



The Yukon Legislative Assembly

Number 4

4th Session

25th Legislature

HANSARD

Monday, March 26, 1984 — 1:30 p.m.

Speaker: The Honourable Donald Taylor

Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake

DEPUTY SPEAKER — Bill Brewster, MLA, Kluane

CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
Hon. Chris Pearson	Whitehorse Riverdale North	Government House Leader — responsible for Executive Council Office (including Land Claims Secretariat and Intergovernmental Relations); Public Service Commission; and, Finance.
Hon. Dan Lang	Whitehorse Porter Creek East	Minister responsible for Municipal and Community Affairs; and, Economic Development.
Hon. Howard Tracey	Tatchun	Minister responsible for Renewable Resources; Highways and Transportation; and, Consumer and Corporate Affairs
Hon. Bea Firth	Whitehorse Riverdale South	Minister responsible for Education; Tourism, Heritage and Cultural Resources
Hon. Clarke Ashley	Klondike	Minister responsible for Justice; Yukon Liquor Corporation; Yukon Housing Corporation; and, Workers' Compensation Board
Hon. Andy Philipsen	Whitehorse Porter Creek West	Minister responsible for Health and Human Resources; and, Government Services

GOVERNMENT MEMBERS

(Progressive Conservative)

Bill Brewster	Kluane
Al Falle	Hootalinqua
Kathie Nukon	Old Crow

OPPOSITION MEMBERS

(New Democratic Party)

Tony Penikett	Whitehorse West Leader of the Official Opposition
Maurice Byblow	Faro
Margaret Joe	Whitehorse North Centre
Roger Kimmerly	Whitehorse South Centre
Piers McDonald	Mayo
Dave Porter	Campbell

(Independent)

Don Taylor	Watson Lake
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Clerk of the Assembly
Clerk Assistant (Legislative)
Clerk Assistant (Administrative)
Sergeant-at-Arms
Deputy Sergeant-at-Arms
Hansard Administrator

Patrick L. Michael
Missy Follwell
Jane Steele
G.I. Cameron
Frank Ursich
Dave Robertson

01 Whitehorse, Yukon**Monday, March 26, 1984 — 1:30 p.m.**

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

Prayers**DAILY ROUTINE**

Mr. Speaker: We will proceed with daily routine.
Are there any returns or documents for tabling?

TABLING RETURNS & DOCUMENTS

Hon. Mr. Pearson: I have for tabling a document, dated March 23rd, 1984, entitled "Points of Agreement on Outstanding Issues Between the Government of Canada, Yukon Territorial Government and the COPE Pursuant to the Inuvialuit Final Agreement".

Hon. Mr. Philipson: I have for tabling a letter, as requested by the Member for Whitehorse South Centre, on our last sitting day.

Hon. Mr. Pearson: I have for tabling the Yukon Public Service Staff Relations Board Report for the year.

Mr. Speaker: Are there any further documents for tabling?
Reports of committees?
Petitions?
Introduction of bills?

INTRODUCTION OF BILLS**Bill No. 16: First Reading**

Hon. Mr. Tracey: I move that Bill No. 16, *An Act to Amend the Real Estate Agents' Licensing Act*, be now read a first time.

Mr. Speaker: It has been moved by the hon. Minister of Renewable Resources that a bill, entitled *An Act to Amend the Real Estate Agents' Licensing Act*, be now introduced and read a first time.

Motion agreed to

02 Bill No. 13: First Reading

Hon. Mr. Pearson: I move that Bill No. 13, entitled *Fifth Appropriation Act, 1983/1984*, be now introduced and read a first time.

Mr. Speaker: It has been moved by the government leader that a bill, entitled *Fifth Appropriation Ordinance, 1983/84*, be now introduced and read a first time.

Motion agreed to

Bill No. 17: First Reading

Hon. Mr. Tracey: I move that Bill No. 17, *An Act to Amend the Securities Act*, be now introduced and read a first time.

Mr. Speaker: It has been moved by the hon. Minister of Renewable Resources that a bill, entitled *An Act to Amend the Securities Act*, be now introduced and read a first time.

Motion agreed to

Mr. Speaker: Are there any notices of motion for the production of papers?

Notices of motion?
Statements by ministers?

MINISTERIAL STATEMENTS

Hon. Mr. Pearson: On October 31, 1978, the federal government undertook to execute one of their most notorious tricks on the people of Yukon. On Hallowe'en eve, they signed the COPE Agreement-in-Principle which effectively realigned the northern border of Yukon with no input or discussion with the Yukon government or Yukon residents.

In effect, that agreement would have removed, for all time, the 5,000 square miles of Yukon's North Slope, including Herschel Island, from any Yukon control or jurisdiction.

One half of Yukon's only coastline, up to 1,000 square miles of land could have been granted in fee simple, to Inuvialuit residents of the Northwest Territories. The remainder of the coast line was to be given to the federal department of the environment for a national wilderness park. Provision was made to expand the wilderness park to perhaps 15,000 square miles, possibly extending north from the Porcupine and Bell Rivers.

Special and exclusive hunting, fishing and trapping rights, along with preferential employment benefits and other economic opportunities were to be afforded to non-resident Inuvialuit at the expense of Yukon residents through the hastily signed agreement.

⁰¹ Despite numerous assurances, the consultation would take place with all interested parties, including the Yukon government. In their haste the federal government proceeded unilaterally and in one fell swoop threatened the constitutional and economic fabric of Yukon, set dangerous precedents for non-resident native rights and, most amazingly, cut off all potential future access to the northern Yukon tidewater so essential to Beaufort development, particularly from the national perspective.

The Yukon government vehemently opposed the 1978 COPE agreement-in-principle, even though the opposition in this House, which included some members who are still here today, did not support the motion condemning the agreement. The Yukon government began a long series of often arduous negotiations to correct the injustices on behalf of all Yukoners. Looking back, these negotiations could often best be described as a fight of desperation against the affront of Yukon's jurisdictional and constitutional integrity. We believe then, and still do, that the federal government did not understand the ramifications or future implications of the document they signed on that Hallowe'en eve. It was inconceivable to us that they could overlook such an important national development prospect as the potential Beaufort Sea oil and gas reserves and the role northern Yukon would play in exploration and production activities. It became obvious to us that the agreement-in-principle was purely political in nature, with little resource planning or forethought.

As a result, the Yukon government took the lead, and in early 1980 began preparation of a northern Yukon resource management model which attempted to embrace the interests of all parties while recognizing the unique natural and sensitive environment, as well as the need to consider future land base access and developments. That model, which was published in October 1980, outlined the Yukon government's decision and presented four main elements of a multi-dimensional management regime for northern Yukon.

⁰² They were: 1) the Yukon Government recognizes special rights of natives to continue traditional hunting, fishing and trapping activities, but there would be no proprietary interest afforded to natives for either land, resources or wildlife;

2) Herschel Island must be transferred to the Yukon Government for a territorial historical park;

3) the national park must be restricted to the area west of the Babbage River; and

4) a special resource management zone should be established east of the Babbage River to accommodate a range of activities, possibly including access and other developments.

The 1978 COPE agreement-in-principle was, for one reason or another, not totally accepted by the federal government and negotiations were resumed in August, 1980. The Yukon Government was finally given a seat at the negotiating table, but only as one advisory member of the federal team. Nevertheless, our negotiator, Mr. John McGill, attended all sessions affecting Yukon and conducted negotiations based upon the 1980 model.

Normally, the essence of negotiation is for each side or all parties to present a position whereupon bargaining takes place until common or middle ground is eventually reached. One usually expects to concede, somewhat, on tabled positions; but, because the original 1978 agreement-in-principle was prepared in such haste, because our model presented a very realistic and rational compromise, and because of the tenacious efforts of our negotiator, Mr. McGill, we achieved almost all of our model and positions in the first draft of the Inuvialuit final agreement, presented in early January, 1984.

65 I submit that this is not good negotiating; it is phenomenal negotiating. Additional provisions, such as the 10 percent preferential bidding clause and elements of a north Yukon resource management regime, not contained in the 1978 agreement but appearing in the 1984 version, have also been considered and dealt with recently by the Yukon government. Considerable credit must also go to the Yukon business community for its efforts in supporting the Yukon government lobby to have the infamous 10 percent bidding preference clause removed. Other groups, such as the Yukon Fish and Game Association, have also lobbied hard to change other contentious clauses.

Last Friday, following two days of intense negotiation between the COPE, federal and Yukon government senior negotiators, a negotiators' agreement was signed by all parties, which paves the way for an unobstructed presentation of a revised Inuvialuit final agreement to the federal cabinet.

In recent consideration of a number of points dealing with the north Yukon management regime, and considering the almost 100 percent achievement of the 1980 Yukon position and model, the Yukon government has now decided to press on with other important matters before it, and has agreed to withdraw all opposition to the Inuvialuit final agreement. That does not mean that we agree with all aspects of the current agreement, but only that we feel that the interests affecting Yukon have now largely been met.

As indicated earlier, we feel many federal government departments seem unaware that certain provisions may adversely impact upon their programs. Be that as it may, we cannot continue to protect both their and our interests.

66 In closing, I would like to express the appreciation of the Government of Yukon to all those individuals, and in particular Mr. John McGill who worked so hard on Yukon's behalf, in reaching the Inuvialuit final agreement.

Mr. Porter: The tabling of the ministerial statement delivered by the government leader will no doubt clarify some of the questions that I had for him later this afternoon, however, I do not believe that was the sole intent of the statement before us.

I think if we examine the statement that has been just delivered by the government leader, we could come to certain conclusions. Aside from the historical overview of the negotiations and the belated praise for certain political lobby groups, the central positive development was an agreement by this government to allow the COPE claim to proceed on a final basis to the federal cabinet with respect to the Government of Canada.

I think, in the broad political sense, the government had a limited number of options, and I say this with respect to the fact that the Council for Yukon Indians, and the people of Old Crow, achieved an agreement of reciprocity in respect to the overlapping claims issue that faced those negotiators, and that was done two weeks ago. I believe, in light of that, it would have been difficult for this government to remain in a position of opposition. Another important political consideration was the possibility of the COPE agreement becoming a reality with, or without, this government's support. We only have to look to the personal political aspirations of the present Minister of Indian Affairs to realize that that was very much a possible scenario to deal with. Given those political scenarios, I think that the Yukon government has made the right decision.

We, the official opposition, support the spirit of the government leader's ministerial statement delivered here today; however, we would like to reserve judgment on the content of what was negotiated between this government, the federal government and the COPE negotiators. After all, we have not been in receipt of the agreement that was tabled. In all probability, we will not be able to look at the specifics of what was negotiated until the COPE claim itself becomes available to the public.

We have, on a consistent basis, urged this government to pursue a policy of fair negotiations with respect to the question of aboriginal rights as it affects Yukon. I believe that the action undertaken by this government is an important development of a long term nature. It gives me a sense of optimism for the specific claim of the Yukon Indian people with respect to aboriginal rights negotiations in

Yukon.

Hopefully, what we see here today is only the beginning of a positive attitude that this government takes to the negotiation of aboriginal rights. We have heard a few weeks ago that this government was not going to participate in the Porupine caribou herd talks because of their disagreement with the COPE claim.

67 Hopefully, today's announcement means that they will begin, again, to avail themselves to the negotiations of a Porcupine caribou herd management agreement.

With respect to the question of aboriginal self-government, hopefully, this will mean that this particular government will be more conducive to lending itself to discuss, on a broader basis, the possibility of entrenchment of self-government, in terms of the *Constitution* of this country and, more particularly, with respect to the possibility of working out an arrangement with the aboriginal community in Yukon.

I think, in conclusion, that as long as this government continues a policy of fair negotiations, as long as this government adapts the principle of making compromises on these very critical issues, they will receive support from this side of the House and, hopefully, this will bring us closer to the reality of reaching an agreement, with respect to the Yukon Indian peoples' aboriginal claims.

Mr. Speaker: Are there any further statements by ministers?

Motion of Urgent and Pressing Necessity

Hon. Mr. Pearson: I would request the unanimous consent of the House, pursuant to Standing Order No. 28, to move the following motion:

THAT the Yukon Legislative Assembly possesses the responsibility for ensuring the development of minority language services in Yukon;

THAT the Government of Yukon has been diligent in developing and presenting to the Yukon Legislative Assembly programs and services which enhance the use of French and aboriginal languages in Yukon;

THAT the Yukon Legislative Assembly has been consistent in its support of these initiatives which further bilingual development;

THAT the introduction into the House of Commons, on March 21, 1984, of Bill C-26, which proposes to apply the official languages provisions of the *Charter of Rights and Freedoms* and the *Official Languages Act* to Yukon, was done without prior consultation with the Government of Yukon or the Yukon Legislative Assembly;

THAT Bill C-26 does not recognize the rights and responsibilities of the Government of Yukon and the Yukon Legislative Assembly for the ongoing development of French language services in Yukon; and

THAT the Yukon Legislative Assembly urges the Minister of Indian Affairs and Northern Development to withdraw Bill C-26 from consideration in the House of Commons.

Mr. Speaker: The motion, as raised by the hon. member under Standing Order 28, requires unanimous consent of the House. Does the hon. member have consent?

Some hon. Members: Agreed.

Mr. Speaker: It has been moved by the hon. government leader THAT the Yukon Legislative Assembly possesses the responsibility for ensuring the development of minority language services in Yukon;

THAT the Government of Yukon has been diligent in developing and presenting to the Yukon Legislative Assembly programs and services which enhance the use of French and aboriginal languages in Yukon;

THAT the Yukon Legislative Assembly has been consistent in its support of these initiatives which further bilingual development;

THAT the introduction into the House of Commons, on March 21st, 1984, of Bill C-26, which proposes to apply the official languages provisions of the *Charter of Rights and Freedoms* and the *Official Languages Act* to Yukon was done without prior consultation with the Government of Yukon or the Yukon Legislative Assembly;

THAT Bill C-26 does not recognize the rights and responsibilities of the Government of Yukon and the Yukon Legislative Assembly for the ongoing development of French language services in Yukon;

and

THAT the Yukon Legislative Assembly urges the Minister of Indian Affairs and Northern Development to withdraw Bill C-26 from consideration in the House of Commons.

Hon. Mr. Pearson: I do intend to be brief with my comments in the House today because I have made a number of statements publically in the last week and I am aware that other members in the legislature wish to speak to the motion. I think that I should draw to your attention that on March 21, 1984 the Minister of Indian Affairs and Northern Development tabled in the House of Commons Bill C-26, which proposes to apply the official languages provision of the *Charter of Rights and Freedoms* and the *Official Languages Act* to Yukon and the Northwest Territories.

I first learned of this unprecedented federal action on March 18, when the minister paid a brief visit to Yukon. There was no advance consultation with the Government of Yukon or any member of this House. Mr. Munro made this decision to amend Yukon's constitution unilaterally.

The reason the minister gave for this outrageous action is that he has conflicting legal opinions. Some which state that the Yukon Legislative Assembly and the Government of Yukon may be found by the courts to be federal institutions and therefore subject to the same bilingual requirements as the federal government. Mr. Munro was taking this action knowing full well that the issue is before the courts. The Government of Yukon condemns Bill C-26 as direct political interference in the judicial process and as a blatant denial of the fundamental rights of Yukoners to their own democratic institutions.

I wish to emphasize that the Government of Yukon is not opposed to bilingualism, we are proud of our record of achievement in this regard. We already have in existence a rational, well-balanced approach to bilingualism as well as for native languages in the schools. We insist that it is the right and the responsibility of the Legislative Assembly to ensure the development of french and native language services to Yukon.

Mr. Penikett: Last week's news, I think, stunned most Yukoners. Most were, I think, shocked and vaguely disbelieving of the original announcement. I think it came to a very large percentage of the population as a complete surprise. I would say that the official opposition in this legislature is frankly appalled at the constitutional process by which Yukon is to be made officially bilingual by the federal government.

For many years now, we in this party have emphasized that constitutional change in the territories should be the product of a consensus achieved at the end of a long public debate. There are many changes which we would want to see enshrined in our constitution, *The Yukon Act*. I do not believe that the change announced by the federal government was very high on anybody's list here. I think we would have preferred to have seen the effect of the Jake Epp letter, the institution of responsible government enshrined, in our constitution first. I believe that there are very large parts of our community that would have preferred to have seen the essence of the Land Claims agreement-in-principle enshrined in our constitution as a higher priority than this proposal.

The arbitrary amendments to our constitution *The Yukon Act*, which are contained in Bill C-26, and which are to be imposed by the federal government, I believe violate our democratic rights. Apparently, no consultation took place with our government. Prior to this day, no debate has occurred in our legislature on this question, and apparently no negotiations about this measure have occurred with our citizenry prior to the federal decision on this question.

Furthermore, we wish to emphasize that if there is an argument for the constitutional enshrinement of minority language rights in our *Constitution*, surely there will appear to be as strong argument for native language rights as for French language rights.

The French-speaking population of Yukon numbers in the dozens, no more than the hundreds. The aboriginal people are several thousand strong. The French are, of course, one of the founding peoples of this nation, but it is also especially important for us to remember here that the Indian people of Yukon are the original people of this area.

It is a matter of concern to me that C-26 effectively, I think, relegates the aboriginal languages in this territory, which have had a small renaissance recently, to third class status. I want to explain that briefly. It seems to me that C-26 enshrines and gives equality to the two languages, especially as it affects the proceedings and operations of this House and the Courts, and that is proposed to be done by an act of Parliament.

However, the fate of the aboriginal languages is seen to be left as an afterthought to the territorial legislatures. It, therefore, clearly relegates them to a lower status; however, that directly contradicts what I heard the Secretary of State, Mr. Serge Joyal, say on television the other night when he emphasized that French and aboriginal languages had equal status. It seems to me that that is not what Bill C-26 says, and there is a contradiction there which needs to be explored.

So that I may be perfectly clear, I want to say a few words at this moment to those people in Yukon who do not understand me when I speak English.

Dans cette pays, un homme a le droit de parler francaise ou anglaise. Il y a une loi Canadienes dit que nous avons deux langues, mais cette Assemblée n'est pas un institution federale. Nous sommes les deputes d'Yukon. Nous sommes maitre chez nous, n'est ce pas?

Mr. Speaker, in fact, if not in law, the Yukon Legislative Assembly is a local institution, not a federal instrument. Our legislature should reflect our community, our cultures. As my mother-in-law might say, nay sha nah. Nodlay, Dene, nay sha. Nodlay gaii, nodlay cho, Dene gaii, Dene cho, nay sha.

Mr. Speaker, the other morning I heard our Member of Parliament, Mr. Erik Nielson, say that the federal measure was unnecessary. Now, Mr. Nielson did not explain the point and Mr. Nielson, as we know, is an excellent lawyer, and it seems to me that Mr. Nielson would be aware of the possibility, or aware of the legal arguments, that C-26 is completely unnecessary because the *Constitution* is already clear that French-speaking persons have certain rights in this territory already and that, for example, there is nothing that would impinge upon such a person's right presently, to upset our sense of federalism and our notion of respect for all the regions of this country.

That is a view that directly contradicts the statement by Mr. Munro, who raises the spectre of legal chaos if Yukon does not immediately become officially French and English. This, in my view, is nonsense. I do not believe there is a case for saying there is any emergency. The court case referred to by Mr. Munro is subject to appeal and any legal problems resulting from a decision on the case should be the subject of negotiations between the federal government and the Yukon Government about French language services and the funding of those services, not a unilateral act by the federal government.

I think it is regrettable, after all that we went through — all of us — in the patriation of our *Constitution*, it is regrettable after all the affirmations of the rights of people everywhere in the country, to avoive, in such a process, that this profound constitutional change for Yukon should be proposed by a federal minister, the federal minister responsible for this area, with so little in the way of consultation or the normal courtesies to the people of this area.

Hon. Mr. Lang: Like the previous speaker, I rise to speak in this debate with a great deal of sadness. As a Canadian and as a Yukoner, I instinctively feel that the Government of Canada is proceeding with a constitutional action that is unparalleled in its historic significance and precedence, which is not only designed to impose the will of the national government on Canadians living in a distinct region of its country but, I believe, it has also been put forward to create political chaos and social upheaval.

This blatant step not only exemplifies our dependency on the political will of people who do not live here, but it also exemplifies the misuse of the authority vested within their political positions of power. The actions brought forward by the Minister of Indian Affairs and Northern Development is designed to propogate his own political ambitions and, at the same time, to paint the people of northwest Canada as bigots and rednecks.

I, for one, condemn this motive, in that not only is it

ill-conceived and immoral, but it is also a political lie. The legislature and the people of Yukon, in my opinion, have demonstrated an unprecedented tolerance and recognition of our minorities, whether they be French or native, with goodwill and cooperation. One only has to look at the legislative actions we have taken to guarantee that the native people of Yukon become active in our everyday affairs. Examine the Municipal Board, examine the Land Use Planning Commission: representation by the native people of Yukon is assured.

11 Look around the legislature at the representation the electors have mandated to carry out their affairs and one can see and understand that the people of Yukon have demonstrated the need for representation of the native people of Yukon. Look at the guarantees built into the proposed agreement-in-principle on land claims, which ensures the native people of Yukon will be involved in everyday decision-making of government. Nowhere else in Canada have the minorities in any region been assured, by policy and legislation, that they will be part of the political decision-making of government. Examine our education system and programs instituted over the past decade, which have encouraged and fostered the preservation of native languages and heritage.

We, as Canadians and Yukoners, have recognized the responsibility to our minorities, unlike many other regions of this country we call Canada. At the same time that we introduced programs for the native people of Yukon, we recognized, as a government and as a legislature, our responsibility to the duality of the nation, the two official languages of Canada, French and English. In 1981, we introduced the French Immersion Program in the education system of Yukon where, as each year goes by, the numbers of students enrolling increases. Further, we have incorporated French programs in our education system, which, in many cases, exceed in quality the programs offered in the provinces.

When you take a look at the administration of the Government of the Yukon Territory and the various bilingual services that we provide to the people who request it, it, indeed, speaks well for the Government of the Yukon Territory.

For the information of all members, there is a list of individuals kept on record at the main Inquiry Centre, who are bilingual and can provide service if a visitor can only speak one of the official languages of Canada. We also provide translation services for written material and verbal inquiries at the French Language Centre. Also, we provide, within the administration in the courts, an interpreter, if it is necessary.

There is no question in my mind that we are providing services far beyond what many other regions of this country are concerned over and, most important, to the young people of Yukon, the next generation. I maintain that, left to our own devices, within a generation the majority of young people in Yukon would be bilingual.

These programs were not imposed: they were presented in the spirit of how we, as Canadians, envisage Canada, in cooperation and common understanding of the national will to preserve Canada as a country and a people.

12 We as Yukoners have nothing to apologize for. In fact, the Government of Canada should be standing up on our behalf, congratulating us for our progress, not condemning us and imposing their political will, which will only result in the furtherance of resentment to one of the basic fundamental foundations of our country.

The implication of the amendment to the *Yukon Act* goes far beyond the question of bilingualism. The leader of the official opposition has stated, it lays open the very question of the validity of this legislature, the people's forum.

The proposed amendment, in part, is a direct interference into the everyday proceedings of this House. The procedure of how we run this legislature is our responsibility, and ours alone. I recognize, under the present framework of our constitutional position within Canada, that the Government of Canada has the legal authority to interfere, but I submit to you that it is not morally right, and that there are certain sovereign rights we have been vested with as a legislature, and should be protected by Canada, not tampered with by a government that is bankrupt of ideas. If we do not stand on

principle on this issue, what is next? Is the present minister or a future national government going to arbitrarily amend our constitution, *The Yukon Act*, and take away the responsibility for education from this House and the Government of the Yukon Territory, so that some bureaucrat in Ottawa can launch on a great Canadian experiment?

I contend that we have to do everything we can to ensure that the action of the present government be stopped. It is absolutely essential that any change to the *Yukon Act* must be agreed to by the two levels of government, and then proceeded with accordingly.

What do we see, instead of a consensus-cooperative process that the member from Whitehorse West spoke of, in its place we see a misuse of authority. It is implicit in the position of the Minister of Indian Affairs and Northern Development that the individual who assumes that office is vested with a very sacred trust. Simply stated, the Minister of Indian Affairs and Northern Development is charged with advancing accurately and faithfully the realities of northern Canada to the cabinet room of our nation. That position is not to be abused to aid one's own personal political ambitions, nor should it be used to create, consciously, social upheaval.

13 It is truly incredible that the minister could produce in hours amendments to the *Yukon Act* for his own personal political ambitions, yet at the same time, ignore repeated requests for changes from the people of Yukon that have been put forward over the past decade.

I want to take this opportunity to outline briefly a resume of requests for change to the *Yukon Act* for the record.

Between 1974 and 1978, there was a committee of this House struck for the purpose of putting proposals for change to the *Yukon Act* to the Government of Canada. Those proposals were submitted to this House and sent to the Government of Canada and, to date, they have been ignored.

In 1977, there was representation made by the Executive Committee of the day to the Minister of Indian Affairs. In 1977, further representation was made. Mr. Allmand indicated very clearly that full consultation with northern residents would take place. We had a change in ministers in 1978. Further representations were made by individual members of this House and by the government of the day for further changes.

It goes year-by-year: February of 1979, July 18, 1979, October 9, 1979, November 28, 1979, February 15, 1980, March 29, 1980, June 30, 1980, March 9, 1981, November 26, 1981, as for representations made in various forms to the Government of Canada.

I think we should harken back to when the Minister of Indian Affairs and Northern Development used this forum to speak to this legislature and the people of Yukon. I want to quote from his presentation. He stated very specifically, "The federal government has been listening. The federal government has been responding..." — have they ever — "to your demands for the devolution of powers and responsibilities. As minister, I am party to this devolution. I have been applauding your march to responsible and politically accountable government. We are now prepared to recognize in law responsible government for Yukon, once agreement has been reached on land claims".

This statement was made on November 27, 1982. I submit to you that all of the proposals from this House, and from the government, that have been put forward to the Government of Canada, for all intents and purposes, have been filed in basket 13. It is safe to say that, time in and time out, we, as a government, and as a legislature, have indicated to the Minister of Indian Affairs and Northern Development, that we are prepared to work with him and reach a consensus for change. Obviously, that has not taken place.

I would like to direct, for a moment, members' attention to the financial consequences of the proposed Constitutional amendment.

14 There is no question that if the law is passed, as presented to the House of Commons, it is going to cost Canadian residents, from Yukon to Newfoundland, millions of dollars. Sure, as the local leader of the Liberal party, Mr. Veale, says, the federal government is going to pay for it, but we are all federal taxpayers.

But let us ask ourselves, for what purpose? Obviously, they will intend to transfer whatever dollars into our budget for that specific

purpose, but what will be the end result?

I submit to you that we will have volumes of papers unread — and very expensive papers — and the end result will be a further allocation of dollars reflected in our government's budget, which will further strengthen the centralist government argument that Yukon cannot seek provincial autonomy since our regional government is economically dependent on the pursestrings of Canada.

Another major concern that I have, in my capacity as Minister of Municipal and Community Affairs, is the effect that this amendment is going to have on our municipalities. If it is an accepted fact in law that the Government of Yukon is an institution or, for that matter, then, a department of the federal government, then commonsense dictates that the municipalities are also an instrument of the Government of Canada. I would then submit that they would have to comply with the federal law.

I say to you, today, that, if that is the case, the councillors of the municipalities of Yukon and the property-owners they represent will not be happy if they are forced to increase their workload and further complicate their proceedings because of this action.

I do not think there is any doubt that the actions we have witnessed by the Government of Canada are going to cause major problems in Yukon. We are presently represented, at the national level, by a government who has chosen to deal with issues, in the past three years, only if they manage to find exposure in the news media of southern Canada.

I think it is safe to say that in Yukon, just like some other parts of the country, we face a certain uncertainty, as far as our economic future is concerned. I would say that, in part, it is the responsibility of the Government of Canada that that climate has been propagated.

Take, for example, the placer mining industry. A commission was struck last fall, a report was issued and various recommendations put forward, one of them being that an advisory task force or board be struck to look at the recommendations to see how they could be implemented.

¹⁵ To date, this has been ignored. Instead, the placer miners must once again apply for water licences individually, and meanwhile, the fight of the federal fishery department continues with the other departments of government.

The other issue that the Government of Canada has not faced, as far as our economy is concerned, is the question of Stokes Point or Peter Kiewit — either delay or just ignore, or if the groups in Toronto decide, say no.

We have a national government that is making every effort to divert public attention from the real problems of Canada to issues such as the peace movement, medicare and the question of bilingualism. It is interesting to observe the tactics of the present government as they raise these "national issues", and the media reports them accordingly.

The underlying inference of these issues is very basic. Only Liberals stand for peace; only Liberals stand for medicare; only Liberals stand for bilingualism. Either directly, or indirectly, they propagandize that all other political parties want war, want sickness and disease, and do not recognize the duality of our country.

No wonder Canadians are cynical about our political system. The government of today takes issues, utilizes them to their own purposes, while at the same time ignore the fact that the people of Canada, for all intents and purposes, as a country, are on the verge of bankruptcy.

It is ironic that the financial policies of Canada over the past two decades have created a major financial deficit and therefore has put the present government in the position of no ability to maneuver. When the interest rates were going down it was because of the Government of Canada's financial policies. Now that they are going up, they blame it on the Government of the United States.

I submit that it is time our national government came to grip with the real problems we face in Canada, basically the economic issues and the choices that have to be made, as opposed to creating issues which are designed to divide us as Canadians, English and French, native and non-native, and use that particular tactic for the purpose of trying to hold on to power.

In conclusion, we cannot stand by and accept the imposition of a law which amends our Constitution unilaterally. I am pleased to see

that we are united in our opposition to the process which the Government of Canada has chosen and there is no doubt that we will persevere, because we are right and they are wrong.

¹⁶ Mr. Kimmerly: It is clear that we in Yukon are caught, sandwiched if you will, between larger interests in the nation. It is clear, I believe, to all Yukoners that Bill C-26, particularly because of the timing of it, is designed to speak to other Canadians than Yukoners. It is useful to take a long and wide look at what is occurring now in this assembly, both from a national perspective and a historical perspective.

I intend to take four or five minutes and do that as best I am able, and it is my opinion that that kind of a reflection may put Bill C-26 into a better perspective from a Yukon point of view. This is not in any way a new issue. It is an issue that we have dealt with in one form or another many, many times before in the long term history of this territory.

I will go through some of the political events that had occurred in our government in the long term historical perspective in order to refresh our memories about the importance of this kind of measure and the recurring nature of it. It is clear that the British Parliament claimed sovereignty over this area by a charter of King Charles II in 1670. It was all in English and was not translated, of course. In 1867, confederation occurred. In 1868, by an act of the British Parliament, called the *Imperial Act*, a jurisdiction over this land that we now stand on was transferred to Canada. In 1869, a Canadian federal act set out a temporary government for the Northwest Territories, which, at the time, included Yukon.

¹⁷ No reference was made to official languages at the time although a discussion did occur in the legislature of the day. The Riel rebellion occurred in 1870, primarily in what is now Manitoba and a significant factor was French language, around that time. It is interesting and informative, I believe, to think about the implication of all of that on the Manitoba situation today, which affects the timing of Bill C-26. A word about that later.

In 1871, there was a temporary government act in the federal House of Commons with no mention of official bilingualism. It is interesting that in 1872 an order-in-council was passed by the federal parliament increasing the membership of the Council of the Northwest Territories with jurisdiction over Yukon at the time to 11 members, and three of them were francophones, and were appointed as francophones. In 1873 the membership was again increased to 18, with 5 francophones, and it is on official record that that council requested copies of the federal laws from the federal government in English and French. It is interesting that in 1877 that council caused the game law of its own passage to be translated into French.

The *Northwest Territories Act* of 1875 contained no official bilingualism provision. It is interesting that in 1878 the first budget for translating of ordinances into French was proposed in the assembly and in 1892 the first observable translated ordinances of the Northwest Territories council occurred.

In 1888, a Lieutenant-Governor was appointed and he gave his inaugural speech in French.

¹⁸ That is probably the first observable usage of French language in this assembly in an official *Hansard* record.

In 1890, there was a debate in the federal House of Commons about bilingualism in the Northwest Territories, which included Yukon. It was a fairly long debate for the time and it ended in a compromise, drafted by the Minister of Justice, Mr. John Thompson. The motion that was this: "THAT the Legislative Assembly of the Northwest Territories should receive from the Parliament of Canada power to regulate, after the next general elections of the Assembly, the proceedings of the Assembly and the manner of recording and publishing such proceedings."

So, in 1890, the federal House gave us, or our predecessors, the right to regulate our own language here. Unfortunately, in 1891, they passed another law in the Commons and decided the question for us and officially made French and English languages of the government of the territories, which, of course, included Yukon.

The political question that we face now arose then, approximately 90 years ago and, in 1892, the assembly, which is our predecessor's, passed a motion. The motion is exactly this: "THAT it is

desirable that the proceedings of the Legislative Assembly shall be recorded and published hereafter in the English language only". The vote was 20 to four on that particular motion and historians identify an English backlash at that time. The law passed in 1891, making this House officially bilingual, was generally ignored and, in fact, the proceedings were not translated, the laws were not translated, and the business was conducted in English.

¹⁹ It is interesting that in 1898, the *Yukon Act* was passed, and made no reference to bilingualism; however, it encompassed the laws in force at that time, which clearly encompassed the 1891 law. So in 1898, legally, it is absolutely clear that this was an officially bilingual House.

Since that time in the last 86 years, there has been considerable social change and legal change. The *Official Languages Act* was passed and it is a neat legal point if it applies here in this Assembly; however, it is completely unimportant now because the *Canadian Charter of Rights and Freedoms* very clearly speaks of the issue and it makes English and French the official languages of Canada and states that they have equal status and rights in the Parliament of Canada. Section 32(1) clearly states, "This Charter applies to the Parliament and Government of Canada in respect of all matters within the authority of the Parliament, including all matters relating to the Yukon Territory and Northwest Territories".

Yukon's MP, Erik Nielson, said on the radio that Bill C-26 was unnecessary in that the Charter already provides for the situation, and I agree with him totally. It is interesting to speak about the concept of an institution of the federal government. The leader of the opposition has clearly stated a moment or so ago that we are not just an institution of the federal government. The Minister of Economic Development clearly stated there are "certain sovereign rights as a legislature that we have".

²⁰ If I may add a comment to that concept, I agree with both of those honourable gentlemen and it is my opinion that the situation is very similar to the situation described by the Supreme Court of Canada when it considered Mr. Trudeau's constitutional act. It is clear under the letter of the law that the *Yukon Act* is a federal statute and we are an institution of the federal government created by them under the strict letter of the law. However, the constitutional traditions demand and assert that we have authority over our own procedures, which it is necessary for a legislature to have in order for it to be truly a legislature. So, by convention, we are not only an institution and we do have a certain sovereign right within the framework of the constitution and the nation.

The court case referred to by the minister introducing Bill C-26 is interesting. It addresses only a fairly narrow point and it follows almost exactly a similar case in Manitoba. The constitutional provisions in Manitoba and Yukon are different so the legal questions are slightly different, but the effectual situation is virtually the same. I dispute that there is any real urgency in the question. There are levels of appeal yet to come and the case refers it in any event to a fairly narrow point. The urgency and uncertainty referred to by Mr. Munro is largely a sham. The urgency in Mr. Munro's mind, I believe, has more to do with national politics involving the Manitoba question and the continuing debate between the federal liberals and the federal conservatives on the bilingualism issue.

²¹ It is unfortunate that Yukon and Yukoners are used as pawns in that particular game. So, what we say is a very small part of a long history, of a long tradition in Canada and the debate, at this point, is a small part of the current national debate about bilingualism.

I say that the most important thing that we can do is promote the communication and the well-being of the communication between cultures and the well-being of the Canadian mosaic. I agree with the statements the Minister of Economic Development made about the importance of this Assembly and Yukoners taking a wide view and not being "redneck" on the question. It is vitally important that there not be an anti-French backlash in the territory. It is totally unnecessary and we should do everything we can to avoid it. It is possible to present ourselves, as Yukoners, to the rest of the nation as open-minded people willing and, indeed, eager to live with the cultural diversity in Canada and benefit from it.

I wish to make a proposal about bilingualism and I am going to

do it in the French language. I have provided the Clerk with a written English translation of the comments that I wish to make in French.

Premierement, que le gouvernement du Yukon accepte des maintenant, d'amplifier ses efforts pour attirer une clientele de l'est du Canada. Nous voulons que celle-ci puisse se prevaloir de notre hospitalite et de notre histoire nordique legendaire, afin d'elargir son appreciation de notre patrimoine remarquable. Nous le considerons aussi unique chez-nous, que le sont leur langages et cultures chez-eux.

²² Deuxiemement, ce gouvernement serait-il pret a rencontrer cet objectif, en rendant disponible le plus tot possible, des informations dans la langue Francaise, afin d'attirer les nouveaux marches touristiques du Quebec, et des autres regions du Canada, ainsi que des nouveaux marches internationaux, au Yukon.

Enfin, ce gouvernement accepterait-il d'accroitre ses responsabilites envers les Yukonais, mais particulierement ses elements de langue Francaise, en acceptant d'encourager le secteur prive, si recemment muni de programmes speciaux, d'accomoder ces nouvelles demandes sur le secteur touristique, par des pratiques d'engagement conformes a des services bilingues, afin de pouvoir traiter directement avec les deux peuples fondateurs du Canada, en des termes qui leurs sont propres.

Mr. Speaker, the net effect of that proposal would enhance Yukon's image throughout Canada and abroad as an open society ready to communicate with all provinces on an equal footing as a northern people recognizing the tremendous importance of including all segments of the Canadian mosaic in its concerns, as well as profiting sections of our local economy from spinoff effects through these precipices.

²³ The Northwest Territories has responded to Bill C-26 and it too is generally in support of bilingualism. I am reading from a press release, released by the government leader of the Northwest Territories and he states this: "the government presently provides simultaneous interpreting services in the legislature in Inuktitut and has embarked on a similar program to provide the same services in any of the five Dene languages in the NWT. Recognition of french as an official language of the north would add a seventh language to the House, more than what is provided for at the UN."

They are proposing to support bilingualism within a northern perspective and within reasonable limits and I certainly support that.

In summary, and in conclusion, I wish to repeat that it is of prime importance that we make our concerns known to the federal government as we are doing, in a forceful and, I hope, effective way, and in a unanimous way; however, at the same time, we be conscious of not in any way pandering inadvertently to an anti-french backlash, and that we be preserved as a northern society open to other societies and welcoming the enrichment that bilingualism and communication with other cultures will afford us. Thank you.

²⁴ **Mr. Philipsen:** It is with considerable regret that I find that I must rise to speak to a motion that should never have come before the members of this assembly. This unfortunate situation would never have entered the minds of members assembled without the interference of a federal minister of the Crown who, for his own political ambitions, has raised an issue that I as a Canadian and proud Yukoner find repugnant in its very nature. Make no mistake about it, the issue before us is one of unnecessary and arbitrary intrusion by the Government of Canada into what are properly the concerns and jurisdiction of a democratically elected government that is presumably part of this confederation called Canada.

There is no doubt that Yukon, with less than 25,000 people, has made sincere and significant progress in making comfortable any Canadian who wishes to converse in either of the official languages of Canada, where significant demand is demonstrated. Our record speaks for itself. No reasonable person can doubt that we recognize the *Official Languages Act* as the law of Canada and endorse the principle of bilingualism as affirmed by the *Charter of Rights*. The cynical use of such an important issue and the connivance of the Minister of DIAND to cast doubt on our commitment to this principle should be offensive to all Yukoners, for it impunes the

integrity of this assembly. In addition, it appears to represent direct and premeditated interference by this individual in the judicial process.

By this recent action, he may have interfered with a case that is now before the courts, trying to create laws which have a bearing on a case while it is presently under review. The normal process of justice is jeopardized. There is no doubt in my mind that he should have learned to avoid such actions after his last brush with the judiciary, which we all know cost him a cabinet post. This kind of unscrupulous behaviour by one who wants to be leader of the Liberal party of Canada is appalling. It comes at a time when all Canadians can see him for the unprincipled manipulator that he is.

On one hand, he was more than willing to impose his will on the people of Yukon without our consent or consultation until he found he could not get away with it. He then embarked on plan two, the purpose of which is to coerce the Legislative Assembly of Yukon into voluntarily carrying out his edict.

It is ironic that his very recognition of our right to be *maitre chez-nous* should occur in such an insulting and degrading circumstance.

²⁵ **Mr. Porter:** I had no intention of entering the debate but, as usual, when the member for Porter Creek East has the floor he invariably gives me cause to enter the debate, as well.

I think I would like to say that there is a need for some correction to the record, with respect to the members' statements in reply to the motion before us. The member used the issue to state that his government has utilized unprecedented legislative actions, in terms of accommodating the interests of aboriginal people in Yukon. He has also stated that his government, more than any other government, has provided for the participation of native people in the decision-making process of government.

I would just like, for the record, to lay that particular claim to rest and speak to other issues.

In Quebec, the James Bay Agreement, reached between the federal government, the Quebec provincial government and the James Bay Cree, provides for a regional form of government control by the Cree people. As well, the COPE claim sets out some very powerful advisory boards to government and these boards have a majority of seats that go to the Inuvialuit, and in the case where the majority of seats are not held by the Inuvialuit, the Inuvialuit have the right to name the chairperson.

As well, I think we have, as my colleague for Whitehorse South Centre states, to look at the Government of the Northwest Territories. I think that if you examine what the Government of the Northwest Territories is doing, clearly they are leading the way when it comes to the issue of providing for participation of aboriginal peoples in government and in government institutions. The majority of the sitting members of the NWT Legislature are aboriginal people; the majority of the Executive Council are aboriginal people; and the government leader of the Northwest Territories is an aboriginal person.

On the issue of minority language rights, the Government of the Northwest Territories spends a million dollars a year, in terms of developing aboriginal language development. Here, in Yukon, I believe our expenditure for the last year was somewhere in the neighbourhood of \$250,000: that is not to demean the efforts of this government. As well, the Legislature of the NWT already provides for the simultaneous translations of aboriginal languages.

I want the record to clearly show that not only is this government involved in the process of recognizing aboriginal people and their place in society, but that that recognition has taken place elsewhere in Canada and, in some instances, in a greater magnitude.

On the issue that the motion speaks directly to, I think that it should be made absolutely clear that we are not opposed to bilingualism in Canada. Bilingualism is an inescapable fact of life in this country; the principle is firmly established in the *Official Languages Act* and is also incorporated in the *Constitution Act* of Canada. What we are opposed to is the process by which the Minister of Indian Affairs and Northern Development has chosen to implement the mechanics of bilingualism as it relates to government and government institutions in the north.

²⁶ As well, what we are opposed to is the Minister of Indian and

Northern Affairs to nonchalantly relegate the issue of aboriginal languages to third class status in the north.

On that particular issue, I have a great deal of difficulty with the Minister of Indian Affairs and his response to the issue of aboriginal language rights. His answer was to defer the question to his cabinet colleagues for a decision. He has stated that it will go to cabinet to seek resources for the development of aboriginal languages, and it seems that if we look at the minister's actions in the past few months, whenever he has been presented with a difficult issue that relates to aboriginal rights, he has consistently stated that he will take the matter to cabinet. We only have to look at the issue of subsurface rights as it relates to lands claimed under the claim process by Yukon Indians. He says he will take that issue to cabinet. He has relegated to cabinet the issue of the cash advance with respect to the signing of the agreement-in-principle. On the issue of extinguishment, again, he has told the Yukon Indian people that he will take that to cabinet for a decision. So, it seems that he is attempting to soft-sell the Indian people with respect to major decisions that he, as minister, should be making.

I think that agreements that he strikes with other groups very clearly proves him wrong, and also shows that politics are involved and that, clearly, the minister, as a minister of the Crown, does have the mandate to deal with the substantive issues that are being negotiated in the land claims forum.

The move towards bilingualism in Canada is premised by the notion that Canada was founded by two nations: French and English. I have always had a personal difficulty with that concept, because we know that prior to the arrival of the European societies, the aboriginal people were enjoying nation status and their own spheres of sovereignty.

Aboriginal nations enjoyed total control of their lives. They had their own governments, their own economies, their own cultural and religious beliefs and, yes, Mr. Speaker, their own languages. Over the passage of time, and as the wheels of history rolled on, the wellbeing of aboriginal people and their institutions were over-run. Clearly, if we examine the history of Yukon in terms of what has occurred, we see that the deterioration of aboriginal people's institutions, their culture, their rights and languages began with the Gold Rush of '98. The most devastating forces, I think, in our history, were brought about, ironically, by the very people who were sent here to help us: primarily, the missionaries. Just about every aboriginal person in Yukon, at one time or another, was subjected to the missionaries' school process, and it was in that term of our lives, I think, that most of the damage was done.

²⁷ I can clearly remember attending a residential school and having the Brothers and Sisters who ran the schools make it totally against policy for us to speak our own languages. As a matter of fact, should you have been found speaking in an aboriginal tongue, you had your mouth washed with soap and, in some instances, spanked. I think that those are realities of history, in this part of the world, that we have to remember. We have to be cognizant of them having taken place. I think that what we have to do now is to begin to recognize that there has been incredible damage done in these areas and to begin to put in place the process by which we begin to establish a new era, in terms of the relationship between aboriginal peoples and the institutions of government.

I think that contemporary history clearly shows that aboriginal society, again, is beginning to assert itself on the conscience of this nation. I am confident that Canadian and aboriginal people will come to an agreement, with respect to the differences that separate us, and I think that there are certain areas that we have to look to for that optimism, primarily the constitutional process undertaken by the Government of Canada.

As well, we have to look to the aboriginal rights and negotiations that are taking place currently throughout northern Canada and elsewhere, and more specifically on the issue that we are dealing with today, the move by this government toward the development of native languages, the development of native language materials and the development of teaching methods for native languages, and also the institutions of those teaching methods and materials into the schools to be used formally in the educational process.

I think that if we look at this issue in a positive vein, what is

possibly being presented to us is the opportunity to utilize this issue as a catalyst to bring all of us here in Yukon closer together.

Hon. Mr. Tracey: Unlike the member for Campbell, who consistently breaks this down into a racial argument, I would like to deal with the issue.

The Minister of Indian and Northern Affairs flew into Whitehorse, as he usually does — this time it was not in the middle of the night — but he made a quick trip into Whitehorse to consult with us. That is what his press release said; that he flew into Whitehorse to consult with us, the leaders and executives of both the territorial governments.

It was interesting to note that two people also flew in with him: the president of the Liberal Party of the Yukon Territory and the Liberal leader of the Yukon Territory who, I would suspect, he provided some information to and, perhaps even provided their transportation to Vancouver so that he could consult with them. He found it more important to consult with them than he did with the Government of the Yukon Territory.

²⁸ He came to lay the heavy on us, but he consulted with his Liberal partisans.

He also said that there was another reason why he was coming to the territory, and that was, to quote from what he said in Yellowknife, "The second ground for wanting to do something about it, and that is a political one".

I suggest to you, Mr. Speaker, and to all members of this House, that that was the only reason that he came here, and the only reason he is doing it is a political one.

I suspect that because of his wanting to run for the leadership of the federal Liberal party, he felt this was a golden opportunity to put some of his leadership opponents in a very tight corner, Mr. Turner in particular, and also to try to put the Conservative Party of Canada in a corner.

It is utterly beyond my comprehension why a man would lower himself to do those types of acts in this country, in this day and age. How can he actually believe that the people of this territory would fall for the news release that he gave, that the reason he gave to us for having to do this was because of the *Charter of Rights*. For him to expect us to believe that is beyond my comprehension.

We, in this country, are just as capable of reading between the lines as anyone else in Canada, and what was between the lines was fairly evident in his reasons for Bill C-26.

He is consistent, at least, in one respect. He says he is going to consult, but what he is going to consult us about is already a *fait accompli*. He flew in, for example, in the middle of the night, and told us at seven o'clock in the morning that the COPE agreement was signed. He is consistent.

I have to agree with a great number of the other members in the Legislature here today. It is abhorrent that a man with his position in the Canadian government would try to perpetrate an act against us in the manner that he has. I support, in total, the motion that is before us today.

Hon. Mr. Ashley: The actions of the Minister of Indian Affairs and Northern Development show a total disregard for the judicial process, for the Yukon Constitutional development and for Yukoners as a whole. At his press conference on March 18, 1984, the minister made no apologies about commenting, in public, on the St. Jean case about to be heard by the Supreme Court of the Yukon Territory. Instead, a transcript of the press conference quotes the minister as aiming to send a clear signal about federal intentions on this issue.

Indeed, the minister even speculates that the judge may now be persuaded to adjourn or delay proceedings until the federal government manages to get legislation passed.

²⁹ Why can the minister not wait until the judicial process has pronounced on this matter? If he fears large-scale invalidation of the territorial laws, surely there would be an opportunity for remedial legislation, immediately after any negative result in the Supreme Court of Canada.

Perhaps, what the minister really fears is a judicial decision that the Government of Yukon is not subject to the language requirements imposed by the Charter of the Government of Canada. Perhaps, he is rushing to try to preempt such a result. Whatever the

minister's motives, his comments are hardly likely to instill confidence in his respect for the judicial process in the minds of the Yukon public.

When the minister announced his planned amendments on March 18th, 1984, neither he nor his officials had attempted any prior consultation with the Government of Yukon. Three days later, the proposed amendments were introduced in the House of Commons. These actions show either incompetence or a callous disregard for the democratically-elected government Legislature of Yukon.

Does the minister not know that Yukoners have had a wholly-elected independent legislative assembly for three-quarters of a century? Does he not know that the Government of Yukon has major quasi-provincial legislative responsibilities? Is he unaware that Yukoners have had partial responsible government since 1960 and full responsible government, with an all elected Executive Council, since 1979? Have the minister's advisors not informed him of decisions such as that of Regina versus Lynn Holdings Ltd., which point out that the legislature of the Government of Yukon is no mere agent of the federal government?

The minister is seeking to impose bilingualism on one of the 12 democratically elected regional governments of this country, as if he were issuing lunch hour directives to a junior branch of the Department of Indian Affairs and Northern Development. This is either a demonstration of extraordinary ignorance of northern constitutional realities or an insult to Yukoners.

Yukoners have been waiting for over two decades for amendments to the *Yukon Act*, which would consolidate and recognize achievements of responsible government, give Yukoners a more meaningful control over our own affairs and open up Yukon land for all Yukoners. First, we were told that there would have to be an agreement in land claims. We worked in good faith and have now secured an agreement-in-principle on most of the key elements of land claims. But then, we were told that there would have to be a federal-territorial land use planning process in place. We have worked in good faith on a land use planning process.

However, positive constitutional amendments to the *Yukon Act* are still not forthcoming. After 20 years of calling for greater self-government for Yukoners, we are advised that the matter requires further study.

In the midst of this, in the midst of a court case and a federal leadership campaign, Mr. Munro announces unilateral language amendments to the *Yukon Act* on a Sunday and introduces them in the House of Commons on the following Wednesday.

Finally, let me say a word about the actual content of the proposed amendments. The proposed federal bill would impose the New Brunswick model of bilingualism on Yukon. In New Brunswick, one-third of the population is French-speaking; in Yukon, only 160 Yukoners speak French as their primary language at home.

Constitutionally, the content of the bill is highly regressive. It clings to the old terminology of ordinances and the council; it treats the commissioner as a simple federal servant; it refuses to recognize that the commissioner now acts on the advice of an elected executive council.

The Government of Yukon is not opposed to bilingualism. We have worked actively to pursue the needs of French speaking Yukoners but, in fairness to all Yukoners, linguistic measures should be agreed to by their elected representatives.

They should be implemented in a manner that bears some relation to local demographic and constitutional conditions. The proposed measures have not been agreed to: the proposed bill to implement them bears no relation to real Yukon needs.

Our judicial process must be respected. The constitutional status of the Government of Yukon and our elected legislature must be recognized. The real constitutional needs of Yukoners must be met. Yukoners must be consulted. The Minister of Indian Affairs and Northern Development should be asked to listen to Yukoners and to withdraw his language bill.

³⁰ **Mr. Speaker:** Is there any further debate? Are you prepared for the question?

Some Hon. Members: Division.

Mr. Speaker: Division has been called. Mr. Clerk would you

poll the House.

Hon. Mr. Pearson: Agreed.

Hon. Mr. Lang: Agreed

Hon. Mrs. Firth: Agreed.

Hon. Mr. Ashley: Agreed.

Hon. Mr. Philippen: Agreed.

Hon. Mr. Tracey: Agreed.

Mr. Falle: Agreed.

Mr. Brewster: Agreed.

Mr. Penikett: D'accord.

Mr. Byblow: Agreed.

Mr. Kimmerly: Agreed.

Mr. Porter: Agreed.

Mrs. Joe: Agreed.

Mr. McDonald: Agreed.

Mr. Clerk: Mr. Speaker, the results are 14 yea, no nay.
Motion agreed to

QUESTION PERIOD

Question re: Bill C-26

Mr. Penikett: While we are on the subject, as they say, I would like to ask the Government Leader a question or two about the press release issued by Mr. Munro at the time of the tabling of Bill C-26, particularly with respect to the statement of the minister that indicated that he would delay detailed debate on the bill — I am not sure if that meant second reading or committee stage — to provide the opportunity for the Territorial Executive Councils to consider bringing forward their own ordinances on the provision of bilingual services. Could the government leader enlighten the House at all as to what discussions, if any, have taken place on that particular point.

Hon. Mr. Pearson: No discussions have taken place at all. As I said in my statement to the motion, the minister arrived in town here on Sunday afternoon. He phoned me on Friday to tell me that he was coming and indicated that he wanted to talk about three subjects. He would tell me what two of them were, one was the COPE and one was the CYI. He said that he could not tell me over the telephone what the third subject was because it was that important to the territory. When he arrived here and told us what the subject was he gave us his opinions on the matter then. I then availed myself of the opportunity to fly over to Yellowknife with him on his government Jetstar, which was a very nice trip. I met with the NWT Executive Committee for about an hour and a half. I was at a press conference that he held afterwards and he had indicated that he was going to be tabling legislation. Here in Whitehorse I thought that he said he was going to table it on Monday. In Yellowknife I know he said that he was going to table it before Thursday. As it turned out he did table it on Wednesday and there has been no discussion with him about it.

We can only speculate on what it means when he says that he is not going to proceed further with it. I do not know if that means he is not going to send it to committee, or whether he is going to leave it on the order paper as a tabled bill without it going to first reading and committee. It would seem that that is where it is now.

³² **Mr. Penikett:** Mr. Munro's statement indicated that were the territorial government to initiate some measures to improve french language services, he would delay the measure but, once those services were established, he seemed to say that he would then entrench them in our Constitution. Is that the government leader's understanding of the minister's proposal?

Mr. Pearson: Yes. It is a bit confusing because I do not believe that the minister in person, when he arrived here, was aware of what we were doing with respect to bilingualism in this territory; how much services we did offer. Nor do I think that he has any idea of what the price tag is going to be, nor how long it is going to take to actually put in place once the decision is taken to actually move in that way.

Mr. Penikett: There has been some indication out of Yellowknife that the government headed by Mr. Nerysoo is inclined to make French the seventh official language of that territory as a response to the federal initiative. Could I ask the government leader if he has

been in communication with Mr. Nerysoo on this point, and whether that has caused the government leader to reflect at all on his options?

Hon. Mr. Pearson: Certainly, they have a quite different problem in the Northwest Territories than what we do have here. They have been dealing with the question of languages in the Northwest Territories for a number of years, simply because they have so many people who talk so many different languages. In fact, English is a minority language in the Northwest Territories. I do not think that is going to detract at all from the fact that Mr. Munro deems the two official languages now to be English and French.

I think probably what the NWT Executive Council will be doing is talking very seriously to the federal government about how they might enhance the provision of other languages within the Northwest Territories. I know that he made that invitation to them at the press conference that he held in Yellowknife.

Question re: Economic Development Agreement

Mr. Byblow: In addition to the subject of bilingualism, the economy is a subject of some concern. The Throne Speech reported that there may be a signing of the Economic Development Agreement that would see some \$18,000,000 allocated into programs in Yukon over the next five years. I am going to ask the Minister of Economic Development if he can explain why that amount under that agreement is reduced from an anticipated \$50,000,000 less than a year ago?

Hon. Mr. Lang: Once the member opposite becomes fully bilingual, I would recommend that he converse with the Minister of Indian Affairs because he is the only one who can tell him.

Mr. Byblow: I am sure the hon. member would be pleased to know that I am bilingual. (*The member spoke a few words in Ukrainian.*)

Can the minister tell me what programs or projects he anticipates to be cut as a result of the reduced funding?

³³ **Hon. Mr. Lang:** The area that is largely being concentrated on is going to be non-renewable and renewable resource development. One element of the agreement was on the human resource side and the Minister of Indian Affairs and Northern Development has indicated to us that there could conceivably be some finances available through other federal departments and, therefore, that is the area that the Government of Canada is looking at to delete from the agreement and proceeding with the remainder of the proposals that have been put forward.

Mr. Byblow: I would like to ask the minister when he anticipates the agreement to be finalized, but a more productive question might be to ask him exactly what steps are being taken to advance interim funding for tourism, given that we can expect the agreement not to be signed until after the next federal election?

Hon. Mr. Lang: I do not concur with the member opposite that we will not get an agreement prior to the next election. I want to emphasize, for the record, that the \$18 million that the member spoke of is for five years, not for one year. The Minister of Indian Affairs gave us assurances, prior to this past trip, that he would do everything to expedite it.

All we can do is try to ensure that the minister carries out the commitment that he made to us and, if he does, we will have an agreement. If he does not, we will have to wait for the Conservatives to form the government.

Question re: Native language services

Mr. Kimmerly: To the Minister of Education: recently, Serge Joyal made statements about the equality of the development of aboriginal languages and French languages and the delivery there of language services, in both territories. Is the Minister of Education seizing on this opportunity and applying for increased federal funding for the native languages project?

Hon. Mrs. Firth: We have not been in direct consultation or contact with Mr. Serge Joyal to pursue that matter.

Mr. Kimmerly: Is the minister contemplating, in the near future, negotiating for increased federal funding as a result of these public statements?

Hon. Mrs. Firth: We are having some concern about the

funding we presently get from the federal government for French language services and we are going to be in touch, through the officials in the Department of Education, with the Secretary of State and the Government of Canada to try and ensure that that funding will be maintained.

As far as asking for additional funding, we have not approached the federal government, as yet.

Mr. Kimmerly: I ask the question again: is the government planning to ask for increased federal funding for the native languages project?

Hon. Mrs. Firth: Every year we ask for increased funding.

Question re: Bear reduction program

Mr. Porter: My question is directed to the minister responsible for renewable resources. I would like to ask the minister, does he enjoy the support of all of his cabinet colleagues with respect to the bear reduction program undertaken by his department?

Hon. Mr. Tracey: As far as I know, I do. If he does not think I do, he should speak to them individually.

Mr. Porter: In light of the fact that the bear reduction program has caused a great deal of controversy and public debate, I would like to ask the government leader, will the government leader confirm that his government supports, unanimously, the Department of Renewable Resources bear reduction program?

Hon. Mr. Pearson: The question seems to be begging an argument. Also, we have not made public our bear reduction program yet, and I do not know the foundation of the question. I do not know on what grounds the member is asking that kind of a question.

Mr. Porter: I ask on invitation from the Minister of Renewable Resources. He asked me to ask them individually so I will do that.

Over the past few weeks, we have also been given evidence that the bear reduction program poses some very real consequences for the tourism industry. I would like to ask the Minister of Tourism, as a matter of tourism policy, is she supports the Department of Renewable Resources' bear reduction program?

Hon. Mrs. Firth: The Department of Renewable Resources' bear reduction program has not had a final decision by cabinet as of this time. I believe that if the member listened to the radio, he would have heard that the Minister of Renewable Resources had made comments to the media that he would be bringing forward to cabinet this week a presentation so that we could make the final decision regarding the grizzly bear reduction programme.

As to the member's concern expressed about the effect on tourism, I have been in consultation with some of my colleagues, particularly in BC and Alberta who embark on predator control programmes in their renewable resources departments, and it has not been shown that these programmes have any negative impact on the tourism business and we would only hope that that follows through with Yukon.

In tourism in Yukon, we have had more and more enquiries this year, and we are anticipating more and more visitors to Yukon.

Mr. Speaker: Just before proceeding, I want to say that the questions asked by the hon. member are really seeking an opinion about government policy, which perhaps I should not have allowed. Perhaps, in phrasing questions, members will keep this in mind.

Question re: Corrections trailer units

Mrs. Joe: I have a question for the Minister of Justice. On March 14, I asked the minister about the trailer units that were renovated at quite a considerable expense so that the Whitehorse Correctional Centre could use them in outlying communities to house inmates working on special projects.

The minister stated that they were being tested all year. Could the minister tell us how they are being tested and when the results of those tests will be complete?

Hon. Mr. Ashley: These trailer units are being tested at the correctional centre. It is a new concept in Canada, basically, so we are testing them to make sure that it will work.

Mrs. Joe: One of the problems of using those trailers in the communities is personnel and working conditions. Could the

minister tell us if his department has considered using local community people to work with that project?

Hon. Mr. Ashley: Firstly, we have to make sure the units are going to work. We believe they will but that is what we are testing them for.

Mrs. Joe: Could the minister tell us if his department has pursued the possibility of hiring and training native people to work as guards under the Northern Careers Programme?

Hon. Mr. Ashley: The hiring for all of the public servants goes through the Public Service Commission, I believe, but we do have a programme in place. You would have to ask the minister responsible.

Question re: Agriculture policy

Mr. McDonald: I have a question for the Minister of Agriculture. As the minister is aware, the federal government has requested that the Yukon government have an agriculture policy in place before the transfer of federal lands to the Yukon jurisdiction. Has the minister established with the federal authorities what the nature or parameters of the policy must be before the land is transferred?

Hon. Mr. Lang: Not to my knowledge.

Mr. McDonald: This is a very critical aspect to the transference of federal lands. Will the government request that negotiations take place with the federal government in order to ensure that the debate over whether the policy is adequate or not, does not become a stumbling block for the transference of land.

Mr. Speaker: Order, please. I believe the hon. member is now making a representation. Perhaps he did have a further question. The Chair cannot allow representations which ought to be made by substantive motion.

Mr. McDonald: I will rephrase the question. Will the government engage in discussions or negotiations to ensure that any debate over whether the policy is adequate does not become a stumbling block in the transference of land?

Hon. Mr. Lang: We will do everything we can.

Mr. McDonald: It has been one of those sessions.

Can the minister state whether the federal government has requested of this government that a land use plan be in effect for agricultural areas before the transfer of agricultural land?

Hon. Mr. Lang: It is once again the story of our life here in Yukon. We have to perhaps justify every minute of our time, plus everything we are going to do with respect to land transfers.

To give you some background, for example, it was announced in this House three years ago that the 900 recreational lots would be transferred to this government for the purposes of title. To date, we have received approximately 150 of those 900 lots for the purposes of having individuals purchasing their title.

So it is a long drawn out process and if it is not the excuse that the member opposite has outlined in his question, land use planning, I am sure there would be another one. All we can do is make every effort we can to get land transferred to this government, and we are on record of doing that.

Question re: Yukon roads

Mr. Penikett: I would like to pepper the Minister of Highways with some questions about salt. In answer to my enquiry about the winter application of salt to Yukon roads, the minister indicated that it had been the subject of a long debate. Could he tell the House when the decision to use sodium chloride for snow and ice control was actually taken?

Hon. Mr. Tracey: Not specifically, but I do know that the decision was made to use sodium chloride over this past winter. Calcium chloride has proven to be hard on vehicles, whereas sodium chloride is not. Calcium chloride also holds moisture at the surface of the road and sodium chloride does not. So, the decision has been made, as in most other areas in Canada, to use sodium chloride mixed with sand, in order to remove the ice off of the road.

I know that there has been some concern expressed by certain people in the territory that they do not like to see the dirty roads, they would like to wash their vehicle in the fall and have it clean in the spring, but road safety is the reason for the use of sodium chloride. The people should also consider that, perhaps by the use

of sodium chloride, we are reducing the length of time that roads are slippery and muddy.

Mr. Penikett: The minister has stated that the negative public reaction to salt comes from the experience with calcium chloride in eastern Canada. In his department's studies, what differences have been found on the corrosive effect on motor vehicles between the two salts, sodium chloride and calcium chloride, in their application in Yukon? Have there been any sort of local experiments?

Hon. Mr. Tracey: No, there have not been any local experiments, but there have been a great many experiments done in North American that prove conclusively that sodium chloride is not nearly as detrimental to metal as calcium chloride is.

Mr. Penikett: The minister says that the department is currently designing a test program to determine the minimum amount of salt that can be used to obtain acceptable safety levels. Did the minister not consider conducting such tests prior to the decision to begin the widespread application of this salt?

Hon. Mr. Tracey: No, what has happened was — it was unfortunate — during the Christmas break, departmental people applied a little too much of the sodium chloride to the road and it was because they felt that they would like not to be called out over the Christmas holidays. I can sympathize with them, in that respect; however, no one knew that the weather was going to warm up and that we were going to be faced with the problems that we did have.

However, after receiving quite a few complaints, I spoke to my deputy minister and requested from him that he try to reduce the amount of salt used, as much as possible, until we reach an acceptable level that everyone in the territory will be happy with.

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Question re: Tourism funding

Mr. Byblow: I have a question for the Minister of Tourism. One of the lobbies of the tourism community has been the need for increased funding, or rather, the creation or establishment of funding, for the area of convention sales and marketing. I am sure the minister would agree with me that attracting conventions to Yukon would be an important shoulder and off-season economic benefit to Yukon. Is it the intention of the minister to provide funding to this effect; that is, of convention sales and marketing?

Mrs. Firth: We do that now and have been for the past two years that I have been Minister of Tourism. We provide the funding to the Yukon Visitors' Association for that purpose.

Mr. Byblow: But the minister is keenly aware that there is very little funding and not very much actual promotion of convention marketing is done. I would ask the minister then if she supports the position that proper promotion of this economic aspect of tourism would also include identification of personnel for the job?

Mrs. Firth: We in the Tourism Yukon department have provided funding to the YVA for convention promotion and for marketing activities. The member for Faro indicates that it is very minimal funding. Last year it was up to \$30,000 and the year before that some \$20,000. The Yukon Visitors Association identified that monies for promotional material and embarked on a program where they printed up promotional materials. Those materials were available.

The Yukon Visitors' Association has an individual who works part-time doing clerical duties, I believe, and the other part of her job is involved with convention promotions. I think, in the last two or three years, we have had two or three major conventions that come to mind immediately, one being the teachers, who held a very large convention, and just recently the Law Society had a very large convention. Aside from that, we have had some smaller groups come to Yukon for conventions. As for the identification of the person-year to promote conventions, we have been in discussions with the Yukon Visitors' Association regarding that, because we have done some reorganization within the tourism branch in government and we will be continuing those discussions.

Mr. Byblow: Thank you for the minister's answer, even though we may not agree on the amount of activity actually taking place. Could I ask the minister if she has had any discussions with any other interests or groups other than the YVA on the subject of promoting conventions such as the City of Whitehorse?

Mrs. Firth: The City of Whitehorse is represented on the YVA

and I believe the YVA had contracted or subcontracted or been in discussions with the City to do some convention promotional work for them. We are aware of the concern that the member is expressing.

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Question re: Home care service

Mr. Kimmerly: About health, the president of the Yukon Medical Association has recently stated that the first priority for addition of services would be a home care service for seniors and the chronically ill. Is the government now actively investigating establishing this service?

Hon. Mr. Philipson: We have not prioritized the areas we will address. We are addressing all areas of concern in the matter of the seniors in Yukon.

Mr. Kimmerly: Is this an area that is identified as an area of needed service and is the government actively working towards establishing this program?

Hon. Mr. Philipson: The area of home care for seniors would absolutely be an essential service. It would help cut down on the cost of keeping seniors in residential facilities. Naturally, we are looking into that service.

Mr. Kimmerly: The minister has, over the last month, made statements about a new hospital. Has he investigated the financial savings that would be involved by establishing this kind of residential home care?

Hon. Mr. Philipson: I am not sure the two items are related. I have gone to great lengths on a federal level to try and get the Canadian government to build a new hospital in Yukon. I will continue to press for that facility as I would like to see the hospital facilities we have upgraded to a level that is acceptable in Canada today.

In the area of home care for seniors, we are continuing to address that issue, as I have stated previously. We realize it would be a savings to the people of Yukon if seniors were able to stay in their own residence rather than go into residential facilities that the government may be operating.

Question re: Bear baiting

Mr. Porter: It has been reported that the Department of Renewable Resources has informed Yukon big game outfitters that they could institute the practice of baiting bears in this year's spring bear hunt. Did he, the Minister of Renewable Resources, make a commitment to Yukon big game outfitters that he would amend the present game regulations to allow for the baiting of bears?

Hon. Mr. Tracey: No, I did not make that commitment. I could not make that commitment. Those decisions have to be made by Order-in-Council. However, we did speak about allowing bear baiting. It has been considered, although a final decision has not been made. If any of the outfitters proceeded on the principle that there would be bear baiting allowed, then I am only sorry that they either misunderstood or misinterpreted what we were talking about. It is not my prerogative to say to the outfitters, "yes, we will allow bear baiting". However, I must also state that if we are interested in removing bears from the territory, and protecting the moose in game management area zones seven and nine, then perhaps bear baiting would be a viable alternative to allow the outfitters to get the bears out of there.

Mr. Porter: Under the present *Wildlife Act*, Section 19(1), it is illegal to hunt within six hours of disembarkation from an aircraft. Is the Department of Renewable Resources in the process of amending this section of the *Wildlife Act*?

Hon. Mr. Tracey: I would suggest that the member waits until I table the regulations.

Mr. Porter: Section 20(1) of the *Wildlife Act* makes it illegal to transport by helicopter any big game hunter or any part of the carcass of any big game. Does the Department of Renewable Resources intend to amend this section of the *Wildlife Act*?

Hon. Mr. Tracey: (Inaudible)

Question re: Yukon courtworker program

Mrs. Joe: I have a question for the Minister of Justice. The Yukon Courtworker Program is seriously lacking in its

courtworker services, especially in the communities where JPs are holding court. Could the minister tell us if this government intends to expand these services to include courtworkers outside of Whitehorse?

Hon. Mr. Ashley: As I have told the House many times, there are only so many dollars in the budget, so we can only put out the services that we can afford to pay for. We certainly, under some circumstances, would like to have more services — in particular, the courtworkers program — but there are only so many dollars.

Mrs. Joe: Since there are only so many dollars available, could the minister tell us if his department is studying the cost savings of using local community courtworkers, with the view of cutting down on the court circuits that cost the taxpayers thousands of dollars?

Hon. Mr. Ashley: We use JPs in a different light than most jurisdictions in Canada do. We do not use the court circuits as much; therefore, they are not needed as much. I am not saying that we do not need courtworkers, but we do use a different system and we have an emphasis on the JP system, rather than on the magistrate's court.

Mrs. Joe: Since the minister is always open to suggestions and since other native courtworker programs in Canada are far superior to the Yukon's, could the minister tell us if he intends to consult with those groups, with regard to improving the Native Courtworker Program in Yukon?

Hon. Mr. Ashley: The department has been studying that situation, the courtworker program and other things. They will be coming forward to me with recommendations.

Question re: Farm Credit Corporation

Mr. McDonald: I have another question for the Minister of Agriculture.

The minister knows that the federal Farm Credit Corporation was represented at a recent seminar, held locally in Whitehorse, at which time it was stated that the Corporation would open a branch office locally, only until they were doing approximately one million dollars lending business in Yukon. Has the government made arrangements with the Farm Credit Corporation to provide liaison or personal services for local farmers until such time as a branch office is opened?

Hon. Mr. Lang: I am sure the member opposite forgot to mention to members of the House that the reason the representative was here was at the request of the Government of the Yukon Territory.

Yes, we have made arrangements, tentatively, with the representative of the Farm Credit Corporation that, if there is an interest demonstrated by people here, we would be prepared to serve as a liaison and arrange an appropriate time for those people to meet with the representatives of that particular Crown corporation.

Mr. McDonald: The minister mentioned at the same seminar to which he spoke that he had been notified that the federal authorities would permit farmers to claim \$20,000 in losses against other income, an increase of \$15,000. As the deduction geared to inflation over 1949 levels is only approximately one-fifth of what it ought to be, can the minister say whether he has made representation to the federal government to argue for a greater increase to reflect the higher cost of farming in Yukon?

Hon. Mr. Lang: I think it would be inappropriate to make further representation in view of the financial situation that we Canadians and the Government of Canada face. I think that if the Government of Canada, in their wisdom, does increase the amount of dollars for the purpose of taxation, it will be to the benefit of everyone else. I believe that if we make further representation, we could perhaps put the Government of Canada in the position of making no changes at all, which I think would be very harmful as far as those people are concerned who could benefit from such a tax benefit.

Mr. McDonald: Obviously, the minister has very little faith in his ability to negotiate things such as this.

Pertaining to territorial taxation, something over which the minister and this government has complete control, could the minister state the extent to which the Yukon government is prepared to offer the family farming community property tax relief for farm

buildings?

Hon. Mr. Lang: I just want to preface my remarks. I take, to some degree, offence at what the member opposite said with respect to my negotiating skills. The member opposite should recall that he was very much involved with a nine-month strike, and it did not exhibit well for his negotiating skills.

I would point out that this is an area that we are prepared to consider down the road, but at the present time, we are not prepared to bring anything forward, since we are just starting in the area of agriculture. Until such time that we see some success in the program we are going into, I think it would be premature to make such decisions.

Mr. Speaker: There being no further questions, we will proceed to Orders of the Day, under Government Bills.

GOVERNMENT BILLS

Bill No. 15: Second Reading

Mr. Kimmerly: I left off on March 15, by saying that I wished to mention, in a general way, some of the cases that occurred in the courts around December and January last.

I do that for this reason: the minister referred to the problem and quoted from a letter he has since tabled. The implication in the minister's comment and the implication in the letter, and I am sure there are other documents with similar implications, is very disturbing to me.

It does not recognize a very, very important fundamental principle about individual patient's rights and the duty of lawyers when representing those people.

The minister quoted one sentence from a letter. I would like to quote the entire paragraph, because it puts it in a little better perspective and it explains a little better what the writer of this is saying. The entire paragraph is this: "Unfortunately the press releases on the subject are less than adequate and do not describe the real dilemma, which is a definite reduction in patient care. Subsequently, several patients are now languishing in jail as they have been refused psychiatric and medical treatment while awaiting the due process through the courts. It is hard to believe this, in fact, is going to do much for their mental health problems. I think I am safe in saying that physicians feel extremely frustrated by these recent interpretations of the act. It is nice that several lawyers in town can blow their horns about the great gains being made in terms of patient's rights, however, what we see happening is a significant disservice happening to a percentage of mentally disturbed patients."

It has long been clear that there is a medical establishment with doctors at the top and hospitals, administrations, in and around the top, close to the top, and they administer hospitals and medical services to patients. Their general aim of course is to cure the sick. It has long been recognized that they resent what they see as interference from the legal establishment. The legal establishment has a similar hierarchy, as they administer the courts and the legal process with the general aim of protecting individuals rights.

There is a similar conflict between the social workers and their administrators, and the legal system, apparent in the minister's statements on *The Children's Act*. It is clear that much needs to be said about the importance of protecting individual rights.

The pronouncements appear to not recognize the very important concepts involved in protecting individual's rights.

It is necessary, and absolutely clear, that citizens in a free country have a right to choose what medical treatment they will receive. They have a right to refuse treatment that doctors may say is for their own good, and heaven help us if we lose that right.

The duty of a lawyer, when retained by a patient, in the medical terminology, who says they want to exercise their individual freedom by not taking a particular drug or whatever, is absolutely clear. The impuning of motives to those lawyers who do that, in my opinion, is irresponsible, and it does not recognize a very, very important and a very fundamental part of the protection of individual freedoms that we recognize in free and democratic countries.

The minister has stated that, because of the actions of several

lawyers — I am proud to say I am obviously one of them — several things have become necessary. In those cases, or in some of those cases, it is absolutely clear that there is a person, a doctor, a psychiatrist. It is interesting and it is important to note that there is only one psychiatrist resident in Yukon, which makes it very difficult to obtain, or to evidence, differing psychiatric opinions, which frequently occur.

It frequently occurs, or it has occurred, that a psychiatrist has made a diagnosis and has arrived at the diagnosis after a non-consensual, involuntary meeting with the "patient", of a duration of less than five minutes, and has labelled that person a patient. Now, regardless of whether the psychiatrist is right or wrong, it is fundamental in our concept of a free society that, if that person is to be involuntarily detained or treated, that person has a right to legal counsel and to take the question to the courts.

43 That, of course, is non-controversial.

Now, the doctors see that as interference, and well they might, because it delays things and it forces them to account in ways that they do not normally do. It implies a challenge to their judgment about medical matters. Even if it is not, in fact, the case, they certainly perceive it that way.

When those patients, or those persons labelled as patients, are being dealt with, they have a right to as much individual freedom as possible until a court judges them to be incompetent or mentally incompetent. It is absolutely crucial that we recognize that there should be a presumption of sanity in an analogous way, as there is a presumption of innocence in the criminal sphere.

The members on the other side are saying they are trying to treat somebody who is not well. It is absolutely crucial that we recognize that who I say is not well or who you say is not well may very well differ. It frequently occurs that the opinions of the doctors differ, especially in the mental health area. That frequently occurs. It frequently occurs that the patient may say, "Yes, I am sick, but I do not want to be involuntarily detained because of that sickness". That is, in fact, extremely common, and if you involuntarily detain a person and take away his individual freedom and dignity, that is an extremely stressful event for the person and, for some people, clearly causes a worsening of their condition.

In a general sense, I would like to talk about the cases of the people who ended up in jail, as opposed to the hospital. They are in jail because they chose that; they said, "I would rather be in jail and left alone than injected with those drugs that I do not want to take".

44 In the face of that instruction, given by an apparently sane person, that instruction is an extremely serious one and any lawyer receiving that instruction is duty-bound to protect the person as much as possible.

It was my intention at the beginning of this debate to attempt to do something constructive, and the communication that is occurring with the government heckling has convinced me that further speech-making on my part is probably counter-productive, so I am going to sit down.

However, at the Committee stage, I am going to raise these points over and over again, because it is absolutely crucial that we recognize that mental patients be treated with the same kind of individual dignity that ordinary citizens are treated, with the same kinds of rights and freedoms and protections, unless they are exhibiting clear and apparent symptoms that are dangerous to themselves or others.

Motion agreed to

Bill No. 5: Second Reading

Mr. Clerk: Second reading, Bill No. 5, standing in the name of Mr. Tracey.

Hon. Mr. Tracey: I move that Bill No. 5 be now read a second time.

Mr. Speaker: It has been moved by the Minister of Renewable Resources that Bill No. 5 be now read a second time.

Hon. Mr. Tracey: There are two amendments to the *Landlord and Tenant Act* here. One was brought to light by one of the lawyers in town. The way he explained it to us was that a person, under the existing legislation, could sign a one-year, two-year,

five-year agreement with a tenant at a low rent and if the bank had to foreclose on the mortgage, they would be stuck with the low rent that had been negotiated with the previous tenant and the previous landlord.

45 So we had to make this one amendment in order to make it possible for the mortgagor to give notice to the tenant so that he could take over his property. The other is with regard to interest rates. We feel that probably the best and most economical way and the fastest way to deal with the fluctuating interest rates in the territory is to have the interest rates set periodically by Order-in-Council. So, that is what the two amendments in this act deal with.

Mr. Kimmerly: We do not support this bill. This landlords' act is becoming increasingly a landlords' act and not a landlord and tenants act.

It may be that there could be an abuse if a property owner purposely signs a rental agreement at what I will call a fraudulently low rent or a rent below the market value. That abuse could easily be corrected by a different amendment, addressed only to that problem.

The amendment proposed here provides a gaping loophole in the law in favour of landlords. To use the vernacular, it is a loophole you could drive a truck through. It really means that a tenancy for a term other than a month-to-month tenancy can be terminated through what most people would call legal trickery at the landlord's will.

It would be very simple, under this proposed law, to abuse the law the other way. That is, if a landlord is unsatisfied with the rent — for example, if he signs a one-year tenancy agreement and rents go up — he can sell the property to some other company, a family member, or something like that, and terminate the tenancy. It has been done here and it is a gaping loophole, and this amendment makes the problem very much worse than now exists. It turns it around all in favour of the landlord. It was obviously put in at the behest of landlords, or one case. It is a landlord's amendment; it is not a fair amendment, at all. Ultimately, more than that, it will prove to be not good business.

46 For lawyers advising tenants and tenants associations, any responsible advice to a tenant must be that your lease for a term is basically worthless because the landlord can maneuver to get out of it. This is a very bad amendment. We oppose it, and oppose it vehemently.

Motion agreed to

Bill No. 10: Second Reading

Hon. Mr. Pearson: I move that Bill No. 10, entitled, *An Act To Amend the Income Tax Act*, be now read a second time.

Mr. Speaker: It has been moved by the hon. government leader that Bill No. 10 be now read a second time.

Hon. Mr. Pearson: There are three basic amendments to this act. Members will recall that when we first introduced this legislation in the House we explained then that amendments would be forthcoming from time to time from the Government of Canada. We have signed an agreement with them that we will amend the act at their behest. Of the three amendments, two of those amendments are in fact at the request of the federal government.

The first one is to allow for a greater flexibility in making annual adjustments to the threshold amount under which individuals may compute their taxes payable from tax tables which accompany the tax return forms. The legislation will no longer refer to a dollar amount but to an amount prescribed by regulation. The other amendment requested by the federal government is to provide greater flexibility for corporations in calculating monthly installments on account of income tax, thereby reducing the potential for large balances due, or overpayments at year end.

The third amendment is one that we discovered here and it is to correct an inaccurate reference in the subsections of the act. Subsection 5.13 is, in fact, in error.

Mr. Penikett: I must say to the government leader that at first glance there appeared to be nothing wrong with this bill at all. However, after having read it a little more carefully and checked the territorial act and the federal act, from which this flows, I must say that we have to reserve judgment until certain points can be

clarified in Committee.

To explain. The principle of the bill, as described by the government leader, is to bring our act into conformity with the federal act. However, in the first point that he mentioned, the provision for people to pay taxes according to what is in a table rather than to do the original calculations themselves, is fine in and of itself, except that, by my reading, the language to describe that provision should be to pay a tax determined by reference to a table prepared in accordance with prescribed rules rather than the language that we have in this act.

"I will, when we get into Committee, look for an opportunity to explore that particular point with the government leader, and I am sure he has expert advice that will satisfy us both.

In the second point, the one about the provision about the payment of taxes as they become due, on a monthly basis, is also interesting because the language that is proposed here talks about taxes payable for the year. Of course, there is, for most people, no way of knowing what amount is payable on a month to month basis, and if the language is to be consistent with the meaning of the federal act, I think it really should talk about an amount equal to one-twelfth of the amount estimated to be the tax payable for the year, rather than the exact language there. There is also a minor point at the end of that section, but I think it will be improved by the addition of the word, "and".

Mr. Speaker: I must caution the member that he can only speak to the principle of the bill, and we ought not to be referring to sections of the bill.

Mr. Penikett: That is right, Mr. Speaker, I am being studiously careful not to refer to specific clauses, but am talking about the language that describes the principles of the bill. Mr. Speaker will understand that I am walking a tight rope in doing that, but I do want to serve notice of these problems in second reading debate before we get into Committee, in order, of course, to save the time of the House and to expedite government business, and all those other wonderful directives, which we all share.

The final concern I have concerns the third principle, a point described by the government leader. That is a problem, I think, he said was identified by this government. Now, the amendment here refers to territorial tax substituted for provincial taxes in a clause that, if I were permitted, I would refer to as 157-4 in the federal act, but I am not permitted to, Mr. Speaker, so I will not, which is very specific, very long, and very complicated. I have concerns, which I would appreciate the government leader addressing when we get into Committee, about whether we can deal with such a long, complicated and specific measure by way of the general way which we have in this act — in the language we have talked about "such modifications that circumstances may require...". It seems to me that that may be inappropriately vague and general, given the specific language of the clause in question.

Those are our concerns which we will express in second reading and we hope to have those concerns satisfied in the Committee-stage consideration.

Motion agreed to

Bill No. 11: Second Reading

Hon. Mr. Pearson: I move that Bill No. 11, entitled *Interim Supply Appropriation Act, 1984-85*, be now read a second time.

Mr. Speaker: It has been moved by the hon. government leader that Bill No. 11 be now read a second time.

Hon. Mr. Pearson: This is the normal interim supply appropriation act that allows the government to continue doing business for the first month of the new fiscal year. The amounts in the schedule are not one-twelfth of the budget, but rather are determined by the actual cash flows of the departments as we estimate they are going to be required for that one month's operation.

Mr. Penikett: We will support this measure at second reading and we will expect to have some discussion on the particulars in Committee. I must say, in passing, that I am extremely pleased to hear the government leader say that it is not a one-twelfth supp because, by that score, I would estimate that their operating budget this year would be \$173,076,000, which is probably, hopefully,

some distance from what we will actually be spending.

Motion agreed to

Mr. Speaker: May I have your further pleasure?

Hon. Mr. Lang: I move that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Mr. Speaker: It has been moved by the hon. Minister of Municipal and Community Affairs that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

Mr. Speaker leaves the Chair

COMMITTEE OF THE WHOLE

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

Recess

Mr. Chairman: We shall now go on to Bill No. 11, *Interim Supply Appropriation Act, 1984-85*.

Bill No. 11: Interim Supply Appropriation Act, 1984-85

On Clause 1

Hon. Mr. Pearson: I always do have trouble with clause 1 in general debate of this particular bill. It is very straightforward. We require the approbation of the House to continue to operate the government during the month of April, being the first month of the new fiscal year. During that time, of course, it is our intention to table the O&M budget for the 1984-85 fiscal year in the legislature and have it approved prior to the end of the month.

So, as I said at second reading, the amounts are determined from past experience cash flows for each department individually.

Mr. Penikett: Just in general debate, I wonder if I could ask the government leader if he could give us a little bit more information about the nature of the expenditures in April that require more than one-twelfth of the department's spending for that month. I, obviously, do not want to anticipate the overall budget debate of the main estimates, but he did indicate, in his remarks at second reading, that some expenditures that were required in April were not monthly expenditures but particular expenditures for this period. I wonder if he could elaborate just a little bit further on that information?

Hon. Mr. Pearson: Probably the most outstanding one is municipal and community affairs, where there are grant payments made to the municipalities. Those grant payments are normally made at the beginning of the fiscal year, of course, because the municipalities and the LIDs need their money, as well. The same thing applies to education, advanced education and manpower, the payment of grants. I think those are probably the major two — health and human resources also has some grants that are paid during the month of April.

So, other than the straight O&M costs, probably grants are one of the major items.

On Schedule A

Yukon Legislative Assembly

Yukon Legislative Assembly in the amount of \$130,000 agreed to

On Executive Council Office

Mr. Penikett: I have to ask a question here. In recent years, the amount of money spent in the Executive Council Office has gradually reached and passed the Legislative Assembly. This amount, though, appears to be getting in the order of twice as much as the Legislative Assembly, which is a disproportionate allocation of resources. Perhaps the government leader has something that would indicate if this is an unusual expenditure in April.

Hon. Mr. Pearson: I do not know that it is unusual. I cannot say that it is unusual. I cannot, offhand, think of any major reason why, unless we do have some research contracts, or something like that, that are coming due in April, which we anticipate we are going to have to pay.

The worse possible thing that we can do is to start comparing one

department to another — twice as much or half as much — because those numbers just do not apply in this particular case. I have said it twice already and I guess I am going to have to say it again: the relationship is strictly to cash flow, it is not to departmental budgets at all.

Mr. Penikett: That still raises a question. I am curious to what cash flow demand there may be in April that in fact puts such a large discrepancy between those two numbers. I do not think I am being argumentative with the government leader, but there has been some approximate relationship for a number of years between these two items, whether we are looking at supps or whatever or interim supplies. It does seem to be on the basis of twelve but let us not even talk about that. It is a large number for the executive council office. If it is in fact for some large research projects that are currently underway or being completed or being contracted for in April, would the government leader undertake to check that out and tell us if that is what it is?

Hon. Mr. Pearson: If the leader of the opposition wants to set it aside, we will set it aside and I will get the detailed breakdowns. I just want to point out that we have been doing this for a number of years and this is the first time we have ever been asked for a detailed breakdown with respect to interm supply. If that is what the opposition wants, then I will make sure that it is here.

Mr. Penikett: I would not think it would be fair to say that we want a detailed breakdown of every item under interm supply. I think it is not unreasonable, though, for us to ask questions where an item seems higher than we might have expected it to be, to see if there is not some expenditure budgeted for in here, which we would be approving here and that we would not therefore have a chance to debate again in the main estimates because we already approved it. I think that it would be irresponsible for us to just skip over that item.

Hon. Mr. Pearson: That is a falacious argument and the leader of the opposition knows it. He knows very well that he is going to have all the chance in the world to debate every penny of this budget, including the money that is voted here. It is not fair, and it is not honest, for him to say that he is not going to get the chance to debate it.

Mr. Penikett: I am a little annoyed at the government leader for raising questions about my honesty, but I will ignore that remark for a minute and just say that all I do is want an undertaking to make sure that we are not approving here — and if he is giving that undertaking, we are not approving anything here that we will not have a chance to examine in detail in the main estimates, that is fine. All I did was begin with a general question as to why there was such a disproportion between the first two items. I have as yet had no answer to the question. That is all I was asking.

Executive Council Office stood over

On Education, Advanced Education and Manpower

Mr. Byblow: This one is ten times more than the one previous. I have an innocent, simple question on this. The government leader made reference to grants as part of the reason for the appropriation in the month of April in Education. I just want to clarify this. Is that to do with vocational, post secondary seats at Yukon College?

Mrs. Firth: That would be with regard to the *Students' Financial Assistance Act*, the grants that young people come to the government for to help with their post secondary education.

Mr. Byblow: Perhaps I could conclude by asking the minister why April is the month in which these come forth in any great quantity because that does not coincide with any academic year?

Hon. Mr. Pearson: All grants coincide with the fiscal year. All grants are finished on March 31. We have legislation that says we cannot give grants for more than a fiscal year at a time, and the grant is over on March 31, and a new grant has to be issued on April 1 — any kind of a grant.

Education, Advanced Education and Manpower in the amount of \$2,919,000 agreed to

On Consumer and Corporate Affairs

Consumer and Corporate Affairs in the amount of \$83,000 agreed to

On Health and Human Resources

Health and Human Resources in the amount of \$2,824,000 agreed to

On Municipal and Community Affairs

Municipal and Community Affairs in the amount of \$1,815,000 agreed to

On Economic Development

Economic Development in the amount of \$236,000 agreed to

On Justice

Mrs. Joe: Could I have a brief statement from the minister as to why it is that amount?

Hon. Mr. Pearson: Once again, I must explain that the ministers are not in a position to defend the amounts of money today. It is the first time in legislative history in this territory that we are getting these kinds of questions. If that is the way it is going to be, then we are going to have to have notice so that we can get the information together.

I want to say, once again, that the amount of \$1,068,000 is based on the historical fact that the department needs this much cash in order to get itself through the month of April. There is no other justification for it at all, just that the department needs \$1,068,000, or something close to that, in order to get through the month of April. It is based strictly on cash flow. There are no new programs, nothing else, it is just strictly cash flow.

Mrs. Joe: I did not realize that the government leader was going to get into a huff. I can wait until I get another explanation at another time.

Justice in the amount of \$1,068,000 agreed to

On Highways and Transportation

Highways and Transportation in the amount of \$2,687,000 agreed to

On Public Service Commission

Public Service Commission in the amount of \$155,000 agreed to

On Finance

Finance in the amount of \$365,000 agreed to

On Tourism, Recreation and Culture

Tourism, Recreation and Culture in the amount of \$413,000 agreed to

On Renewable Resources

Renewable Resources in the amount of \$546,000 agreed to

On Government Services

Government Services in the amount of \$790,000 agreed to

On Yukon Housing Corporation

Yukon Housing Corporation in the amount of \$142,000 agreed to

Mr. Penikett: On a point of order: on the undertaking of the government leader to provide some information about the cash requirements, especially unusual cash requirements of the Executive Council Office in the month of April, I would be prepared to clear that item, if it would be agreeable to the government leader.

Hon. Mr. Pearson: I honestly do not know what I can provide. I am sitting here trying to think what I can provide him with, without giving him the budget of the department for the next year. I am in no position to be able to do that yet. It is going to be another couple of weeks before we can table the budget.

I would ask the leader of the opposition to remember a couple of things. During the course of this year, we transferred to that particular department, Intergovernmental Relations from Economic Development. I think there were three specific items that were transferred: Intergovernmental Relations — if we include the Ottawa office — and the Public Affairs Branch were all transferred into that department during the course of the year.

That includes the addition of a cabinet minister on this front

bench. That would all reflect on the cash flow of that department in this particular month, if you were making a comparison with the first month of last year.

Executive Council Office in the amount of \$250,000 agreed to

On Total

Total in the amount of \$14,423,000 agreed to

On Clause 2

Hon. Mr. Pearson: I have an amendment, because there is a typo, and the amendment is that Clause 2(1) at page 1, be amended by deleting the phrase "First Appropriation Act, 1983-84" and substituting for it the phrase "First Appropriation Act, 1984-85".

Amendment agreed to

Clause 2 agreed to as amended

On Clause 3

Clause 3 agreed to

Clause 1 agreed to

On Title

Title agreed to

Hon. Mr. Pearson: I move that Bill No. 11 be reported out of Committee with amendment.

Motion agreed to

Mr. Chairman: We shall now go on to Bill No. 15, *An Act to Amend the Mental Health Act*.

Bill No. 15: An Act to Amend the Mental Health Act

On Clause 1

Mr. Phillipson: It gives me great pleasure to be able to bring before this House the amendments to the *Mental Health Act*, which will clearly indicate that this government is doing everything in its power to ensure that a patient's rights are protected and, in fact, go beyond what was in the previous legislation in looking after patient rights.

I believe that most areas of concern that members of the opposition may have, or others may have, in relation to the amendments, are clearly explainable and I would welcome the opportunity to enter into this debate the members opposite.

Mr. Kimmerly: In general debate, I would first like to ask a question specifically about why these amendments are coming forward now. This was already explained, in a general sense, at second reading and in the media, but it is clear that especially the hospital and the medical community expressed certain concerns about immediate aids. Why were these ones identified as necessary now?

Mr. Phillipson: These amendments that you see before you are here as a direct result of problems that have been encountered in the past approximately four to six months, which have come to light. The members of the law profession in town have seen fit to enter into the area of mental health and the patients' rights in this regard. The government realized approximately two years — a little longer ago than that — that we had a problem in this area and first the hon. Meg McCall and then the hon. Howard Tracey commissioned a report be done by a psychiatrist. The psychiatrist was Dr. Herb Cohen. He prepared a report and was in the process of completing his report when the problems were brought to a head, around Christmas time.

Had those problems not come to a head at that time, we would probably have been tabling new legislation in the fall, without bringing these amendments forward. The reason we are now bringing these amendments forward is due to the fact that these problems have been encountered in order for us to continue to be able to treat individuals who are problemed with mental disorders at this time. It is necessary for us to amend the old legislation to allow for treatment without having the legal profession feel that the patients' rights are being abused.

Mr. Kimmerly: In light of that, that these amendments address problems arising in the courts in the last three or four months, I would ask what was the consultation process with the three specific

groups or three areas of concerns. First of all, the medical profession; second, the legal profession, and, third, any representative of mental patients or patients' groups or patients' advocates.

Hon. Mr. Phillipson: The first people we had consultation with were the psychiatrist presently in Yukon, the head of the Medical Association in Yukon and the Vice-Chairman of the Yukon Medical Association. These gentlemen came to my office and discussed the problems they were encountering. They told me the areas of concern and asked me to address these areas of concern. I have a letter on file from the Yukon medical association, and the director of the health department has been in consultation with the legal profession. Both the territorial government and outside legal opinion was sought. In the area of consultation with the patients' groups and advocates, representation would have been made to the Director of Health.

After the amendments have gone through, we will be continuing with our series of discussions with the medical patients and their advocates, with the legal profession and the psychiatrist currently in the Yukon Territory, and doctors in the Yukon Medical Association.

Mr. Kimmerly: What consultation occurred with the legal profession, or, perhaps the lawyers involved in bringing these concerns to light?

Hon. Mr. Phillipson: To the best of my knowledge, on the consultation, a member of a law firm was asked to look into the old *Mental Health Act* and to give us his opinion on how the amendment could be written. The government's legal draftsman and the Director of Health have worked on the drafting of the amendments.

Mr. Kimmerly: The reason I ask those questions is that I believe that I was counsel of record on every single one of the problem cases. Initially, it was my law partner who was counsel, but I took over that case as well.

I am also aware that the Commissioner of Yukon, who is an active, important person in the consideration of these cases was particularly involved, and I am informed was eager for information and for consultation on the amendments. In the last session I raised the issue with the minister and I expressed a great deal of interest and I have publicly expressed a position requiring a fairly wide consultation. My question is this: as obviously the consultation with the Commissioner, with the patients involved and with the lawyers who have actually been involved in these cases has not occurred, is the minister now prepared to consult with those persons or those bodies in consideration of a clause-by-clause consideration of this particular bill?

Mr. Phillipson: Obviously, the Commissioner is involved in these amendments and this piece of legislation. The Commissioner signs the final committal form. The Commissioner was an individual who expressed concern after these problems surfaced. The Commissioner has not expressed a concern to be involved in a consultative process in which the amendments are brought before us. I did not feel any need to consult with the member opposite, as he is the person who brought these problems forward in the first place. We are going to great trouble to ensure that we address the problems that he has originally brought forward. I would like to read a small portion from an already tabled letter, "that until recently, health care for mentally ill patients at the Whitehorse General Hospital was running quite smoothly. Unfortunately, a legal interpretation which is now being applied to the act has left us extremely hamstrung in terms of treating patients requiring committal to hospital facilities for either their own protection or the protection of others. As you are no doubt aware, at this point in time a patient may be committed on a short term basis or for more extended periods of time when the physicians involved are unable to treat a patient without the patient's consent."

Now this issue was brought to light. This is the issue we are now addressing. I have explained it to the members of this Assembly that the total issue of mental health in Yukon will be addressed in a new bill that will be before this House in the fall of the coming year, along with a companion bill which will be a competency act.

Mr. Kimmerly: I thank the minister for that answer. It is absolutely clear that the process was running along smoothly in an

administrative sense and smoothly from the point of view of the legal establishment, as they have clearly stated, and of the mental establishment, as they have clearly stated. It is also mentioned in Dr. Kohen's report about how the process was essentially a rubber stamp process. It is important to note, and it is documented in Kohen's report, and in other places, frequently, what occurred was that there was an involuntary committal made with no hearing in fact, except in a very technical sense.

⁵⁶ It has occurred that a justice of the peace has been called in to the hospital and has read the patient's chart and has signed the forms, and may or may not have actually spoken to the patient. In some cases, they clearly did not speak to the patient.

In one sense, that is running smoothly. It is a very sort of smooth operation clerically; it is easily done, but it was not smooth from the patient's point of view. There have been, in the past, significant abuses, and the patients have been involuntarily committed without appreciating or knowing what is going on, without agreeing to what was going on, and experiencing extreme anguish, stress and disruption in their lives.

Of course, if some lawyer comes along and says, "Hey, wait a minute, you cannot do it that easily, we want a hearing here and we do not agree", all of a sudden the system is not smooth anymore; there is a problem. That is, practically speaking, or in laypersons language, what occurred. It is inevitable that it would occur at some point, and it occurred because some patients wished to exert his rights and wished to make his rights known, and objected to involuntary treatment.

I raise all of this at this time because what the bill does is close up gaps in the old legislation so that hospitals and doctors are protected and will, if this is passed, go back to the old system of treating patients in this category, irrespective of the patient's desires.

The response of the government has been to one side of the question; or the problem was identified by the medical establishment and the government has introduced a bill which solves the problem from the point of view of the medical establishment.

⁵⁷ I say it would have been a better bill if the other interests were also considered. As we go through the bill, I will be making specific points where the other side has been neglected and should have been considered.

Hon. Mr. Phillipsen: I take issue with a few of the statements made by the member for Whitehorse South Centre. I will be very brief.

The problems in this were not identified by the Medical Association, they were identified by the member opposite, by the legal association, which he was representing at that time. The areas of concern that we are trying to address are definitely those concerns that deal with the patients' rights and not with the medical profession's rights.

I feel it less than humane to take a person, as has had to be done since this interference, and have him restrained and not be able to treat him in Yukon with known drugs and treatments that could have been given here, and have to take restrained people outside to areas where they can be treated involuntarily with the same drugs and make them suffer through the 72-hour period, plus the trip outside, so they can get treatment they could have had here if they would have been allowed to have the treatment here. We are addressig those issues.

I realize the time is late and I am sure I will be able to speak to it at greater length.

Mr. Chairman: At this time we shall recess until 7:30, at which time we will come back and go on with general debate on *An Act to Amend the Mental Health Act*

Recess

Mr. Chairman: I will call Committee to order. We are now on the mental health act. We are on general debate.

Mr. Kimmerly: We were in the process of referring to several cases that occurred in the courts around the existing mental health act or, more properly, around specific situations. Those cases have been interpreted as statements of policy by some, although they

clearly were not. They were individual cases bound to come up at some time or other and, of course, there will be more cases in the future.

Because it is crucial, especially in some sections of the bill, I would like to refer to some of those cases and outline the general fact situation. It is also appropriate to do this because it is obvious that the minister's source of information has been largely one-sided in that the patients, it appears, or the alleged mentally ill persons, have not spoken to the minister or their counsel has not previously, and it is appropriate that the issues from another perspective be clearly identified.

⁵⁸ Let me speak about one case, which occurred very recently and which never went to court. In fact, it really is not a Yukon case. A person came to me a little while ago and asked for legal advice concerning a mental health problem.

The problem was that this person was a middle-aged woman who had been in a marriage for almost 20 years and had been in a fairly well-to-do socio-economic status. She was incredibly bored with her life and her marriage and what she did was leave and take a trip to Europe and also to Yukon. She did incredible things like spend some of her money and generally lived an independent and more carefree and more unusual lifestyle than in the past 20 years.

Her husband made an application, under the mental health act of a Canadian province, to get her committed in order to stop her doing harm to herself and to stop her from dissipating her property.

⁵⁹ She had substantial property, in most people's terms, and she was spending it and, may I say, enjoying spending it. She had consulted me as a lawyer to see what could be done. The reason why I raise that is to demonstrate that the particular factual situations involved in these cases need not be very bizarre or unusual and in fact are readily understandable by common people. It may be said that that is not the full story. There is more to it and that is obviously so, but the reason why I mention it is that it is clearly a principle of this bill that a person can be involuntarily detained and involuntarily treated in order to protect his own property.

I disagree with that. I think that that is granting a power to other authorities that is inconsistent with our feelings of freedom and democracy in this country, indeed. Members on the other side have hesitated putting property rights in the constitution in a fairly bold statement and were that the case it is a very possible and likely that at some time protection of property in the constitution, which is proposed, would come in conflict with this very bill.

⁶⁰ That is one case, and the implication is clear for this bill. In another case, it involves a woman who I will describe as an approximately 30-year-old average American citizen who was single and who had spent more than 10 years travelling around with no fixed address. She had travelled around basically in the United States and was, as some people would call her, a street person, and what some people would call, simply, a tourist.

That particular person came to Yukon, and it was decided by a psychiatrist here that partially, and indeed largely — and he clearly stated this — because of that lifestyle, he was making a diagnosis of mental illness, as it is defined under the old act as mental abnormality, because it is a symptom of mental instability to travel around with no fixed address, and not to have a home.

That particular person was involuntarily administered mind-altering drugs, and that person violently objected to that involuntary administration of drugs, and instructed her solicitor to do anything and everything possible — there are many people who would disagree — to avoid the involuntary ingestion of mind-altering drugs, which eventually was achieved or, I should say, achieved in fairly short order.

⁶¹ That person eventually found herself in the jail here, because the hospital refused to keep the person in an undrugged state, although there had been not a single symptom of danger to any other person previously made, and it was common ground with everybody that the person was not suicidal in any way. The application was made because, in the mind of the applicants, it was for the person's own good; the person was mentally unstable and needed treatment. But there was not a single instance of a threat of danger, or danger to any other person.

There was a concern that it was wintertime and cold out and the

person had not the means to survive in Yukon in the winter, although she had survived very well for the previous three weeks and, indeed, subsequently.

106 In that case, I outline it because it is a provision of this bill that people alleged to be mentally ill can be placed in jails or outside of an approved institution, which means a jail cell, and I am very interested in a justification for that. In my view, a jail cell is the last place for a mentally ill, or an allegedly mentally ill, person, and a grave injustice was done by the system to that person because of the various decisions made, which necessitated the detention outside of the hospital. She eventually ended up at the Women's Transition Home, which was a far better place for her. She eventually left the territory. Indeed, I would have, too, were I in her place.

Another case involves a person who lived in an outlying community and came into town, here. According to him — now, this is possibly not the real factual situation — through some trickery, in order to get him here, he was at the hospital as a voluntary guest, indeed not a patient, and was made an involuntary patient for 72 hours. His initial instruction to his lawyer was, "They have given me drugs and I cannot think straight, and I cannot tell you exactly what happened and what my desires were". It was clearly a fact that there were mind-altering drugs administered, and that case went to court on the instructions of the allegedly mentally ill person, initially to get a decision from a court allowing that person to instruct his counsel in an undrugged state. That is, he wished to be taken off the mind-altering drugs in order to properly instruct legal counsel.

107 Now, that immediately raised a legal issue, of course, which is partially addressed in this legislation, but not completely. There was an opinion of the Yukon psychiatrist that he was clearly mentally disturbed. To make a long story short, he went to Alberta under the criminal process. He was not actually in the jails, but through the criminal process he went to Alberta for a time, certainly not under a definite order. He appeared before a board in Alberta, was adjudged perfectly sane and released. That is a very important factor in that case. To my knowledge he is still functioning as a citizen. That is an example, clearly, of a case where psychiatric opinions differed with that particular person.

There are other cases. There is another case of a person who was in hospital voluntarily after a physical injury acquired in a car accident. In layperson's language there was something like a stress reaction to the car accident and the physical injury and that person was involuntarily committed on a seventy-two hour order, on a Friday, and was specifically told the reason was that the doctors were not going to be around on the weekend and that they needed the control. The person was subject to an application for permanent involuntary order, which occurred, and was adjourned in the court. Five days later the application was dropped. The person stayed in the hospital voluntarily to be treated for a physical illness and eventually left as a voluntary patient. That person clearly and precisely stated that a process of involuntary admission made her substantially worse. It was essentially a terrible experience to go through and totally unnecessary in her opinion.

108 I raise those cases — and there are other cases — because they are identified as the cases that have stimulated this bill. It is important and, I would say, crucial that the minister proposing the bill understands the point of view of the patient, when going through these particular experiences.

Some of those patients may express their view in the future, publicly, but that will be up to them. In all of those particular cases I have referred to but not identified, they have asked me to publicize the general problems involved in this kind of legislation. There are other cases where the alleged patients have not given that instruction.

I say, again, as I said in the second reading speech, that it is absolutely essential, in consideration of this bill but, more importantly, in considering the next bill to come in the fall, that the minister and all members understand the differing points of view; that it is necessary to approach the problems addressed in this bill from a different perspective. The legal perspective, which could be called an individual rights perspective, is absolutely crucial in considering these provisions and coming up with a bill that

effectively guarantees a judicial or a quasi-judicial procedure for the protection of patients.

It is anomalous to talk about protection from doctors or from hospitals and that appears to be a difficult concept for some. Many of the members opposite will appreciate the concept of protection from lawyers. Perhaps they may have more sympathy with that particular concept, but it is the same kind of concept and it is important to recognize that most, and indeed all, of the major innovations, and the major steps taken to free the mentally ill have not come from the medical establishment. They have come from patients' advocacy groups. Incidentally, no lawyers either, but patients themselves. It is the patients who best understand the real problems that they go through in an involuntary committal.

109 **Hon. Mr. Philipsen:** I will attempt to be brief. I think we would like to get on with the debate on these tabled amendments.

I feel that the member for Whitehorse South Centre views social workers, doctors, policemen and all individuals as out trying to help people who are in times of distress. He feels that these individuals have nothing better to do with their time but run around the country grabbing up children, grabbing up people that they say they are going to commit to institutions because it is something that they wish to do.

I submit that the members of the medical fraternity who are charged with the responsibility for ensuring the wellbeing of citizens in our communities will probably be very unhappy to hear that the member opposite feels that their job is to commit every person who comes in as quickly as possible.

Mr. Kimmerly: On a point of order, Mr. Chairman.

The point of order is that it is improper to impugn a motive to another member. I do not know the citation in *Beauchesne*, but the minister is trying to state what I feel, and he specifically said what I wished to do, and that is impugning a motive to me.

110 It is, first of all, factually incorrect because it is a wrong statement but even if it were right it is improper, and I would ask the member to go on to his next point.

Mr. Chairman: I do not think there is any point order, and I think I should point out something to both sides of the House. You are getting on to personal subjects and I think we should stay in the debate on the mental health act.

Hon. Mr. Philipsen: I would debate the mental health act amendments, after I make another point. I find it very odd that the only member of the legal society in Yukon to be involved in this procedure is the member for Whitehorse South Centre. I am surprised that he says that it is an issue outside his own firm. I have not heard another individual speak of it.

Although I personally do not know all the cases as well as he obviously does, because he has been the person representing all the individuals in these cases, I do know that one of the people he said was walking around in a manner strange in the Yukon; was walking around in a nightgown at 40-below, and suffered frozen fingers, frozen toes and frozen ears to an extent that people thought they would have to be removed. Now this to me clearly indicates an individual who is in need of some assistance.

I submit to you that the people who are best suited to make these kinds of decisions are members of the medical fraternity and not a lawyer. I think that when medical people have made the decision, which is in the best interest of the person who is incapable of making a decision himself, that that decision should not be questioned beyond the regular points of the act, in as far as having representation at a hearing.

Mr. Kimmerly: The minister is not saying, I hope, that those who possibly freeze their fingers and toes in the Yukon are mentally ill. In that particular case, there was no physical damage.

The minister has stated in clear words something that I have been trying to explain, or he has stated clearly that it is not for a member of the legal fraternity to decide, it is a question for the medical fraternity to decide. He clearly stated a moment ago that he believed that whether a person was mentally ill or not was a question for the doctors.

111 That is a common belief, but it is not accurate. It is interesting that some of the justices of the peace in Yukon would agree with him; indeed, one of them clearly stated so in a court. None of the

judges in Yukon would agree. It is a constitutional fact, and it is clear, under the old act, under the act of every province in Canada, and these amendments, that it is not a question for the doctors: it is a question for the courts.

That is the fundamental concept that I have been trying to reach in the last hour or so of the debate. Our law is not that a person is mentally ill if a doctor says so; our law is that a person is mentally ill if a court says so. The fundamental concepts all boil down to that; that we do not, as a society in a democracy, give the power of decision to doctors. It is a public decision affecting the public good and the protection of individuals. It is a court decision and it fundamentally boils down to that.

Hon. Mr. Phillipsen: I think I am disgusted.

I do not think, at any point, that I made the statement that the doctors in the community would be the people who would commit an individual. My statement was that the people who do the assessment would be the medical fraternity.

There is no question in my mind that the procedure that they would go through would be the judicial procedure. The assessment and the statements that would be asked for in the court as to the mental stability of the individual would be based, basically, on the evidence that would be brought forward by either the psychiatrist, the examining person or the medical fraternity.

Clause 1 agreed to

On Clause 2

Mr. Kimmerly: Clause 2(1) is the first place where reference is made to "such other place or institution". It is also referred to in section 4 on page 2, in the bottom paragraph. It obviously means to me that the government could approve some other place as an approved institution and I would ask here: is the intent of this bill to try to continue to exert a legislative control over patients who are committed under this act and placed outside of Yukon in some other province, or is it to approve other institutions aside from Whitehorse General, or is there some other reason for it?

Hon. Mr. Phillipsen: The intent is to clarify the roll of the Whitehorse General Hospital as the institution that will normally make the assessment and treatment of mentally disordered persons while continuing to permit the scheduling of other health care facilities under the regulations, that is, other health care facilities.

Mr. Kimmerly: I am slightly confused. Is the minister stating that there might be other facilities that become approved institutions in the relatively near future?

Hon. Mr. Phillipsen: No. We are undergoing extensive studies. At the present time, I do not think that in the relatively near future that we will have a facility of this nature in Yukon, although I would like to see one in the future.

Mr. Kimmerly: Is it contemplated at all that persons involuntarily committed under this act would be controlled by this act in a legal sense, even if they are physically in Alberta or BC?

Hon. Mr. Phillipsen: Further on in the mental health amendments we have a board. The setting up of a board is there to enable institutions in Alberta, British Columbia, or somewhere else, to report to something in Yukon, rather than what we have presently; they have no one with legislative authority to report to.

Mr. Kimmerly: That is an interesting concept and it is a question that was raised by the Commissioner, actually, several times in the conduct of some of the cases over the last few months. Has the minister received any legal opinion, or legal authority as to the possibility that we can supervise a mentally incompetent person who is actually placed outside? The conflict is obviously if we make an involuntary order and send a person to Alberta, where most people presently go, the Alberta legislation takes over and the review procedure in Alberta is obviously triggered and I know as a matter of fact that the Alberta authorities treat Yukoners or ex-Yukoners as Alberta mental patients under their legislation. It appears to be an unanswered question as to whether any legal authority exists after the person is outside our borders. I would ask the minister if that is contemplated, especially in relation to the review board in further sections.

Hon. Mr. Phillipsen: We have always had no problem with the people in Alberta on their desire to pass information on to us. The only problem we have encountered so far is that we did not have a

board with the legislative authority to receive that information. It is my understanding, through the legal advice that we have had on the drafting of these amendments, that with the setting up of this board the people in Alberta have someone they can report to and we will have no problems.

Mr. Kimmerly: I understand the comments, but I am still not clear. I am fully aware that there is no problem as to the communication of information. Indeed, the professionals involved communicate very freely about these particular cases. The problem as I see it is that the minister's comments about a board to report to are certainly understandable and I have no problem with that, but what does "report to" mean and who has the final authority, the Alberta board or the Yukon board? It is not an academic question because it is entirely possible there could be a disagreement. Indeed, I expect there will be, at some point in the future.

Hon. Mr. Phillipsen: If a person is sent to Alberta for care and is institutionalized in Alberta, I would suggest that the recommendations of the institution would be the recommendations that the board in Yukon would be listening to. The point of having the board is so that a person does not get lost in the system, so to speak. The person is always on the minds of the board. The person is always in a position where the board is asking: how is the person in your care? In that manner, we are always looking to the best interests of a Yukon person placed in an Alberta facility.

¹⁴ Although, as I stated before, we would have to go on the recommendations of the experts in Alberta, into whose institution the person has been placed for care.

Mr. Kimmerly: This is increasingly fascinating to me, because, as I understood the comments the minister made about the board at his second reading pronouncement, he clearly stated that the reason for the board is that it is now contemplated that some involuntary patients will stay here and be treated here at the hospital; whereas, in years past, all of them went outside. That is a very laudible goal and I am supporting it wholeheartedly.

The last comments made clearly implied that it is contemplated that a person in Alberta, for example, or possibly BC, would be still subject to the review board here. Now, without being unduly alarmist, it is my opinion that that is probably not so, in a strict legal sense. The *Yukon Act* has legal force only within the jurisdiction of Yukon. If a patient were in Alberta, the Alberta board would have jurisdiction over that person.

I am trying to get a clarification, partially because I know the Commissioner is extremely interested in exactly this question, and is interested in any legal opinions or test cases that may exist on the question — that it is a desirable goal, because of our lack of facilities here — if we are the jurisdiction that involuntarily commits a person, that the person is not lost in the system, as the minister has stated.

It is my opinion that my motives are the same as the minister's motives. I am not trying to find any fault at all, or make any criticism, simply to raise the problem and determine the government position on it.

¹⁵ I will put it to the minister in this form, for the sake of clarification: it is my opinion that if a person is outside of the jurisdiction, geographically, the Yukon law no longer applies, and the law where the person is applies. Facing that, is the minister able to say if he has any contrary legal information or contrary legal opinions, or is there some effort being made to clarify the situation, possibly by an inter-jurisdictional agreement?

Hon. Mr. Phillipsen: I think what I am trying to say in very few words is that the people in Alberta would be very happy to give us reports on patients who are in their care if we had a board that had the legislative authority to receive those reports. That would be, to my understanding, the extent of the involvement of our board in the operation of the Alberta board's existence. We are only there to ask how the person is doing and to receive a report. They have to have somebody with the legislative authority to receive that report and that is one of the areas we are trying to set up with out-of-territory patients.

Mr. Kimmerly: I think I understand, and I would ask the minister's indulgence that I paraphrase him, and he tell me if I am right or wrong. It is now my understanding that the concept of the

government policy is that if a person is involuntarily committed here and sent outside, he would fall under the jurisdiction of the province where he resides, probably Alberta, and information would come back regularly to the review board. The review board would assess Alberta's information, or, at the very least, receive it. I would contemplate that if the information came back that the person was at the point of release or getting better or, indeed, worse, that the board could recommend such funding adjustments that would achieve the result of either releasing the person or continuing to support him in a financial sense.

Hon. Mr. Philipson: It is my understanding that what the member from Whitehorse South Center has just paraphrased is indeed correct.

Mr. Kimmerly: I would ask what is the rationale for the word "reasonable" in line three? Why was that particular word chosen?

Hon. Mr. Philipson: I think the word has to be taken in the context of the entire paragraph. "Detain" means to keep under control by such force, mechanical apparatus, secure enclosure, or drugs as is reasonable, having regard to the conduct and the apparent physical and mental condition of the person. I would say that the word "reasonable" is easily understood by me, and I think most people would understand that "reasonable" is that; it is reasonable.

Mr. Kimmerly: Lawyers find problems even where most people find it unreasonable to have problems of that type.

Amendment proposed

I move that Bill No. 15, entitled *An Act to Amend the Mental Health Act*, be amended in clause 2(2) on page one by deleting in the definition of "detain" the word "reasonable", and substitute for it the word "necessary".

In speaking to that amendment, I would say that the word "reasonable" has been called by some legal draftsmen a weasel word in layperson's language. It involves a value judgment as to what is reasonable in a certain set of circumstances and what is unreasonable. It does not say this must occur or that must occur. It says that if the reader makes the value judgment that something must occur, then there is authority to do it. I would submit that the word "necessary" is somewhat more restrictive. It is clearly intended to be more restrictive, and it is obvious, or reasonable, and commonly understood that the word "necessary" is more narrowly defined than the word "reasonable", in that it may be reasonable to do something but unnecessary to do it.

¹⁷ The word "necessary" is more in keeping with the definition of a mentally disordered person, which appears in the next definitions.

It clearly gives a more narrowly defined discretionary power to those enforcing the bill. It clearly means that one interferes where it is necessary to do so with regard to the test, being the protection of the public or the alleged patients themselves.

I would say, in the context of the bill, with the new definition of the mentally disordered person, it is much more reasonable to use the word "necessary" than the word "reasonable".

Hon. Mr. Philipson: As the member for Whitehorse South Centre is more aware than I, in law, we speak of reasonable and probable grounds, not necessary and probable grounds. I therefore feel that this amendment is not reasonable or necessary, and I believe that the word "reasonable" in the suggested amendment as stated here, being used by people who are trained in the medical profession, would not be abused to any extent. I therefore would not support this amendment to 2(2).

Mr. Kimmerly: I do not mind my amendments going down to a defeat — most of them do — but I do mind if they are defeated for unreasonable reasons. The concept of reasonable and probable cause is entirely different from this test here. The phrase "reasonable and probable cause" is like a legal buzz word and is defined in many cases, and it refers primarily to the criminal area of law.

¹⁸ That assertion by the minister is just simply unreasonable; it has no sense to it.

The second reason given by the minister can be restated that "I feel the doctors will not abuse this". Forgive me if I am not satisfied by the minister's feeling. The laws should be written in such a way that the potential for abuse is minimized in almost an

absolute sense. The absolutely minimal potential for abuse is desirable in considering these kinds of powers.

The powers themselves are extremely wide and I am specifically interested in the power identified as administering the drugs. Were the definition only to refer to force or mechanical apparatus — meaning a straitjacket, I presume, or handcuffs — and a secure enclosure meaning a room or a cell or a building, reasonableness is probably a good test. However, when additional powers are given as to the administration of drugs, which is not defined as sedatives or drugs only, designed to quiet a person down, there is a different concept here. There is a wide discretion as to the kinds of drugs that may be used in individual cases and, of course, a medical judgment as to the amounts and the mode of administration.

I am perfectly willing to live with a medical judgment as to the amounts and mode of administering drugs, but when the kind of drugs is not specified, and when the kinds of situations where they may be used is open to an extremely wide discretion, the section is, I believe, unreasonable.

¹⁹ It is extremely wide. Medical technology is rapidly changing, and the choices of the drugs available get wider and wider. It is unreasonable to give a discretionary power about administering any sort of drug and leave it that wide. I would ask the minister to stand the section over and consider the amendment in a reasonable and a leisurely way. I would say about that: nothing is lost if the minister obtains various opinions. You have received mine, and simply reject it without really giving an adequate reason at all. I would ask you to either stand it over or give a reasonable reason as to why the word "necessary" is not better.

Hon. Mr. Philipson: The reason that I am not going to entertain standing this over is that the word "necessary" is much more restrictive than the word "reasonable", and the word "reasonable" is the word I wish to see in this amendment, not the word "necessary".

Mr. Kimmerly: That is an example of the reason why I occasionally say that debate here is very unhealthy and is on a very low level. I have asked for a reason, and the minister states that he recognizes the word "necessary" is more restrictive than the word "reasonable". That is obvious and we can all accept that.

He simply says that it is reasonable and not necessary because that is the way I want it to be. That kind of imperial, indeed colonial, statement serves to degrade the whole institution and weakens the confidence of Yukoners that responsible debate occurs in this place.

We should be able to discuss reasons why I think it ought to be restrictive and you think it ought to be wider, and that is obviously the proper way to debate this kind of an issue.

²⁰ **Hon. Mrs. Firth:** I hope I can elevate the tone of the debate. I think I am a relatively reasonable person and I hope, after almost two years in the legislature, that I am learning the art of compromise and the art of debating.

I have in front of me the Oxford English Dictionary, and I would like to call upon my medical experience to see if, perhaps, I can register the point that the government is presenting, as to why we have put the word "reasonable" in and not the word "necessary". Because, as the Minister of Health says, the word "necessary" is more restrictive and in putting that restrictive word in it somewhat ties the hands of the people who are administering the medication or the mechanical apparatus or whatever, because they are no longer required to make a value judgment or to make a judgment that would pertain to that individual who is being restrained or medicated, or so on. "Necessary" restricts them to utilize only what necessary methods are available.

I can give an example. If we encountered a patient, say, who was in the *delirium tremens*, the necessary dosage of medication would be from a low dosage to a higher dosage, or a maximum, which would be considered necessary. If you restrict them to using that necessary limit, they are no longer required to make a judgment. They may decide that, for some reason, they have to go beyond that necessary limit, which would require them to make a reasonable judgment to care for that individual or to restrain that individual.

As the dictionary says, the definition of reasonable is "having sound judgment and not asking for too much". So, the individual

who is being cared for is being required to be cared for by someone who has to make a reasonable decision as to how they are going to deal with that individual in the immediate situation.

The word "necessary" means "cannot be done without or that is needful to be done". So, I think it would be very restrictive for the person in attendance of the person with mental illness to be capable of assessing that individual on his individual needs and dealing with him accordingly.

Mr. Chairman: Order. I think we should recess for 15 minutes.

Recess

²¹ **Mr. Chairman:** I will call the Committee of the Whole to Order. We are now on the amendment.

Mr. Kimmerly: In response to Mrs. Firth's comments, I would say that it would be entirely reasonable if she were talking about treatment, but this is the definition of "detain" not "treat". I would be perfectly willing to live with, indeed I would support a reasonableness test in deciding medical treatment after a person is judged a mental incompetent. In that case the medical decision as to the reasonableness of the treatment is, I believe, appropriate. In this case we are talking about detention, not treatment. If a person is unruly, the doctors could shoot the person full of drugs so that he is sedate, or reasonable, perhaps. They could increase the dosage and put the person out for 18 hours.

²² A philosophy that I would like to see is that before a judge makes a determination, there is power only to do what is necessary.

Hon. Mrs. Firth: The only thing is — and I appreciate what the member for Whitehorse South Centre is saying about detention versus treatment — when it comes to mentally ill people, I think that detention quite often is part of the treatment, if you are detaining a mentally person, say, perhaps, from causing injury to himself or causing injury to others. So, I do not think you can differentiate the two and draw a fine line.

I still feel that if we use the word "necessary", we are unduly restricting the people — usually medical people, or some people in authority — who will be detaining that mentally ill person. The detention that we are speaking of here is not, it seems to me, to be for a long time. It means to keep under control by use of force, and so on, as the clause states.

Further on in the act, there are provisions to see that that individual is not detained unduly or unnecessarily long, under those circumstances. That, also, is considered part of the treatment of mentally ill patients.

²³ **Mr. Kimmerly:** The minister would be right if we assumed the person was mentally ill, but this person is alleged to be ...

Hon. Mr. Pearson: We are not talking about criminals, we are talking about mentally ill people.

Mr. Kimmerly: ... alleged to be mentally ill, and the philosophy that should be in the bill is if a person is able to object, and who is objecting, to a judicial order that he is mentally disordered under this act, there should be a presumption of sanity. The implication of that argument is that there is no such presumption; if a person is alleged to be mentally ill, he is treated as a mentally ill person. In some cases, that is going to be wrong, because there are going to be people alleged to be mentally ill who are not.

It is extremely important that we understand the underlying philosophy of these sections, and I say, in argument, that the amendment I am proposing assumes that a person is sane and it is only possible to do what is necessary to do to detain him in order to protect the public interest and the patient's interest until a judicial determination is made.

²⁴ This is even more important when considering the wide timeframes in this legislation. If the bill is passed unamended, this section would give various people authority to treat people for five days, and possibly even longer, pending a judicial determination. It may very well occur that at the conclusion, the judicial determination is that the person is not mentally disturbed within this definition and in that situation it is far, far better to have only done what is necessary. Less damage to the person's rights has occurred.

If, indeed, a person is found to be a mentally disordered person,

what have we lost? We have lost extremely little. The person is detained as far as is necessary and nothing is lost. I would say it is far safer, it is more humane, and it is consistent with a presumption of sanity that the word "necessary" be used as opposed to the word "reasonable".

²⁵ I would like to say a word about the phrase I have used, "the presumption of sanity", because the government leader has interjected that we are not talking about criminals, we are talking about mentally ill people. I would add that we are talking about allegedly mentally ill people, some of whom are not mentally ill, or alleged criminals, in the same sense.

There is, in law, a presumption of sanity, and that is absolutely obvious. People are either sane or insane in a legal sense, and we presume everybody is sane unless the contrary is proven, and that is an elementary, very simple, thing. When a doctor says, or a peace officer says, or a family member says, "I think that a person is dangerous", the presumption should not end there. If the person is a patient, if a 72-hour order is made, then obviously some necessary treatment is called for.

²⁶ I would emphasize, necessary. I would also emphasize that it has been the decision of the courts, to date, after these cases go to court, that there is power only to administer such drugs as are necessary. There are some decisions to deny the use of drugs at all, in specific cases.

What we are doing here is to take away some judicial discretion and we are giving the discretion to an unnamed authority in an approved institution and, outside a peace officer, — especially about administering drugs — they will probably be nurses or doctors, or nurses acting under a doctor's supervision.

It is a very fundamental abuse, I would suggest, to deny a presumption of sanity until a judicial decision is made. It is only consistent with the philosophy that an alleged mentally ill person shall be treated as a mentally ill person. That is the only underlying assumption or philosophy that it is consistent with, and that is wrong.

If this amendment is rejected out of hand, I would suggest a very fundamental abuse of lack of consideration has occurred.

Hon. Mrs. Firth: I want to speak just one more time to these amendments to the *Mental Health Act*, because I somehow get the feeling that the member for Whitehorse Centre is, in his legal terms, trying to apply something in a legal sense to something that really should be dealt with in a medical sense.

I do not know how many mental patients the member for South Centre has been involved with or has looked after, and so on — and I would never question that — but I would only like to speak from my experience, after some considerable years as a registered nurse and after having had a fair amount to do with mental patients and mental illness.

²⁷ The underlying philosophy of this amendment to this bill is not to give medical people the ability to go out and snatch people who they feel are mentally ill off the streets and commit them, and do all kinds of unconstitutional things to them. These amendments clarify committal procedures and patients' rights and they clarify when treatment can be given without consent. That treatment that is given without consent is in an immediate situation, and again I refer to the fine line the member from Whitehorse South Centre is trying to draw between detention and treatment. You cannot do it. If someone is found to be in an immediate need, this bill is not going to give medical authority the ability to label them automatically as a mentally ill patient. Quite often we have individuals who display extreme behaviours that are not considered socially acceptable. That could have various causes. It could be physiological cause, it could be induced by alcohol or it could be induced by drugs. That does not necessarily mean that that individual is mentally ill. However, that individual could require some immediate treatment.

This bill gives the medical authorities the ability to give that treatment to protect that person who is displaying that extreme behaviour or to protect that mentally ill individual.

If the judiciary for some reason think that they should be jumping in and saying who is mentally ill and who is not, I do not see how it is logical or feasible for them to step in and do that in an immediate situation. You cannot tie the hands of the medical authorities to

protect those individuals, either from themselves or to protect others from them.

These situations that the member for Whitehorse South Centre is referring to, situations of people who have had their rights infringed upon, well at the time I worked in the Whitehorse General Hospital we saw very few of those individuals. However, we did have the odd circumstance of a patient who was not perhaps restricted or, as the bill says, detained, or kept under control, and who wandered off. We found them in the river or we never found them again.

I think that it is very important for the government to recognize that this can happen and to give the medical authorities the ability to prevent that kind of thing. To have an individual lost because the medical authorities had no ability to detain that person to make a medical assessment because the judiciary felt that they were the ones that should be making that medical assessment, that one life that is lost is far greater than the infringement upon people's rights in the very rare circumstances where they may have had their rights infringed upon because they had been diagnosed as a mentally ill patient and they were not. This does not stop after that immediate treatment. Once that individual has had immediate treatment, if he is not able to assess whether they want to continue on with treatment and give his consent to do so, there are procedures in place for a mental health review board to review the detentions and care, so that we are having incidences that the leader of the opposition mentioned some time ago where a patient had been locked away for many, many years.

I just want to express that the underlying philosophy of the bill is to give the medical authorities the authority to treat these patients in an immediate situation and to clarify when the treatment can be given without consent, and also take into account the committal procedures and the patient's rights.

Mr. Kimmerly: The previous speaker is not understanding my points. She has clearly got it all wrong.

Hon. Mr. Lang: How come you are always right and everybody else is wrong?

Mr. Kimmerly: The concept of detention exists in the old legislation, and it is simply being extended in these amendments. Whether the word "reasonable" or "necessary" is finally adopted is completely irrelevant to those cases of patients wandering off from the hospital. That is a question of whether there were grounds to make an order in the first place or not, which we are not talking about now, and whether the detention was adequate in a physical sense. We are talking about people who are detained here, and those people who wandered off were, for the most part, not detained and not involuntarily detained, probably because the grounds were deemed insufficient by the authorities at the time.

That is one thing she got wrong. That problem is completely irrelevant to this issue of necessity or reasonableness.

The other concept was about treatment and she has simply mixed up the words about the "authority to treat" and "immediate treatment". Frequently, people get immediate treatment; generally, and most often, by consent. Those situations are easy to deal with. We are not dealing with the definition of treatment; we are dealing with detention.

Hon. Mrs. Firth: Detention is part of treatment.

Mr. Kimmerly: The minister states that detention is part of treatment. In this case, treatment can become part of detention, and that is objectionable. We should have an ability to detain people who are apparently dangerous.

Nobody is arguing with that, that is not an issue. We are arguing with what means and what degree of detention is going to be allowed. I have specifically mentioned the major concerns around the administering of drugs.

Detention through administering drugs clearly involves a medical judgment. There is a place for that and the doctors can be directed by various tests. If it were a detention for the purposes of treatment, after a judicial determination of mental disorder, a reasonableness test is quite appropriate. If it is a detention before a judicial order, the test ought to be more restricted; that is, detention should be allowed, but only such detention as is necessary to preserve the patient and preserve the public safety until a judicial order can be obtained.

These kinds of things can be abused and, indeed, are abused —
Hon. Mrs. Firth: Rarely.

Mr. Kimmerly: Rarely, yes. They are abused rarely, that is absolute truth, but it is our duty, as legislators, to write the law in such a way that that rarely is the lowest possible number of cases or categories of cases.

It is not unduly restrictive, in any way at all, to make the test a necessary one. It still preserves adequately and properly the concept of detention. The member for Tatchun refers to five days. Well, I challenge him to be involuntarily administered drugs for five days: five days can be a very long time.

That is another issue that we will debate at some length in the sections to come.

The patience of the members on the other side has been exhausted, according to their own words. I feel so strongly about this that I do not care if they say I am unreasonable. I thought that before I rose, in any event, and I feel I have lost nothing.

I would submit that very little is lost, Mr. Chairman. It is 9:25, and if I talk out the clock to 9:30, the minister will be forced to consider the question over night and vote tomorrow, and I can easily do that.

Perhaps it is appropriate to adjourn a moment or two early, and avoid the members opposite listening to what they feel are my unreasonable reasons.

Amendment defeated

Hon. Mr. Philipson: I would move progress on Bill No. 15.
Motion agreed to

Hon. Mr. Lang: I would move that Mr. Speaker do now resume the Chair.
Motion agreed to

Mr. Speaker resumes the Chair

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

Mr. Brewster: Mr. Speaker, the Committee of the Whole has considered Bill No. 11, *Interim Supply Appropriation Act, 1984-85*, and directed me to report the same with amendment.

Further, the Committee has considered Bill No. 15, *An Act to Amend the Mental Health Act*, and directed me to report progress on same.

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

Some Hon. members: Agreed.

Mr. Speaker: May I have your further pleasure?

Hon. Mrs. Firth: I would move that it is reasonable and necessary that the House do now adjourn.

Mr. Speaker: It has been moved by the hon. Minister of Education that the House do now adjourn.

Motion agreed to

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

The House adjourned at 9:28 p.m.

The following Sessional Papers were tabled March 26, 1984:

84-4-6

"Points of Agreement on Outstanding Issues Between the Government of Canada, the Yukon Territorial Government and COPE, Pursuant to Inuvialuit Final Agreement". (Pearson)

84-4-7

Letter to Minister from Yukon Medical Council re Mental Health Act (Philipson)

84-4-8

"Yukon Public Service Staff Relations Board - 1982-83 Report" (Pearson)