a judgment, which they would not make lightly. You might have a difficult time finding three doctors who would be prepared to put their professional reputations on the line, simply because they have not got enough knowledge of the circumstances.

That is what I was getting at, is that you may have a situation where there is a doctor in a small community who is not performing well and it takes three other doctors, assuming that you can get a member of the public in a small community to make that charge, but if the profession feels strongly enough about it, nobody wants to put their professional reputation on the line because they have not got enough personal knowledge of the fact. Making it three is a little difficult.

Hon. Mr. Graham: Well, Mr. Chairman, we still have the ability, if one member submits, in writing, a request for an inquiry to the Council, they still may initiate an inquiry on their own behalf, but they do not have to initiate that inquiry.

Maybe the Council can investigate on their own and determine whether or not there are sufficient facts to, in fact, initiate an inquiry.

Clause 24(1) agreed to

On Clause 24(2)

Clause 24(2) agreed to

On Clause 24(3)

Hon. Mr. Graham: Mr. Chairman, this is a section under which the regulation will come that two members of the medical profession will be outside doctors, or doctors not resident of the Yukon.

Mr. MacKay: I think perhaps that was stated yesterday, and I would like to thank the Government Members for bringing that idea forward, recognizing in the long run, that regulation may be dropped, bringing more doctors here, that this is a good solution to the dilemma which we are in.

Clause 24(3) agreed to

On Clause 24(4)

Clause 24(4) agreed to

On Clause 24(5)

Clause 24(5) agreed to

On Clause 24(6)

Mr. MacKay: I am wondering if the Government gave any thought in this area of frivolous or non-serious complaints as to whether or not the posting of some kind of bond would be in order for a member of the public. This is done in other jurisdictions, it is not a brand new idea, and in the Dental Profession Ordinance which we passed this spring.

Dr. Hibberd: Yes, Mr. Chairman, indeed it was considered and serious consideration was given to it, but it was felt there should be nothing to impede the ability of a person to register a complaint. That may have the affect of impeding that process. They do, certainly, have to make it in writing and it must flow from there, but nothing should be there to impede it. That is what our feeling was.

Mr. Penikett: In that event, Mr. Chairman, can we assume then that the Government will be amending the Dental Profession Ordinance to apply the same principle?

Hon. Mr. Graham: I am not even certain if that section is in the Dental Profession Ordinance and I think that is a problem we should look at when we get to it.

Clause 24(6) agreed to

On Clause 25(1)

Mr. Chairman: On Clause 25(1), I have an Amendment.

It has been moved by Mr. Graham that Bill Number 12 entitled

Medical Profession Ordinance be amended by adding the phrase "as soon as practical" to Subsection 25(1) in the last line immediately after the words "to the Council in writing."

Amendment agreed to

Clause 25(1) agreed to

On Clause 25(2)

Clause 25(2) agreed to

On Clause 25(3)

Mr. MacKay: We have a number of loosey-goosey words in here again. We discussed the problems of good character, and now we have the problems of infamous conduct, emotional disturbances, and mental ailments. It is casting a very wide net. We are not sure how thick the mesh is. I am wondering if the Government has given any thought to defining more clearly what they had in mind for infamous or unprofessional conduct such as is given in the Saskatchewan medical ordinance?

Hon. Mr. Graham: Mr. Chairman, I think the final couple of lines there say everything that we wanted to say and that is if such member continues to practice medicine that constitutes a danger to the public, and I think that says it all basically.

We are depending upon the Inquiry Committee to inform us or the Council whether or not that person, if he continues practising, would be a danger to the public, to the people that he was working with. I think that, by casting a wide net, we are giving a lot of leniency but we are depending upon them to make that final judgment, whether or not that doctor is going to constitute a danger to the public.

Mr. MacKay: I can appreciate the force of that last thing. That does narrow the scope of it quite a bit. I suppose we should not necessarily assume that because there are three doctors sitting on our Inquiry Committee, two of whom are from outside, that they would know all of the things to consider with respect to unprofessional conduct. Again it is a question of saying that it will be at the discretion of that Inquiry Committee. I think we have argued in the past about how much guidance the Government should give to such independent committees. I would suggest that a little more guidance would have been useful in this section.

Clause 25(3) agreed to

On Clause 25(4)

Clause 25(4) agreed to

On Clause 25(5)

Clause 25(5) agreed to

On Clause 25(6)

Clause 25(6) agreed to

On Clause 25(7)

Clause 25(7) agreed to

On Clause 26(1)

Mr. Byblow: I would just like to know why section (1)(d) is in. It would appear to me that if there is some case of a doctor under investigation, and he cannot practise, he is not entitled to have a locum in his place. Is that correct?

Hon. Mr. Graham: Mr. Chairman, during the period of suspension, if he employed a locum, then he would be eligible to receive funds as a result of the operation of that doctor.

Mr. MacKay: Our concern would be that in a one doctor town, who would be responsible for trying to provide medical care? Would the Council undertake to try and supply that need?

Dr. Hibberd: Mr. Chairman, there is nothing to prevent another doctor from going in and assuming that practice. It is just that the doctor who is under suspension should not be still receiving remuneration from that practice. That is the only thing. Certainly, another doctor could go in, no problem.

Clause 26(1) agreed to

On Clause 26(2)

Clause 26(2) agreed to

On Clause 26(3)

Clause 26(3) agreed to

On Clause 26(4)

Clause 26(4) agreed to

On Clause 27(1)

Clause 27(1) agreed to

On Clause 27(2)

Clause 27(2) agreed to

On Clause 28(1)

Mr. MacKay: I have a little difficulty with this section. I think again we are trying to find ways to protect the public, but the concern that I have is that under this section one member of the medical profession can report to the Registrar the condition of another member on reasonable and probable grounds for a physical or mental ailment or emotional disturbance or addiction to alcohol or drugs that might constitute a danger to the public. I am wondering why, in this instance, it says one member is required to do that whereas in the previous section it took three members to launch an inquiry.

Dr. Hibberd: Mr. Chairman, this is just meant to cover the fact that if, in the course of his practice, a practitioner finds that another practitioner is not fit to practice then he is obligated to report it. It is putting the obligation on the examining physician to report it, that is all. He is just reporting it, that is all. He is not doing anything else but reporting.

Mr. MacKay: With which I agree. All I am saying is that in that instance it seems all right for one doctor to do it, and I am wondering why it is not all right for one doctor to do it under the previous section where we have a specific complaint to make.

Dr. Hibberd: He is always entitled to do it anytime. Mr. Chairman, it is a different instance that he is referring to. Any time, any member of the public, including member of the profession, can issue a complaint or can lay a complaint about any other practitioner. They always have that ability, everyone does.

Mr. MacKay: So, in fact, a member of the medical profession can put on a different hat at some point and call himself a member of the public and make a complaint. Is that true?

Dr. Hibberd: Yes, Mr. Chairman.

Clause 28(1) agreed to

On Clause 28(2)

Clause 28(2) agreed to

On Clause 28(3)

Clause 28(3) agreed to

On Clause 28(4)

Clause 28(4) agreed to

On Clause 29(1)

Clause 29(1) agreed to

On Clause 29(2)

Clause 29(2) agreed to

On Clause 29(3)

Clause 29(3) agreed to

On Clause 29(4)

Clause 29(4) agreed to

On Clause 30

Hon. Mr. Graham: Mr. Chairman, can we have Clause 30(1) stood over, please?

Mr. Chairman: Just (1), Mr. Graham?

Hon. Mr. Graham: The whole clause, please.

Clause 30 stood over

On Clause 31(1)

Clause 31(1) agreed to

On Clause 31(2)

Clause 31(2) agreed to

On Clause 31(3)

Clause 31(3) agreed to

On Clause 32(1)

Mr. MacKay: I think this relates back to the discussion we had yesterday about the Government paying fees to the members of the board who are members of the local medical profession.

Again here we have the Government paying the legal fees of what is supposed to be a self-governing profession. The Government may, at the expense of the Yukon Territorial Government, employ legal counsel.

Again, I am caught in this dilemma. Do we have a self-governing profession who is looking after its own affairs, or is this the Government's Consumer Protection Ordinance to protect the consumers?

This is the whole problem with this Bill all the way through, is

that sometimes it seems to be a private bill for the medical profession and sometimes it is a consumer protection bill. Perhaps the Minister can address that principle as to what the main function of the bill is.

Hon. Mr. Graham: Mr. Chairman, I think that the first thing that has to be recognized is that they are not a totally self-governing body, the same as most other bodies are not totally self-governing.

It is very important that this inquiry committee have legal advice at its disposal, if a doctor when appearing before the inquiry committee actually has legal counsel to represent him. I think it is only reasonable that this counsel be made available to the inquiry committee.

"...At the expense of the Yukon Government", I think has been put in basically because, in most cases today--correct me if I am wrong, Mr. Spray, the legal counsel provided has been the legal Director of the Department of Justice.

I do not know what we are going to run into in future, but we put "at the expense of the Yukon Territory" because of that fact.

Dr. Hibberd: Mr. Chairman, this allows the Council itself to employ legal counsel to carry out their duties, at the expense of the Yukon Territory. That is all it is saying?

They may have the expertise to proceed with an inquiry. In essence, that is what this is saying. They have the ability to proceed with an inquiry.

I might mention also, Mr. Chairman, that I well appreciate the Member's concern when he speaks about the profession being self-governing, but this is not what we are referring to here. The profession itself, indeed, does have a responsibility to maintain high standards. That is, indeed, an internal matter, that they must always address themselves to maintaining high standards, but, Mr. Chairman, it is incumbent upon a government, a representative of the people to ensure that there is a standard of medicine available in the Territory.

Those are two separate issues. The profession on the one hand has the responsibility to see that it does a good job. The Government, on the other hand, has a responsibility to see that there is a level of medical care available to its citizens. Those are two separate things.

This Council is the second thing. It is not involved with the standards that the profession itself must maintain for itself. It is to ensure, for the public, that there is a certain level of medical care available and as such it does not come into the sphere of doing their own work to maintain their own standards, because they are already doing that on their own, maintaining their standards. This, where they are being paid, they are doing it as representatives of the Government to ensure the citizens of the Territory have that medical care available to them. There is quite a difference between the two things and I think that is what we have to be careful to differentiate.

Mr. MacKay: Very good. I congratulate the Member's clear statements on that thing. I think had the amendment not been brought forward yesterday that the Medical Council was going to serve at pleasure, that I could have argued for a very long time that, in fact, the medical profession was being self governing and applying their high standards through this Ordinance and at the same time, trying to perform a dual function of being the policeman, acting on behalf of the Government.

So there is a duality in the function of the Council, I think, that is there.

I find it a little hard to swallow that the Government is going to pick up the tab for all of these things. I mean, if there is a practitioner who is fouling up and needs to be brought to task and there is a heavy cost involved in that, should it always be the public who picks that up or is the profession itself not liable, in some respect, to pick up the costs of this?

I think that is the principle I was getting at. I agree with the need for legal counsel, on behalf of the Medical Council, I am not disagreeing with that at all, I think that it is paramount that you have that. What I am suggesting is that perhaps the medical profession is getting a free ride here in administering their own affairs at the taxpayers' expense. Not only that, we are paying the Council fees in addition to that. We are going to pay all the legal bills and fees to sit on the Council where, in fact, there is a dual role they are playing. They are sitting in there as a self-governing profession and acting as policemen for the Government.

I speak from the heart in this because the Territorial Government recently informed the Professional Association, that I am a member of, if we wished to enforce our Ordinance we would have to hire our own lawyer, and that is not uncommon. I am wondering

why the rules should be any different for this particular profession.

Dr. Hibberd: Indeed, they should be different, Mr. Chairman, because I think that we are dealing with an entirely different thing when we are talking about the health of the public. As I said before, it is the responsibility of the representatives of the people to ensure that there is that there is medical care available of a high standard to those people.

The public must have some confidence that, when they do seek medical attention, it is to that standard; therefore, it has to ensure that every member of the profession who is practising here is of that standard and is capable of doing it.

Certainly, the Yukon Medical Association and its affairs, it is, indeed, the professional association of the medical profession. They hire their own lawyer, they pay their own costs for their own lawyer. Again, it is entirely separate.

I repeat, Mr. Chairman, what this is doing here is permitting the citizens to ensure that they, themselves, have a certain standard of medical care. That is all that is happening.

This Medical Council is not a professional council. That is the Yukon Medical Association, which is separate. The Medical Council is the body which sets the standard of the medical care available in the communities. It does it for the citizens as the government is supposed to act everywhere.

That is entirely separate than the self-policing aspects of the profession. This is to ensure the level of medical care. It is not the profession itself policing itself. This is the Government, as representatives of the people, saying that this is the standard of medical care that there shall be.

Mr. MacKay: I agree this is what this Ordinance is doing and, if that is the case, why are we having a Council which is composed of non-government nominated people?

I mean, if you are saying this is the Government's ordinance to enforce the standards of the Government, why are we going through all the trouble of setting up an independent council?

I think we have got that the very root of the problem of the Ordinance is that it is trying to do two things at once and the net result of it is that everybody is rather confused, I think, as to who this Ordinance is actually going to benefit.

We started out discussing whether or not it was a Consumer and Corporate Affairs ordinance. I believe it is. I think it is there for the protection of the consumer, but I can see that, despite the denials of the Member from South Centre, this is, in fact, the body which will be governing the practices of doctors in this Territory, because the YMA itself is merely a voluntary organization and has no legal status to strike people off or to enforce discipline.

So, I go back to the point, if we are talking about a self-governing body that is responsible to itself for its own ethics and so forth, but is enforcing a government rule, it should be paying its own way. It should not require the Territorial Government and the taxpayers of the Territory to be paying the bills for its own policing.

Dr. Hibberd: Mr. Chairman, this is really getting ridiculous. Why should the profession go to this extent? Why should they not just leave it up to you to set your standards? You would not be able to. All the profession is saying here is that they are offering their expertise to help you set the standards. It is not their Council; this Council is the Council of the people. The expertise on the Council has to be from the medical profession itself. It would not be possible for the standards to be set by an entire lay council. I am sure that must be obvious to everyone that they cannot sit in judgment in an area in which they have no competence to do so.

Mr. Chairman, the professional organization, the YMA, functions exactly as does the professional organization for the Honourable Member. It is an entirely voluntary body that does certain things for the profession on a collective basis. It is their organization. This Council is not their organization. This Council is the Council of the government which has doctors on it so that they can lend their expertise to setting up certain standards and to see that those standards are fulfilled.

This Medical Council, Mr. Chairman, is indeed a council which is obvious, it is a council of this body right here. We are the ones who are creating it; and, we are the ones who are giving it direction. It is not a council of the profession itself. They will set up their own organization.

We are merely trying to ensure that there are certain standards of medical care that are here in the Territory that are available to every citizen of the Territory. That is the responsibility of Government. We are seeing to it through the creation of this Council.

Now the Council obviously requires expertise from the profes-

November 14, 1979 YUKON HANSARD

sion itself to see that these standards are there. They are the only ones who will be able to see it, but there is the protective mechanism built into this Council that there are lay people on it. Indeed, it is representing the people overall. The expertise is there; the representatives of the people are there to see that these standards are carried out. It certainly is not a professional organization. Let us not confuse the two. I am glad that the Member brought it up to point this very difference out.

Hon. Mr. Graham: Mr. Chairman, getting back to the money that the Member opposite is obviously worried about, you must remember one thing. The doctors presently pay their registration fees to the Government of the Yukon.

I do not know at what point the books are in now, if we have a surplus or a deficit, but I will guarantee that if we have a surplus we do not give it back to the doctors. Therefore, they do as Dr. Hibberd has pointed out to me, pay their own YMA fees as well. But their fees do come to us, and therefore, as a result of that, we feel it is our responsibility to provide the legal counsel for the Yukon Medical Council which is established by us.

Mr. Penikett: The Minister is kind enough to throw in a red herring, as usual, and make reference to a surplus.

I guess the obvious question is what if there is a deficit? Since user-pay is the principle which is adhered to by this Government on a number of occasions, can we expect, if the Medical Council does prove to be of some considerable cost to the Territory, that physicians will be expected to bear the cost in the form of increased license fees?

Hon. Mr. Graham: Mr. Chairman, in fact, that will happen, yes. You can expect to see an increase in medical fees if, in fact, that is true.

Dr. Hibberd: No, Mr. Chairman, we certainly will not. I object very strongly to that.

Mr. Chairman, it is this group that is setting the medical standards. It is not the medical profession that is setting the standards. This group, through the Medical Council, is setting those standards.

Now, it is not up to the profession to pay for this Council, surely, Mr. Chairman, that is utterly absurd.

Mr. Fleming: I thought we were discussing 32(1).

Mr. Chairman: We are.

Hon. Mr. Graham: Right on.

Mr. Fleming: Well, I think 32(1) is dealing with the Council and who they may hire. All this other hooah is fine and dandy, but what it boils down to the very things, as the Honourable Member, I think, in front of me, has put it, that they will be at the expense of the public; there is no question about it, in my mind.

I am not happy with the section, as it stands. I feel the same way as the Honourable Leader of the Opposition feels. You know, you can talk all you want about something else, but in this section it is very plain to read what it says and it is very plain to understand it and I do not think anybody is going to change their mind on it.

Dr. Hibberd: Mr. Chairman, I can guarantee you that you will have a two member Council. There will not be one doctor in this Territory who would ever sit on a Medical Council if he did not have legal counsel available to him.

Why should he sit on the council and expose himself to every suit in the world, when it is not his responsibility?

Clause 32(1) agreed to

On Clause 33(1)

Clause 33(1) agreed to

On Clause 33(2)

Clause 33(2) agreed to

On Clause 33(3)

Clause 33(3) agreed to

On Clause 33(4)

Clause 33(4) agreed to

Mr. Chairman: I shall now call a short recess?

Hon. Mr. Graham: Why stop now?

Recess

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

We will continue where we left off before recess. We will start with Clause 34(1).

On Clause 34(1)

Clause 34(1) agreed to

On Clause 34(2)

Clause 34(2) agreed to

On Clause 34(3)

Clause 34(3) agreed to

On Clause 34(4)

Clause 34(4) agreed to

On Clause 34(5)

Clause 34(5) agreed to

On Clause 34(6)

Mr. Chairman: I have an Amendment by the Honourable Mr. Graham that Bill Number 12, entitled Medical Profession Ordinance be amended by deleting Subsection 34(6) and substituting the following therefor:

34(6) No liability shall be incurred by the Registrar, the Council, any Inquiry Committee or by any Member of the Council or Subcommittee of the Council or an Investigator appointed pursuant to Subsection (1) or anything done or purporting to be done bona fide under this Ordinance.

Amendment agreed to

Mr. Tracey: Mr. Chairman, before we get off this Section, in (e) of Subsection (1), I would like to know why evidence can be accepted by this body when it is not acceptable in a court of law.

Mr. Chairman: We have passed that Subsection. Is it agreed that we go back to it?

Mr. Tracey: This is still part of ...

Mr. Chairman: Just a moment Mr. Tracey. Order please.

May we consider subsection (e)? All agreed?

Some Members: Agreed.

Mr. Tracey: Mr. Chairman, I would like clarification from the Minister of why we accept the evidence here which would not be acceptable in a court of law.

Dr. Hibberd: Mr. Chairman, it is in order for evidence that would not otherwise be available to the inquiry would, indeed, to be made available. It removes the obligation of the Members of the Inquiry, whether they know the evidence would be so admissible or not. It removes the obligation of having to have legal counsel for all the evidence that is put forward.

It permits, Mr. Chairman, the inquiry to review all the evidence available which may not be available to it otherwise.

Mr. MacKay: Would it permit the introduction of hearsay evidence? Is that what this section would do?

Dr. Hibberd: Yes, Mr. Chairman.

Mr. MacKay: Perhaps then I could ask a couple of questions revolving around this section. Having gone through this process, the Inquiry Committee then decides that this particular doctor is guilty of some infraction and makes a recommendation to Council to then strike him from the Register or so forth, but beyond all of that the doctor has the right of appeal to the courts of the land at which only evidence would be introductory that is admissible. So, with the hearsay evidence it would not in fact prejudice any ultimate court case. Am I correct?

Dr. Hibberd: Yes, Mr. Chairman.

Mr. MacKay: I am satisfied on that point. I am not so satisfied though that there is not a hardship being worked here. On (4), now the case for having a transcript of the inquiry's operations is going to be at the cost of the doctor against whom the complaint has been laid.

Am I correct in my interpretation of that? I am wondering if the complaint proves unfounded whether the doctor has any recourse to obtain reimbursement for the cost that he has incurred to defend himself?

Mr. Spray: Mr. Chairman, no, not through this Ordinance.

Mr. MacKay: I am wondering then, and I am probably venturing into legal area where the witness is not qualified to answer but it seems to me that if he has a case where he was wrongfully accused and had suffered a loss of money by defending himself and ultimately had a damage to his reputation that was irreparable, would (6) preclude him from ever recovering from anybody the losses that have been incurred?

Mr. Spray: Mr. Chairman, subsection (6) of Clause 34 is only saving the specified persons and bodies from liability. If this complaint was originated by a member of the medical profession other than a member of the Council or the Inquiry Committee, or by a citizen, there is still normal recourse by the medical practitioner through the courts. It is just that there is no recourse under this Ordinance.

Mr. MacKay: So there is no recourse against the Registrar. Would that include the Government itself? The word "Registrar", does that then exclude the Government from having any responsibility towards any person who felt they were incorrectly treated?

Mr. Spray: Mr. Chairman, I am not able to answer that question, I am sorry.

Hon. Mr. Graham: I am sorry, Mr. Chairman, I do not have the answer either. I would imagine that it does, but I am not certain. I can find out. Perhaps we can set this section aside.

Mr. MacKay: Yes, I would just be interested to know what recourses are available. We have established that if it is a member of the public or not a member of the profession who laid the complaint that turned out to be unfounded, that they would be able to be sued or were "sueable".

My only other question then, I guess, is whether or not the Government could be joined in that action?

Hon. Mr. Graham: Mr. Chairman, perhaps I can find the information and get it to the Member at another time.

Mr. Chairman: Do you want the information later and pass this, or do you want this stood over? What is your intention, Mr. Graham?

Hon. Mr. Graham: We could just go ahead with this section.

Clause 34(6) agreed to

On Clause 35(1)

Clause 35(1) agreed to

On Clause 35(2)

Mr. MacKay: I think I found the answer to my previous question, that costs can be awarded by the judge, presumably for or against.

Clause 35(2) agreed to

On Clause 35(3)

Clause 35(3) agreed to

On Clause 35(4)

Clause 35(4) agreed to

On Clause 35(5)

Clause 35(5) agreed to

On Clause 35(6)

Clause 35(6) agreed to

On Clause 36(1)

Clause 36(1) agreed to

On Clause 36(2)

Clause 36(2) agreed to

Mr. Spray: Mr. Chairman, I am sorry, under Clause 36, there is a typing error in Clause 36(1). It should read "An appeal under subsection 35(1)..."

Mr. Chairman: We will consider that a typing error. I thank you, Mr. Spray, for bringing that to our attention.

I have cleared it already. There is no necessity to go back, unless somebody has any more comments.

On Clause 37(1)

Clause 37(1) agreed to

On Clause 37(2)

Clause 37(2) agreed to

On Clause 38(1)

Mr. MacKay: Perhaps I could just have an explanation of why this section is in here.

Mr. Spray: Mr. Chairman, the appeal is being given by notice of appeal, but this is an enabling section for the judge of the court of appeal to hear the case, judge it upon its own merits, notwithstanding that there may be some problem as to the form of appeal which has been launched.

It is a section primarily for the benefit of the court so that the court may proceed.

Mr. MacKay: Relating back to the previous section, where there is one certified copy of the evidence being submitted, I am just using it as an example, if, in fact, that evidence contained hearsay evidence, would this be the kind of thing that would permit the appeal to the court, even though the evidence was faulty under other rules?

Mr. Spray: Mr. Chairman, this is one point, but the section also goes on to point out that the judge may give such direction to provide proper documentation or whatever he considers proper or necessary in order that the proper hearing may go on.

It is to enable the court to go ahead with the hearing and not refuse to hear the appeal on a technical ground.

Clause 38(1) agreed to

On Clause 39(1)

Clause 39(1) agreed to

On Clause 39(2)

Clause 39(2) agreed to

On Clause 39(3)

Mr. Penikett: Mr. Chairman, the other day I asked about the Good Samaritan provision and Dr. Hibberd was kind enough to suggest that that was covered in another Ordinance. I wonder if there is any reason why specific reference is not made to that here, or is it?

Hon. Mr. Graham: Mr. Chairman, I had hoped that section (3)(b) would cover that.

Clause 39(3) agreed to

On Clause 40(1)

Clause 40(1) agreed to

On Clause 41(1)

Clause 41(1) agreed to

On Clause 41(2)

Clause 41(2) agreed to

On Clause 42(1)

Clause 42(1) agreed to

On Clause 42(2)

Clause 42(2) agreed to

On Clause 43(1)

Clause 43(1) agreed to

On Clause 44(1)

Mr. MacKay: I had a concern raised on this by a member of the legal profession who was a little concerned that by using the words "unprofessional conduct" and defining it in this section, that we may be narrowing the scope of a previous clause which had unprofessional conduct as one of the problems that may cause a disciplining.

It seems to read that is unprofessional conduct under this Ordinance, but to me, of course, it is not the only kind of unprofessional conduct. I am wondering if there was a problem there.

Hon. Mr. Graham: Mr. Chairman, I agree that this is not the only definition of unprofessional conduct. In fact, I do not really know why we singled it out, Mr. Spray maybe can help us.

Mr. Spray: Mr. Chairman, it is singled out because there is specific prohibition against a medical practitioner tying himself in with any pharmacist or pharmaceutical chemist, I would suggest that "an" unprofessional conduct and that then sets apart and does not preclude any other unprofessional conduct that would be considered.

Hon. Mr. Graham: If I can suggest that it would be considered a typing error that between "is" and "unprofessional" the word "an" to maybe clarify.

Mr. Chairman: I am sorry, Mr. Graham.

Hon. Mr. Graham: Could that be considered to be a typing error, Mr. Chairman, so that we do not have to bring in an amendment. Between "is" and "unprofessional" put "an": it is "an unprofessional conduct"

Mr. Chairman: Is there any further discussion?

Hon. Mr. Graham: Mr. Chairman, can we ask for 44(1) to be set over and we will bring in an amendment.

Clause 44(1) stood over

On Clause 45(1)

Clause 45(1) agreed to

On Clause 46(1)

Clause 46(1) agreed to

On Clause 46(2)

Clause 46(2) agreed to

On Clause 47(1)

Clause 47(1) agreed to

On Clause 48(1)

Clause 48(1) agreed to

On Clause 49(1)

Clause 49(1) agreed to

On Clause 49(2)

Clause 49(2) agreed to

On Clause 49(3)

Mr. MacKay: It has been pointed out to me by the Member from Klunane that the fines here are less than these under the Game Ordinance.

Clause 49(3) agreed to

On Clause 49(4)

Clause 49(4) agreed to

On Clause 50(1)

Clause 50(1) agreed to

On Clause 50(2)

Clause 50(2) agreed to

On Clause 30

Hon. Mr. Graham: Mr. Chairman, I do not know if you passed out the amendment to Clause 30. I would like you to pass that out, possibly, and we can have that amendment made to Section 30, before we go on.

In Clause 30, page 23.

Mr. Chairman: Moved by Mr. Graham that Bill Number 12, entitled Medical Profession Ordinance, be amended in Clause 30, at page 23, by deleting the whole of this section.

Hon. Mr. Graham: Mr. Chairman, if I may suggest that the word "delete" be put beside Clause 30, so that we will not have to re-number the total Ordinance.

Amendment agreed to

Clause 30 agreed to

Mr. Chairman: I now refer you back to page 33, Professional Corporations, Clause 51(1).

On Clause 51(1)

Clause 51(1) agreed to

On Clause 52(1)

Mr. MacKay: I am just wondering about the effect of (1)(a). I am a little late getting to my feet. Professional corporations, as I understand them, as they are operated anywhere else, and that is mainly Alberta, generally restrict their ownership to one practitioner at a time.

In other words, it will be John Douglas, a professional corporation, or So and So, John Doe, a professional corporation. This seems to allow for a professional corporation to be owned by more than one practitioner and I am wondering about the legal ramifications of personal liability now.

Does that mean that when you allow later on for the same personal liability to flow through and to ignore the corporate veil, whether, in fact, you are going to cause some diffusion of that in the sense of this guy's partner being caught up in the same suit for something that his partner did that he did not do?

I think that is the essence of the professional corporation in Alberta being available only to one individual at a time, that you maintain that strictly personal identity of the practitioner in the corporation, so that you may, in fact, be personally liable for his actions.

Mr. Spray: Clause 55(1) covers liability.

Mr. MacKay: I understood that this personal liability flowed through to the individual. I am concerned about the fact that you may have one or more, maybe ten individuals practising under the one corporate group, whether or not they would be dragged into the same court case by virtue of one member of that group being dragged into a court case.

Would they have to cite the company as a co-defendant in a case, in which case all of the doctors would be involved if any?

Dr. Hibberd: Mr. Chairman, perhaps the witness can help us here, but it is my understanding that the corporation section does not apply to the professional conduct of the individuals involved. In the professional sense, they are subject to suit as individuals and this section of the corporation does not apply to that professional conduct.

Am I right, Mr. Spray?

Mr. Spray: Yes, Mr. Chairman. Professional corporations, in Section 52(1)(a) do not protect an individual for his professional practice. I believe the Member is quite correct that as member of a professional corporation more than one physician may be brought into suit against a corporation. (inaudible)

A professional corporation is operating here to practise

medicine. We are making exemptions here for the Companies Ordinance, Mr. Chairman.

Dr. Hibberd: Mr. Chairman, I think we are saying the same thing again, are we not?

As far as professional conduct is concerned, and a suit is brought in that action, this section on corporations does not apply so that when a suit is brought against a member of that corporation, it is brought to the individual only, Mr. Chairman.

Mr. Spray: Mr. Chairman, we are specifically providing legislation here for a medical practitioner not to obtain protection because he is in a corporate body. Other than that the laws under the Companies Ordinance will apply to that corporation.

Mr. Fleming: So I do take it from there that on the other hand that the corporation could be dragged into the affair really.

Hon. Mr. Graham: I think Mr. Chairman, that is correct. You sue the doctor, if you are also suing the corporation then the burden of proof is on the person who is initiating the action. The doctor is the person that you have the suit against. That is the primary person. If you decide to sue the corporation as well, I would imagine that that would be up to you. You can sue anybody you want. There is absolutely no legislation in the world that is going to prevent you from making a suit against anyone except the Government of Canada.

Mr. Fleming: If you are suing the doctor, I maintain that under this you would be suing the corporation.

Hon. Mr. Graham: Mr. Chairman, I think it has been explained several times that this legislation is not attempting to shield a doctor by allowing him to set up a professional corporation with any number of doctors in that professional corporation. The legislation is very explicit in that it does not allow a doctor to hide behind a professional corporation in the event of his malpractice or whatever, in the event of a suit. This legislation expressly forbids him hiding behind a professional corporation.

Mr. Spray: If I may make one more comment, I believe you will find that a professional corporation legislation was put through in Alberta, the Alberta Companies Legislation did not provide for one-man corporations whereas our legislation does indeed provide for a company being incorporated by one person. Alberta made specific reference in their corporation legislation to single man corporations.

On Clause 52(2)

Clause 52(2) agreed to

On Clause 52(3)

Clause 52(3) agreed to

Clause 52 agreed to

On Clause 53(1)

Mr. Chairman: At this time I am going to call a recess. We are having trouble with our sound. I ask you not to go too far away because we are going to make it very short.

Recess

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

On Clause 53(1)

Clause 53(1) agreed to

On Clause 53(2)

Clause 53(2) agreed to

On Clause 53(3)

Mr. Chairman: On Subsection (3) I have an amendment by the Honourable Douglas Graham, that Bill Number 12, entitled Medical Profession Ordinance, be amended by deleting the Subsection 53(3) from the Bill.

Hon. Mr. Graham: Mr. Chairman, the only reason that we put this Amendment in is that it could have been misconstrued, and it could have created problems later, during litigation in court, so we decided to eliminate it.

Mr. MacKay: I am sure that most of the doctors, if not all of the doctors, would have been most reluctant to put the initials "P.C." after their names anyway.

Amendment agreed to

On Clause 54

Clause 54 agreed to

On Clause 55

Clause 55 agreed to

On Clause 56(1)

Clause 56(1) agreed to

On Clause 57(1)
 Clause 57(1) agreed to
 On Clause 58(1)
 Clause 58(1) agreed to
 On Clause 59(1)
 Clause 59(1) agreed to
 On Clause 60(1)
 Clause 60(1) agreed to
 On Clause 60(2)
 Clause 60(2) agreed to
 On Clause 60(3)
 Clause 60(3) agreed to
 On Clause 61
 Clause 61 agreed to
 On Clause 62(1)
 Clause 62(1) agreed to
 On Clause 62(2)
 Clause 62(2) agreed to
 On Clause 44(1)

Hon. Mr. Graham: Mr. Chairman, I believe all Members have received now an amendment to Clause 44(1), page 31, I think this will make it a little bit more clear, deleting "It is unprofessional conduct", and substituting "It is an example of unprofessional conduct".

I think that should fill the requirements of Members.

Mr. Chairman: It has been moved by Mr. Graham that Bill Number 12, Medical Profession Ordinance, be amended in Clause 44(1), at page 31, by deleting "It is unprofessional conduct" on the part of a person registered under this Ordinance to place or permit to be placed the name of any pharmacist, pharmaceutical chemist or association for the sale of drugs or medicine upon any prescription issued by him" and substituting "It is an example of unprofessional conduct on the part of a person registered under this Ordinance for him to place or permit to be placed the name of any pharmacist, pharmaceutical chemist or association for the sale of drugs or medicine upon any prescription issued by him".

Mr. Penikett: Mr. Chairman, at another time and at another place I might have argued also for saying that we should only have generic names and not brand names in prescriptions but, I think, I would probably have more energy than I have at my command right now to be able to persuade the Members opposite of such a point.

Amendment agreed to
 Clause 44(1) agreed to
 On Clause 63(1)
 Clause 63(1) agreed to

Mr. Chairman: Mr. MacKay, what are you referring to? Clause 63?

Mr. MacKay: I am sort of half way between 63 and 64 and I am thinking that there was one question I asked yesterday that I did not get an answer to. With respect to temporary permits vis-a-vis temporary register vis-a-vis permanent registers and whether or not the grandfather clause would have any detrimental effect on any existing practitioner. I am wondering if we have the answer to that question now.

Dr. Hibberd: Mr. Chairman, I believe we gave the answer to that question yesterday. It would have not detrimental effect on anyone practising in the Territory at the present time.

On Clause 64(1)
 Clause 64(1) agreed to
 On Clause 64(2)
 Clause 64(2) agreed to
 Preamble and Title agreed to

Hon. Mr. Graham: Mr. Chairman, I move that you report Bill Number 12, Medical Profession Ordinance as Amended, out of Committee of the Whole.

Mr. Chairman: It has been moved by Mr. Graham, that Bill Number 12 be reported, with amendments out of Committee of the Whole.

Motion agreed to

Mr. Chairman: We will now consider Bill No. 37, An Ordinance to Amend the Liquor Ordinance.

Hon. Mr. Graham: May the witness be excused?

Mr. Chairman: Oh, I am so sorry. Thank you for being with us Mr. Spray. You may be excused.

On Clause 1(1)
 On Subsection 87.1(1)
 Subsection 87.1(1) agreed to
 On Subsection 87.1(2)
 Subsection 87.1(2) agreed to
 On Subsection 87.1(3)
 Subsection 87.1(3) agreed to
 On Subsection 87.1(4)
 Subsection 87.1(4) agreed to
 On Subsection 87.1(5)

Mr. Fleming: On Subsection 87.1(5), I would just like a little explanation on it. This is something like we ran into on the Boiler and Pressure Vessels Ordinance the other day. I am just wondering if there is any onus in this case, if, for instance, a store sold some malt, or otherwise, to make a type of liquor. There would not be any onus on the store? I presume that the wording covers it.

Hon. Mr. Lang: I am not clear on the question.

Mr. Fleming: In this Subsection, it looks like it is all in the area of Old Crow, but I am thinking of an area, for instance, in Whitehorse, where something might be sold to a person who comes from Old Crow, and he would have no knowledge whatsoever, and I am just wondering whether it does cover it and whether the onus is on that person to know, somehow or other.

Hon. Mr. Graham: Mr. Chairman, this section is basically to prevent the co-op in Old Crow from selling vast quantities of necessary ingredients for making home brew to the residents of Old Crow. You will notice that we also said "sell, give or deliver". Hopefully, by instituting that Clause and knowing that only one transportation system, or possibly two, the river and air, are available to Old Crow we hope that we will also be able to prevent people from transporting necessary ingredients for home brew to the village of Old Crow.

Mr. Penikett: Mr. Chairman, I know there is a home brew tradition in Old Crow. Might the Minister happen to know what the basic substance is in that community? I am concerned, because it seems to me if you are going to keep track of materials, we ought to know what it is.

Mr. Tracey: Mr. Chairman, sugar is the basic ingredient in home brew. Certainly you cannot expect somebody not to sell sugar.

Mr. Penikett: Mr. Chairman, there are various cultures in the world. Some use barley, some use potatoes, some use other crops. I wanted to know what other essential ingredients there might be, beyond sugar.

Hon. Mr. Graham: I am sorry, Mr. Chairman, I do not really know. We have a member from Old Crow present in the House and perhaps if he has had any experience he could enlighten the House.

Mr. Njootli: Mr. Chairman, it is the understanding of the Old Crow residents that sugar is a basic need and it is an ingredient of brewing alcohol, but the House must understand that the Old Crow Co-op is owned by all the people in Old Crow and the policy concerning this section here, with regard to the Old Crow Board of Directors of the Co-op, have the general understanding not to sell any specifics, such as yeast and malt, commercially made malt.

Liquor cannot be made without those two, so, notwithstanding that, you cannot make any liquor without the two exemptions.

Mr. Fleming: Mr. Chairman, I have to differ slightly with the Honourable Member. I can remember a few years ago they had a fairly nice little still going in our operation, oh, 25 years ago. White beans were used very, very well to make a little bit of a drink once in a while.

I am wondering, though, the section is so loose. It says in Old Crow at the bottom, but by the other person, will be used by the other person in Old Crow, which means that person is in Old Crow that you are selling to, but it does not state that the Co-op would be the very one. It is very loose. It could be a person in Whitehorse.

If it said, "no person shall, in Old Crow, sell, give or deliver", then I could understand it, but the way it is here is very, very loose. It takes in the whole Territory, that if I sold them something.

Hon. Mr. Lang: No, Mr. Chairman, the previous section, or the section in respect to transportation of liquor covers the aspect that the Honourable Member has referred to, I think.

It is very difficult, Mr. Chairman, trying to draft something like this. You are trying to make it general and broad and attempting to

November 14, 1979 YUKON HANSARD

cover the various aspects that could come up, if a ban were to come into effect.

All I can say is that we discussed it, my colleague, the Minister of Justice discussed it at great length with the Justice Department and it is the best we can come up with.

If we find problems with it, I guess we can amend it, but unless somebody else has another recommendation, I think we have covered the point that the Honourable Member has raised, with this section and previous sections.

Subsection 87.1(5) agreed to

On Subsection 87.1(6)

Subsection 87.1(6) agreed to

On Subsection 87.1(7)

Subsection 87.1(7) agreed to

On Subsection 87.1(8)

Mr. Fleming: Mr. Chairman, yes, I would like to have a good explanation of this section, because I do not really approve of it. I feel that it is taking civil rights away from people who have to defend their cause. They are innocent, in my book, until they are proven guilty.

If the section is explained to me and is in favour of the accused, somehow, I may change my mind, but otherwise, I will have an amendment.

Hon. Mr. Graham: Mr. Chairman, I am glad that he asked this question, because I have an answer. I asked the same question.

The burden of proof that is, it says "that an exception or exemption operates in favour of the accused is on the accused".

In other words, Mr. Chairman, if the RCMP happen to raid a home in the Old Crow area and find that there are, in fact, alcohol or alcoholic beverages on the premises, the burden of proof is then on the accused to prove that that alcohol is not his.

In other words, if you are found with a bottle of alcoholic beverage in your back pocket, you are therefore guilty of having that bottle of alcohol until you can prove that it is not, in fact, yours, that somebody put it in your pocket while you were unaware, or something to that effect. That is the intent of that section.

Mr. Fleming: Mr. Chairman, I do not agree with that type of a section in any legislation, because we have laws and those laws, so far, have been always that you would prove the innocent guilty and let the law will do it.

I am quite prepared to still stand by that, I do not care. So, I would move an amendment to the Bill, that Bill Number 37, entitled An Ordinance to Amend the Liquor Ordinance, be amended in Clause 1, at page 2, by deleting Subsection 87.1(8).

Mr. Chairman: While they are passing the amendment out, it has been moved by Mr. Fleming that Bill Number 37, entitled An Ordinance to Amend the Liquor Ordinance, be amended in Clause 1, at page 2, by deleting Subsection 87.1(8).

Mr. Fleming: Mr. Chairman, in putting an amendment forth I see absolutely no reason for a section which does allow something to be taken away. It is, I think, entirely covered in the law whenever you are, as the Minister said across the table, picked up by the RCMP and you find a bottle in the hip pocket or somewhere. But, I am thinking of cases where you might find the bottle somewhere else, or a long way away from where you actually are. There is just no need of a section of that type, as I see it, in the Ordinance, whatsoever.

Hon. Mr. Lang: Mr. Chairman, I think there is a point that has to be raised. If he reads the section, it says "proving an exception or exemption." In other words, if it has been ordered by a doctor, then we have the exemption section in the Bill. All he has to do is produce the prescription, or whatever, to say that he can do this. Otherwise, it is illegal to drink in the Old Crow area. It is just that simple.

Hon. Mr. Graham: Mr. Chairman, if you do not have this section in here, I can see a case where a person has been legally prescribed alcoholic spirits of some type that would be normally considered banned in Old Crow prescribed by a doctor, as my colleague has said here, or something to that effect, and you would be guilty of possession of alcohol unless you could show that the exemption existed, or the exception. It is a perfectly clear section. I do not see any great problem with keeping it in here.

Mr. Fleming: Then it is perfectly simply, too, to realize that we have all gone through life that way. You are bound, by yourself, to bring forth evidence that shows that you are not guilty at any time. You do not need to be told to bring it forth or anything else, but you do not also need to have the right taken away from you, forcing you to prove, in any case, no matter what type of case it is, whether you have a prescription, or whether you do not have, in this case. Anything that is found, you must prove that you are not guilty. I

cannot agree with this section.

Mr. MacKay: Perhaps I could ask a question before the Minister gets too indignant and ends the questioning. I assume that subsection (3)(b) provided the legal exception for somebody to have liquor for medicinal purposes. I am concerned about the section when it talks about proving an exception or exemption operates. Are we really just referring to subsection (7), which is the aircraft section, or subsection (3), which is the sacramental and medicinal purposes section? Is that really all that this section refers to? If that is all it does, then I can understand the section.

Hon. Mr. Lang: Mr. Chairman, most definitely it says, in a prosecution under this section. This is one total section, Mr. Chairman. Section 87.1, all the way through, is a total section. You are referring just to that section itself. It is a separate, if you like, part of the liquor Ordinance. That is why it is designed in the manner that it is.

Mr. MacKay: I do have a problem then because when I look back at section (5) and I see that no person shall sell, give or deliver a substance that he knows, or ought to know, and then I read it in conjunction with (8). If it is to apply to that then a fellow could say that he did not want to be prosecuted under section (5) because he did not know, then they could say prove that you did not know because the burden of proof is on you under subsection (8). That puts a pretty heavy onus on it.

If it only applies to the aircraft and to the medicinal and sacramental purposes, I can fully support that Clause, but if it covers people who are selling stuff, the burden of proof is going to be on them to show that they did not know, I think that is going too far.

Mr. Tracey: Mr. Chairman, that was one of the things that I was going to bring up, too.

I still have an awful problem with (5) where it says "ought to know". I do not know how anybody can be convicted. He ought to know if he sells 100 pounds of sugar to somebody that they are going to manufacture liquor with it. Then if you go down to (8) and you are prosecuted under it, then the liability is on you to prove that you should not have ought to know that that sugar was for making alcohol.

Hon. Mr. Lang: Mr. Chairman, would you please set subsection (8) aside and we will have a look at it.

Mr. Chairman: We will set subsection (8) aside and the amendment.

Subsection 87.1(8) stood over

On Subsection 87.1(9)

Subsection 87.1(9) agreed to

On Clause 2(1)

Clause 2(1) agreed to

Mr. MacKay: This Clause will be brought into force immediately after a favourable plebiscite?

Hon. Mr. Lang: Mr. Chairman, I have stressed that point a number of times.

Mr. Chairman: At this time we will leave this Bill. At this time we will consider Bill Number 35, An Ordinance to Change the Name of the Magistrates Court and to Amend the Magistrates Court Ordinance. On Clause 1, I will anticipate general debate.

As there appears to be no general debate, we will commence a clause by clause study.

On Clause 1

Mr. MacKay: I was a little unclear as to the explanation that the Minister gave at second reading.

Has there been a change now, to the Yukon Act, which permits us now to call the Magistrates Court a Territorial Court?

Hon. Mr. Graham: Mr. Chairman, we never needed a change in the Yukon Act in order to do that. Every other jurisdiction in Canada presently calls their court either a Provincial Court or, in the Northwest Territories, for instance, they call it a Territorial Court Judge.

It has been common use by Ottawa and, again, by this Government, to call the Supreme Court of Yukon the Territorial Court and the Judge a Territorial Court Judge. That use has since elapsed. If it was a section in the Yukon Act, I believe it was changed back in 1971, but, no, there is nothing else needed.

Clause 1 agreed to

On Clause 2(1)

Clause 2(1) agreed to

On Clause 3(1)

Clause 3(1) agreed to

On Clause 3(2)

Clause 3(2) agreed to

On Clause 4(1)

Clause 4(1) agreed to

On Clause 5(1)

Mr. Fleming: Sorry, just a second. I thought I saw where there was one word written down twice and now I cannot find it again.

Mr. Chairman: I will pause.

Mr. Fleming: Oh, yes, "of" is down twice, I think.

Mr. Chairman: Where?

Mr. Fleming: Are you in 5? No, you are not quite there yet, maybe.

Mr. Chairman: We are on 5(1).

Mr. Fleming: I am a little ahead of you, sorry.

Clause 5 agreed to

On Clause 6

Mr. Fleming: If I may then, no, we were in Clause 5(1), and it says, on my paper "...Court, and every judge of of..."?

Mr. Chairman: What line, Mr. Fleming, please?

Mr. Fleming: The third line up.

Mr. Chairman: We will consider this a typo error. It has been noted and it has been cleared, so that will be in order.

Clause 6 agreed to

On Clause 7

Clause 7 agreed to

On Clause 8

Clause 8 agreed to

On Clause 9

Clause 9 agreed to

Preamble and Title agreed to

Mr. Chairman: I now declare that Bill Number 35 has cleared Committee of the Whole.

Hon. Mr. Graham: Mr. Chairman, I move that you report Bill Number 35, An Ordinance to Change the Name of the Magistrates Court and to Amend the Magistrates Court Ordinance, as having passed Committee without amendment.

Mr. Chairman: It has been moved by Mr. Graham that I now do report Bill Number 35, An Ordinance to Change the Name of the Magistrates Court and to Amend the Magistrates Court Ordinance, without amendment.

Motion agreed to

Mr. Chairman: I now direct you to Bill Number 36, a Justice of the Peace Court Ordinance

On Clause 1(1) I shall anticipate general debate.

As there seems to be no general debate we shall proceed with a clause by clause reading.

On Clause 1(1)

Clause 1(1) agreed to

On Clause 2(1)

Clause 2(1) agreed to

On Clause 3(1)

Clause 3(1) agreed to

On Clause 3(2)

Clause 3(2) agreed to

On Clause 4(1)

Clause 4(1) agreed to

On Clause 4(2)

Clause 4(2) agreed to

On Clause 4(3)

Clause 4(3) agreed to

On Clause 5(1)

Clause 5(1) agreed to

On Clause 5(2)

Clause 5(2) agreed to

On Clause 5(3)

Clause 5(3) agreed to

On Clause 5(4)

Hon. Mr. Graham: Maybe I should explain first of all why (4) is

there. I heard certain rumblings of discontent on the other side. At present there are only two commissioned officers of the RCMP in the Territory. Those are the Inspector and the Superintendent, Mr. Chairman. It is largely a ceremonial role. It does not really fulfill any great function. We had the option of leaving it in or taking it out, and we left it in largely as a matter of ceremony.

Clause 5(4) agreed to

On Clause 6(1)

Clause 6(1) agreed to

On Clause 6(2)

Clause 6(2) agreed to

Mr. Chairman: I am on Clause 6 on Page 2; but the Chair does note that when we turn over we have another Clause 6.

Hon. Mr. Graham: Mr. Chairman, I will bring in an amendment indicating that the second Clause 6 will Clause 6(a). Can we continue on under that basis?

Mr. Chairman: Is it agreed that we continue on?

Some Members: Agreed.

Mr. Chairman: We are now on the top of Page 3. An amendment will be coming in. I think we will stand over both Clauses until we get the amendment in. It will be easier to handle. Is that agreed?

Some Members: Agreed.

On Clause 7(1)

Clause 7(1) agreed to

On Clause 8(1)

Clause 8(1) agreed to

On Clause 8(2)

Clause 8(2) agreed to

On Clause 8(3)

Clause 8(3) agreed to

Clause 8 agreed to

On Clause 9(1)

Clause 9(1) agreed to

On Clause 10(1)

Clause 10(1) agreed to

On Clause 10(2)

Clause 10(2) agreed to

Clause 10 agreed to

On Clause 11(1)

Clause 11(1) agreed to

On Clause 11(2)

Clause 11(2) agreed to

On Clause 12(1)

Mr. MacKay: My question is one of information with respect as to how this is handled in other jurisdictions. Is it normal for a member of the Cabinet to sit on this kind of Council, or is this a unique animal, anyway? How is this election of JPs usually carried out in other jurisdictions?

Hon. Mr. Graham: Mr. Chairman, there are no other JPs in other jurisdictions, or in most cases there are not. They are members of the Provincial Court, and therefore come under the direct supervision of the Provincial Court Judge, and are appointed in the same method as are Provincial Court Judges. This is a method of trying to dispense justice in the Territory in a reasonably economic manner, and that is why we have Justices of the Peace dispensing justice.

Clause 12(1) agreed to

On Clause 12(2)

Clause 12(2) agreed to

On Clause 13(1)

Clause 13(1) agreed to

On Clause 13(2)

Clause 13(2) agreed to

On Clause 13(3)

Clause 13(3) agreed to

On Clause 14

Clause 14 agreed to

On Clause 15(1)

Mr. Penikett: Mr. Chairman, I have just a problem in principle.

November 14, 1979 YUKON HANSARD

You have got this Council now functioning as a judicial body, itself, together, which is fine, except that I then have a problem with the previous section where, in fact, the Deputy Head of Justice, who is a member of the Council representing the Minister, or the Minister may be a member, and I have some problem with the principle of separation of powers on that account.

Hon. Mr. Graham: I do not really see the problem. As I see it, I am representing this Government. You see, what must be also understood is that, at the present time, in hiring Territorial Court Judges, the Government built that totally on their own. We hire Territorial Court Judges at the present time. We also appoint justices of the peace at the present time.

Technically, I would imagine, we could also revoke the appointment of justices of the peace, although it has not yet happened.

We hope that by instituting a system such as this, I will still perform the same function that is now, technically, my function, which is recommending, hiring or revoking the appointments of JP's, but that now we will be getting some expert advice, at all stages, both in appointing, training, disciplining and, in very, very rare occasions, revoking.

But I perform the same function, only this time with some high-price legal help.

Mr. Penikett: Mr. Chairman, I understand the Minister's arguments there. Really what he is making is an argument in favour of the bureaucratic efficiency. I am fascinated by this argument of efficiency because I have never heard that in the case of courts before. I mean, I did not know that that was a judicial principle, efficiency, anymore than efficiency is a principle of legislative functions.

But, anyway, and I understand the bureaucratic neatness of it. It does offend my sense at the separation of powers in some sense, and I must say that I would probably be a little happier if the Council were reporting to the Minister or recommending to the Minister, rather than the Minister just simply being a member of the Council, which he also is.

However, Mr. Chairman, I do not want to delay passage of the Bill. I just want to say to the Minister it is his neck, so, I just hope that if any successor of his has a problem with this, he may see the wisdom of tinkering with this particular section.

Hon. Mr. Graham: Mr. Chairman, I think the one thing that perhaps the Honourable Member opposite is losing sight of is that the Council only recommends to the Commissioner what to do in all of these instances.

So, the Commissioner, or the Cabinet still has the ultimate responsibility.

I think that this is just a good step and that we will now be getting the professional help that perhaps we should have been getting earlier.

Clause 15(1) agreed to

On Clause 15(2)

Clause 15(2) agreed to

On Clause 15(3)

Clause 15(3) agreed to

On Clause 16

Clause 16 agreed to

On Clause 17

Clause 17 agreed to

On Clause 18

Clause 18 agreed to

On Clause 19

Clause 19 agreed to

On Clause 20

Clause 20 agreed to

On Clause 21

Clause 21 agreed to

On Clause 22

Clause 22 agreed to

On Clause 23

Clause 23 agreed to

On Clause 24

Clause 24 agreed to

Mr. Chairman: We will now adjourn until 7:30 p.m.

Recess

The following Legislative Returns were tabled November 14, 1979

79-2-41

Corporal punishment in Yukon schools
(Oral Question — Oct. 23%79 — Page 481)

79-2-42

Alcohol-related medical, staff and transportation costs: Old Crow
(Written Question No. 16)

The following Sessional Paper was tabled November 14, 1979

79-2-47

Report to the Council on the examination of the accounts and financial statements of the Government of the Yukon Territory for the year ended March 31, 1979.