



The Yukon Legislative Assembly

Number 6

3rd Session

25th Legislature

HANSARD

Wednesday, March 30, 1983 — 1:30 p.m.

Speaker: The Honourable Donald Taylor

Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake

DEPUTY SPEAKER — Andy Philipsen, MLA, Whitehorse Porter Creek West

CABINET MINISTERS

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

GOVERNMENT MEMBERS

(Progressive Conservative)

Bill Brewster	Kluane
Al Falle	Hootalinqua
Kathie Nukon	Old Crow
Andy Philipsen	Whitehorse Porter Creek West

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

Whitehorse, Yukon
Wednesday, March 30, 1983

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

Prayers

Mr. Speaker: We will proceed at this time with the order paper.

ROUTINE PROCEEDINGS

Mr. Speaker: Are there any returns or documents for tabling?
 Reports of committees?

Are there any petitions?

Reading or receiving of petitions?

Introduction of bills?

Notices of motion for the production of papers?

Notices of motion?

Are there any statements by ministers?

This then brings us to the question period.

QUESTION PERIOD

Question re: Rural banking services

Mr. Penikett: I have a question for the acting government leader, in his temporary position as Minister of Finance.

The government leader indicated last fall that the provision of rural banking services has been a criterion used in the selection of the Yukon government's banker. Has cabinet ever considered making the availability of rural mortgage lending services a similar priority when evaluating banking contract proposals? I ask that question in the light of the minister's personal commitment to private home ownership.

Hon. Mr. Lang: Since the member opposite has already indicated that I am in a temporary capacity, in respect to my responsibilities as the Minister of Finance, I would be prepared to take notice on the question that he has given because I do not have all the information at hand, in respect to that particular issue.

Mr. Penikett: I wonder if the minister would, on behalf of his first minister, at least give the undertaking that, when the banking contract next comes up for review, that the provision of rural mortgage lending services will be a requirement for consideration under that contract by cabinet?

Hon. Mr. Lang: I would go so far as to say that I would not give an undertaking to the member opposite that it be a requirement, but I would definitely draw it to the Minister of Finance's attention when he arrives back to see whether it could perhaps be a consideration.

Mr. Penikett: I just wonder if I could ask a particular question which the minister may be aware of, having been involved in this government for a number of years. Could the minister indicate to the House if this matter has been a subject of discussion in cabinet or in his communications or dealings with the municipalities on any occasion during the time he has been in his present portfolio?

Hon. Mr. Lang: It has been an issue raised in a number of different forums at different times, in respect to the availability of mortgage money. It is my understanding, and I may stand to be corrected on this, that there are monies made available through the banking fraternity for the purposes of mortgages outside of municipalities proper. I do not know what procedure they follow and if there are problems there, maybe there are a number of ways of approaching the problem and that is why I do not want to give a firm commitment today.

Question re: Economic planning

Mr. Byblow: My question is also to the acting government leader. The current syndrome of a boom-bust economic cycle is, today, highlighted by the very evidence of the Cyprus Anvil closure. Certainly the major dependence on one mine perpetrates that kind of syndrome. Is the acting government leader's government developing a long-term economic planning policy and, if so, when can articulation of that be expected?

Hon. Mr. Lang: If the member opposite is referring to the general economic development agreement that we would like to see come into place between the government of Canada and Government of Yukon, there is active consideration internally and I would expect a decision within the very near future in respect to the direction of the way those expenditures would be made. I do not think that we should put anybody in the position of thinking that we are not going to be dependent — at least in part, if not in whole, as far as our total economy is concerned — upon the mining fraternity which is dictated by international metal markets. We are looking at various ways where perhaps further efforts can be made to diversify the the economy; tourism is a fine example. We are looking at our agricultural area very seriously, so there are a number of areas that are being addressed at the present time.

Mr. Byblow: The minister made reference to the economic development agreement that is being negotiated with the federal government and we heard of this at least a year ago when there was also reference to it in the throne speech. What is the state of negotiations on that agreement?

Hon. Mr. Lang: There has been a number of meetings between the Government of Canada and the Government of Yukon at the officials level. There is a document being prepared for consideration of cabinet here in Yukon and from thereon I would suspect that there would be further discussions at both the officials level as well as at the political level in Ottawa in concert with the Government of Yukon to see what type of agreement we can reach.

Mr. Byblow: The minister, in answering the first question, drew reference to diversification of the economy as one of the goals or objectives of his economic policy. Could I ask him if that is an emphasis being placed in the development of the policy and will large scale energy projects be a part of that policy?

Hon. Mr. Lang: As far as large energy projects are concerned, the member well knows that is the direct responsibility of the Government of Canada, whether we like it or not. In respect to money in various other aspects of the economy, I am sure that is going to be part of the document that we will have to consider. I should point out that I am not directly responsible for that portfolio, so subsequently I am not totally up to date as far as the day-to-day paperwork is concerned in that portfolio.

Mr. Kimmerly: A question to the Minister of Consumer and Corporate Affairs, again about food prices: the chairman of the committee today publicly stated that this minister had implemented none of the recommendations made in the report of a committee of this Assembly. Yesterday, the minister was making a list of the implementations. I wonder if the minister would clarify the apparent contradiction?

Hon. Mr. Ashley: I welcome the opportunity to clarify the misstatement by the previous chairman of this committee. As I said in the fall, the Department of Consumer and Corporate Affairs is only responsible for about one of the recommendations in this report; it is other departments, tourism and economic development, that are responsible for it. I do have the department getting that list together right now. It is not complete yet; when it is, I will be putting it forward, probably tomorrow or next week, as soon as I can.

What the Consumer and Corporate Affairs department has done to date is to have put out educational material to the consumer throughout Yukon and, I might add, there has been a substantial package of it; as a matter of fact it is very thick. This is what they have been sending out to all the libraries and the LID's throughout the Yukon. So, they have certainly been doing their job on that; and that is one of the implementations I mentioned.

I did not state that the report was not worthwhile, by any means; I said that there were some things I disagreed with. What they have been doing, as I said, is this: supported the encouragement of cooperative bulk buying by community groups, and that is what I stated in the fall. I will be giving you an update, as I said, in the next couple of days, as soon as we have all the information gathered from the department as to what is happening.

Mr. Kimmerly: I thank the minister for a complete answer; this is the seventh question I have asked since the election of the minister and, finally I got an answer.

Mr. Speaker: Order, please. I believe the hon. member is now making a statement.

Mr. Kimmerly: I would ask: the minister stated yesterday that he has not discussed it with his colleagues, as of yet. When is the minister intending to discuss food prices at the cabinet level?

Hon. Mr. Ashley: In answer to the first statement that was made by the member opposite, this review and report was done by a different government, so I would just like to make that plain and clear; it was a previous government that I was not a member of.

Now, when I get the information, I will be discussing it with my colleagues; in answer to the last question.

Mr. Kimmerly: As a broader question, not only about the committee, since the 7th of June, 1982, has this minister made any proposal of any kind to the cabinet about food prices?

Hon. Mr. Ashley: I have not, as I said, discussed actual food prices with my colleagues. There are other items that I am working on daily that I certainly have been discussing. My department certainly has been working on parts of this report, as I have already explained.

Question re: Stokes Point

Mr. Porter: My question is for the Minister of Renewable Resources.

On July 6th, 1978, the federal government withdrew 9,600,000 acres in the northern Yukon for conservation purposes. Subsequent to that order-in-council decision, the Minister of Indian Affairs has received a legal opinion from the federal Justice Department that suggests that DIAND could grant Gulf Canada a land use permit for Stokes Point. My question is: does this government concur with, or, to be more precise, does this government agree with the federal Justice opinion on the legality of granting the land use application?

Hon. Mr. Tracey: I think we have made our position fairly clear. Last fall, when we passed a resolution in this House, we said that if it was shown to be environmentally sound that we would support Gulf's application at Stokes Point. Our position has not changed; we are concerned about the environment; we are concerned about the game and, other than that, we have no problem with the port at Stokes Point.

I think we have said that over and over and over again; I do not know what the member is trying to get at.

Mr. Porter: What I am getting at is specifically the question that I asked. Has this government a legal opinion from the legal people whom it employs that agrees or disagrees with the federal Justice opinion on the legality of the land use application process?

Speaker's ruling

Mr. Speaker: I would have to rule that question out of order. Questions relating to legal opinions are clearly out of order. This question would seem to be out of order as was the first question. The first question, of course, asked a question seeking an opinion about government policy, which is out of order. The second question was asking the opposite side about a legal opinion and I do not feel, from the Chair and from the rules, which state that "the question cannot seek an opinion either legal or otherwise ...". You simply cannot ask questions about legal opinions.

Mr. Penikett: On a point of order, it is quite right that it is not possible to ask the government to give a legal opinion. It is perfectly in order, I submit, for the government to be asked if it has obtained a legal opinion. You, sir, have permitted such questions in the past. Every precedent that either of us can cite would make it quite clear that to ask the government if it has obtained a legal opinion and what that opinion was, would be perfectly in order.

Mr. Speaker: If the question is restated to include the question as posed by the hon. leader of the opposition, the question would be quite in order.

Mr. Porter: If I may be permitted to rephrase the question, or ask the same question that I asked, has the minister obtained from within the legal department of this government an opinion as to the legality of the application in the area of Stokes Point?

Hon. Mr. Tracey: No.

Question re: Justice of the peace appointments

Mrs. Joe: I have a question for the minister responsible for justice. Yesterday, the minister stated that it was the policy of his government to appoint justices of the peace and then later train them. Can the minister tell us how his department determines how a person qualifies for an appointment?

Mr. Speaker: I would ask the minister to make a brief reply to this one. This could involve quite a lengthy reply.

Hon. Mr. Ashley: The department does not qualify a JP. I would like to make that perfectly clear to the member opposite. The JP Council recommends JP appointments to this government, to the cabinet, and then the cabinet appoints. They are then checked out through an RCMP procedure. That is done at the Justice of the Peace Council level and that is done before they are recommended to cabinet for appointment.

Mrs. Joe: The question I had was: can the minister tell us how his department determines how a person qualifies for an appointment?

Hon. Mr. Ashley: What I believe the member opposite is referring to is how do we know they are going to be good once we have trained them. We train them after they are appointed and they do not sit on the bench until they are properly trained, and that is up to the Chief Judge right now and the JPs who are there presently. We do not have unqualified JPs sitting on the bench.

Mrs. Joe: A woman from Haines Junction was denied a JP appointment by cabinet, even though she attended two training sessions, was found qualified and is respected in her community. Since the minister has never given her a reason for the rejection, is he now prepared to do that in the form of a letter to her?

Hon. Mr. Ashley: As I stated yesterday, it is a cabinet prerogative to appoint or not to appoint members who are presented or recommended by the JP Council and that is what has happened.

Mrs. Joe: Can the minister provide this House with up to date qualifications required for the justice of the peace appointments. We would like to know?

Mr. Speaker: Perhaps that should be more in the form of a written question, but, if the minister can answer, he may.

Hon. Mr. Ashley: The JP Council is the one that recommends; we do not.

Question re: Agriculture

Mr. McDonald: I have a question for the minister responsible for agriculture.

The agricultural dispersement ground rules, I believe, Order-in-Council 1982-96, states only that agricultural endeavours specified in the agreement for sale must be completed to the satisfaction of the Commissioner. The minister has mentioned verbally in the House that soil analysis, irrigation and road access are factors taken into account in determining successful applications. Will the minister table in this House a complete list of factors used to determine a viable agricultural venture, along with a thorough explanation of each?

Hon. Mr. Lang: No.

Mr. McDonald: As this government is not merely experimenting with rules, but is actually selling off what little agricultural land we have, thereby affecting the whole future of agriculture in the territory, will he at least tell this House in some form or other what factors are used to determine a viable agricultural venture in this territory?

Hon. Mr. Lang: A submission is put forward by the applicant, in a process that the member is fully aware of, to the Agriculture Development Council. It is considered on its merits in respect to the viability of the land, water availability and also access. A great deal of the success of the operation is going to depend on the ability of the individual who has applied.

The saving grace, in respect to the present policy that is in place, as I indicated, I believe, last fall, is the fact that if they do not meet the requirements as put down by the Agriculture Development Council, that land will return to the Crown and perhaps then, at that stage, it will probably be made available to someone else who is perhaps more serious in going forward with an agricultural submission.

It would seem very straight-forward to me, in respect to exactly what is being requested, in a general sense. At the same time, I should point out that the general areas that are being applied for for agricultural purposes are screened by the renewable resource department, in respect to the effect on the game population in that area. So, there is a number of checks and balances, and various authorities, as well as individuals, are asked for advice.

Mr. McDonald: As the minister will not provide a thorough list of factors used to determine viable agricultural operations in the territory, I will begin my guessing game by asking him: before signing over title of agricultural land to prospective farmers, is there any stipulation ensuring that there is adequate financial resources or access to credit which would permit a successful startup?

Hon. Mr. Lang: I am sure that the Agricultural Development Council, if they believe that the operation is of such a magnitude that we ask questions of that nature, will assure itself that whatever is being applied for could be done within the financial capabilities of the individual in question.

Question re: Electrical Public Utilities Board

Mr. Penikett: I have a question for the acting government leader.

Concerning the recent appointments to the Electrical Public Utilities Board, announced in a press release on January 11, can the Minister say what criteria we used in filling the vacancies on this Board.

Hon. Mr. Lang: One was the question of who was available, number one, and if the individuals have the time to serve because the appointments on that particular board are very time consuming. Also, various backgrounds; we were looking, at least in one particular case, for some financial background in accountancy, because the area that they are concerned with is a very technical area, as the members across the way had referred to in their submission to the Yukon Electrical Public Utilities Board, and subsequently we thought that would be an asset.

Mr. Penikett: I would be curious in pursuing further the technical qualifications of the nominees. Can the Minister tell the House if anyone other than card carrying Conservatives were considered for these appointments, and since he is concerned about the question of availability, would he be interested in receiving a list of other available citizens who might be interested in an appointment?

Mr. Speaker: Order please. I would consider that question as being quite frivolous.

Mr. Penikett: Mr. Speaker, it is a perfectly serious question as my next supplementary will make clear.

Speaker's Ruling

Mr. Speaker: I rule that question out of order. If the hon. member has a supplementary, please proceed.

Mr. Penikett: If that is your decision, Mr. Speaker. Let me ask the minister this question then: other than being a card carrying Conservative, what qualifications did those appointed have for seats on this board, which will consider important issues such as deciding between the interests of Yukon consumers and the interests of this government in Yukon Hydro and the government's partner, Yukon Electric?

Hon. Mr. Lang: I want to assure the member opposite that I probably know as many, if not more, people than he does in the Yukon Territory so if we are looking for the people who could fulfill those appointments and the mandate that the Legislature has given to them, I have doubt that we are quite capable of finding the necessary people. Further to the qualifications or backgrounds of the people involved, we wanted people who had some business experience as well, and also wanted to ensure that we had someone from outside "the capital city, Whitehorse". I think we resolved that and also at the same time we have made an effort to ensure that the women of the territory are fairly considered and if one looks at the new appointments, I believe one was a woman.

Question Re: Furnace Chemicals/Yukon Housing

Mr. Philipsen: During the course of the Public Accounts Committee hearings, it was noted that we now have on hand a rather large excess of chemical substance to be used to clean furnaces or treat water. Could the minister responsible for the Yukon Housing Authority give this House an update on this matter?

Mr. Penikett: Point of order. I doubt very much that this question is in order since there is a resolution on the order paper concerning the subject which the member has raised the question about; namely the motion to concur in the Fourth Report of the Standing Committee on Public Accounts, which contains considerable information on the subject just raised by the member.

Mr. Speaker: I would so agree.

Question re: Training courses

Mr. Byblow: I have a question I will direct to the Minister of Consumer and Corporate Affairs. Over the recent period of the last ten-month Cyprus Anvil shutdown, a number of people in Faro, including loyal Conservatives, have availed themselves of training opportunities and upgrading courses. Since almost 50 of my constituents have completed air brake courses in the last while, most of them, as a consequence, are interested in upgrading their drivers' licences. Could the minister undertake to have his department offer a testing opportunity in the immediate future for these people in Faro?

Hon. Mr. Ashley: I will certainly look into it and get back to the member.

Mr. Byblow: The minister would be pleased to know that the earliest scheduling his department has offered is early summer and since many of my constituents, caught in the uncertainty of the Cyprus Anvil situation, have difficulty projecting their futures in the community that far ahead, would the minister further undertake to attempt to have a testing program in as early as April?

Speaker's Ruling

Mr. Speaker: Order, please. The hon. members are, for some reason, very difficult for the Chair today. The first question was clearly an abuse of the rules in that the questions are not to be making representations as all members know. The second question is along the same line, but if the House deems that it is important that the question be answered, I will permit it to go ahead. The Chair would appreciate it if members would not raise representations in the question period.

Hon. Mr. Ashley: I believe I already told the member opposite that I would look into it and do what I could.

Mr. Byblow: On the same subject, I understand that there are a number of people in the community who would be qualified and experienced to actually conduct the necessary tests for upgrading. Could the minister undertake to explore that option as well?

Hon. Mr. Ashley: By all means.

Question re: Food prices

Mr. Kimmerly: Another question about food prices: in December, 1982 I asked the minister about discussions about the recommendations with any of the officials of the federal government and the answer was that the minister would check into it. Is there any ongoing negotiation with the federal government about food prices?

Hon. Mr. Ashley: I am going to have to get back to the member on that question.

Mr. Kimmerly: Also, in December, I asked about recommendation number five concerning unfair competitive practices. Is the minister now able to answer that question?

Hon. Mr. Ashley: It seems that the member opposite did not hear what I said earlier. I said I will be getting back to him and the House on what other departments have done with respect to the recommendations in the report. I will be speaking to that at that time.

Mr. Kimmerly: On Monday, the minister indicated that the report was biased. Would the minister indicate if it is biased in favour of the consumer or in favour of the corporate interest?

Hon. Mr. Ashley: As I said I will be reserving all of these questions and take them on notice and answer them all at the same

time.

Question re: Transport Public Utilities Board

Mr. Porter: Getting back to the Minister of Consumer and Corporate Affairs, I would like to ask him a question in his capacity as minister also responsible for the Transport Public Utilities Board. Has the Transport Public Utilities Board been approached by Canadian Coachways Company regarding further withdrawal of services on any of their routes in the Yukon?

Hon. Mr. Ashley: That is an independent board and I do not receive what goes before it. I believe they have appealed on the one for the north highway but, aside from that, I will have to ask the Transport Public Utilities Board for the member for Campbell.

Mr. Porter: Is it this government's policy to have those routes maintained?

Hon. Mr. Ashley: That is a function of the Board. They are an independent Board. I cannot tell them what to do.

Mr. Porter: Does the minister indeed know what the Transport Public Utilities Board does?

Hon. Mr. Ashley: I have just told the member what the board does. I resent his implication.

Question re: Women's Bureau

Mrs. Joe: I have a question for the minister responsible for the Women's Bureau. On March 8th this year, International Women's Day, the minister noted in a press release some statistics that indicate that most women in Canada work in a low-paying job with limited opportunities for advancement. Since the minister was also quoted as saying that there is an enormous amount of work to be done to make our society equitable for women, will the minister now make a completion of the Women in the Labour Force Study a top priority?

Hon. Mr. Ashley: The Women's Bureau is working on that now and, when I receive a report, I will be getting on to it. I have not received anything yet.

Mrs. Joe: What I wanted to know was whether or not it was a top priority. My second question is also to the minister responsible for the Women's Bureau: is the minister aware of the motion passed by this House in 1979 which called for the continued development of an affirmative action program for women within the public service of the Yukon Territorial Government; and, if he is aware of the motion, does he agree with it, or does he consider it somehow to be biased?

Mr. Speaker: I think the latter part of the question would be out of order because questions seeking the opinion of a minister are quite out of order, but I will permit the first part, which is quite in order.

Hon. Mr. Ashley: The first part, I believe, was whether I am aware that there was an affirmative action program. Yes, I am aware of it.

Question re: Agriculture

Mr. McDonald: I have a question for the minister responsible for agriculture, once again. Yesterday, the minister said that the government is thinking of bringing on staff, or on contract, someone with agrarian expertise which "we presently lack". Can the minister explain what expertise is not contained within the Agricultural Development Council and, consequently, what the role of the council is or should be in determining agricultural policy?

Hon. Mr. Lang: Primarily, I was speaking to the fact that we are hoping to have someone, along with the soil pedologist, who could be available to go out and give certain advice to those people getting involved in agriculture; also, as the same time, we would expect the individual in question to have the background in respect to what is available through the Government of Canada to the provinces, which perhaps we could make use of in Yukon to the benefit of those people pursuing agriculture. It is our position that, if there are certain benefits made available to the provinces, they certainly should be made available here; and if we can get some expertise and administrative capability aware of it, it would make our job that much easier in respect to discussing the question of agriculture with the Government of Canada.

Mr. McDonald: The Agricultural Development Council is given the right in legislation to recommend policy in a variety of areas. Has the council turned its attention to the concerns I raised yesterday such as farm tax rates, securing of federal farm credit, and health rules, and have they recommended a policy in these areas?

Hon. Mr. Lang: They have had some discussions on it. I think it is safe to say that they recognize that they could utilize some advice in this area as well, because they are laymen, as far as the procedure and the general conduct of government is concerned, and that is why I have expressed the opinion that we should seriously be looking at the possibility of obtaining somebody who is well qualified in respect to the capabilities that I outlined in my previous answer to the question.

Mr. McDonald: In response to a question yesterday, the minister suggested that his department was experiencing administrative problems, delineating boundaries, I believe. What sort of problems was he referring to? Perhaps he could elaborate on this?

Hon. Mr. Lang: The problem was that the administrative individual that was on staff applied for a job with the Government of Canada and subsequently was offered the job and took it, and therefore we did have a period of time where that particular position was not filled; that of the land administrator. It has now been filled and I suspect that we will overcome some of the problems that we experienced over that brief period of time.

Mr. Speaker: There being no further questions, we will proceed to orders of the day.

ORDERS OF THE DAY

Mr. Speaker: Motions other than government motions.

MOTIONS OTHER THAN GOVERNMENT MOTIONS

Motion Number 2

Mr. Clerk: Item number 1, standing in the name of Mr. Kimmerly.

Mr. Speaker: Is the hon. member prepared to deal with item number 1?

Mr. Kimmerly: Yes, Mr. Speaker.

Mr. Speaker: It has been moved by the hon. Member for Whitehorse South Centre, seconded by the hon. leader of the official opposition, that the qualifications of electors as embodied in Section 18 of the *Elections Act* be referred to the Standing Committee on Rules, Elections and Privileges;

THAT the Standing Committee review these qualifications to determine whether they are in violation of the *Canadian Charter of Rights and Freedoms*, with particular reference to the age and residency requirements and to the rights of remand and convicted prisoners; and

THAT the Standing Committee, at the fall sitting of the House, report its findings and any recommendations it may have for amendment to Section 18 of the *Elections Act*.

Mr. Kimmerly: I would first like to say that this motion is put forward as a way to refer some very serious questions to a committee of this Assembly in order to study them very thoroughly. I wish to say a few words to identify for all members why a study is necessary and why the questions are so important.

I wish to say that my caucus, or this side of the Assembly, has not come to a final position on the various questions. We have purposely not come to a position because various factors and, indeed, some facts are unknown and we believe it requires a substantial, serious consideration.

I will express my own personal view in a moment or two and I wish to say it is not the view of my party, but my personal view, and I express it for discussion purposes. I am of an open mind, still, about all of the questions.

The problem is that it is my opinion, and I believe it is fairly obvious, that existing territorial legislation, specifically the *Elections Act*, and specifically Section 18 of the Act, is in violation of the *Canadian Constitution* or the new *Canadian Charter of Rights and Freedoms*. I wish to quote from the *Charter of Rights and*

Freedoms very briefly, in order to clearly identify what the problem is in my opinion.

Under "Democratic Rights", Section 3 of the Charter, it states: "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein". Now, that is a very simple, clear statement and I submit that it is not necessary to obtain any particular legal training or legal qualification to understand it. It is clear and simple: it is the right of a citizen of the country to vote in federal and territorial elections.

There is also a section about the fundamental freedoms and the reasonable limits prescribed by law on those rights and it is obvious that, practically, there is some limitation necessary. For example, a legally incompetent person in a mental institution — should he be allowed to vote?

¹² It is an interesting question. For example, an infant, a child — should it be allowed to vote? The section in the Charter sets out that the fundamental right to vote is subject only to such reasonable limits prescribed by laws as can be demonstrably justified in a free and democratic society. That is a little more general, of course, and it clearly gives the courts a direction that the way to decide these constitutional questions in a judicial forum is that there must be a demonstrable justification for any limit. In other words, anyone wishing to impose a limit must be able to demonstrate that it is a justifiable limit.

In the case of an infant, that is not going to be too difficult. There may be a question of the well-informed 18-year-old or 17-year-old in federal elections, which may be a substantial question. In any event, a limit or a cut-off point must be established. It is interesting that in federal elections the age limit is 18; in territorial elections it is 19. Which is right under the Charter or are they both right? The point I wish to raise is, in order to guarantee certainty for the benefit of the citizens of the territory, it is our duty to demonstrate these questions in this Assembly or in a political arena and that will, I submit, assist determinations in a judicial arena.

If we do not speak politically, the judicial forum will have nothing or very little to go on and, it is my contention, will not make as informed a decision as it might make. It is our duty to speak on these questions.

Age is one question identified. Another question of importance, although it does not affect as many people, is the question of people in jails. Under our law, if an unconvicted person is in jail — we say on remand — he cannot vote. It is the decision of the British Columbia courts that that is unconstitutional; that a serving prisoner, or a prisoner serving a sentence, loses that citizenship right and cannot vote, which is exactly in accordance with our law. However, a person who is not convicted has not lost the right to vote. It does not affect very many people. It probably only affects seriously one riding in the Yukon — Whitehorse West — at the present time, anyway. However, it is a question that ought to be considered and my position is that our law ought to be brought into conformity with the decisions already known on that question.

The most important question, and the most controversial question, is going to be the residency requirement. Under our law, as everyone knows, a person is not qualified to vote unless he is a Yukon resident for the 12 months immediately preceding polling day. That is clearly in our law. If it is the will of this Assembly that that is maintained, it would serve us well to demonstrate a justification for that and we should be doing that. It is my opinion that it is important to do that in order that a political statement be made about the justification, if there is one. The Committee of Rules, Elections and Privileges ought to study that question.

¹³ Now, it is my personal opinion that the residency requirement is, in fact, unconstitutional and would be struck down by the courts and that a residency requirement only so long as to make possible the administrative requirements of elections would be allowed by the courts.

There is a substantial legal jurisprudence on the question in several countries and, most noticeably in the United States. The right to vote in the United States is clearly guaranteed in the Constitution in wording almost exactly similar to our present *Charter of Rights and Freedoms*. The legal tests about demonstrat-

ing a justification are the same tests as applied in the American courts. There are many cases in American courts, under the various state laws, and all of them have eventually been resolved to allow only a 30-day requirement, as it can be demonstrated quite easily that it is justified that that period of time is allowable in order to make the lists and nominate candidates and print the ballots and those sorts of things.

It is my opinion that the Supreme Court of Canada will eventually find, in the next few years, that the federal residency requirement, which is residency at the time of the writ, is the limit of the question, aside from some variance about the election procedures. Probably, in Yukon, the best opinion would be that the residency at the time of the election writ is the only legally justifiable residency requirement: that is my opinion.

If we do not study this question, we leave ourselves open to substantial uncertainty in the law. Now, it eventually must go to court in other provinces, if not here, and I say that it is appropriate for these questions to be decided in assemblies such as these, as much as is legally possible. Our influence over any eventual legal decision ought to be maximized. If we do nothing, we will have no input into that question at all. If we bring our laws into clear compliance with the *Constitution*, there will be no uncertainty in the electoral laws.

I urge all members to accept this proposal to study the questions, both the more minor questions and the substantial questions, and the most important, about a residency requirement, and to report to the full Assembly in the next Session, and that this Assembly ought to establish its position on the question very clearly and ought to attempt to demonstrate any residency requirement that this Assembly feels is justified.

¹⁴ **Hon. Mr. Lang:** I listened with a great deal of interest and respect to what the member had to say about motion number 2 that is before the House for consideration. I was somewhat taken aback when he indicated that his party had not made a decision or political commitment, at least in part, to a number of the outstanding questions that he believes have come into question because of the new *Charter of Rights and Freedoms* that we, as Canadians, now have.

There have been discussions on this particular topic in the Legislature prior to the enactment of this bill, of our *Constitution*, and I think it is safe to say that some members here and some people within the general public really questioned the long term wisdom of enacting a *Charter of Rights and Freedoms*. In view of the fact that the argument was put forward that the *Charter of Rights and Freedoms* that was there to protect every Canadian citizen was, in part, a method where the political decisions that should be made by legislatures were actually going to be made in a court of law.

The member opposite has raised a number of questions which, I believe, should be the prerogative of our Legislature, and I refer to the statements that were made by the Alaskan legislators and the problems they have encountered in trying to bring forward programs and ensuring that the age and residency requirements that they felt should be part of the guidelines for anyone benefiting from that program should be an Alaskan prerogative as opposed to a national question, as long as it was within the bounds or reason with respect to your nation. That is the fine line that the member opposite referred to.

I have taken some time and inquired of an individual who, I believe, has the necessary background to give us advice with respect to the questions that the member has put forward, and how it relates to the *Constitution*. I think it has to be pointed out on the question of age qualifications that all provinces and the federal government have an age qualification with respect to voting. Also, I think it is important that we understand that the Yukon, BC and Northwest Territories require 19 years of age and all other provinces, as well as the Government of Canada, have a requirement that you must be 18 years of age in order to have the right to vote.

I think it is important to note that a Professor Gerald A. Beaudoin, a co-editor of a leading text or critique on the *Charter*, and who is, I understand, nationally renowned, has stated, as far as

this section is concerned in the *Constitution*, and how it relates to the question of the qualifications for voting, "such a disparity would appear to be of marginal importance". That is one opinion.

The member opposite has raised his own opinion on the matter and I have to ask myself: what would the Rules, Elections and Privileges Committee accomplish by bringing up this particular question for review. What it will come out to is that we will have a number of legal interpretations which are going to cost the taxpayers dollars to acquire, and then we will have to, upon our legal interpretations, make decisions. I think this is, to some extent, a tragedy in view of the fact that really it is a question of us, as laymen and elected people within this House, to say, in the best interests of the people of the territory, what age is required to take on the onerous responsibility — and it is an onerous responsibility, and a very serious responsibility — the right to vote and at what age.

I want to speak on the other aspect of the motion, and it refers to residencies. I think for the information of all members, all provincial statutes today have a requirement of prior residency in the province concerned prior to voting, which the hon. member alluded to in his presentation. For half of the provinces, Ontario, Quebec, Manitoba, Prince Edward Island and Newfoundland and the Northwest Territories, this prior residency requirement is 12 months, which we have presently in place in Yukon. I have further been informed that the other five provinces have six months prior residency requirements.

Once again, it comes down to the question of a legal interpretation of the *Charter of Rights and Freedoms* and how it relates to this particular question.

It would seem to me that the residency requirements which have long been associated with the right to vote would constitute reasonable limits, or I have been advised of that. I also should point out that I have been further advised that it would appear that the question of residency would not run afoul of section 6, the mobility rights provision of the *Charter*, since the provision is directed only at taking up residency and gaining a livelihood in a province, and not necessarily voting there. Now, once again, with the new constitution, as the member put forward, at some stage the court of the land will decide whether or not that is a proper interpretation and if it is, the people of Canada and the regions will have to live with that decision unless the constitution is amended, which, in view of the furor which was created over the past number of years, does not seem likely.

I want to refer now to the rights of remand and convicted prisoners. I think it is important for all members to realize that all provinces, with the partial exception of Quebec, and the federal government, like all other nine provinces and the territories, disqualify prisoners who have been convicted of criminal offences and who have not completed their sentences, from voting. The way I am led to understand it, the *Quebec Election Act* does not disqualify convicted prisoners who are serving terms of less than two years. I should further point out that Yukon, Newfoundland, Ontario and Saskatchewan appear to go further and disqualify those who have been charged and are in custody but have not yet been tried and convicted, and that is in deference to the rights of the individual who has been remanded and has not been to court to be tried by his peers in respect to the offence or charge.

Now, I am prepared to accept one element of the argument that has been put forward, the question of the remand prisoner or, in other words, the individual who has not been found guilty of an offence but is awaiting trial. I can see the point that the member is putting across in that particular area, if we accept the basic principle that our law is based on, that one is innocent until one has been proven guilty. I think that is the basic principle that the member opposite has put forward and of course is the basis of our law as we know it today. I will take this undertaking; that is one area that we will be prepared to look at. I should point out that, from where I stand, and I can speak for my party on this, I do not believe that anyone who has been convicted of an offence and is serving time should have the right to vote.

It think it is ludicrous that we, in this Legislature, would ask the taxpayers to research that question because of perhaps some legal

requirement flowing from the *Charter of Rights and Freedom*. If a person was convicted of an offence and was serving time, and it was brought down by the highest court of this land that they could vote, then I would say, it would not be up to us to change our legislation if we believe in our convictions, it should be up to the parliament of Canada, to change the *Charter of Rights and Freedoms* to ensure that it is clear and unequivocal that, once you have committed an offence against society and you have been found guilty and you were putting in time, you lose your rights and privileges during that period of time in respect to the right to vote. I want to make it very clear and unequivocal where I stand in respect to that question.

As I indicated earlier — and from the work that I have done on the subject — the question of a years' residency for the right to vote, I personally believe, is a good section in our statute. I personally believe that if you have been here a year, you have shown a commitment to the region and therefore you have acquired the privilege and the right to vote for the members of this Legislature. I cannot accept the argument put forward by the member opposite that we may have to go as low as 30 days, as per the statements made by the Alaskan legislators. Now, once again, we could send this question to the Rules, Elections and Privileges Committee and look for those legal interpretations, because that is basically what you will be looking for along with perhaps recent judicial decisions. But then it always boils down to a political decision and I personally think, and I can speak for my party on this, that one should be here a minimum of a year.

¹⁶ Because I use the converse of the arguments, that if one is here 30 days — and if you look at our region and the way we are structured, the numbers of people we have — if I was properly organized and I had the money, I could perhaps get enough people on to the voters' list in Whitehorse South Centre to ensure that the member opposite would have to find some other means of employment.

I may want to do that, but then it boils down to what is fair and what is just, but just as importantly, what the people of the territory should want as the requirements for residency prior to being granted the right to vote.

I want to inform the House that we presently have *The Elections Act* under review. We are awaiting recommendations from the Elections Board in respect to what they see fit to recommend to the government as amendments to that particular piece of legislation. So, what I am saying, to sum up: our side of the argument — and the motion has been put forward — is that we are prepared to continue to scrutinize those judicial decisions in other areas of Canada to ensure that they do not have an effect in respect to our legislation, but at the same time, unless something comes to our attention regarding residency and age, we are not prepared to consider changing them at this time. We are prepared to consider in our review the question of the individual who has been remanded. I think that is a valid point and I think it is one we will give serious consideration to.

I am trying to put our position in a non-partisan manner but also from the point of view of political conviction in respect to the issues that the member opposite has outlined. The *Elections Act* will undoubtedly be presented next sitting and probably amendments thereto, in view of what I had said earlier about the Elections Board, and them recommending changes, et cetera.

So, I cannot see recommending to the Rules, Elections and Privileges Committee that it consider these matters at this time in view of the cost, because you are going to be looking for legal advice and that is going to cost the taxpayers of the territory. Secondly, I think it is safe to say that, on this side of the House, we have a political conviction that the age and residency at the present time is satisfactory. Also, on the question of convicts, I think I have made my position very clear, and our party's position very clear. And I safely say to you that I want to reiterate once again that if our legislation in this particular area is found by the highest court of the land not to be proper, then I would suggest the Parliament of Canada should act in this particular area, in the best interests of the general public of Canada.

So therefore, in conclusion, we will not be supporting the motion.

Mr. Speaker: The honourable member for Whitehorse South Centre, now speaking, will close the debate.

Mr. Kimmerly: I will respond fairly briefly. Given the government's position, which is clearly stated, it appears to me that the best course of action to follow, if that is the clear position, is to attempt, or at least make a communication, to amend the *Charter of Rights and Freedoms* in order to clarify the residency requirement. It is absolutely true that the other provinces and territories do have residency requirements. Some municipalities do, although most do not. And it is absolutely true that some of them are six months and some of them are twelve months. That is a substantial difference.

Any person can see that there is an uncertainty in this area, and it is, I will say, fundamentally dangerous that the law about a basic thing such as elections is uncertain, especially in the Yukon, where many territorial elections are won by a very narrow margin — which is obvious because of the numbers — that it is a very substantial uncertainty and the likelihood of a legal review is not very, very great. Given that and given the government's position, I say that the government ought to be promoting a greater clarity in the law, albeit the federal law, the constitutional law.

It is a shame that the demonstration of a justification of Yukon residency is going to be so thin. One political argument was raised about the potential abuse of moving people around in order to put politically identified people into marginal seats just before an election.

Now, I have thought of that, too; that is a reasonable argument on the question. There is no doubt about that, especially given the right of the governing party to call an election suddenly if it wishes, and keep it secret until it is called.

The demographics of Yukon are peculiar. It is quite obvious to me that if residents of 45 or 60 days or so — or the period of the campaign — were allowed to vote, it would make a difference in some ridings. The communities of Faro and Elsa come to mind. Temporary places such as Stokes Point — or the possibility of Stokes Point — comes to mind, and the more transient areas of Whitehorse, especially Riverdale South and the downtown ridings.

Those kinds of political questions ought to be identified so that the courts can make an informed decision on the question if they are called upon to make it, which I predict they will, somewhere in the country. Those kinds of demonstrations are obviously not going to come from Yukon and that is a shame.

The question of residency is going to go on to be a thorny question and I simply wish to sum up by saying that we could have added to the debate on the question. We could make a political statement about what is primarily a political question and it is a shame that we will not.

Motion defeated

Motion Number 3

Mr. Clerk: Item number 2, standing in the name of Mr. Kimmerly.

Mr. Speaker: Is the hon. member prepared to deal with item 2?

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

Mr. Speaker: So ordered.

Motion Number 4

Mr. Clerk: Item number 3, standing in the name of Mr. Kimmerly.

Mr. Speaker: Is the hon. member prepared to deal with item number 3?

Mr. Kimmerly: Yes, Mr. Speaker.

Mr. Speaker: It has been moved by the hon. member for Whitehorse South Centre, seconded by the hon. member for Whitehorse North Centre, THAT this House encourage the federal government to appoint a Yukon resident as a citizenship judge.

Mr. Kimmerly: This is a very simple motion and I will simply put a few remarks on the record, very briefly.

The practice, or I could say the fairly long-standing practice, in Yukon of welcoming new citizens here was that the clerk of the Supreme Court would conduct a ceremony, which could only be called a ceremony if one uses the word very, very broadly.

Very recently, the federal government appointed, all across the

country, citizenship court judges. There was political comment about the nature of the appointments at the time, but that need not concern us here. No appointment was made in Yukon.

Very recently, a ceremony occurred and it occurred in the Members' Lounge, on the other side of the wall here, and a number of new citizens were welcomed as Canadian citizens. The Royal Canadian Mounted Police attended in their red serges and the ceremony was dignified and appropriate. The citizenship court judge travelled from Vancouver in order to carry out the ceremony. We believe that there ought to be a Yukon citizenship court judge. There are many people in the community who are qualified to do the job and we believe the federal government ought to be urged to pay attention to us in this respect. I have corresponded with federal ministers on this question and I have received no answer as of yet, although I believe a resolution of the Assembly would assist in the process of appointing a Yukon person and that is why the motion appears.

Hon. Mr. Ashley: I believe that we can support this motion. I am in agreement with the member opposite. I do not see any reason why the federal government has to bring someone up from Vancouver to make Yukoners new citizens. As I said, I will agree that we should support this motion.

Hon. Mrs. Firth: I would like to respond to the motion just to say that I do support it, however, to indicate to the member who has proposed the motion that, at a recent cultural conference I attended, some of the other provincial ministers were indicating to me that the federal government was extremely reluctant and, in fact, had discontinued the practice, of sending the lists of the new citizens to the provinces, as they had in the past. Although we support the motion, I do not hold much hope that the federal government will support this. However, I would just like to say again that this side of the House supports the motion.

Motion agreed to

Motion Number 5

Mr. Clerk: Item number 4, standing in the name of Mr. Brewster.

Mr. Speaker: Is the hon. member prepared to deal with item 4?

Mr. Brewster: We would like to put that over until next sitting day.

Mr. Speaker: So ordered.

We will now proceed to government bills and orders.

GOVERNMENT BILLS AND ORDERS

Bill No. 3: Third Reading

Mr. Clerk: Third reading, Bill No. 3, standing in the name of the hon. Mr. Pearson.

Hon. Mr. Lang: I move, seconded by the hon. Member for Kluane, that Bill No. 3, *Fourth Appropriation Act, 1982-83*, be now read a third time.

Mr. Speaker: It has been moved by the hon. Minister of Municipal and Community Affairs, seconded by the hon. Member for Kluane, that Bill No. 3 be now read a third time.

Motion agreed to

Hon. Mr. Lang: I move, seconded by the hon. Member for Kluane, that Bill No. 3, *Fourth Appropriation Act, 1982-83*, do now pass and that the title be as on the order paper.

Mr. Speaker: It has been moved by the hon. Minister of Municipal and Community Affairs, seconded by the hon. Member for Kluane, that Bill No. 3 do now pass and that the title be as on the order paper.

Motion agreed to

Mr. Speaker: I declare that bill number 3 has passed this House.

Bill No. 4: Second Reading

Mr. Clerk: Second reading, Bill No. 4, standing in the name of the hon. Mr. Ashley.

Hon. Mr. Ashley: I move, seconded by the hon. Minister of Health and Human Resources, that Bill No. 4, *An Act to Amend the Territorial Court Act*, be now read a second time.

Mr. Speaker: It has been moved by the hon. Minister of Justice, seconded by the hon. Minister of Health and Human Resources, that Bill No. 4 be now read a second time.

Hon. Mr. Ashley: The goal of this legislation is to raise the quality of judicial services provided in Yukon. This legislation addresses concerns raised by the *Charter of Rights and Freedoms* in paragraph 11(c), "Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal". Studies I have commissioned revealed a need for legislative and administrative changes in the judicial system. Last fall, I made a statement promising to table legislation to effect these changes in this legislation. The legislation is now before the House, Bill No. 4, *An Act to Amend the Territorial Court Act*.

The existing *Territorial Court Act* consists almost entirely of provisions found in the old *Magistrate Court Act* and that act was based on legislation that was common in most Canadian jurisdictions, twenty or more years ago. Indeed, the foundation for the *Magistrate Court Act* across Canada is in the courts that existed at the time of Confederation. Traditionally, in Canada and Britain, the Magistrate's Court was a very junior judicial authority entitled to exercise only the jurisdiction expressly given to it.

In modern times, however, court has acquired an expanded and significant role. One hundred percent of the criminal cases, including juvenile delinquency cases, in Yukon come before the Territorial Court at one stage or another while only perhaps five percent are tried in the Supreme Court. It should be noted that the Territorial Court is responsible for other high volume areas such as small claims, offenses against the territorial statutes and child welfare matters.

¹⁹ The territorial court deals with those cases that affect the largest numbers of people in Yukon. Accordingly, it has been, and will continue to be, one of my highest priorities to facilitate the operation of the territorial court. The time has come to modernize the *Territorial Court Act* to reflect the changing status of the court and the new Charter. In doing this, we are following the lead of most of the provinces.

In my statement to this House last December, I identified three major changes that would be required. The first would be to create a judicial council to recommend judicial and justice of the peace appointments and to deal generally with discipline of judges and justices of the peace. The second would remove judges from their present status of public servants, and the third would provide for the judicial administration of the Territorial Court by the Chief Judge.

Because the nature of the appointment and the removal of judges is so fundamental to judicial independence, many new detailed sections and provisions are being added to the act to deal with these matters. For an example, judges and deputy judges are to be appointed only on the recommendation of the judicial council, of which only three of its seven members may be appointed by the government. In order to discipline or remove a judge, elaborate procedures are set out to provide for making formal complaints and conducting investigations and inquiries.

As a result of the termination of the judges' status as public servants, new provisions are added to the act to provide for their remuneration and fringe benefits and for other conditions of their employment.

In regards to judicial administration, new provisions are added to specify in some detail the authority of the Chief Judge and to provide for the appointment of an Associate Chief Judge to exercise that authority in the absence of the Chief Judge.

Also dealt with are matters of conflict of interest and the continuation of proceedings after the retirement or resignation of a judge in the middle of a case.

Provisions are made for the appointment of a rules committee, consisting of the Chief Judge and two representatives from the legal profession. I will be making the latter appointments after consulting with the Law Society. The regulation-making powers of the government are spelled out in greater detail and provisions are added to ensure consultation with the judiciary before regulations are enacted.

The new act provides for an annual review of salaries and benefits

and I will shortly be setting up a review process to effect this provision.

In consultation with the Chief Judge, I will be describing various administrative duties and functions of the court. This will include duties of the clerk and other court employees. I believe this is necessary for the good management of the court systems.

Because the population of Yukon is widely scattered in small communities, it has been found necessary to rely heavily on justices of the peace for the administration of justice. In recognition of this, I am committed to the implementation of measures to improve the education of justices of the peace and to enhance the assistance provided for them for the performance of their important duties. Through an amalgamation of legislation for justices of the peace and the Territorial Court, which puts them in much the same relation to the government and the judicial council as the judges, justices of the peace are given their proper place in the justice system of Yukon.

In addition to the foregoing, the act makes a number of less significant changes, including cosmetic improvements to its language and organization. The provisions dealing with the civil jurisdiction of the court and appeals are not being amended at this time.

Finally, I would like to emphasize that this legislation is only one part of the process that I hope will lead to improvements in the efficiency of our courts and especially in the quality of justice administered through them. I will be continuing to consult with the judges, the legal profession and other interested individuals and groups to design and initiate the best measures possible for the implementation of this legislation and generally the improvement of the administration and operation of the courts and our justice system as a whole.

Mrs. Joe: As I mentioned in my reply to the Speech from the Throne, I was looking forward to any changes in the *Territorial Court Act* that would improve the court system.

I have since read the territorial court document. I have just finished listening to the Minister of Justice and I thought that the things that he had mentioned were significant changes that would certainly serve the purpose.

However, there are a number of things that are in the Territorial Court document that I would certainly not agree with. There are a number of things that I certainly think could have been taken into consideration. If the authors of the ordinance had studied the Deschane Report and taken a lot of those recommendations and implemented them into this document, then, certainly, we would not have had a very difficult time in agreeing with a number of things that are in here.

I think that one of the things that we are in disagreement with is, possibly, the structure of the council itself; it is very similar to the Justice of the Peace Council, as it is right now. Certainly, if that is any indication of what is going to happen under this new amendment, then I think that, just from what I have seen happening in the last little while with the appointments by the Justice of the Peace Council, which I believe has been set back 20 years because of some of the things that are happening right now, it is going to have to have some other kind of a structure, and appointments certainly made in another manner.

²⁰ One of the other things that I was not in complete agreement with was the appointment of the juvenile court judges. I think that the only person who knows who is capable of doing the duties of a juvenile court judge is the Chief Judge of the Territorial Court. I do not think it is up to the minister to appoint those individuals, because I do not think the minister knows exactly what is happening in that court. I think that the Chief Judge has been given some added responsibilities, but I do not think that that Chief Judge has been given enough. I think there is still too much interference from the government, and I would like to give notice that we will not be supporting this bill in second reading but that we will be introducing a number of amendments.

Mr. Kimmerly: On December 9th 1982, the minister made a ministerial statement for which we, on this side, applauded the minister and applauded the government, because the statement, in the general sense, included an intention of putting into legislation

the doctrine or the principle of independence of the judiciary in a very practical and sensible way. The minister stated on December 9th, that they were going to introduce the legislation, "providing for the judicial administration of the Territorial court by its Chief Judge". He also talked about a consultation with the judges, people in other provinces, and the legal profession here. We agreed with the intent of that speech and we still agree. It is unfortunate, and it is a matter of grave concern to members on this side, that bill number 4 does not embody those principles which the minister advocated on December 9th.

The minister spoke about receiving reports. He means substantially the Peterson Report, which he talked about on December 9th and on other occasions. That report remains a secret report, unfortunately. He did not mention the Seaton report in British Columbia much earlier, and he did not mention the Deschane Report, which was referred to in this Assembly last year.

I am going to mention in particular a few of the fundamental principles that are spoken to in the bill that, in my submission or my opinion, are not addressed appropriately in the bill. But before doing that, I wish to make a few general remarks about the concept of the independence of the judiciary; and I do that because I know it is absolutely necessary to emphasize that, because there is a demonstration of a lack of understanding of the basic concept. Most everybody knows of the doctrine of a separation of powers; and most everyone agrees that the judicial function of government ought to be entirely separate from the executive function of government. The minister spoke about that in a general sense on December 9th. He referred to it obliquely today, but did not emphasize it, and I think that is unfortunate.

Perhaps the most important thing I will say this session is this: the separation of powers, or the independence of the judiciary, is not a right for judges; it is a right for citizens who appear in the judge's court. It is not the judge's right; it is the citizen's right.

²¹ We all recognize that a judge must not be involved in political activities, that is uncontroversial, and the reason for that is not as a restriction on the right of the judges, it is so that people who find themselves in the court feel that the decision made is made free of any partisan influence.

And, it goes beyond that; for example, if there is a known Conservative judge and a known Conservative person before the court who wins in the court or who gets off extremely lightly, other non-Conservative people may say he only got that because he was a Conservative, or the words to that effect. That is unfair to the person who was in the court. He or she deserves the right, and a position in the community, such that no one feels that he got any favouritism, and it is worse if he comes out on the bottom end as opposed to the top end.

The right of the independence of the judiciary is not a right for judges, it is a right for citizens. The Member for Kluane knows that in his heart because he spoke on a Thursday about possibly being taken away in handcuffs. He cannot feel that way in a free and democratic society because he knows that judges are independent, and the Member for Old Crow will remember a case in Old Crow where the citizens of Old Crow gathered meat for the citizens of Fort McPherson and transferred the meat to them, and the citizens of Old Crow were charged with offences under the *Territorial Game Act*. The citizens could only feel in that case that they would get a fair and impartial decision if the judges were completely independent.

The Member for Porter Creek West has spoken of property rights; he knows about the *Expropriation Act* and he is comfortable as a Canadian citizen knowing the very wide powers of the *Expropriation Act*, because he can feel confident that a judge in any case involving his land would be independent of the government.

Now, this legislation does not afford the necessary independence that a judge must have; it does not guarantee the basic minimums. The minimums are spoken about as these: there must be a security of tenure in that a judge must not be able to be fired except for gross misconduct or things like that; there must be financial security, and that is both a very simple concept and a very complex one — the salary of a judge ought to be established independently of the executive arm of government and the question of the

gradually diminishing salaries that are possible under this legislation are crucially important to that fundamental principle; there must be a security in the decision-making process in a court against external influences of all kinds; there must be a freedom within certain limits against unjust criticism and legal action as a result of the decision in courts — that is immunity for judicial acts committed in good faith in the discharge of judicial duties.

²² The bar against outside office and outside employment is also a guarantee of independence and is good. There must be finally a security against executive or legislative interference in the duties of a judge. I will speak most about that in connection with the principles in this bill.

The concept of independence of the judiciary involves a number of things. Some of them can be very simply stated. Some of them are quite complex. I am sure that all members will agree with the general statement about the desirability of an independent judiciary. When we get down to the more detailed discussion of the question, we disagree. The decisions that ought to be made about the more detailed questions must be made very, very carefully. There is no real urgency about the matter. It could be made next week or next month and nothing of any weight is going to hinge on that. I urge all members to consider this legislation as legislation of fundamental importance and the details, which may be thought of as details by laypeople, require a great deal of consideration.

I am aware, and I am sure the minister is aware, although he neglected to mention it, that the Law Society has made comments on this bill. They go into five pages, and there are some general comments and then specific recommendations.

The recommendations are divided into three categories. They are: essential matters, matters of major concern and matters of importance. I want to put my position on the record: I agree with the recommendations made by the Law Society. I say that it is of crucial importance, not to lawyers, not to judges, but to the citizens of the territory that, especially, the essential matters be considered by every single member here very, very thoroughly. It is the duty of all of us to understand the implications of all of those matters.

There is a provision in the bill for an annual review of judges' salaries. Why could it not be a different formula pegging the judges' salaries to a percentage of the salaries of Supreme Court judges. Members ought to know that there is a fairly complex mechanism established federally to establish and change, from time-to-time, the salaries of federally-appointed judges. That is a good process that is substantially independent of the executive arm of the government. Why do we not simply pay our judges a percentage of that amount. It is so simple and it is completely independent of the executive arm and, during the committee stage, I can give you specific examples of interference in the last five years in the Yukon on that question.

A question of fundamental importance is the control of the administration of the courts. The minister stated on December 9 that he was going to give it to the Chief Judge. The bill does not do that and I want to explain why it is so important. We all know, here in the Legislative Assembly, that the legislative staff, Mr. Clerk and the clerk assistants, are not civil servants in the lines of authority. They are independent and under the Speaker. The Speaker independently administers those staff people. Why can it not be the same in the judicial arm of government as it is in the legislative arm of government? It is in B.C. and in Alaska, I understand.

The executive interests and functions can well be looked after in the budgetary process, and it is clear that Mr. Speaker looks after the budget for the Legislative Assembly. The budget is established by the Legislature on the motion of the Minister of Finance. The courts could be established the same way. The control over the budget is very, very clear; the administrative independence is necessary in the court system. During the committee stage, I can give you specific examples, if you wish, of executive interference in the Yukon in the last five years on this important question.

I would quote from the Deschane Report, on page 19; he is talking about relations between the judicial arm of government and the executive arm of government. I am going to quote two very short paragraphs, "But as I was told over and over again, whether

relations between the judicial and the executive are good or poor, it depends very often on the personalities of the parties involved. No system can be based on such a flimsy and unstable foundation. Indeed, it would seem that this factor is responsible for the surprising turnover of the judicial personnel in the Territorial Court of Yukon. Five of its judges in succession have resigned since 1968, while the Deputy Minister of Justice remains".

That is a national embarrassment for Yukon, because of the lack of the independence of the judiciary since 1968. Now, part of that problem has been corrected already; however, I say that it is our legislative duty to establish the legislation such that the independence of the judiciary, a basic right for all citizens, is not based on a flimsy and unstable foundation — and it need not be.

There is a section in the legislation which allows the Minister of Justice to, on his own motion, on his own initiative, set in progress an inquiry and investigation into the conduct of a judge. There are no grounds or reasons actually established in the legislation; it is "in the opinion of the executive council member". That section is a blatant power given to the executive which is in contravention of the fundamental principle of the independence of the judiciary. Judges ought to be removed only for misconduct and the way to get that kind of a disciplinary procedure going is well established in other jurisdictions and in other sections of this bill.

There are many other more minor refinements necessary and I will speak to them in the committee stage. I wish to say, though, that I am aware that the president of the Yukon Law Society has sent a letter to the government asking to appear before the Assembly to make the views of the legal profession known. That is a very responsible request. Indeed, it is the duty of the Law Society to speak up for judges on the question of the basic principles due to citizens, as the judges themselves cannot be involved in the political fray, of course.

I say to all members that there is no particular urgency — that is, in the next few weeks or so — about this bill. It deserves our very serious consideration and I say that the best way to do that is to refer the bill to a select committee and to discuss with the experts and lay people their particular concerns in a public way.

Amendment

With that motive, I propose an amendment to the motion, seconded by the member for Whitehorse North Centre: THAT the motion be amended by deleting all words after the word "THAT" and by substituting for them the following, "Bill Number 4, *An Act to Amend the Territorial Court Act*, be now read a second time, but that it be referred to a select committee, the membership to be established by separate motion, for review and recommendation".

Mr. Speaker: It has been moved by the hon. Member for Whitehorse South Centre, seconded by the hon. Member for Whitehorse North Centre, THAT the motion be amended by deleting all the words after the word "THAT" and by substituting for them the following, "Bill Number 4, *An Act to Amend the Territorial Court Act*, be not now read a second time but that it be referred to a select committee, the membership to be established by a separate motion, for review and recommendation".

Hon. Mr. Lang: I rise on the motion, in my capacity as house leader. As I indicated the other day, it was not our intention to put this particular bill to a select committee.

It was felt from our side of the House that it has been tabled for some time; we have a further four or five days prior to the budget being brought down; in sitting days, I believe it is three after today.

Aside from that, I want to assure members opposite that it is not our intention to bring closure on the bill at hand. I think it is safe to say that we are prepared to listen to reason, listen to any objections or constructive changes that, perhaps, may be coming forward from the other side.

I also would like to put the House on notice, or perhaps I should clarify what I believe the position of the House should be in respect to the calling of witnesses and utilization of these Chambers. I go from experience back to 1974, when, at one time, the Legislature was utilized for the purpose of calling witnesses in Committee of the Whole. I should say that, back at that time, in reflection, it seemed to me at times that the lobby groups were running the Legislature and making the decision on behalf of the Legislature, as

opposed to the good commonsense that, perhaps, all members should utilize in deference to information being provided and making a decision as far as their conscience dictated.

I do not think I would like to see the House or the Committee of the Whole reverting back to that style of governing. I think it is safe to say that we have evolved a long way since those days to where you have a minister who is now in charge of a department, and who is not only administratively accountable to the Legislature, but is also politically accountable to the Legislature; but, just as importantly, politically accountable to the people of the territory.

Therefore, in respect to the question of witnesses appearing before the Committee of the Whole, it would be our position that we should not revert to that particular procedure that was utilized for so many years when the Legislature was referred to as the Territorial Council. I am sure that Mr. Speaker could speak on that at great length, in view of his longevity, as well as experience, as the legislative procedure has evolved.

I have clarified our position in respect to the procedure of the bill and how we see it going forward. I think it is safe to say that if the members opposite were to say to me, as house leader, "Look, after deliberating the bill for some time, we want to, perhaps, go into other business or adjourn early", I would be more than prepared to consider those types of suggestions coming forward from the other side, as far as their position is concerned on, perhaps, a certain item within the bill or whatever the case may be.

In other words, what I am saying is that the bill we have before us, as I indicated earlier, is going to be a question of debate, point by point. Also, the time that it takes to get through the House, in most part, is going to be dictated by the opposite side, in respect to the constructive suggestions they put forward. I do not think that the Minister of Justice has closed his mind entirely, in respect to some of the items that have been raised, but, at the same time, I think it is safe to say that in the bill we have made every effort to ensure that there is a proper and distinct division between the authority of the judiciary vis-a-vis the executive.

I do not totally concur with the member opposite with respect to a number of the points that he has raised as far as the philosophy of the Deschane Report, which he always refers to in almost biblical terms. I still maintain this, and I recognize that it is a very fine line, but the judiciary has a responsibility to the people whom they serve, and that is the general public. The idea that one would dictate how much he or she were going to be paid without eventual accountability to the people who pay them, is what I could not support on principle. I concur that anyone who is doing a job such as taking on the onerous responsibilities of a judge should be paid, and should be well paid. At the same time, those dollars are taxpayers' dollars and they have to be justified in some form, and the obvious form that the people of any region of Canada expect that accountability to come from, as far as remuneration is concerned, is their legislature.

In view of what the member opposite has said, using that logic, I would say that what he is saying to me, as a minister of the Crown who does have to give up certain rights or privileges to some degree in order to carry out the job that I am charged with, I should be able to just dictate one day that this is what I am going to get paid. I feel I have a responsibility, and whether he be a judge or whether he be a member of the public service, he has a responsibility to the general public, through the Legislature, with respect to remuneration.

I think it is safe to say that it has been proven that any government, no matter whether it be in British Columbia, Yukon or anywhere across this country, will pay judges, and pay them well. I think they are, at the present time. The member opposite may argue that, but in today's realities, I would look at it and say it is fair in relation to what other people are getting paid. Across this nation at this time, some are not getting paid at all, and, not because of their fault, either.

It would seem to me, with respect to the legislation and the division of authorities — with the judicial council, the review, the requirement of appointments to be going through that particular body — I think will do away with what is deemed to be political interference. I want to refer to some of the comments that were made by the Yukon Law Society and I want to say that I appreciate

their observations with respect to the bill at hand. I think they should be commended for the work they have done. There are a couple of comments that I would like to make, from a layman's point of view, and I am going to, perhaps, differ in opinion with a number of their recommendations.

I do not concur that the judicial council should consist of people all having legal training. The reason I say that is because I recognize the importance of having people on that council with legal training, and I do not argue that principle. At the same time, I cannot buy the argument that, because you are a layman, you will not understand what is taking place. I think the converse of that argument — I accept the argument in part put forward by the Member for Whitehorse South Centre — is that the general public should be represented in some manner or another.

If I recall correctly, I thought that the member opposite had accepted all of the recommendations put forward by the society, in his opening statement, and this is the point I am making: this is one area that I philosophically differ with. It is interesting to note that in my conversations with the visiting legislators from Alaska, I found that they had a judicial council with the requirement that people appointed to that council had to have legal training. They have just changed that to permit the general public, "the laymen", to be appointed to that council because they felt that the general public should be represented in that particular area in order that the public's perception, to some extent, as far as the layman was concerned, was being represented in view of some of the decisions that that particular body would have to make.

²⁶ And I am pleased to see, and I am going to put it on the record on his behalf, that the Member for Whitehorse South Centre has agreed with me in that particular area.

In closing, I think it is safe to say that we are open to constructive suggestions and they will be given every consideration. It is not our intention to send this bill to a select committee; it will be our intention to carry on discussion and debate in the Legislature and through Committee of the Whole, and further to that, if there is representation to be made we believe that the representation should be made to the minister himself, or, for that matter, they can contact the elected MLAs and arrange a meeting outside these particular Legislative Chambers.

Mr. Byblow: I had not intended to speak on second reading of this bill, however, I am prompted by some of the points raised by my distinguished colleague across the floor.

On the subject of his concern about disrupting the business of the House by having witnesses appear before it, I find it on the one hand ironic that the government would be hesitant to listen to expert advice on a subject as serious and important as the matter laid before this House in this bill. Should it be a matter of taking up unnecessary time of the House, which I do not believe is the case, my colleague for Whitehorse South Centre has made a proposal for this to be sent to a select committee where the witnesses can be called upon, where the expertise can be utilized to analyze the import of this bill and to make the suggested recommendations or changes that may be necessary for this bill to work in a maximum fashion.

I find it a complete puzzle — the hesitancy of the government on the one hand, neither to take the expertise of witnesses before the House, nor to send this to a select committee where that kind of expertise would be available. As my colleague has pointed out, there has been an appeal already made by the Law Society to appear before a committee of this House. In that respect, I would ask the government to reconsider its position in supporting this amendment to the motion and permit this to be properly scrutinized, as it appears to be warranted from the evidence we have before us.

Some of that evidence was clearly confirmed by the Member for Porter Creek West when he indicated his confusion of the issues on a couple of subjects relating to salaries and political influence that has taken place in the judicial system. I think the minister will clearly recall the political interference during the last round of judge appointments. Certainly, I was critic at the time, and the former minister is in the House today.

On the subject of the salaries, it is not a matter of setting out adequate amounts of income or remuneration, it is a matter of not

allowing any opportunity to use those salaries or the ability to set those salaries as a sanction against any aspect of the judicial system. I think the minister completely misunderstood my colleague's position on that. I think, in quick summary, it would seem to me that it would be a most wise and prudent exercise on our part to send this to a select committee where it can receive the attention that it deserves, and we clearly have some questions about it at this time.

²⁷ **Hon. Mr. Tracey:** I must stand in disagreement with the motion. I believe that we are elected as the legislators in the territory to make the decisions regarding the laws that we bring into effect. I believe that we have ample time to deal with this bill. We have all summer, if we have to continue on, to debate this legislation. I have great hesitancy about agreeing to a motion to send it to a select committee.

I also agree with my colleague that allowing lobby groups to appear before the bar of the House would be a backwards step in this government process — a very backward step. Those lobby groups have ample time and ample opportunity to contact any member of this Legislature or all members of this Legislature one by one, or they can contact the minister of the department; I believe they are doing so. I believe it would be very backward and detrimental to the procedures of this House to allow these lobby groups to appear before the bar of the House.

The calling of witnesses before the bar of the House is done by the ministers in order to have expert witnesses explain the position that is put forward in the government's legislation. I cannot agree, as my colleague cannot agree, with lobby groups coming before the bar of the House.

As for the position put forward by some of the members across the floor, it was almost predictable. We knew what they were going to say. The Member for Whitehorse South Centre has said it all before, and we will probably hear it all again before it is all over. He seems to have some fixation; that if judges do not name their own salary and call their own tune or run their own shop, that they are not independent. Well, I think it has been shown a great many times that it is, in fact, considered to be independent. We have just had a court case down east that also backed up that opinion, so, while the allegations made by the members across the floor were predictable, I think that is something that we can deal with in Committee of the Whole; I think that is where it should go — Committee of the Whole — so I will be voting against the amendment.

Mr. Porter: I, as well, did not have any intention of rising to speak on this particular bill, but the comments of the members opposite have prompted me to do so at this particular point.

First of all, I would like to say that I refuse to believe that the Legislature in which we sit is such a fragile structure that it cannot withstand the appearance of one witness before the Committee of the Whole to discuss this particular bill. As I am made to understand it, the role of witnesses before Legislature is to assist the legislators in making good law for the people whom it is set up to serve. I think that the premise of the Legislature, the premise of government, is that the people make a decision to establish the government; it is the people who have voted in the various members who sit in these Chambers, and there is a great deal of cynicism out there that exists among the people who are supposedly served by the Legislature, inasmuch as they do not feel a part of the process. So often you hear comments, "What is the use? They do not care. They will not listen. We make no difference in the process." I think that this government could go a long way in changing that public feeling by inviting the citizens to participate in the process; by inviting its citizens to come before the Legislature and express their views on the laws which are being considered and debated by this Legislature. I think that the legislators whom we have here have the minimum capability of protecting and controlling the Legislature so that the so-called lobby groups and interest groups do not come in here and start running the show, as has been put to us.

I suspect that the real reason that we do not see a greater use of the process of inviting witnesses to appear before the Legislature is simply because the government wants to have absolute control of the legislative process; it wants to have absolute control of the

debates that go on here and the way legislation is brought out, and the content of the legislation that is put before it and eventually passed, simply because they do, indeed, at the present time, enjoy a majority among sitting members.

Late the other day, the Member for Porter Creek East expressed, on a personal basis, that when he participated in the committee process he found there was a much greater achievement in terms of consensus amongst the members. I think that that is something I agree with, and that is something this Legislature has to move more toward; to utilize all of the tools of the Legislature to a greater degree to achieve a process by which we can reach some sort of consensus, decision-making process when we look at the legislation that has to be established.

I just would like to state my support for the motion and I urge, for the good of the Legislature and the good of the citizens for whom the Legislature is established to serve, that the members opposite would also support it.

Mrs. Joe: I rise in support of the motion that was presented by my colleague from Whitehorse South Centre. I listened to the members across the House; there was some agreement that there had to be some kind of input and that they were ready to listen to some constructive ideas that we had on this side of the House. There was also some mention of a member saying that what we said was predictable. I think that comments like that are not going to do this bill much good because I do not think that anything that we would say in Committee of the Whole would make any difference because he would consider it predictable.

I think that we all know that we represent people in this territory and we may speak on behalf of all of those people whom we represent, but I think that we have to listen to the people who are concerned about this document that we have before us. We do not only have the one list of concerns from the Law Society; we have other ones as well.

I am not saying that we should bring every group into this House. What I am saying is that there are a lot of people out there who are concerned, there are a lot of people who have been before the courts, there are a lot of people who have worked in the courts who have seen the problems that exist. I think that if we take it upon ourselves to pass this legislation without having the input from the people who are going to give it to us, then it is not going to be as well done as it should be. I think that if we are going to make legislation, we have to do it the very best way we can, which includes, if we have to, putting it into a select committee because we have to have good legislation. It has been outdated for too long, and I would support the motion that is on the floor.

Amendment defeated

Motion agreed to

Mr. Speaker: May I have your further pleasure?

Hon. Mr. Lang: It is my understanding that the Alaskan delegates will be returning to the Legislature. I have had discussions with the opposition house leader. We are, for your information, Mr. Speaker, as well as other members, going to receive them outside the format of the House, yet in the legislative body here, strictly to have an informal discussion and that time will be approximately 4:30.

In view of the time, I would move, seconded by the Minister of Justice, that we do now adjourn.

Mr. Speaker: It has been moved by the hon. Minister of Municipal and Community Affairs, seconded by the hon. Minister of Justice, that we do now adjourn.

Motion agreed to

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

The House adjourned at 4:09 p.m.