



# The Yukon Legislative Assembly

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Number 10

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25th Legislature

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## **HANSARD**

**Wednesday, April 4, 1984 — 1:30 p.m.**

Speaker: The Honourable Donald Taylor

# Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake

DEPUTY SPEAKER — Bill Brewster, MLA, Kluane

## CABINET MINISTERS

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

## GOVERNMENT MEMBERS

(Progressive Conservative)

Bill Brewster	Kluane
Al Falle	Hootalinqua
Kathie Nukon	Old Crow

## OPPOSITION MEMBERS

(New Democratic Party)

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

(Independent)

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

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

<sup>01</sup> **Whitehorse, Yukon**  
**Wednesday, April 4th, 1984 — 1:30 p.m.**

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

*Prayers*

#### DAILY ROUTINE

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

#### TABLING RETURNS AND DOCUMENTS

**Mr. Speaker:** I have for tabling, today, communication from the Solicitor-General of Canada, respecting the development of the directive to the RCMP on legislative privileges.

Are there any further documents for tabling?  
 Reports of committees?  
 Petitions?

#### PETITIONS

**Mr. Kimmerly:** I would present a petition and, clearly and in capital letters, it is addressed to the Assembly, on the subject of *The Children's Act*.

**Mr. Speaker:** Are there any further petitions?  
 Introduction of bills?  
 Notices of motion for the production of papers?  
<sup>02</sup> Ministerial statements?  
 This then brings us to the Question Period.

#### QUESTION PERIOD

##### Question re: Granting of franchises

**Mr. Penikett:** Prior to putting my question to the Minister of Municipal Affairs, may I be permitted to congratulate the government leader on the new status that he has just acquired.

To the Minister of Municipal and Community Affairs: AYC has asked that a statutory requirement be established in any legislation governing the granting of franchises in which the terms and conditions governing the use of streets be laid down in order that the municipality may control the use or occupation of its streets.

Has the minister acted on this proposal, or is the statement made by the Minister of Highways the other day, to the effect that the territory shall continue to control the streets within municipalities, the existing policy?

**Hon. Mr. Lang:** I think the member opposite is taking the Minister of Highways out of context with respect to the definition of highways and the responsibility of this government as opposed to the responsibility of the municipalities for streets and lanes. There has been some discussion on the matter. I do not think this necessitates amendments to legislation. We are cognizant of the problem that they perceive and I think we can assure them the right of access as far as the franchises are concerned, that the city's responsibility would definitely be honoured in any case.

<sup>03</sup> **Mr. Penikett:** I thank the minister for his answers and I beg the Minister of Highway's pardon if I have taken him out of context; which is, admittedly hard to do.

My supplementary is to the same minister. The AYC has also resolved that the financial impact potential burdens on Yukon's property taxpayers be analyzed and assessed to form the basis of an approach to the federal government requesting funding assistance towards operation and maintenance costs. Has the Minister of Municipal Affairs received any communication from the federal government which would make him optimistic about this AYC proposal?

**Hon. Mr. Lang:** Not to my knowledge.

**Mr. Penikett:** Could I ask a final supplementary to the minister

responsible for Yukon Housing Corporation. The AYC has also resolved that the minister responsible for this corporation upgrade the standards of landscaping, construction maintenance, of public housing units in order to make them more of a credit to their respective communities. Given our understanding about the relationship between the minister and the responsibilities of Yukon Housing Corporation board, could the minister tell us if he, in any way, has had an opportunity to act on this initiative?

**Hon. Mr. Ashley:** This initiative was being enacted on before that resolution was ever passed by the AYC. We spent a lot of the winter works projects that were put out in August on those projects up until the freeze-up. So, we have certainly been working on that in all communities of Yukon.

##### Question re: Predator control program and tourism

**Mr. Byblow:** I have a question I will direct to the Minister of Tourism.

It appears that there is a mounting effort by national and international interests opposed to this government's predator control program, to the extent that we hear today of the Project Wolf Coalition to be engaged in an advertising campaign against tourists coming to Yukon; in other words, dissuading tourists from coming here. What is the minister's intention, in her capacity of responsibility for tourism, towards offsetting this tourism distraction?

**Hon. Mrs. Firth:** Yesterday, on the radio, I heard that one wildlife organization had decided not to pursue their boycott against tourism. This news has come on the radio, I believe, at noon today, that the wolf organization was going to pursue their adventures in boycotting tourism.

I had indicated to the members last week, or the week before, I believe, that the department was making some efforts to control the situation, and have it under investigation. At that time, I indicated that we had been in touch with the Canadian government's Office of Tourism and consulted to see what they had done in various areas in the United States. We had also requested that Tourism Canada, in Seattle, at the Consulate General, see what it could do to mitigate any adverse effects this protest publicity may have, and we followed that up with a telex.

Further to that, I have been in contact with the Minister of Tourism for Alberta, the hon. Al Adaire, and the Minister of Tourism for BC, the hon. Claude Richmond, who has just lately had an incident with the wolf people, and discussed with them various methods that they used to counteract the proposed boycott.

So, we are doing what we can in the department, to consult and keep in touch, and we are aware of the situation.

<sup>04</sup> **Mr. Byblow:** The minister has indicated her communications with various tourism interests across the country and across the border with respect to the boycott. I would like to ask if her department has been in communication with any of the interest groups who have expressed an interest and intention to lobby against the Yukon tourism market?

The minister, I am sure is acutely aware that there have been at least three interests expressing such a concern.

**Hon. Mrs. Firth:** We received a letter from the Wilderness Association here in Yukon, and I have been in correspondence with them. I have also talked to another individual who is a member of that association and I have had many discussions with him regarding the proposal of the boycott. I believe it was an associate of that Wilderness Association who said they were not going to pursue the boycott.

On the latest incident we have heard about, I have not had any correspondence from these people and I do not know if my hon. colleague, the Minister of Renewable Resources has, I see is holding up a telex, so he may have just heard from them; however, we have not had any contact from them.

Having just received the message on the noon news, I would just like to say that we have not been approached for any scientific data. I am assuming that they may be approaching the Department of Renewable Resources for that data. I understand that the scientific data, referred to on the radio as being unavailable to him, is available if it is asked for.

<sup>05</sup> **Mr. Byblow:** Recognizing the various interests intending to

mount a boycott, the minister must be acutely aware of the seriousness of this government's predator control program. Does the minister support her government's predator control program?

**Mr. Speaker:** Order. The hon. member is asking an opinion of the minister, and I think that would be quite out of order.

**Hon. Mrs. Firth:** I would like to respond, because I feel that it is necessary to say that we are dealing with an extremely emotional issue here and I think the government has recognized that, and definitely the Department of Tourism has recognized that. This can be an extremely emotional issue, having seen what happened in the province of British Columbia with its wolf control program. I would just like to stress that we are so aware of it.

I would like to make some comments in support of the tourism industry itself. We have just had the opportunity to publish, in *Yukon Info*, a very positive article talking about the 1983 year of tourism. We did have a good year; we are predicting an even better tourism business this year. It is very difficult for the industry to defend itself against this kind of boycott. The businesses are very diversified, right from the small gas station owner at the junction of a highway to a very large hotel chain. The department of tourism and the Government of Yukon recognizes that the tourism industry needs some support and some help in defending itself against this kind of boycott. We are prepared to do whatever we can, as a government, to help that industry.

#### Question re: Liquor licencing

**Mr. Kimmerly:** To the minister responsible for the liquor corporation. Just for the record, is it the government's policy that no minister should recommend to the general manager of the liquor corporation or any board member, that any particular licence should or should not be issued?

**Hon. Mr. Ashley:** There is no way that any minister would ever get involved in that.

**Mr. Kimmerly:** Does the minister have any knowledge of any licenced establishment now serving liquor in the territory, in violation specifically of the regulations concerning the number of available hotel rooms for rent?

**Hon. Mr. Ashley:** Not that I am aware of.

**Mr. Kimmerly:** Has ministerial approval ever been given for the issuance of a licence in violation of the regulations concerning the number of available hotel rooms?

**Hon. Mr. Ashley:** As far as I am aware, I do not believe that that has ever happened.

#### Question re: Letter to Yukon Outfitters Association

**Mr. Porter:** I have a question for the minister who is obviously doing everything he can to assist the tourism ministry, by the policies of his government.

Yesterday, in the House, during a reply to a question raised by myself regarding a letter sent out by the officials of the Department of Renewable Resources to the Outfitters' Association, dated November 29, 1983, the Minister of Renewable Resources replied that he did not know that the letter had gone out. I would like to ask the minister, point-blank, what or when did he become aware of the existence of the letter dated November 29th, 1983, from his department to the Yukon Outfitters' Association?

**Hon. Mr. Tracey:** Approximately a week ago.

**Mr. Porter:** The contents of the letter concerned a commitment, made on behalf of government, to relax existing game laws. Is the minister telling this legislature that the management staff of his department have the authority to commit this government to changes of regulations and laws of the Department of Renewable Resources?

**Hon. Mr. Tracey:** I would like to clarify this whole situation. Last fall, when we were dealing with this wolf and bear program, we discussed methods of getting the bear and the wolf out of the area. One of those proposals was that we would allow the outfitters, in that specific area, to bait the bears, in order to ensure that we got the number that we wanted out of the area.

At that time, I gave my tentative approval to the use of bear-baiting. I did not instruct my department to put it in a letter and give that information in the form of a letter to anyone that we

would go with bear-baiting. It is unfortunate that it went out in the form of a letter, because the final decision had not been made; however, it did go out. The outfitters who got the permits in that area were aware, from that letter, that bear-baiting was going to be allowed; or, they thought it was going to be allowed.

It is unfortunate, however, that since that time, the decision has been made that we would not allow bear-baiting. Every one of those outfitters has been contacted and most of them were quite in favour of not using bear-baiting because it is against their principles of fair chase. There is one outfitter — only one outfitter — who is doing some complaining about it. The others are quite satisfied with the situation, as it is today.

**Mr. Porter:** Is the minister contemplating disciplinary action being taken against the unfortunate scapegoat who wrote the letter?

**Hon. Mr. Tracey:** Absolutely not.

#### Question re: Video display terminals

**Mrs. Joe:** I have a question for the government leader in regard to VDTs.

The Canadian Labour Congress recently conducted a survey and the purpose of the survey was to identify the nature and extent of health-related problems of Canadian office workers, particularly those using VDTs. The study identified a number of health hazards to those workers, including eye strain, muscular discomfort and stress. Since this government's study has found no such evidence, could the government leader tell us if the internal government questionnaire included questions related to those specific concerns?

**Hon. Mr. Pearson:** No, I am sorry, I cannot tell the hon. member. I am sure she already knows the answer. Obviously she has seen the questionnaire and I have not.

**Mrs. Joe:** I have not seen the questionnaire and I would like it tabled in this House.

The Canadian Labour Congress has asked for long-term VDT research programs from the federal government citing the genuine and well-founded concern over adverse pregnancy effects because of the many tragic experiences of substances and forms of energy that were once thought to be harmless, but later turned out to be lethal.

Based on this latest information, can I ask the government leader if his department will seek more information regarding this very serious problem?

**Hon. Mr. Pearson:** We have been able to avail ourselves of the report made by the CLC to the federal government. As a result of that report, and the report that was done by our internal committee — which, I must say, included representation from the Public Service Union in this territory — the department is now in the process of preparing policy regulations for this government. I will be most pleased to ensure that the member who has exhibited such great interest in this subject is the very first to be informed of what these policies will be.

**Mrs. Joe:** I would thank the government leader for that information. Due to all of these studies that have indicated that there is evidence to health hazards, will his department continue to monitor the health hazards of VDTs?

**Hon. Mr. Pearson:** I must correct one inference left by the member opposite. In fact, the studies, so far, have clearly indicated that there is no hazard. They have been very clear and very explicit. All of the medical studies that have been done clearly indicate that. The major problem that employers and governments are having with this problem is that there is a perceived hazard. It has not been substantiated. Notwithstanding that, this government, as an employer, is taking precautions for their employees.

#### Question re: Mayo passenger air terminal

**Mr. McDonald:** I have a question for the minister responsible for highways, for which notice was given. During the most recent territorial Cabinet tour last September, the minister mentioned that plans had been completed for the new Mayo passenger terminal facility. Recently, the Western Regional Administrator for Transport Canada said that the design of the facility is now at the 60 percent stage. Can the minister state at what stage the plans for the new facilities are at?

**Hon. Mr. Tracey:** To the best of my knowledge they are completed.

**Mr. McDonald:** I guess the minister should get in touch with Transport Canada in that case.

The same Transport Canada official said on March 27 that the Mayo terminal is ranked fourth on the airports' current year priority list. Can the minister state what specific effort the Government of Yukon has made, or is prepared to make, to encourage the federal government to provide funds for construction to take place this summer?

**Hon. Mr. Tracey:** We have consistently attempted to have Transport Canada approve the facility in Mayo, as well as the new proposed facilities in Haines Junction. It is now in Ottawa for a decision to be made at that level, and there is very little that we can do until Transport Canada makes a decision to allow it to go ahead. The territorial government has done as much as possible. We have maintained the pressure as much as possible. It is up to the federal government.

**Mr. McDonald:** We will get more deeply into that in the estimate debate. Has the Government of Yukon approached the Mayo municipal government to determine whether the LID would be prepared to operate the airport terminal on a cost plus basis?

**Hon. Mr. Tracey:** I do not know.

#### Question re: Reserve funding

**Mr. Penikett:** I have a question for the Minister of Municipal Affairs, further to the AYC resolution. The AYC has adopted a resolution on reserve funding, namely that the government of Yukon reconsider the announced plan of replacing equipment and provide local improvement districts being incorporated as municipalities with adequate seed funding for asset replacement reserves. Could the minister tell the House how he has officially responded to this proposal?

**Hon. Mr. Lang:** As I indicated in the presentation I made to the Association for Yukon Communities that we knew we had a responsibility to ensure the equipment that was presently owned by the LID's would have some method of being replaced, with financial assistance by this government.

As indicated in the debate in the capital mains, I believe we voted \$150,000 for this forthcoming year. I know the money that is needed is a great amount more than that. We are presently looking within the confines of our budget so see if the money can be found, and perhaps more can be put forward.

There is no question that, if we recognize our responsibilities to ensure that the equipment that is being utilized is replaced, but at the same time it is our position that after this period of time goes by, the communities through charges, et cetera, similar to what this government uses and some of the municipalities use presently, then the equipment funds will be replenished and subsequently the equipment can be replaced.

**Mr. Penikett:** Supplementary to the Minister of Education. The Association for Yukon Communities has asked the Government of Yukon to guarantee two seats on the Yukon Recreation Advisory Committee to the Association for Yukon Communities. How has the Minister of Education responded to this proposal?

**Hon. Mrs. Firth:** Legislatively, we were unable to give that guarantee to the Association for Yukon Communities.

**Mr. Penikett:** To the minister of municipal affairs, again. Could I ask him this question, which is of continuing concern to the AYC? What is the status of the government's election promise that municipal employees be included in the government of Yukon's housing buyback program?

**Hon. Mr. Lang:** I think the member has it wrong. There was consideration prior to the last election in the legislature as a possibility of incorporating that principle with respect to the government buyback act. I indicated to them that, in view of the general situation, it was not our intention to proceed with that legislation. At the present time, I would submit that it is on hold and we are prepared to review it on an ongoing basis. When we feel the time is appropriate, perhaps we will incorporate it in the legislation that the member speaks of.

#### Question re: Cyprus Anvil housing purchase

**Mr. Byblow:** My question is to the government leader. The government leader will recall this government's offer in the fall of 1982 to Cyprus Anvil respecting the acquisition of \$1.2 million worth of housing. Does this offer still stand?

**Hon. Mr. Pearson:** Surely, if they go back into operation and we deem it necessary to have that housing, we would be most interested in trying to work out a deal with the mining company.

**Mr. Byblow:** Since the time when the offer was made, I would like to ask the government leader, if he has had any productive discussions on that subject?

**Hon. Mr. Pearson:** Yes, our last discussions with the company, with respect to this, were that they did not feel that they were going to have any housing to sell to this government.

**Mr. Byblow:** Given that situation, what is the intention of the government with respect to providing adequate housing in that community, in light of the fact that Yukon Housing has got rid of a number of units in the last two years?

**Hon. Mr. Pearson:** It is our intention, like it is in every community in the territory, that, if we have to provide housing for our employees, it will be adequately provided.

#### Question re: Liquor corporation employee gifts

**Mr. Kimmerly:** Again about the liquor corporation: is there a government policy concerning the receipt and the declaration of receipt of gifts or samples from liquor suppliers to any board members or employees of the corporation and their families?

**Hon. Mr. Ashley:** I believe the question should have been a written question: I will take notice on it.

**Mr. Kimmerly:** If there is a policy, will the minister agree to table a written statement of the policy and any declarations in the past year?

#### Speaker's ruling

**Mr. Speaker:** I believe the question is hypothetical; however, I will permit an answer, if this is the case.

**Mr. Kimmerly:** Have Cabinet members ever received free liquor or liquor at a special price through the liquor corporation?

**Mr. Speaker:** To whom is the question addressed?

**Mr. Kimmerly:** The minister responsible for the liquor corporation.

**Hon. Mr. Ashley:** I have certainly never received any and the front bench has certainly never received any, so, the answer is no.

#### Question re: Bear hunting limits

**Mr. Porter:** Again, to the Minister of Renewable Resources.

On March 30th, of this year, the Department of Renewable Resources announced the relaxation of the game regulations to allow resident hunters to take a grizzly every year in the bear reduction zone, as opposed to the existing laws, which only allow for residents to take a bear every four years. Is there a ceiling on the number of bears that can be taken, under this regulatory change?

**Hon. Mr. Tracey:** No, Mr. Speaker.

**Mr. Porter:** As well, on March 30, the minister announced further changes to the game regulations, which allow for resident hunters to guide non-resident hunters for the purposes of taking grizzlies in the bear reduction zone. Is there a limit on the number of permits that will be issued by the department under this regulatory change and, if so, what is the limit of the permits that will be issued?

**Hon. Mr. Tracey:** Yes, there is a limit. It is 100.

**Mr. Porter:** Can the minister tell this legislature what is the cumulative impact on the bear population in the bear reduction zone as a result of the recent regulatory changes announced by the minister?

We have a situation where outfitters are getting 60 permits. Then we hear that we do not know what the number is in terms of resident hunters, but non-resident hunters will be allowed 100 permits. Can the minister, or anyone in his department, accurately state what effects these hunting pressures will have on the bear

population of the bears in the bear control zone?

**Hon. Mr. Tracey:** The member across the floor has consistently been distorting the facts. I have said in this House, on more than one occasion, that we feel that the maximum number of bears that will come out of that area is 20 to 25 bears. All of these provisions are made to get those bears out of the area, because we need the bears removed for study purposes.

The members across the floor are consistently raising the question about tourism in the territory. I suggest that the members across the floor are the biggest problem to the people of this territory.

**Question re: Case management in Corrections Branch**

**Mrs. Joe:** I have a question for the Minister of Justice. I understand that the minister's department has commissioned a study on case management for Corrections. Could the minister tell us if this study is a result of the high incarceration rate of inmates in Yukon?

**Hon. Mr. Ashley:** I will get back to the member on that. We know that the main cause of the high incarceration is the fine options program. It was not we, as I have told the House many times, who shot that down.

**Mrs. Joe:** I asked the minister if the study on case management for Corrections is being commissioned by his department and, if it is, is it a result of the high incarceration rate, or is it a result of the recommendations by the steering committee due to other identified problems in the department?

**Hon. Mr. Ashley:** (Inaudible)

**Mrs. Joe:** Is the minister aware of the case management for Corrections study that is in progress right now by his department?

**Hon. Mr. Ashley:** There are a number of studies going on. I believe there is one in that but, as I said, I have taken notice on it and I will get back to the member opposite as to whether that specific one is being funded by this department or not.

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**Question re: Placer mining regulatory body**

**Mr. McDonald:** A press release, dated March 12th, 1984, called on the Northern Affairs minister, John Munro, to establish an advisory committee to develop a regulatory regime for placer mining in Yukon. Has the minister received any response from the federal minister on this proposal?

**Hon. Mr. Lang:** I have sent correspondence twice to the minister and I am in the process of sending further correspondence on this all-important matter, as far as the placer miners in Yukon are concerned. To date, I have received no definitive word from the minister. I believe we have received an interim reply, by his special assistant, that it would be brought to his attention as it possibly could be. I would suggest that this is a very serious problem and it cannot wait until after the results of the Liberal leadership convention.

**Mr. McDonald:** I certainly concur with that.

Has the federal minister indicated to the Yukon government, recently, that he wishes the report of the Yukon Placer Mining Guidelines Public Review Committee to act as the basis for any new regulatory regime?

**Hon. Mr. Lang:** We assumed that that would act as a basis for the purposes of those people who are involved in the industry and government to look at the report, from a pragmatic point of view of what could be implemented, realistically, and enforced by the various government departments.

We, on this side — and, I hope, members on that side of the House — share the concern that if the report, itself, is accepted *carte blanche*, there would be major problems, as far as the placer mining industry is concerned, depending on who is interpreting and making the laws as they affects the placer miners. All I can say is, on this side of the House, we are very, very concerned about what is transpiring, presently, as far as the Water Board and the applications are concerned, and we are doing everything we can in informing the federal government of their responsibilities and to ensure that those placer miners go to work without the government intervention that they have had in the past.

**Mr. McDonald:** I have a rather more specific question.

Can the government state its position on the nature of regulation

to be used during the placer mining season immediately upon us?

**Hon. Mr. Lang:** That was the point of the correspondence that was sent to the minister. We felt that there was enough time to set up an advisory board to bring forward guidelines that would be realistic and practical and that could be put into effect. Whether or not there is enough time for that to take place now remains to be seen.

It would seem to us that if there is no resolution of the situation, perhaps they should be going back to the 1975 guidelines, I believe it is, and working on that particular area of concern, over the course of the next 12 months, so something realistic could be put into place that does not drive the placer mining industry into the position where it is no longer viable.

**Question re: Sheep study**

**Mr. Porter:** I have a question for the Minister of Renewable Resources, who is also the member for anti-tourism.

He stated, earlier, that the government has received money from the North American Foundation of Wild Sheep. Can the minister tell the House how much money his government has received from the foundation and how is the government spending money that it has received? Where is the money being spent? On which program?

**Mr. Speaker:** Perhaps this would be more properly in the form of a written question but, if the minister has that information, I will allow it to proceed.

**Hon. Mr. Tracey:** I believe that we have received in the neighbourhood of \$35,000 or \$40,000 from the North American Foundation for Wild Sheep. Part of that money was used in the burn at Kluane; part of the \$25,000 was used in the Finlayson caribou area; and part of the money will be used, and is being used, in Game Management Zone — I believe it is — 7 on the sheep-wolf predation study that is being conducted there.

**Mr. Porter:** Does the government have to account to the foundation as to the nature of the expenditure of the funds?

**Hon. Mr. Tracey:** We put a proposal to the North American Foundation for Wild Sheep. It makes the decision whether it will fund it or not. I am not aware of whether we have to account for it or not. I would suppose that if I were handing out money to someone I would want to know that it is spent where it was supposed to be. We probably do account for it.

**Mr. Porter:** On March 30th, the government announced its regulatory changes to allow opening black bear hunting to year-round in parts of zone 7, 9, and 5, and increasing the annual limit to three from two, provided at least one is taken from the study areas. We know that, like the minister, some of these bears sleep during the winter. What is the purpose of this regulatory change? Is it to allow hunters to disturb the bears during the denning process and to allow the hunters to take them at that time?

**Hon. Mr. Tracey:** I wonder when the member across the floor is going to quit working for Paul Watson?

**Question re: Apprentice training**

**Mr. Byblow:** Oh, that is a facetious answer. I have a question for the Minister of Education. Through the special funding appropriated by legislature last year, a number of apprentices were retained at Faro through the stripping program. I would like to ask the minister if she can advise what the current status of that program is in terms of funding?

**Hon. Mrs. Firth:** I believe the funding for last year, the year that the member is indicating, has been expended.

**Mr. Byblow:** Does the government intend to extend the funding this year in order that the program can continue?

**Hon. Mrs. Firth:** I believe that is dependent upon whether the federal government is prepared to give us assistance with that funding.

**Mr. Byblow:** I am surprised that there is that condition related to the funding. The government made much of its \$1 million appropriation last year toward that program. I would like to receive an assurance from the minister that the originally selected apprentices who have, and will be, completing their programs will in fact have their positions filled and funded for the duration of that stripping program?

**Hon. Mrs. Firth:** Well, we are looking after the problem and I appreciate the member's concern. Depending on whether the federal government is prepared to give us some assistance, and whether this government is prepared to put another million dollars into funding that apprenticeship program, is a decision that this government has yet to make.

**Mr. Speaker:** We will now proceed to orders of the day under motions other than government motions.

#### MOTIONS OTHER THAN GOVERNMENT MOTIONS

**Mr. Clerk:** Item No. 1, standing in the name of Mr. Penikett.

**Mr. Speaker:** Is the member prepared to deal with Item No. 1?

**Mr. Penikett:** Yes, Mr. Speaker.

#### Motion No. 7

**Mr. Speaker:** It has been moved by the hon. leader of the opposition that this House urges the government to establish an economic advisory council comprised of deputy ministers of relevant departments of Government of Yukon, representatives of business, labour, and consumer groups, and representatives of the Indian community; and that the duties of this economic advisory council be to regularly review and issue annual reports on the performance and development of the Yukon economy.

**Mr. Penikett:** What I am making today is a modest proposal but, I hope, a useful one. What I am suggesting, I hope, will be received by the government as an idea worthy of some consideration.

<sup>14</sup> Back in 1982, shortly after the last territorial election, when it was finally evident to the government that the economy was in a precipitous decline, the government leader called a summit conference of interested parties to discuss the state of the Yukon economy and the Government of Yukon's response to it.

I said at the time that I thought that was a constructive exercise. I believe most of the participants in the exercise saw it as a fruitful venture. I think the people who were involved — and that includes two of my colleagues — saw it as a instrument of potentially continuing benefits for the government.

At this point, I do not intend to review any of the discussion that went on, or to discuss the merits of any of the ideas that may have come out of that conference. The main point I want to make about it is that the economic crisis that we are experiencing continues today. I think the need for the kind of consultative mechanism that that conference provided continues as well.

To state the obvious, we are still experiencing, in this country, and very much in this territory, some continuing economic difficulties. I do not, for a moment, imagine that the solutions to all our economic problems are going to be found in this House, in this community or, perhaps, even in this country. However, I do not believe anybody here would argue that that is reason for doing nothing. I think most of us here would like to do what we can about the situation, even if we are a little frustrated about the limited extent to which we control the levers that operate our local economy.

To state the obvious, I believe that if the various interests in this community — and I am not talking about the political interests, but the economic interests here — are able to come to some basic agreements about the direction and future of our economy, not just for today but for next month and next year and perhaps even a longer period, we would have done something very useful, or something very useful would have been achieved.

If we were all, to state the obvious, moving in the same direction, or if we could come to an agreement about the direction and begin to move in that direction, I think there would be less wasted energy in the process.

The Economic Advisory Council, which I am suggesting the government establish as a permanent vehicle to provide a kind of consultation and potentially a vehicle for achieving a consensus among the economic interests of this community, is, I think, very simple in its conception.

<sup>15</sup> I do not believe that the costs involved in establishing such a

body need be any more than any other significant board in this territory and, in fact, I think they could be much less than many others.

I have suggested in the motion, although I am not wedded to the specific, that the economic advisory council could issue an annual report. If the government finds merit in the suggestion, of course, there may be arguments for the board doing it more often than that.

What economic reports come out of this government now are mainly those published by the Economic Research and Planning Unit. I think we would all agree that that entity has evolved somewhat in the last few years and the quality of its information has improved considerably. However, I think the ministers responsible will understand it if I say that there is still some question about the accuracy and relevance of some of the data. I think the people assembling it would admit that and that has to do with reasons of the size of the territory and the mobility of our population and other concerns, which make their work quite difficult.

It is also true to say that some of the information in those reports may be of limited interest to some of the major economic actors on the Yukon stage. I think, therefore, it is conceivably a useful idea to have the kind of reports, which are not published quarterly, fleshed out a little bit and, perhaps, published under the authority of a vehicle like the Yukon Economic Advisory Council. I think, were that to happen, the content of the reports and the analysis that is contained in them could be expanded in a way that was useful to the whole community.

I think it is also true to say that most of the information published by the Economic Research and Planning Unit, now, is oriented towards the past: it is a statement about what has gone on before. In kind, with similar bodies elsewhere in the country, I would suggest that the Economic Advisory Council, were it publishing such reports, could also devote some attention to the future.

Now, we have within this government, right now, a computer economic model. I think the kind of information that could be generated by ERPU and analyzed by their computer model being put before a body such as I have proposed here, could lead to some further analysis and some discussion and, potentially, some consensus about the future trends in Yukon economy and, perhaps even further than that, some useful ideas about how we might maximize the benefits from the information that we can develop.

I have suggested that this body should include, I think — although, again, I am not rigid in my views on this — at least the deputy Minister of Finance and probably the deputy Minister of Economic Development. It might, were it to become a very cellular group, actually include the ministers responsible for those departments, but I think it might be just as well to have the deputy ministers.

It would also, as I see it, involve representatives of the business community and, I think, almost certainly representatives from the key sectors in the Yukon economy: mining, tourism, renewable resources and, perhaps, the service sector, as well. I think it should probably have representation from labour and consumer groups and from the Indian community as well.

<sup>16</sup> That may not cover enough bases but I think it would then be a large enough group to provide a forum as a Wildlife Advisory Committee might, or some other bodies that we could think of, for discussing important economic issues and providing some kind of objective assessment to the government about the state of our economy and its potential and, conceivably, as well, some ideas about how it might be developed.

This morning, I happened to be in conversation with the mayor of this city, who was describing his visit to Japan to me, and telling me a little more about his ideas for the development of a silver smelting operation here, and the potential, as he sees it, for a silver and gold craft industry. I was quite impressed by his enthusiasm for these ideas. I was also struck by the keenness with which he and his colleagues in the municipality feel for getting involved, in some way, with the business of developing our economy, even though, as I think we would all admit, the city, in law, has very little responsibility for the economy.

I think it is true to say that we are still in a crisis, economically. Our Throne Speech talked about the decline having bottomed out. That

probably was not the exact phrase, but I think we talked about it having stabilized at the end of a long decline. That situation could continue for some time and, notwithstanding the talks nationally in the United States about a recovery, we have reason to be concerned. We have already discussed in this House, the situation of our tourist industry. There are people in the tourist industry who feel, if I may put it this way, "the wolves will be at their door soon", or "may be at their door pretty soon".

The Minister of Municipal Affairs has indicated that there may be lots of them.

Whether or not there are lots of wolves, and whether we are talking about economic wolves or the natural creatures, there are some indications that all is not well in the tourism industry. That is not a problem peculiar to us, but it is a problem in the western world and it may be a problem in Canada itself. To say the least, I expect that if ordinary working people do not have money in their pockets, they are less inclined to travel the great distances involved to destinations like this territory.

It is also stating the obvious to say that the mining industry is uncertain at the moment. Having read something about the state of world markets, and having looked at the pricing trends, the picture is very mixed. The situation with copper certainly is not encouraging; Lead could certainly be better. I gather that the prospects for tungsten and zinc are quite as good as they are for silver and gold, but it is clear that the kind of environment and the kind of markets under which the Yukon mining industry was operating just a few years ago does not exist any more. There is a very different kind of situation going on and I think, to the extent that we have any responsibility for that economy, — and we do, because we provide services to that industry — we should take advantage of the opportunity to not only get the best available information, but to use an institution such as an Economic Advisory Council I proposed to discuss the situation, and perhaps, if we can, come to some agreement as to how we should deal with it.

<sup>17</sup> The forestry industry in Yukon has always been marginal and perhaps underdeveloped. I do not know what will happen there. Needless to say, it has been Canada's industry for a long, long time now, but its prospects are not great. We have a potential environmental disaster on our hands in that industry because reforestation has not kept up with the logging and there are people who are afraid, now, that in 15 years that industry could be in peril.

We have, in this territory, a very under-developed commercial fishing industry. On the noon news today I heard a representative of one group, in fact, calling for it to be abolished to protect the interests of the sports fisherman. There will be lots of arguments about the economic benefits from commercial fishery and sports fishery. The fact of the matter is that there are competing interests in those areas. In fact, it is the job of governments to try to resolve some of those conflicting interests.

We also have, going on right now, the settlement of Indian land claims which will have an economic impact. There will be certain kind of corporations, certain kinds of job and activities happen as a result of that.

Everything that will be happening in our economy, and there will be some new initiatives, and some new businesses start, may not be enough to produce a recovery. There will be all sorts of people in the different sectors, and the different levels of government doing different things in our economy in our jurisdiction.

I think, therefore, that there is a great danger of those different elements in the economy working at cross purposes. For example, if the people who are interested in developing a commercial fishery are, in fact, working at cross purposes with people in the sports fishery, or who are interested — for tourism reasons — in keeping the sports fishery alive, or if — and I say this not in a provocative way — our wildlife policies are having an impact on our tourism policy, we need to know the economic consequences of these things.

I think the kind of formal and official concentration process that went on for that brief period after the 1982 election was a useful purpose. It was a useful exercise. I think we should formalize that consultative mechanism. I think the body I propose could have a very important role to play in not overseeing — but, how can I put

it — advising on the kind of economic planning activities of this government. I think the reports that it published would be very valuable items for public discussion and they could be an important tool towards developing a consensus about economic directions in this territory. I think the institution I have proposed could help provide a service in helping pull the elements of the Yukon economy together so that we are moving more in the same direction. I think that is very important right now, and there is a danger of the economy, being as fragile as it is, being pulled apart.

<sup>18</sup> Finally, I want to say that I have specific ideas, as do, I am sure, my colleagues and members opposite, about how we can deal with the economic situation now. I do not see the debate that I proposed today as necessarily the time for airing all those — I think there will be ample opportunity to do that during the budget debate — but I would hope that the members opposite and the government of the day would give this proposal, such as it is, serious consideration.

**Hon. Mr. Lang:** I welcome the motion that the member has put before all members, with respect to the principle of establishing an economic advisory council. For members' information, I have been doing a lot of work, within the department, with respect to looking at various possibilities to form an advisory council to the department, as well as myself, with respect to looking at the situation as far as the overall territory is concerned.

I, like my colleague for Whitehorse West, feel that it would provide a vehicle to get the various actors who are involved together, perhaps on a quarterly basis, to review not only the past, but also to look at the future possibilities of diversifying our economy. I think it would be a very positive move, with respect to what we are doing as a jurisdiction, and with respect to the general economy of the territory.

Just as an aside, and I think the member opposite would agree with me, we are in a very difficult situation, as far as our jurisdiction is concerned, and as a government, with respect to our relationship with the Government of Canada, with the absentee landlords who own our resources living 3,000 miles away. When time becomes advantageous, sometimes they run for the Liberal leadership to not only further expand their responsibilities, but also to ensure that they are busy at all times.

That aside, it puts us in a very difficult situation in Yukon, in view of the very real things and regulations that the business community and the developers face, as far as Yukon is concerned. During Question Period, the member for Mayo raised the question of the placer miners — the member for Hootalinqua has been to see me a number of times — and the concerns that these people really do have with the proposed management that appears to be taking place in the placer mining industry.

I think that, getting above partisan politics, one of our objectives has to be to look at taking these various responsibilities on, as a government and a legislature, so that we can respond to the needs of the people of the territory when the need arises. Right now, we are in a situation where we have to write letters, telexes and, perhaps, make a phone call — and sometimes they are responded to and sometimes they are not — to the Government of Canada to try to resolve these very real problems that are facing people who own mortgages, have families and who are trying to pay their bills and, at the same time, are attempting to develop the territory.

With respect to the motion itself and the way it is written, I was pleased to hear the member opposite indicate that he was not hard and fast on the membership, nor on the principle of the duty that, perhaps, could form part of the economic advisory council.

<sup>19</sup> That did cause me some concerns, because I am looking at a number of various models that perhaps could be incorporated here in Yukon. I do not think, for the purposes of this debate, that I want to tie our hands with respect to exactly who would be represented and how. The member opposite raised the possibility of perhaps the Minister of Economic Development being either the chairman or part of such a council. He raised the possibility of various deputy ministers being involved. I think probably one of the major components of such a council would be the membership by the Government of Canada in an advisory capacity; as a think-tank concept with the idea of trying to ensure that the ideas being

incorporated by the regionally-elected government at least meet, in part, the needs of the people of the territory as opposed to, at times, going off on their own tangent and really not caring what people think. For that matter, sometimes they adversely affect them, both economically and socially.

I concur with the member opposite. As far as membership is concerned, there is no question that the Council for Yukon Indians and native representation is going to be very important because of the land claims, hopefully, coming to a conclusion as far as negotiations are concerned. It would be a vehicle for them to participate in in the context of the territory, and also they could participate as the territory grows.

*Amendment proposed*

Therefore, I would amend the motion to read: that Motion No. 7 be amended by deleting all words after the words "Economic Advisory Council", in the first instance.

**Mr. Speaker:** It has been moved by the hon. Minister of Economic Development that Motion No. 7 be amended by deleting all the words after the words "Economic Advisory Council" in the first instance.

**Hon. Mr. Lang:** Just to say a few more comments on this, the reason I am amending, as I indicated, was that I felt there were a number of models that we could look at and perhaps incorporate as far as the composition of representation is concerned. Also, I think perhaps the duties of this particular Advisory Council should be looked at a little bit more closely with the idea of various responsibilities being put down as guidelines.

I want to assure the member opposite, in view of his non-partisan presentation, that I am going to do everything I can to expedite such a council being created. I hope to do it in the very near future. I have, like him, talked to the mayor of the City of Whitehorse, and the council, a number of times on this. They are very interested in it as well. Therefore, there are a number of various groups who are going to have to be considered as far as representation is concerned.

I hope, prior to the closing of this session, I will be able to give an indication to the House as to exactly what our intentions are going to be.

*Amendment agreed to*

*Motion No. 7 agreed to as amended*

**Mr. Clerk:** Item No. 2, standing in the name of Mr. Byblow.

**Mr. Speaker:** Is the hon. member prepared to deal with Item No. 2?

**Mr. Byblow:** Yes, Mr. Speaker.

**Motion No. 8**

**Mr. Speaker:** It has been moved by the hon. member for Faro that this House urges the government of Yukon to adopt, where practicable, a policy of permitting daycare facilities to be located in school buildings.

**Mr. Byblow:** I intend to be quite brief on this motion. I believe it is very reasonable, non-controversial and very appropriate. As the government I am sure is aware, daycares across the territory, for the most part, struggle for an existence. That struggle largely is financial and in part is a problem of suitable location.

What this motion urges is the opportunity, where reasonably possible, for daycare facilities to locate in school buildings. I believe this to be entirely reasonable. It would help alleviate some of the difficulties facing some daycare operations in the territory. I do not intend to go into any detail respecting the value or the importance of daycare services in our communities. I believe that all members recognize that, for many reasons, daycares are quite a necessary service in our society today.

I believe that we all recognize the critical importance that a proper daycare provides for the emotional, the physical, and certainly the intellectual development of a child. I would submit that we are all supportive of daycares and, where possible, will want to foster and nurture their quality and their growth.

It becomes, therefore, to me something of a logical expression that daycares receive the kind of support that we can give them, and

certainly in instances where empty classrooms exists. I think the situation is clearly more evident in rural Yukon. We have situations where daycare facilities not only struggle because of financial difficulty and constant relocations, but we have situations developing where the need and the demand make it impossible for a daycare service to come into operation. In some of those communities, there are, in fact, empty facilities within school structures. So it seems logical that this opportunity be afforded to them.

<sup>21</sup> I think, that where there is clearly room to allow this to happen, it would not pose any problem to the system and would be, indeed, no difficulty at all. It would be a logical place for such a service to emanate from.

I think, also, that it would be a greater utilization of a public facility. I think, in today's costs, school structures, as any public buildings, do not come cheap. Particularly in rural communities, there is a growing tendency to maximize the public use of public facilities. Because this tendency has an economic basis, given the capital and the O&M costs of those facilities, it is clearly within reason to permit a maximization of these facilities' use. They have to be heated and they have to be maintained, anyway.

I said I would be brief, and I will be. I do not wish, at this point, to say much more, other than urge the government to consider the motion in a positive way. It is left quite open for some flexibility and I urge support.

**Hon. Mrs. Firth:** We have, as a government, considered this motion and I appreciate that the member for Faro is not actually giving the government the direction to assume responsibility for daycare services, but is simply stating that, where practicable, we provide space for the present daycare services that are available in Yukon.

I want to talk about the practical aspect of it, first, and then the aspect of establishing a precedent and what happens when these kinds of things are allowed. First of all, practically speaking, there are not a lot of spare classrooms around Yukon. There are some in a few schools, but not in most schools in Yukon, as the member for Faro would indicate.

Another thing is that these arrangements would have to be temporary: we could not make any guarantees that the service would be there, that the space would be there for any length of time. With the increasing programs that we have in the Department of Education — for example, the French Immersion enrollments are increasing, the Native Language Program is increasing, Special Education programs are increasing, computer programs are increasing — we are very reluctant, at this time, to give away what free space we do have, in view of the future advancement within educational programs.

We also have a concern about population shifts. The schools were full, at one time, and because a couple of classrooms in Yukon have become available, we are very hesitant to fill them with another service, in the event that the population does shift and we require the space for students, once again, for students who qualify as a responsibility of the Government of Yukon, to educate those children.

<sup>22</sup> As far as establishing a precedent, I find that it is somewhat dishonest with the public to allow them to utilize space and say to them that that will happen for a short time, or even if you said, you could guarantee it for a year. After the time is up and then you are asking them to remove themselves from that facility or from that service that they have become accustomed to, it creates an upheaval and again creates a lot of emotional problems. People have been accustomed to the service and they have been accustomed to having their children go to that school to the daycare.

The daycare services that are provided in Yukon presently are done so by the public sector and they are a private concern. Many of them are located in buildings that have been specifically designed for that purpose, or buildings that have been renovated for the purpose of providing a daycare service, or in some cases in private individuals' homes. Those individuals have done some modifications in their homes to comply with the licencing and supervisory standards set down by the department of health and human

resources.

So we do feel that it is a private concern between the parents and the daycares and that government would rather not intervene or provide non-guaranteed accommodation.

We do feel that we are giving support to the daycares. I appreciate that some of them are struggling, however, sometimes it is very healthy for private businesses to struggle. We have provided some support in the job retention program. I believe a few of the daycare services in Yukon have been eligible for, and are benefiting from, that job retention program. We are also supporting them by not providing the space and competing directly with them.

We have been criticized in the past by community centres for providing free space to the community and they are unable to support their community centres because people would prefer to use the schools as opposed to paying a small fee for the community centre. I think where there is a demand for a service, which there obviously is with daycare services, I think that demand will be met and that it will be met by the private daycare centres.

The government will be disagreeing with this motion, because of the few very valid points I think I have made. I do believe that some of my colleagues wish to respond to this motion. I gave them a commitment that I would be brief. I have been somewhat tongue-tied the last couple of days and it probably is a result of taking too many asprins. So, I will allow my colleagues to make some comments about this motion, and I am sure the member from Faro will find them very interesting.

**Mr. Kimmerly:** I was not intending to speak as this is a very simple motion about a very general policy, it seems to me that it should be self-evident. However, after listening to the points raised by the Minister of Education I could not sit quietly and not respond. I made a list of the points that she made and they can be identified.

(1) if this principle were accepted, it might set a precedent.

(2) the availability of the facilities might be temporary.

(3) it would be wrong to give away free space because the educational needs of the school may, at a future point, need to take precedence.

(4) she is concerned about population shifts.

(5) as a matter of principle, daycare is, and should be, delivered by the private sector.

(6) it would set up a possible competition with such things as community centres and possibly private sector daycares.

If we look closely at those six statements, it is simply all nonsense. It simply does not hold up. To say I will not do anything because it might set a precedent is really dishonest. What you are saying is, "I do not want to do it". It is very easy to change a practice and it is very easy to do something, especially in a community because of special circumstances and to say, at a later time, "That was not our policy; it was only done because of peculiar circumstances, or it was only done because of a particular community circumstance; for example, the availability of the buildings at a particular time".

The point about the facilities being available temporarily is simply not an argument for anything unless the organization running the daycare facility actually owns the building, and very, very few, if any, do. They rent space, and the availability of the space is temporary, according to either a short term or a long term agreement.

The third one, to say that we do not want to give away free space because it might be needed in the future, is ludicrous. These are government buildings, these are the people's buildings, paid for by the people. If there is free space not being utilized now, let us use it for something supporting the public good. That is only efficient use of the buildings.

It is clear that, in a school, the space needs for educational purposes for the school program should take precedence over everything else; that is clear. The motion nowhere says that that should not occur. The motion simply calls for the availability of taxpayers' space in government buildings for an essentially public service, being daycare.

The concern over population shifts is, again, absolute nonsense. There are those concerns over the building of any building, public

or private, and the use of any building. It is clear and obvious that there are population shifts frequently occurring in Yukon and what occurs is that a school is built and it is under-utilized because of a population shift. There are available spaces because of population shifts or the inaccurate projection of population. There is space available in several of the territorial schools and the buildings in several of the communities are, in fact, larger than necessary for the current population existing today: Faro and the Junction are two that come immediately to mind.

The statement that daycare is a private sector concern is fundamentally a difference in philosophy between the two parties. We believe that daycare is a community concern and it is clear that, by the regulation of daycare centres, the government recognizes a community interest in daycare.

The motion, in any event, simply calls for the placement of a service, whether it be private or of a community nature, in a school building, either for rental or not; it is not mentioned in the motion.

In fact, many daycare services are operated by what is essentially a non-profit society, run by groups of parents, and they deserve the availability, under appropriate conditions concerning lease or whatever, of publicly-owned space.

The concern about competing with community centres is absolute nonsense as well. If there were a situation where that is of a concern, that is, if there would be suitable space in a school and in a community centre, it is entirely appropriate to follow that policy, if it is the government policy, and say because of that the community centre ought to get the facility, and not the school. That is entirely possible. In cases where community groups or individuals think of putting daycare in the school buildings, it is because there is no other suitable building available.

The reasons put forward are so extremely weak that they are not reasons at all. Really, the Conservative government is simply reacting reflexively and saying, essentially, "We do not support any public involvement with daycare", and they are out of touch with the community on that issue.

**Hon. Mr. Lang:** I did not have any intentions to stand up and speak to this motion but after I had heard what the member for Whitehorse South Centre had to say, it left me little choice. I asked myself — and I am sure the general public does, as well — what subjects the member opposite is not an expert in, or on.

When I first viewed this motion I was both taken aback and, I guess, more amazed at who was sponsoring the motion, in view of the member for Faro's past career, which was in the teaching profession, and I do not mean that in a derogatory manner. If we were to use our schools for the purposes of daycare facilities, that would mean you would have children from the age of, perhaps, two months to four years of age; and then, of course, at the age of five, being able to proceed into the school system through kindergarten.

I have been to all the schools in the territory, unlike my educated colleague for Whitehorse South Centre, and I have seen those teachers, especially where they are teaching a number of grades, attempting to keep a semblance of order among the students, especially from the age of kindergarten to grade five. Now, I say to you, if we were to permit daycares to be established in the schools in the Yukon Territory, I would submit, for the purpose of running a school if I were a principal, it would compound my problems probably ten-fold, as opposed to the difficult task they face on a daily basis, even now, with the students in a school.

So, I say, from a practical point of view, to add to the reasons that were brought forward by the Minister of Education, I think it would be a very difficult situation that you would create, socially, within the school itself.

The member for Whitehorse South Centre, who, unfortunately for Yukon, in many respects, has not been here that long, made fun of the Minister of Education when she talked about precedents. Well, just to give the member opposite a little lesson in precedents, it has not been all that long — as Mr. Speaker knows — that the kindergarten has been incorporated into the school system. It began, similar to what this motion is indicating, if there was space available they may rent space and it was incorporated as an optional program put on, by those people who were interested, in those particular schools that had space. In some cases, it was outside the

school.

It slowly got to the point to where it became a major issue and, subsequently, the political decisions were made to permit kindergarten into our school system, which was, of course, and still is, optional, as far as the students are concerned.

<sup>27</sup> I am not here to discuss the pros and cons of kindergarten. The point I am talking about here, to expand on what the Minister of Education has said to you, is that it was strictly going to be an optional program and it was going to be of no cost to the taxpayer and they could use what facilities they wished to. Subsequently, we have it in the school system today.

I want to take a few moments to talk about the philosophy of the motion we have before us: should the taxpayers of the Yukon provide institutions for space for daycare? That is the fundamental question. The members opposite speak about there being space, and where it is practicable — and I think the member for Whitehorse South Centre was as honest as he could be, within the context of the motion — and said that he philosophically believes that it is the state's responsibility to provide daycare.

In defending the issue, he talks about the family unit, as if he is the only elected member in this House who will defend the family unit. Next, he wants the people of the territory to provide institutions for daycare facilities. If we were to vote for this motion today, there is no question in my mind that the same member would, within five years, be here with a resolution asking for the transfer of the maternity ward into the schools.

I have seen the member speak about his philosophy on education. He has stated in this House that the answer to the recreational problems facing the youth of Yukon is to put video games in every corner of the schools. At approximately the same time, the same member stated that education should not be compulsory. I suppose that that is his party's policy definition of freedom, which is a student playing hookey.

The answer to the quality of education, it appears from the results of the task force on education, is to have daycare in every school. It amazes me that one would expect the people of the territory to provide that service in an education facility.

The Minister of Education has made it very clear that in most cases our facilities are used to a maximum. The members opposite have stood up in this House and asked for programs, whether it be expansion of the native language program or the French Immersion Program. The general populous has come forward to the Minister of Education and talked about the computer programs. All of this is going to require space.

I find it difficult to understand how the Member for Whitehorse South Centre can stand up and not smile when he says that the Minister of Education is full of nonsense. I submit that the Member for Whitehorse South Centre is full of nonsense, as far as his ability to argue the principle that is before us. It basically boils down to the socialistic attitudes and the principles that the members opposite bring forward, on a daily basis, into this House.

Last week, a rough estimate — and I am sure we could refine it to within \$50,000 — of five million dollars worth of public funds were requested for various things by the individual members opposite. Now, they want us to incorporate daycare. I can see that the next step is that they would be asking for either partial or full wages for the employees; then they would become part of the collective agreement and the story would go on.

I just find it totally and absolutely ludicrous that anyone would bring a motion of this kind into this House, in view of the very practical limitations of being able to provide the service — which the members opposite know to be true — from a philosophical point of view and from an economical point of view.

I find the whole situation totally and absolutely ludicrous.

**Mr. Penikett:** I did not want to respond to the minister's speech because there was nothing in it worth responding to. However, I did want to put a couple of questions on the record which would have some relevance to the issue before us.

The questions are, to the present Minister of Education and to the former Minister of Education: is it, or is it not a fact that there was, at one time during the life of the last Legislature at least, operating in the Takhini School Annex, a daycare facility? The second

question: is it, or is it not a fact that that space is now being used as a storage area, rather than classroom area. I will not ask this question, but I believe there may even have been children of the members of this House who attended it.

**Mr. McDonald:** I was not intending to speak either, until I heard the very entertaining speech from the Minister of Economic Development, the member for Porter Creek East. The member for Porter Creek East says that he has been around the territory and we can assume — he is leaving the Chamber — that he has spoken to everyone involved with education in every school around the territory. I am not sure if that is the case, but nevertheless, his rhetorical point was made, however fallaciously.

The Minister of Economic Development also suggested that daycares in the school would compound the principals' problems ten times. I am sure there would be no principal in the territory who would not refuse to take issue with that particular assumption. Nevertheless, that is irrelevant. That was another worthless, rhetorical point.

The motion does not request that the Department of Education administer Yukon daycare facilities. It merely asks that school facilities, the physical plant, be used, where practical, to allow for daycare facilities.

<sup>29</sup> We were treated to the typical thin edge of the wedge argument, the typical foot in the door paranoia that they constantly dredge up in this House, feeling that, perhaps, those socialist hordes are going to be creating daycare palaces around the territory, in every hamlet and every village, pushing out legitimate educational facilities. This motion says nothing like that; it does not even get close to saying anything like that.

The minister suggested that this side of the House would go so far as to put maternity wards in schools. I mean, that is absolutely ridiculous. It is as silly as a suggestion that, some time ago, perhaps voting against drinking driver laws would create a serious littering problem on the highways. I would hope that we could elevate the debates, somewhat, from that kind of claim.

The member for Porter Creek East fundamentally asked the question of whether we should fund daycare or not, and his assumption was that, no, we should not. That was, essentially, what he was saying. We, on this side of the House, believe that men and women in this territory and in this country work, they will continue to work, both sexes have a right to work and many have to work in order to survive — both partners in a family. That is the character of our society and, somehow, the suggestion that putting your children in daycare facilities is, somehow, illegitimate or anti-family is ridiculous and something that will be challenged by many people in this territory.

The Minister of Education put up some arguments and, for the purposes of this debate, I will be as generous as I can in interpretation. The minister suggested that there were not enough rooms, that, perhaps, provision of daycare facilities could only be temporary because of future program demands or because of population shifts, for example, and that increasing people's expectations by providing school facilities for the purposes of daycare would be dishonest.

I think that the motion goes a long way in allaying the minister's fears because the motion talks about providing daycare facilities where practicable. Now, that suggests that educational demands would be given a high priority and daycare demands would be given a lesser priority in school facilities.

Regarding the issue of dishonesty, I would think it is undebatable that any short-term contractual arrangements with the public is not a dishonest method of dealing with the public, anymore than is, say, bumping after-hour sports in favour of adult education.

The minister brought up the issue of competition with the private sector and that many people have gone to great trouble to design buildings to meet daycare demands. In the rural areas, for the member for Porter Creek East's edification, there are very few such facilities and, in many cases, these facilities are, in fact, struggling. The Minister of Education says that it is healthy for small businesses to struggle. I would say, for the purposes of becoming more efficient, that is true, but it is not healthy for those businesses to go under, because they are providing a very necessary service.

10 To providing physical plant facilities to those brave souls who would like to get involved in daycare is not an unreasonable request.

The minister brought up another issue I am familiar with, which is that many communities are justifiably upset that sometimes community centres are not being used to the extent that they should be, and that the provision of educational facilities provides unreasonable competition with efforts that municipal governments are trying to further, and I understand that problem. I think that I would prefer to interpret the words "where practicable" in the motion, that unfair competition or unreasonable competition would have to be taken into account when deciding where daycare facilities should be put. However, I am not familiar, especially in my own riding, with any such opposition to daycare facilities being placed in the schools' physical plant.

I would repeat once again, now that the member for Porter Creek East is back in the House, this motion does not call for the schools, or for the educational system, to administer daycare. This motion asks for daycare to be allowed to use school facilities; the school as a physical plant. I do not think that we should encourage the minister's typical paranoia when it comes to dealing with issues such as this, so I, too, encourage all minister to support this motion. I think it is entirely reasonable.

**Mr. Byblow:** You will recognize that I was on my feet before question was called, and I recognize that I will now close debate. I did not anticipate having to rise to my feet again, because I thought the intention of the motion so mildly worded and so reasonably stated, would have been the necessary persuasion to any fair-minded government to approve it.

I did not anticipate hearing that this government is opposed to helping little children. I did not anticipate hearing at least one minister of this government oppose even kindergarten, much less allow a daycare facility.

**Hon. Mr. Lang:** Point of privilege, Mr. Speaker.

**Mr. Speaker:** The hon. Minister for Municipal and Community Affairs on a point of privilege.

**Hon. Mr. Lang:** The member opposite indicated that I was opposed to kindergarten. I did not say that. I indicated the precedence, in respect to how it was done when kindergarten first came into effect.

#### Speaker's ruling

**Mr. Speaker:** Order, please. I must remind the hon. member once again that he has, of course, not raised a question of privilege and I would suggest that all members who wish to raise points of privilege, which ought to be very rarely raised in this House, consult the rules, because it makes it very difficult on the Chair and wastes the time of the House for interventions in debate.

11 **Mr. Byblow:** The record proves what was said, and the record will further prove how the vote went. I did not anticipate further to hear that the government considers daycare a business. It must be an exciting business to conduct bake sales, sell pocketbooks and have beer bottle drives to meet bottom line wages for daycare workers; some business.

I did not anticipate this government being so easily forgetful of the precedent already set. It was not only in this city, but in my community, as well. Daycare was located in school facilities in Faro and it was in approximately 1978 or 1979.

I did not anticipate that this government would try to make a case because they could not guarantee daycare a facility for any length of time, therefore they could not do it. The facilities that daycares already have are under that very stipulation. No daycare in the territory is permanently located.

I did not anticipate that a minister of this government would assume that all children who go to school eventually also attend daycares all the time. Only a fraction of those children do.

Having formerly been in a classroom for some length, I am familiar with a daycare facility located in a school and it is not as the minister would have us believe, some sort of interference, an impossible situation created upon the school by its presence.

My colleagues have rebutted, quite adequately and competently,

the rather weak and unsubstantiated arguments that this government has put forth in opposition to this motion: principally, precedence and practical impossibility. Those are totally invalid. We have the precedent and it is practically possible in some instances.

**Some Hon. Members:** Division.

**Mr. Speaker:** Division has been called. Mr. Clerk, would you kindly poll the House.

**Hon. Mr. Pearson:** Disagree.

**Hon. Mr. Lang:** Disagree.

**Hon. Mrs. Firth:** Disagree.

**Hon. Mr. Ashley:** Disagree.

**Hon. Mr. Tracey:** Disagree.

**Mr. Falle:** Disagree.

**Mrs. Nukon:** Disagree.

**Mr. Brewster:** Disagree.

**Mr. Penikett:** Agreed.

**Mr. Byblow:** Agreed.

**Mr. Kimmerly:** Agreed.

**Mr. Porter:** Agreed.

**Mrs. Joe:** Agreed.

**Mr. McDonald:** Agreed.

**Mr. Clerk:** Mr. Speaker, the results are: six, yea; eight, nay.  
*Motion No. 8 defeated*

**Mr. Speaker:** We will now proceed to Motions Respecting Committee Reports.

#### MOTIONS RESPECTING COMMITTEE REPORTS

12 **Mr. Clerk:** Item Number 1, standing in the name of Mr. Brewster.

**Mr. Speaker:** Is the hon. member prepared to deal with Item 1?

**Mr. Brewster:** Yes, Mr. Speaker.

#### Motion No. 2

**Mr. Speaker:** It has been moved by the hon. member for Kluane THAT the Third Report of the Standing Committee on Statutory Instruments be concurred in.

**Mr. Brewster:** Before I begin, I would like to draw the attention of the Legislature to page 3, the bottom line. There is a typo error in the *Health Care Insurance Plan Act*. The proper authority for this order is Paragraph 9.1(f).

The Standing Committee on Statutory Instruments should be a significant factor in the institution of representative government in Yukon. As a committee of the House, it serves to scrutinize the action of the government to ensure the delegated power of this Assembly is being exercised properly and responsibly. A democratic government necessitates that a duly elected body be given the mandate to govern with a minimum of operational sanctions, but there are principles and procedures, developed over the centuries, that have become generally accepted throughout the British parliamentary system to guide the conduct of government. These principles and procedures are the hallmark of good government. They protect our parliamentary system by providing safeguards against abuse of power that has occurred periodically in assemblies throughout the world.

The Standing Committee on Statutory Instruments works on the check and balance system. Although I have great confidence in my government's conduct, we must, nevertheless, constantly be vigilant to ensure that errors or omissions do not occur. It is with these noble sentiments in mind that I present the Third Report of the Standing Committee on Statutory Instruments.

The areas of concern the committee members had are explained in the Third Report tabled before this House. The government has had the opportunity to review the recommendations. I would like to remind all the members of this Assembly that this report is presented in a spirit of cooperation and constructive criticism. It is presented in an effort to provide better government for Yukoners. I trust the government will better serve as a result of our humble efforts.

Many of the concerns recognized throughout the report are concerns that have been raised in previous reports. Although I have

been told that our efforts are not without gain, there appear to be many areas where improvements should be forthcoming. At times, it seems that our committee must adhere to rigid guidelines, while many civil servants ignore the respective guidelines for making statutory instruments. Perhaps they just do not want to change, or they do not want to inconvenience anybody in government. With the support of our excellent staff, we will attempt to hammer away at a few bureaucrats who tend to ignore the commonly accepted mandates and recommendations of this committee.

This committee is of the opinion that the actors in the statutory instrument process must be given firmer direction to conform to practices that are supposed to be in place throughout the bureaucracy. The government should give departments explicit instructions to follow the established consultation and review system to allow adequate time before a proper review of statutory instruments.

We can accept the need for retroactivity in a few cases, where statutory instruments are required because of an emergency situation; but every OIC is not an emergency, nor should it be. Too many retroactive regulations is clearly an indication of poor planning on the part of the departments.

It is clear that the legal profession is split on the interpretation of some matters regarding statutory instruments. This is very understandable to me, for I have yet to meet two lawyers who agree on anything. It is fine for these lawyers and civil servants to argue the technicalities of the regulatory procession. The point is that the average person cannot understand many of these regulations. Shakespeare would probably roll over in his grave if he knew what we were doing to the English language.

To make matters worse, with the awkward regulatory process, which is often bypassed, the man on the street has difficulty understanding the regulations, that body of rules that make up half of our laws. After a year of trying to break down the obstacles to understanding our regulatory process, I am still virtually a novice. The man on the street cannot possibly understand what we are doing.

For example, every area development plan has a separate set of regulations. It is evident that one standard set of regulations could be drafted flexibly enough to accommodate all development plans.

There have been many occasions where the government and the standing committee seem to disagree on the interpretation of the requirements to cite the regulatory authority. This situation could easily be clarified by an amendment to the *Regulations Act*, which would require each regulation to cite its specific authority. This would put the onus on drafters who write the regulations to bring forward properly considered regulations within the scope of the parent act. It would relieve this committee and other internal committees within government from the time-consuming efforts required to find the authority and determine if the statutory instrument is valid and enforceable.

It is commonly accepted that policies should be embodied within the parent legislation. The government has the power to write legislation with special provision for regulation-making authority. It has the power to amend these special regulatory provisions of an act of this Assembly if it so desires. The government has the power to instruct the administration to carry out its policies as stated in legislation.

In short, the government has broad and sweeping powers to deal with matters within its areas of responsibility through well-established and commonly-accepted procedures. It should not be necessary to use the backdoor of policy through the regulatory process. It sometimes appears that a small number of officials of this government tried to take the easy way out.

From time to time, the government may deem it necessary to improve relations in areas where the regulatory authority was not clear or specific. These regulations are of the nature that good and valid reasons exist and they must be approved immediately. This type of regulation, although required to deal with matters of urgency, may come under attack. This committee maintains that there should be a filing or recall process under which the proper legislative amendment could be brought forward at the next sitting of the House. In this way, the flexibility the government requires to pass regulations for emergency situations would be maintained and

the proper regulatory authority would also be provided.

The government should review the regulations where the legislative amendments are brought forward to determine whether there is anything in the regulations that might be better located within the parent act, such as the case of the occupational health and safety officer's powers. All existing regulations should be reviewed to determine whether they still have the necessary authority after the amendment. If not, the regulation must be changed to conform to the amended act since any problems arising from regulations have the potential of becoming a matter of public discussion. It is in the government's best interest to adhere to and establish guidelines to give them necessary policy direction.

This committee feels that our persistent demands for citing authority have been largely met by the government. The quality of regulations recently received has improved dramatically in this regard. There are a number of regulations that are beyond the scope of their authority is noticeably reduced. I do believe we are making progress.

In closing, I would like to point out, in the Third Report, there are 16 OICs. On 11 of these, we have made comment; on five, we have not. Out of the 11, there were three that were simply typo errors.

**Mr. Kimmerly:** I would thank the chairman for an excellent speech. There is a lot of meat in that speech. The committee is indeed working in a non-partisan, and I believe, constructive way. I am rising simply to say that the recommendation made by the chairman while speaking to the motion concerning a change in the terms of reference of the committee is a very constructive recommendation and is designed solely to achieve a better, more understandable and more consistent regulations for the benefit of all Yukoners.

**Hon. Mr. Pearson:** I would like to respond, first, as the government leader and the minister responsible for regulations, then secondly as the Minister of Finance with respect to two of the regulations that are cited on page three of the report. My other cabinet colleagues would also like to respond to specific recommendations that were made in respect to regulations that fall under their jurisdiction.

I want to assure members that the reports of the committee are welcomed by this government. The committee's detailed contents, both praise and criticism, are considered very carefully. The committee's most recent report tabled in this House on November 15th was reviewed initially by the Registrar of Regulations, then distributed to all government departments and the legislative council for comment and discussion at a meeting of deputy ministers.

This government takes its obligations seriously to ensure that the law is stated as clearly and simply as possible; and is published in a form that is as accessible and convenient as possible. With particular reference to regulations and other orders-in-council, the government attempts to follow the guidelines for drafting them stated in the McGreer Report, the report on the 1968 Ontario Royal Commission on Civil Rights. These guidelines are repeated by the standing committee of this House in each of its reports.

Proposed orders-in-council are subjected to careful scrutiny before they are submitted to Cabinet. They are examined by staff of the Executive Council office and by a lawyer in the Department of Justice. They are then reviewed by the Cabinet Committee on Statutory Instruments before consideration by Cabinet.

I do wish to address one repeated comment made by the committee, and that is the matter of citing the authority for making a regulation. As a matter of law, authority for making an order does not have to be cited. The citation of authority is a public service, a convenience to the user, and its primary justification is the extent to which it assists the user and makes clear to him what might be unclear. This government has, since early 1982, made a consistent practice of citing the section or the subsection of an act that is the main source of authority for making the regulation. However, we have not made the citation even more specific by designating the paragraph or clause.

It frequently happens that several clauses or paragraphs are relied

upon as authority for making an order. Also, clauses and paragraphs usually do not stand on their own; rather they must be put into a broader context before their meaning is clear. The government has also avoided citing a long list of sections and subsections that might give authority for a regulation.

The reader who wants to know exactly what the authority for a regulation is will check the section or subsection that is quoted and investigate the detail to determine all authorities.

This government recognizes that regulations are subordinate legislation; that is, they can do no more than the parent statute authorizes them to do. We are committed to ensuring that regulations are clearly written, easy to understand and accessible. We thank the committee very seriously for keeping the government advised of its concerns.

With respect to the two regulations referred to on page three, under the heading *Assessment Taxation Act*, Order-in-Council 1983-8-62, and Order-in-Council 1983-77, the first one, Order-in-Council 1983-8-62 was originally drafted to establish both general purpose, as well as school tax, rates for 1983. General purpose tax rates were subsequently struck by means of a separate order, but the section references were not amended accordingly. As the committee points out, Order-in-Council 1983-8-62 should only refer to subsection 54(1) of the act, and not to the two sections that were referred to.

Conversely, with respect to Order-in-Council 1983-77, this order established general property tax rates for 1983 and the committee is quite correct: the reference should be subsection 53(1), not 54(1).

I would also like to point out that it has been our practice, each year, to revoke the previous year's Order-in-Council when establishing the current property tax rates. There has been a question raised as to the continuing validity of an order if it has been repealed and we will be discontinuing the practice of automatically repealing this orders upon the issuance of a new one.

**Hon. Mrs. Firth:** I wish to respond, as Minister of Education, to the recommendations on page three of the report, and to the recommendations on page three and five of the report, as Minister of Health and Human Resources, in an acting capacity.

I would like to thank the Committee on Statutory Instruments for completing a most onerous task assigned to it. The Order-in-Council cited by the committee, 1983-76, should correctly state that the relevant legal authority for this regulatory instrument is, indeed, 91(c), 91(m) and 91(i) of the *Apprentice Training Act*. The Committee on Statutory Instruments has corrected this citing of the act and I am most appreciative of their efforts and attention.

I am also pleased to respond today, on behalf of the Minister of Health and Human Resources, to the recommendations made in the Third Report of the Standing Committee on Statutory Instruments. The report identified Order-in-Council 1983-63, under the *Health Care Insurance Plan Act*, and Order-in-Council 1983-64, under the *Vital Statistics Act*, as requiring more specific citing of the authority for the orders under the appropriate acts.

We have seriously considered these recommendations and the orders-in-council cited by the committee should correctly state the relevant legal authority. We greatly appreciate the effort and recommendations of the committee.

**Hon. Mr. Tracey:** I, too, will reply to the report from my various departments. I will start with Consumer and Corporate Affairs, on page five, *Personal Properties Security Act*, Order-in-Council 1983/67.

The committee is correct in pointing out that paragraph 69(1)(b) is indeed proper authority for the order; however, it is the opinion of our legal advisor that the paragraph may be cited without risk of misleading or confusing anyone. There is no reasonable ground to think that confusion will result from the omission of a reference to paragraph (b).

In our opinion, the citation of section 69(1) is adequate to achieve the objective of directing the user to the main source of authority for the order without misleading or confusing him. That follows what the government leader previously stated to the House.

Under the *Workers' Compensation Act*, Order-in-Council 1983/59

on page seven, our department has been advised that section 81 of the *Workers' Compensation Act* is adequate authority for making the accident prevention explosive actuated fastening tools regulations. While the committee's comment may have some validity in relation to other parts of the total body of accident prevention regulations, it bears no relevance to the explosive actuated tool regulations established by Order-in-Council 1983/59.

In rebuttal to the committee's concerns, it is the department's opinion that these regulations (a) do not contain provision initiating new policy that is not already established by and to be inferred by the *Workers' Compensation Act*; (b) are in strict accordance with the statute; (c) do not impose a fine, imprisonment or other penalty; and (d) do not make any unusual or unexpected use of the delegated power, what one would expect to emanate from the power to make regulations with respect to the prevention of accidents.

From a political, legal or managerial perspective, there are few who would disagree that the current provisions of the *Workers' Compensation Act* are not the ideal regime to administer programs designed to minimize occupational health and safety accidents. Under the existing legislation, section one has been used as the linch pin for the entire body of accident prevention regulations. It is anticipated that the current development of a more sophisticated *Occupational Health and Safety Act* will strengthen this area and create a separate legislative administrative regime similar to provincial jurisdictions. That is now in progress.

Next, I would like to address the report on page four, under the *Highways Act*, Order-in-Council 1983/53, amended Order-in-Council 1983/34, to correct an omission by the Executive Council Office respecting the date of enforcement of private highway signs regulations. Order-in-Council 1983/34, as required by the Cabinet committee.

It was not intended to address the standing committee's comments in their second report. My comment on the second report with regard to this subject was with regard to the *Highways Act*. Those regulations provide for control of private highway signs in rural areas.

The regulations of such signs on the highways in communities or urbanized areas is currently being addressed. When this work is completed, private highway sign regulations will be redrafted and expanded. The recommendations of the committee will be addressed at that time.

We are presently addressing that very problem at this moment and hopefully within another week or so, the problem will no longer appear. It will be addressed under the new highway signs regulations.

I would like to go to renewable resources, on page five, *The Wildlife Act*. The committee had several comments about Order-in-Council 1983/57, to which I would like to respond. The committee recommended that our wildlife regulations should be repealed and re-enacted with amendments included. They note that this would improve service to the public and remove gaps in consolidation. I would agree with the committee in principle, but I would like to note that to provide this service would be very much additional time and cost.

The committee suggested that the face sheet of Order-in-Council 1983/57 is incorrect. I would like to point out that the face sheet follows the pattern established on clear advice from the Department of Justice. In fact, justice praised the approach utilized and I have the comment that justice made, "The proposed Order-in-Council about grizzly bear quotas is a model, deserving of emulation. It is not only legally correct, but also has the advantage of clarity and simplicity." That was the comment made by the Department of Justice regarding that.

The committee's final recommendation would appear to be that we cite every relevant section of *The Wildlife Act* that applies to the section of the regulations we are amending. I think the government leader has addressed that comment, although it may be nice for the general public to have every section and every subclause of the sections quoted, it is not necessary for that to happen.

**Hon. Mr. Ashley:** My first comment in reply to the committee, is on behalf of the Department of Justice, then on behalf of the Yukon Liquor Corporation, then the Workers' Compensation Board.

First, on page four under *The Judicature Act*, Order-in-Council 1983/66 reads as signed in 1982 not 1983 is correct, and the department acknowledges the error and will attempt to eliminate the same in the future.

Under *Yukon Liquor Act*, Order-in-Council, 1983/55 the committee drew attention to a wrong date appearing in draft ad, which is correct on behalf of the committee. The mistake was noticed immediately and corrected prior to the ad being published, just for the committee's knowledge.

Then on page seven, under *Worker Compensation Act*, there are a number of comments by the committee, and I will read out a written reply. This is in regard to Workers' Compensation Board Order 1983/02. This is not an order-in-council, it requires no Cabinet approval. It is a board order that, under the act, becomes a regulation.

Section 81-2 of the act has a broad scope. Unless rules made under it prejudicially affect the rights of an individual, the procedural effect of the rules should not be subject to criticism. We agree with the standing committee's comments on rules one and two, that the better position would have been to deal with those matters through specific sections in the legislation itself. Our legal advice, however, is that rules one and two are legally acceptable. And, rules three and four, in our opinion, simply recite the law as it is, and is more for information rather than rules for specific procedural direction. I would like to thank the committee for its work and look forward to the next committee report. It does help all of us to keep on our toes.

**Hon. Mr. Lang:** Just in reference with respect to one particular piece of legislation that I am responsible for, the *Lands Act*, the committee has referred to Order-in-Council 1983/80. We did have that particular recommendation reviewed by those people within justice, with respect to whether or not we were citing the proper authority. We have been advised that we can use our general regulation-making power, which I do not think that the recommendation here is refuting. I have brought it to the attention of the department and, in the future, if we can be more specific, we will be, where possible.

I would like to add that I think that the work that the committee is doing is very advantageous, as far as the members of the House are concerned. I recognize that a lot of it is drudgery. It is not all that exciting. I think, in view of the work that the committee has done, I believe the chairman indicated that the numbers of errors are becoming less and less as time goes by, so there is no question that the committee is serving a useful purpose, with respect to the drafting of regulations. It would be very interesting to see if the committee works its way out of a job. It would be one of the few times in government that that has ever happened.

**Mr. Brewster:** I would like to thank the ministers for paying attention to some of the things that we have brought to them. I think that we still have a small problem between, as I say, lawyers; no two lawyers agree. I do not know how we are going to get them to agree. However, that is a position that we cannot do much about. I think that we have gained considerable ground when we find out the fact that not only are the ministers apparently reading these dreary things but, apparently, the deputy ministers are. I think we have gained a little.

Thank you.

*Motion No. 2 agreed to*

**Mr. Speaker:** We will now proceed to Government Bills.

## GOVERNMENT BILLS

### Bill No. 14: Second Reading

**Mr. Clerk:** Second reading, Bill No. 14, standing in the name of the hon. Mr. Pearson.

**Hon. Mr. Pearson:** I move that Bill No. 14, entitled *Fifth Appropriation Act, 1982-83*, be now read a second time.

**Mr. Speaker:** It has been moved by the hon. government leader that Bill No. 14 be now read a second time.

**Hon. Mr. Pearson:** This bill gives effect to the year-end financial position of the government, as audited by the Auditor-General. The bill should be looked at in conjunction with the territorial accounts for 1982-83, which I tabled in the House a few days ago. As I explained at that time, it would have been desirable to table those accounts at our last sitting. However, we did not receive them in time.

The significant variations from the amounts appropriated are in the Department of Finance and the Department of Health and Human Resources. The variance in the Department of Finance is primarily attributable to an increase in workers' compensation for government employees of \$417,000.

Accounting adjustments, with respect to previous years, is \$423,000 and a significant increase in claims, under the Energy Equalization Program, \$161,000.

The large over-expenditure in the Department of Health and Human Resources is almost entirely due to a book entry requested by the Auditor-General to reflect unpaid billings from the federal Department of Health and Welfare for hospital services under YHIP. This amount is \$6,930,000. Financing arrangements for the payment of these arrears are currently under negotiation with the federal government and it is anticipated that it will be possible for us to resolve this long-standing difficulty some time in the course of the new fiscal year.

**Mr. Penikett:** We will not be opposing this bill at second reading — there would not be much point in opposing it, anyway. I would say to the government leader that, at first glance, the sums involved in a final supp are alarmingly large. He has explained, of course, the most significant item, and I will not conjecture about that now. Suffice to say, we will have a few questions when we go into committee.

*Motion agreed to*

### Bill No. 21: Second Reading

**Mr. Clerk:** Second reading, Bill No. 21, standing in the name of the hon. Mr. Pearson.

**Hon. Mr. Pearson:** I move that Bill No. 21, entitled *An Act to Amend the Financial Administration Act*, be now read a second time.

**Mr. Speaker:** It has been moved by the hon. government leader that Bill No. 21 be now read a second time.

**Hon. Mr. Pearson:** The new *Financial Administration Act*, passed at the fall session of the Legislature in 1983, authorized an expenditure level of \$1,200,000 for the highways materials revolving fund. The purpose of the revolving fund is to enable the Department of Highways and Transportation to purchase all types of highway materials in large quantities and to use these materials, as required, for road maintenance throughout the territory.

There are three reasons for the need to increase the dollar amount in the fund. (1) in the past, calcium chloride was shipped to Yukon by rail to Vancouver, by barge to Skagway, by rail to Whitehorse and then by truck distribution to the highway maintenance camps. In 1983-84, delivery was to have been made via barge to Haines and then by truck from there but, before the highway department could take delivery, White Pass terminated the barge operation and the calcium chloride had to be shipped by rail to Fort Nelson and from there to the camps by truck. (2) advance purchasing of bulk quantities of sign materials was introduced one year ago. It has now been determined that bulk purchases saved from 20 to 30 percent of material costs and it would be financially advantageous to allow this practice to continue. (3) the volume of centre line paint required has increased rapidly over the past few years and will continue to increase as the length of surface treated roads increases.

Having a full year's supply of calcium chloride delivered before March 31st each year, in one continuous operation, has the following benefits: (a) the hauling is done on frozen subgrades and reduces highway damages; (b) it reduces extra hauling costs because of loading restrictions in the spring; and (c) hauling will occur in winter, when there is, normally, a shortage of work for the trucking industry in the territory.

Bulk purchases of sign materials and paint, increased administra-

tion efficiency and reduced road damage will produce an overall net saving to the government of approximately \$35,000.

**Mr. Penikett:** I expect that henceforth this process will become known as "salting away some money in the account".

I should say that, having raised the statutory limit on one of the revolving funds in the newly proclaimed *Financial Administration Act* may raise some question about the use of those revolving funds, but I do not want to anticipate those questions now. I may want to ask a couple when we get into committee. Having said that though, we will not oppose the principle of this measure.

*Motion agreed to*

**Bill No. 22: Second Reading**

**Mr. Clerk:** Second Reading, Bill No. 22, standing in the name of the hon. Mr. Pearson.

**Hon. Mr. Pearson:** I move that Bill No. 22, entitled *Government Employees' Unemployment Insurance Agreement Act*, be now read a second time.

**Mr. Speaker:** It has been moved by the hon. government leader that Bill No. 22 be now read a second time.

**Hon. Mr. Pearson:** This legislation is an enabling statute that allows the Government of Yukon to enter into an agreement with the Canada Employment and Immigration Commission.

It is a *pro forma* agreement, which simply applies formal recognition to an arrangement that has already been in practice. A provision exists in the *Unemployment Insurance Act of Canada* whereby employment in Canada of public servants by provincial governments is considered to be excluded from the act. Provinces agreed to waive this provision in order that unemployment insurance coverage may be formally extended to provincial employees. This government has been asked to follow the same procedure. Section 18 of the *Yukon Act* requires that such agreements be approved by this Legislature.

The *Government Employees' Unemployment Insurance Agreement Act* and the subsequent agreement to be signed on behalf of Yukon and the Canada Employment and Immigration Commission are merely housekeeping matters. We are entering into this formal agreement at the request of the CEIC. Unemployment insurance coverage rights for Government of Yukon Employees, as have been the case in the past, have never been in question.

**Mr. McDonald:** My first reaction to the tabling of this act was that it was a prelude to layoffs in the public service. I am satisfied that this legislation is a relatively harmless piece of housekeeping.

We will support this act at second reading, as it appears to be non-controversial. I, however, am still unclear about the reason for the legislation. I will, during the committee stage, pursue a line of questioning to that effect.

I understand that there is no ambiguity in the federal legislation suggesting that the federal public employees would not be entitled to unemployment insurance, while there is such an ambiguity concerning provincial employees. I would like the minister to explain the special legal relationship we have with the federal government that would associate the territory with provincial governments for the purposes of this act. That is the only question we have at this time.

*Motion agreed to*

**Bill No. 5: Third Reading**

**Mr. Clerk:** Third Reading, Bill No. 5, standing in the name of the hon. Mr. Tracey.

**Hon. Mr. Tracey:** I move that Bill No. 5, *An Act to Amend the Landlord and Tenant Act*, be now read a third time.

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

*Motion agreed to*

**Mr. Speaker:** Are you prepared to adopt the title to the bill?

**Hon. Mr. Tracey:** Yes. I move that Bill No. 5 do now pass and the title be as on the Order Paper.

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 5 do now pass and that the title be as on the Order Paper.

*Motion agreed to*

**Bill No. 16: Third Reading**

**Mr. Clerk:** Third Reading, Bill No. 16, standing in the name of the hon. Mr. Tracey.

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

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 16 be now read a third time.

*Motion agreed to*

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

**Hon. Mr. Tracey:** Yes. I move that Bill No. 16 do now pass and that the title be as on the Order Paper.

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 16 do now pass and the title be as on the Order Paper.

*Motion agreed to*

**Bill No. 17: Third Reading**

**Mr. Clerk:** Third Reading, Bill No. 17, standing in the name of the hon. Mr. Tracey.

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

**Mr. Speaker:** It has been moved by the hon. Minister for Renewable Resources that Bill No. 17 be now read a third time.

*Motion agreed to*

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

**Hon. Mr. Tracey:** Yes. I move that Bill No. 17 do now pass this House and the title be as on the Order Paper.

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 17 do now pass and the title be as on the Order Paper.

*Motion agreed to*

**Bill No. 18: Third Reading**

**Mr. Clerk:** Third Reading, Bill No. 18, standing in the name of the hon. Mr. Tracey.

**Hon. Mr. Tracey:** I move that Bill No. 18, *An Act to Amend the Transport Public Utilities Act*, be now read a third time.

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 18 be now read a third time.

*Motion agreed to*

**Mr. Speaker:** Are you prepared to adopt the title to the bill?

**Hon. Mr. Tracey:** Yes. I move that Bill No. 18 do now pass and the title be as on the Order Paper.

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 18 do now pass and the title be as on the Order Paper.

*Motion agreed to*

**Mr. Speaker:** May I have your further pleasure?

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

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

*Motion agreed to*

*Mr. Speaker leaves the Chair*

**COMMITTEE OF THE WHOLE**

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

At this time, we shall take a slight recess, until 4:30, and, when we return, we will go on Bill No. 7, *Public Utilities Act*.

*Recess*

**Bill No. 7: Public Utilities Act — continued**

**Mr. Chairman:** We are on Clause 12, page 5, of the *Public Utilities Act*.

**Mr. Byblow:** The entire section deals with interest of a member on the board, relating to the business before the board. I assume that would specifically relate to an application or a review or a hearing, any kind of activity that the board is engaged in.

I wonder if the minister could give me a kind of example that he is considering, in Section 12, that would cause the member to refrain from participation? What kind of an example would there be a distinct interest by the member that would cause him to withdraw from participation?

**Hon. Mr. Tracey:** If he had a share or shares in a company that was involved, for example. Or, say Yukon Electrical was going to build a project here, in the territory, and the contractor who was going to be doing the job, or proposed to be doing the job, was "x" company, and one of the board member's was associated with or owned shares in, or did work for it, he would have to declare his interest in it and remove himself from dealing with it.

**Mr. Byblow:** The reason I asked for an example was because later, in the wording of a clause, there is the term "significant beneficial interest". Because of the word "significant", it suggests, or implies, that you could have some interest and still continue in your deliberations with the board.

I guess I would be curious why the word "significant" is used. You either have an interest or you do not.

**Hon. Mr. Tracey:** The beneficial interest may be so small and miniscule that it does not amount to anything. Incidentally, this is the same type of legislation that is in every other *Electrical Public Utilities Act* in Canada.

**Mr. Byblow:** I will permit the quick clearing if I could raise a point in 2(c) because of the word "significant". What is the limit of an interest with respect to the construction of a facility under consideration or under application?

**Hon. Mr. Tracey:** If he was a part owner of a contracting company that was doing some work, that would be a significant interest. If he was a worker who was working for the company, that would be something different altogether. He would still have an interest, but it would not be a significant interest, although part of his job may be working on that project, for example: who knows? The thing is, if he has a major beneficial interest in it, then we would expect him to withdraw.

**Mr. Byblow:** Who would make the judgment as to whether or not a person has a significant beneficial interest? Is it the member himself or is it based on honour or is it something beyond that?

**Hon. Mr. Tracey:** It would be up to the member himself, and if he did not declare it, and someone was to discover it, the whole ruling of the board could be overturned, so he is jeopardizing his position on the board on top of everything else, if he does not declare it.

**Mr. Byblow:** On subsection 4 I have a question relating to gas. Is there any other legislation that would supercede this or be in conjunction with this, as it relates to a gas franchise?

**Hon. Mr. Tracey:** No.

**Mr. Byblow:** With respect to gas, natural gas is what I am referring to, the entire body of legislation governing its franchise or enfranchisement, is in this bill.

**Hon. Mr. Tracey:** Yes, this allows us, the *Public Utilities Board*, to also control and regulate gas production and distribution in the territory; not so much production as distribution in the territory. If that were ever to come about, there may have to be some changes in the act, but I would doubt it; most of it would be handled by regulation under the act.

**Mr. Byblow:** In the instance, of, say for example, a gas field, if it went into production — rather than for export, for domestic use in the territory — the entire legislative package is contained here for that franchise?

**Hon. Mr. Tracey:** Yes.

*Clause 12 agreed to*

*On Clause 13*

**Mr. Byblow:** My ignorance of the law is demonstrated by my question on (2), because I am wondering if that is a normal, legal procedure?

**Hon. Mr. Tracey:** Yes, because he may be receiving confidential information, in his capacity as a board member. The same as

with a judicial body, he should not be divulging that information.

*Clause 13 agreed to*

*On Clause 14*

*Clause 14 agreed to*

*On Clause 15*

*Clause 15 agreed to*

*On Clause 16*

**Mr. Byblow:** My observation about 16(2) is that it grants very broad powers to an individual. I am wondering if that is the intent?

**Hon. Mr. Tracey:** Yes, he would have the same powers as the board.

**Mr. Byblow:** Just for my clarification, then, we are talking about only persons from the board being authorized in this capacity. It does not, in any way, relate to Clause 15; some expert outside the board being called in and given these powers.

**Hon. Mr. Tracey:** No, Clause 16(1) says "members of the board" is who you are dealing with.

*Clause 16 agreed to*

*On Clause 17*

**Mr. Byblow:** In subclause 17(2), there appears to me to be two sets of standards with respect to individuals who are employed by government, giving information or evidence to the board. This can only be done on the approval of the minister, and it seems to me that that is not the same kind of standard expected from individual members of the public.

**Hon. Mr. Tracey:** The reason for this section being here is because the government provides most, or a great deal, of information to the board and the board can call for witnesses whenever they want.

There are a great deal of government people who would be called, or could be called, and we do not want the board to have the ability to just grab the deputy minister of the department that he is trying to run. It is not a case of trying to withhold information or not make the people available. It is just that the government has to maintain some kind of control over what is going on here. There is no intent to deny the board any information or the services of the people.

**Mr. Byblow:** The clause is clearly an instruction to the board that the minister is the only person who can grant permission for members of the government to speak?

**Hon. Mr. Tracey:** Yes, it is no different than if the board instructs Yukon Electrical to make some information available. They cannot instruct Yukon Electrical to send so-and-so there, off the top of its head. It is exactly the same thing here; they ask the minister responsible to provide the information or the people and that is the way it is done. The responsible person is asked to give the information or provide the people.

*Clause 17 agreed to*

*On Clause 18*

**Mr. Byblow:** On 18(3), I think this relates, in part, to what I was raising in general debate. We have here a very powerful authority being given to the minister in terms of what he can or cannot do with recommendations from the board.

<sup>47</sup> Coupled with 18(1), the minister has quite absolute authority over the board and that is fine, if the minister is going to be fully accountable for those actions. I only raise it, not with any question in mind but, essentially, the clause around which I expressed some concern at the beginning.

**Hon. Mr. Tracey:** The reason for 18(3) is for the benefit of the board. If the government passes a regulation giving some direction to the board, the board has the ability to review that and request a review of it before it all becomes public. That is the idea, so that there is no confusion about it ahead of time, or to ensure that the government, perhaps, in the board's opinion, is not making a mistake: they can review it ahead of time, before the regulation is passed.

**Mr. Byblow:** In Clause 18(5)(b), when the minister refers to awarding costs as the board deems just, I would be curious as to what we are talking about. Are these instances of a board order to expand a service, for example, or is this a review process where somebody has accumulated some data and it costs money for consultants? I am curious as to what costs are going to be given out or commended for awards.

**Hon. Mr. Tracey:** There may be costs involved. Someone is appearing before the board and the government has, by regulation, made it impossible for the process that has been applied for to go through, so that, if they are appearing before the board, they have incurred costs. This section provides for the board to reimburse them for their costs.

*Clause 18 agreed to*

*On Clause 19*

**Mr. Byblow:** Just for the record, I want to be clear that the intent of Clause 19(1) is clearly for such investigations as would normally be expected of a utility board. The way it is worded it certainly does allow for the minister to call on the board to go beyond utility board jurisdiction.

**Hon. Mr. Tracey:** Yes, the member across the floor is absolutely right. Under this section here we can ask the Public Utilities Board to investigate any matter that we want investigated, for anything in the territory. Incidentally, they can do that now under the existing act.

**Mr. Byblow:** Is the minister saying that they could investigate anything relating to utilities, or can they investigate electoral boundary changes?

**Hon. Mr. Tracey:** They can investigate anything that they are given direction to investigate.

**Mr. Byblow:** I am curious as to why this broad authority is granted?

**Hon. Mr. Tracey:** The reason it is granted is because we have here a very high level board that can call on a lot of expertise and we may not want to set up another board. We already have a board that works together, and knows how to work together. They can call on any people they need for witnesses to investigate anything for us. As you will notice, in the transport board we have restricted it to motor transport, but this is the one board that we have in the government that we can refer anything to, to have them do a study on it.

**Mr. Byblow:** This could be an economic council. It is a possibility.

**Mr. Byblow:** The question that comes to mind in (4) is, if a report or recommendations, or the results of an investigation, are not binding on the minister, who then is responsible?

**Hon. Mr. Tracey:** We are saying here that if we ask the board to do an investigation, exactly as I mentioned the other day, and if they make recommendations, that does not bind the government. We can accept them or reject them or change them. All we ask them for is to provide us the information and make the recommendations. What we do with them is the responsibility of the government.

**Mr. Byblow:** It brings to mind, a question I raised earlier. How will we in the opposition, and the public out there, know what this government turns down from the board or accepted, or changed, or buried, or revoked? I am curious about how this information is going to be translated to the public.

**Hon. Mr. Tracey:** I think the member across the floor has already got the report there. That is the way they become public. The board releases them. Executive Council member may release them, or we may ask them to investigate something we do not feel is in the public interest to release and in that case, it would not be released. In most cases, whatever they were dealing with would be public knowledge.

**Mr. Byblow:** For the most part, however, any information translated to the public would come in the form of the annual report spoken about in the next section?

**Hon. Mr. Tracey:** It may or may not. They may report that they were doing a study or did a study or whatever. That does not necessarily mean that the information is public.

*Clause 19 agreed to*

*On Clause 20*

*Clause 20 agreed to*

*On Clause 21*

*Clause 21 agreed to*

*On Clause 22*

*Clause 22 agreed to*

*On Clause 23*

*Clause 23 agreed to*

*On Clause 24*

*Clause 24 agreed to*

*On Clause 25*

**Mr. Byblow:** The only phrase that bothers me in 25(2) is "on payment of reasonable costs". The minister knows that in the normal course of proceedings of any board that is given the responsibility of investigation or deliberating over franchises, we can have quite large volumes of information accumulate. The minister also knows that you can set quite a high cost to have some of that documentation for an affected party to review. I guess I would be curious from the minister what, in some sense of generality, we are looking at in terms of those costs?

**Hon. Mr. Tracey:** It says "reasonable costs", and it is the board's discretion to set the reasonable costs. For example, in some of these proceedings that we have gone through in the last while, the reasonable costs to provide all of the transcripts is running in the neighbourhood of about \$60. It certainly is not going to be outrageous to us. The government, even at that \$60 rate, absorbed a great deal of the cost of producing the transcripts. It is to try to recover some of the costs and to also stop people from coming in and grabbing all of the paperwork with no intention of using it.

*Clause 25 agreed to*

*On Clause 26*

*Clause 26 agreed to*

*On Clause 27*

*Clause 27 agreed to*

*On Clause 28*

**Mr. Byblow:** On Clause 28(1)(c), in comparison to the previous orders the board may make, in the old bill, sections (c) and (d) are largely new, one other one is expanded and the rest are quite similar.

Because we are talking about, in (c) and (d), the business of accounting procedures, as well as, in (d), something a little more technical in the operations, I would be curious as to what the minister has in mind by having jurisdiction over this, through orders.

**Hon. Mr. Tracey:** There are a great many different ways of accounting. What we are saying here is the board can set the manner of accounting for each of the utilities under its jurisdiction, in order to simplify all of the processes involved in the setting of rates. So, they could require a new gas company to use the same accounting procedures as Yukon Electrical uses, for example, in order to simplify it.

**Mr. Byblow:** Why does the board require this authority? Recognizing that changing procedures to an established company may incur costs, may not be advisable, or may not be desirable by that company for whatever corporate reasons it may have, I would be curious as to why the government feels the need for some authority over this?

**Hon. Mr. Tracey:** Because they may want, for example, to depreciate equipment in a straight line process, rather than some other process of depreciation. They want to be able to instruct the utility company that that is the way we are going to do it, in order to get the best possible rate for the people. If the utility company wants to depreciate in a different manner, it may be more costly for us and there are accounting procedures that are quite a bit more costly to the consumer.

*Clause 28 agreed to*

*On Clause 29*

**Mr. Byblow:** It appears to me that there is no means for dealing with complaints during this period. Is that concern not applicable, or should it be included?

**Hon. Mr. Tracey:** I do not see it being applicable at all. It says here that they must operate within the rates that the board has set and they must give 90 days notice before they propose to charge a different rate. That is all it is. There should not be any procedure for any kind of complaint. It is up to the utility company to give the Public Utilities Board notice before they want to change the rate.

*Clause 29 agreed to*

*On Clause 30*

**Mr. Byblow:** In Clause 30(1)(b), I think that relates to accounting procedure in terms of what proportion of the fiscal year

the board may want to take into account when it is calculating a rate. My only question there is: what does it mean, in the latter part of the clause, "that in the opinion of the board applicable to the whole of the fiscal year"? Is the board determining what shall constitute a fiscal year of the utility company, or is there some other meaning there?

**Hon. Mr. Tracey:** No, what they are saying is that if the utility company is saying that they obtained a big loss in the last three months of the year, or whatever, the board can apportion part of that over the whole fiscal year if they so desire. To make it easier for the utility company, they might want to apportion some in one year, or some in the other year, rather than having a big increase in rates in one year.

*Clause 30 agreed to*

*On Clause 31*

**Mr. Byblow:** I could not completely understand Clause 31(1)(a). I want to know how a fuel price increase would be applicable?

**Hon. Mr. Tracey:** What this section does is allow the board to set up a proscribed manner in which the utility company is going to pass the fuel price increase on to the consumer. There is no intention of stopping them from passing them on, it is just to be able to say the manner by which they will be passing them on; how it will be done, how it will be allocated over the period of time, or whatever.

**Mr. Byblow:** So, it would become a matter of policy by his government to encourage measures of efficiency to reduce fuel consumption.

**Hon. Mr. Tracey:** I think that is our stated position and has been for a long time.

**Mr. Byblow:** Clause 31(4) and 31(5) would both apply to utilities such as Yukon Electrical and Yukon Hydro, where there is an exchange of electrical power between the producer and the distributor?

**Hon. Mr. Tracey:** Yes, or any other producer. If someone were to produce some power, in some other area, and it was purchased by Yukon Electrical, these provisions also apply there.

**Mr. Byblow:** So, the provision we are talking about is the ability to transfer fuel price increases on to the consumer.

**Hon. Mr. Tracey:** Yes, we have made provision in this act for everything to do with any utility the board has the power to sit in judgment on. Nothing can happen without the board being aware of it happening, so that they can decide what is best for the consumer.

*Clause 31 agreed to*

*On Clause 32*

**Mr. Byblow:** I suspect there is a typo in the third last line, the word "increase".

**Hon. Mr. Tracey:** That is true, there is a typo there.

**Mr. Chairman:** Does the committee accept that typo?

**Some hon. members:** Agreed.

**Mr. Byblow:** What is this section intended to do? It comes to mind, immediately, with me the dispute that Cyprus is currently having with NCPC over fixed monthly rates during a period of non-usage.

**Hon. Mr. Tracey:** I think it is fairly self-explanatory. If anyone applies to the board for a change in the rate the board has the jurisdiction to change that rate, regardless of anything else that happens. Upon occasion, they can review it and they could either increase or decrease the rate.

**Mr. Byblow:** I am puzzled. Who has the authority to change the rate?

**Hon. Mr. Tracey:** The board; no one else. No utility can set a rate without the approval of the board.

**Mr. Byblow:** Okay, I see. So, if I am trying to apply this to the scenario between NCPC and Cyprus, if it was not approved by the board and if NCPC were under the control of the board, it could never have taken place, where they were charged a minimum monthly fee during a period of non-usage.

**Hon. Mr. Tracey:** It is possible they could have been charged the minimum monthly fee, if that was the contract that was agreed to and was acceptable to the board. They could not change it without the board's approval.

*Clause 32 agreed to*

*On Clause 33*

**Mr. Byblow:** What is the meaning of rate base in the context of the way it is worded?

**Hon. Mr. Tracey:** What section 33 is doing is allowing the board to require a rate base analysis and provided it to the board in order for them to make some rational decisions. What they could require is a cost of service study, or whatever they needed to have that rate base analysis done.

**Mr. Byblow:** Is the minister saying that this kind of determination is only done in the instance of when a utility is expanding and there is no basis for establishing that base because you are working with projections of figures?

**Hon. Mr. Tracey:** No, it could be done at any time. They could ask for a cost of service study to be done once a year. Sometimes they require it once a year so that the board has accurate up-to-date information in order to make its decisions.

**Mr. Byblow:** This clause deals with the question of fair return. The minister and I spent some time in debate yesterday on this. I guess, for the record, I am interpreting the subsequent clauses to mean that once the rate base is established, the board can then determine what return on equity the utility company is entitled to a fair return.

**Hon. Mr. Tracey:** Yes, in 33(1), you will see that they can determine the value of a piece of property in order to determine its cost in the rate base. After all the rate base is set, they can give the utility company a return on their equity as determined by the rate base. Utility companies are controlled by a board because they have a guaranteed profit every year. They have a monopoly and they have a guaranteed profit that is allowed them by the board. That is why they are controlled so strictly by the boards.

**Mr. Byblow:** I think I want to invest in a utility.

Under what guideline is the board going to determine a fair rate of return? Is that going to be set by policy of this government, or is that going to be their determination based on some kind of industry averages?

**Hon. Mr. Tracey:** It could be either one, but the existing system is set by the industry average. If the industry is getting an average of 11 percent, that is probably what the board is going to allocate to Yukon Electrical. If it was 14, it would be 14. It could also be set by regulation of the government, if the government so desired, but I doubt that they would desire to do so.

**Mr. Byblow:** I am sure the minister will agree that if the utility were a public corporation, there would be no need for debate on what is a fair return, and the consumer would be able to get a greater benefit from the generation and distribution.

**Hon. Mr. Tracey:** I cannot comment on that. Perhaps they would and perhaps they would not. There are arguments on both sides.

*Clause 33 agreed to*

*On Clause 34*

**Mr. Byblow:** My note to myself on 34(2) is that the clause provides for the government to participate in direct financial contribution to the expansion of a utility.

«I think, if I understood from previous debate, we have not determined the nature of that financial contribution, whether it be in the form of a loan, a grant, equity or some other mix.

**Hon. Mr. Tracey:** That is right; that situation would be dealt with as it arose. This makes it possible for the government to instruct the board to instruct the utility to expand, regardless of the cost, as long as the government is going to pick up the unwarranted cost, in one manner or another.

*Clause 34 agreed to*

*On Clause 35*

**Mr. Byblow:** Is this now standard procedure, where you have a joint use of poles or underground conduits, and so on?

**Hon. Mr. Tracey:** Yes.

*Clause 35 agreed to*

*On Clause 36*

**Mr. Byblow:** This one, again, grants a tremendous authority or power to the minister. Essentially, all that we have covered in the past 14 pages can be treated with exemption to someone and I am

curious as to why this clause is here?

**Hon. Mr. Tracey:** I think you have overlooked the most important part of it: it is on the recommendation of the board. The board has to recommend, the member cannot just do it out-of-hand.

*Clause 36 agreed to*

*On Clause 37*

*Clause 37 agreed to*

<sup>56</sup> *On Clause 38*

**Mr. Byblow:** My question is not so much with regard to 38(1) but to Part III in general. Why does the government feel that it required an entire section devoted to energy projects?

**Hon. Mr. Tracey:** This allows the government to become involved in any energy project that is going on in the territory, and it allows us the ability to license them and have some control over them. Under the existing legislation, we do not have that. They can build whatever they want, but now they would not be able to build it without us being involved from day one in order to project what the costs are going to be, whether it is beneficial for them to build it in that manner, or whether we should not allow it to happen. Maybe it should be built in a different manner that would be less costly to the ultimate consumer, the public of the territory.

This allows the government to get in on the ground floor in order to make wise decisions and force the people who want to build these energy projects to make wise decisions.

**Mr. Byblow:** It is not spelled out in the definitions, but would this include new technology in the area of energies such as thermal, geo-thermal, solar and such forms of electrical generation?

**Hon. Mr. Tracey:** Yes.

*Clause 38 agreed to*

*On Clause 39*

*Clause 39 agreed to*

*On Clause 40*

*Clause 40 agreed to*

*On Clause 41*

*Clause 41 agreed to*

*On Clause 42*

*Clause 42 agreed to*

*On Clause 43*

*Clause 43 agreed to*

<sup>57</sup> *On Clause 44*

*Clause 44 agreed to*

*On Clause 45*

*Clause 45 agreed to*

*On Clause 46*

**Mr. Byblow:** This is the clause where I expressed some concern about earlier where it becomes a discretionary power of the board to determine whether or not to consider a complaint. I guess I would be curious why the minister feels that an appeal process is not permissible or should not be put in place.

**Hon. Mr. Tracey:** That is not in here at all. It says that it is subject to subsection 51, which is the section stating that they must come to the government in order to get the financial power to do it. Other than that, they hear all the complaints. There is nothing stopping them from hearing the complaints. I do not know where you get that impression from reading the section.

**Mr. Byblow:** Well, in 46(1) it says clearly that the board will decide whether any action is going to be taken. That is not specific in terms of denying it. In 46(2) "The board may decide not to deal with a complaint" because —

**Hon. Mr. Tracey:** Where it appears that it is frivolous or trivial or that the complaint should be dealt with under another act — maybe it is a complaint that should go to civil action or some other thing — they determine the best manner in which to handle it or whether they should handle it at all. If they think it is frivolous, why should they go through the process of constituting a board and having an inquiry to deal with something that they already consider is frivolous?

**Mr. Byblow:** Given that a complainant feels he has a legitimate complaint that the board does not, what recourse does the complainant have?

<sup>58</sup> **Hon. Mr. Tracey:** The ability to appeal to the government has passed this on to him, and he may still appeal to the court,

if he feels wronged.

**Mr. Byblow:** In the case of the incident I just cited, a complainant has recourse to civil court if the board refuses to hear it?

**Hon. Mr. Tracey:** Not necessarily. He may go to court on a matter of law, but the court may decide not to hear it, as well. One must remember that this board constitutes a court. It is a semi-judicial body, with the same powers of a judge.

*Clause 46 agreed to*

**Mr. Chairman:** We shall recess until 7:30.

*Recess*

<sup>01</sup> **Mr. Chairman:** I will call Committee back to order.

*On Clause 47*

*Clause 47 agreed to*

*On Clause 48*

**Mr. Byblow:** In 48(1), it commits the board to be able to effect a settlement that, in my interpretation, means it can send out a financial settlement for something in the line of damages. Is that what it means?

**Hon. Mr. Tracey:** Not necessarily. What it really says there is that they can endeavour to act as a mediator between the two opposing parties. That is all it says; they can endeavour to effect a settlement. It does not say they shall.

*Clause 48 agreed to*

*On Clause 49*

*Clause 49 agreed to*

*On Clause 50*

<sup>02</sup> *Clause 50 agreed to*

*On Clause 51*

**Mr. Byblow:** This is the one I believe I may have drawn attention to earlier, in general debate. Because any inquiry or hearing requires the approval of the minister for the expenses of that inquiry, it is quite logical, of course, that the inquiry will not take place without the appropriation of the funds for it. What are we talking about, in terms of an inquiry or a public hearing? I can understand what a public hearing would be, but, with respect to an inquiry, what?

**Hon. Mr. Tracey:** It could be any inquiry. The board can inquire on its own motion, as long as it gets the funding from the government. It also could be some other inquiry or some complaint that was laid by some other organization, that the board wanted to inquire into, to find out if the complaint was valid or not. They would have to come to the government to get the funding.

**Mr. Byblow:** So, in undertaking to do an inquiry, it need not be an inquiry of a public nature; it could be, in effect, a small investigation of a minor complaint. Would that then require financial approval for any costs?

<sup>03</sup> **Hon. Mr. Tracey:** Yes, that is the reason for this section.

*Clause 51 agreed to*

*On Clause 52*

*Clause 52 agreed to*

*On Clause 53*

*Clause 53 agreed to*

*On Clause 54*

*Clause 54 agreed to*

*On Clause 55*

**Mr. Byblow:** I have some difficulty understanding this one because it seems to me that we have the potential here of withholding information.

**Hon. Mr. Tracey:** No, what it is saying is that he is not disqualified from participating in a public hearing because he has previously taken part in an investigation, unless he has been in direct communication with the party. If he has been in direct communication, personally, with one of the parties on a singular basis, he is disqualified.

<sup>04</sup> **Mr. Byblow:** I am still puzzled as to the need for the clause, because if you have an investigation and a member has participated in that investigation and, subsequent to the next investigation, he, by virtue of his board membership, has had some form of communication with a complainant, suddenly he can no longer be

required to give evidence. There may very well be new and important evidence in the interim. Unless I am completely misreading this, I am puzzled.

**Hon. Mr. Tracey:** It is obvious that you are misreading it, because it has nothing to do with giving evidence. It has nothing to do with appearing in a previous hearing. If you are a member of the board and someone is going to apply to the board for something, he comes to speak to you and you have been participating and conducting conversations with him on a private basis, you are disqualified. If you were to appear as a board member at a hearing and someone was to raise that in evidence, the whole thing would be thrown out because you were participating with him on a private basis.

Clause 55 agreed to

On Clause 56

Clause 56 agreed to

On Clause 57

15 Clause 57 agreed to

On Clause 58

Clause 58 agreed to

On Clause 59

Clause 59 agreed to

On Clause 60

Clause 60 agreed to

On Clause 61

**Mr. Byblow:** For the record, what would be considered a case of urgency in Clause 61(1)?

**Hon. Mr. Tracey:** I cannot think of what would be a case of urgency, right off the top of my head. There may be some kind of a disaster take place and someone has to provide temporary power, or something. That could happen.

Clause 61 agreed to

On Clause 62

Clause 62 agreed to

On Clause 63

20 Clause 63 agreed to

On Clause 64

Clause 64 agreed to

On Clause 65

Clause 65 agreed to

On Clause 66

**Mr. Byblow:** Just before you clear Clause 66(5), is this the section under which Yukon Electrical can be taken over as a public utility? It was just a facetious remark.

Clause 66 agreed to

On Clause 67

Clause 67 agreed to

On Clause 68

Clause 68 agreed to

On Clause 69

Clause 69 agreed to

On Clause 70

Clause 70 agreed to

On Clause 71

**Mr. Byblow:** What are the full implications of Clause 71(2), because it refers to the board and the minister, and states, "...may be heard by counsel on the appeal". I do not understand the meaning of that.

**Hon. Mr. Tracey:** What we are trying to do is broaden it somewhat. We have the power in here to give the board direction and the Executive Council member may have given the board direction in whatever is being appealed and the court may want to hear from the ministers.

25 Clause 71 agreed to

On Clause 72

Clause 72 agreed to

On Clause 73

Clause 73 agreed to

On Clause 74

Clause 74 agreed to

On Clause 75

Clause 75 agreed to

On Clause 76

Clause 76 agreed to

On Clause 77

Clause 77 agreed to

On Clause 78

**Mr. Byblow:** I am trying to understand the full meaning of this clause in relation to the future. Does this mean that NCPC does an extension of facilities; this act would supercede the *Northern Canada Power Commission Act*?

**Hon. Mr. Tracey:** No, there is no way any of our laws are going to supercede the *Northern Canada Power Commission Act*.

**Mr. Byblow:** So I guess the net result is that we are still under the colonial structure as it exists now?

**Hon. Mr. Tracey:** Yes.

Clause 78 agreed to

On Clause 79

Clause 79 agreed to

On Clause 80

Clause 80 agreed to

Clause 1 agreed to

On Title

Title agreed to

**Hon. Mr. Tracey:** I move that you report Bill No. 7, *Public Utilities Act*, out of Committee without amendment.

Motion agreed to

**Mr. Chairman:** I declare Bill No. 7, *Public Utilities Act*, cleared out of Committee of the Whole.

#### Bill No. 4: *Legal Profession Act*

**Mr. Chairman:** We shall now go to Bill No. 4, *The Legal Profession Act*. We are still on general debate.

On Clause 1

**Mr. Kimmerly:** As a comment, I will not pursue the general debate. I believe the points are made. As far as I am concerned, most of the sections can pass very quickly. There are only some that are controversial from my point of view, and I will identify them.

On Clause 2

**Mr. Chairman:** On (b) there is a typo on the last word. It should be "judicially".

**Mr. Penikett:** On a point of order, if the lawyers in the House do not help explain this bill there is no possibility of us laymen to ever understand it.

**Mr. Kimmerly:** If the minister wants me to explain it I will do so at some length if he requires.

30 Clause 2 agreed to

On Clause 3

Clause 3 agreed to

On Clause 4

**Mr. Kimmerly:** This wording is far superior than wording in earlier drafts, but I would ask the minister to explain the rationale for this wording. Specifically, why is there no mention of a duty concerning public legal education and delivery of public legal services, as well as private ones.

**Hon. Mr. Tracey:** All I can state is that this was, I thought, self-explanatory. I am a little surprised at the question, but we have put down in writing, here, what we feel the paramount duty of the Law Society should be.

As for the public education process, that is covered under Law Foundation monies. Part of the money is going for the educational process. I did not feel it was necessary — in fact, it was never even raised to us — that we should include it in this section here.

**Mr. Kimmerly:** On which provincial model is this wording based?

**Hon. Mr. Tracey:** I could not say.

**Mr. Kimmerly:** That was only a political question: it is BC.

Clause 4 agreed to

On Clause 5

Clause 5 agreed to

35 On Clause 6

**Mr. Kimmerly:** I move that entire clause clear.

Motion agreed to

Clause 6 agreed to

*On Clause 7*

**Mr. Kimmerly:** This is an excellent example of the way regulation-making power should be granted in the specific sections. It is interesting if the government is granting power to themselves, they become general and impose extremely wide wording. If they are granting regulation-making power to somebody else, they are extremely specific and extremely careful about it all. This wording is pretty good, and it would serve as a model for other legislation.

I am going to move that the entire section clear.

I have one question about advertising by members. That is in 7(n). In my view, it is entirely appropriate to put in a regulation-making power concerning advertising and this is where it ought to be.

**Hon. Mr. Tracey:** Just so that the member across the floor does not have the opportunity to stand up and say how great the other side is, the reason we do this is because, as he said, everyone has to watch out for the lawyers as well, so we are going to watch out for them beforehand.

*Motion agreed to*

**Mr. Kimmerly:** I was incorrect in my statement. I have a question about clause 7(2), if the minister would answer it even though it has been passed, especially subclauses (c) and (e): why is it specifically stated that the fees for inactive members must be at these low levels?

**Hon. Mr. Tracey:** It was felt by the government, on recommendations from the justice department, who drafted this, that inactive members should, because of the Law Society in the Yukon Territory. The Law Society, in order to raise capital, may try to charge an inactive member a full fee, in order to remain a member of the society. We should protect the inactive members by setting a maximum on it.

**Mr. Penikett:** Are lawyers who are not in regular practice, but who are employed by the government, considered inactive members?

**Hon. Mr. Tracey:** No.

**Mr. Kimmerly:** I believe that these sections are not in provincial acts and it is certainly my view that this power would be appropriately put in the hands of the society. It is, generally, in the society's interest to maintain a list of inactive members and to charge a reasonable fee, in order to offset expenses, but not so high as to discourage membership, especially a continued membership.

There is discussion among the profession that this section was put in largely to protect various individuals, who now no longer live here. I hope that is not the case. In any event, in my view, that is totally unnecessary. It is not a major point, but it is an interesting one.

**Hon. Mr. Tracey:** I guess the only answer I can make to that is if the Law Society, in its wisdom, would not charge excessive rates, then us setting a maximum of 50 percent should not have any effect on them, under any circumstances.

**Mr. Kimmerly:** That is not necessarily so. The services to inactive members are not necessarily related as a percentage of the services to active members.

**Mr. Chairman:** Can we consider clause 7 carried now?

**Some Members:** Agreed.

*Clause 7 agreed to**On Clause 8*

**Mr. Kimmerly:** It is an interesting example of regulations and it largely follows the Ontario model but, as I understand it, that is not the case in the other provinces. Why is it deemed necessary that law society regulations be regulations within the meaning of the *Regulations Act*?

**Hon. Mr. Tracey:** Because the services of the law society may be classified as essential services and, therefore, they are required in the public interest. It was felt by the Province of Ontario — and we have agreed with them and included it in our act — that it should be a regulation under the *Regulations Act*.

**Mr. Kimmerly:** The minister will understand a second question. The regulations are clearly regulations of the law society and members are bound by them. They would have the same force concerning discipline and any important consideration if this section existed or not. I submit that it makes absolutely no difference if

they are regulations or not as far as the protection of the public goes.

**Hon. Mr. Tracey:** That is not necessarily true. The only bylaws of the society that are regulations are the rules that affect the public. We make them regulations, which makes them the law, and we can stop the law society from changing the regulations if necessary to maintain the public interests.

The only rules of the society that are regulations are the ones that are of public interest.

**Mr. Kimmerly:** The minister is getting at the real answer, although he referred to it obliquely. The real answer, I believe, is that they are regulations in order to justify subsection (3), that is to give a power to the Minister of Justice that should be one of, possibly, consumer and corporate affairs, to annul the regulation if he so chose.

I wish to say that I will not propose an amendment, only because it is a futile gesture. My position is, there is no need for this and no reason for it, logically. It is my information that the same power exists in Ontario, but nowhere else. It has never been exercised at any time in Ontario. If it were exercised there would probably be a major political incident over it. In any event, it is my view that it is totally unnecessary to make the regulations of the society lawful regulations under *The Regulations Act*. It is, in fact, contrary to the principle of independence of the profession to allow a power to annul a rule.

**Hon. Mr. Tracey:** I do not want to get into an ongoing debate with the member, but we also have the power to annul the rules of any other society in this territory; accept them or reject them. This is no different, except we are only dealing with the bylaws of the society, which are in the public interest. It certainly should not bother the law society that the government wants to protect the public interest. I am surprised that any member from across the floor would say that we should not protect the public interest. If it has never been used in Ontario, I say that that is great. I hope it is never used here as well.

**Mr. Kimmerly:** So do I.

*Clause 8 agreed to**On Clause 9 to 16*

**Mr. Kimmerly:** I move that the remaining sections in Part I be deemed clear.

*Motion agreed to**Clause 9 to 16 deemed to be read and agreed to**On Clause 17*

**Mr. Kimmerly:** With regard to Clause 17(1), I would ask if there is consideration of the register that the Supreme Court keeps? Is it contemplated that, after the proclamation of this act, there will be two records: one at the court and one at the Law Society?

**Hon. Mr. Tracey:** I guess, under the rules that we have here, there would be. I do not know if there is any problem with that. I do not think there is. The Law Society has had this before them and they have not commented on it.

*Clause 17 agreed to**On Clause 18**Clause 18 agreed to**On Clause 19**Clause 19 agreed to**On Clause 20**Clause 20 agreed to**On Clause 21*

**Mr. Chairman:** Mr. Tracey, should that comma be after "a person who"?

**Hon. Mr. Tracey:** I do not know, I am not an English expert.

**Mr. Chairman:** Neither am I, but that is what the clerk tells me.

**Hon. Mr. Tracey:** I could go either way on that one, it does not matter to me, if someone feels that it is not correct English.

**Mr. Chairman:** We shall leave it in there, then.

*Clause 21 agreed to**On Clause 22**Clause 22 agreed to**On Clause 23*

**Mr. Kimmerly:** On 23(2), about the oath: was consideration

given as to alternate wordings and why was this wording selected?

**Hon. Mr. Tracey:** I do not know why this wording was selected. This is the wording that was given to us by our people and it went to the law society. Noone had any problem with it. I do not see anything wrong with the oath. If members across the floor do, let us hear it.

**Mr. Kimmerly:** I have no problem, but oaths are serious things to everybody, perhaps especially lawyers. It is not a bad oath, although not particularly uplifting. It is certainly directed at the public interest as opposed to protecting the profession. I fully support that, but some explanation would have been, at least, interesting.

**Hon. Mr. Tracey:** It is obvious that the member has more interest in the oath — perhaps because he is a lawyer — than I do. My main concern is that the oath protects the people of the territory. The Law Society is interested that it protects the people of the territory as well as the Law Society. They have accepted the oath. Who am I to argue with them?

<sup>16</sup> *Clause 23 agreed to*

*On Clause 24*

**Mr. Kimmerly:** I move that the rest of Part II be deemed cleared.

*Motion agreed to*

*Clause 24 agreed to*

*On Clause 25*

**Mr. Kimmerly:** In Clause 25(2), we have a serious question. The definition is interesting and it does not refer, incidentally, to the oath. It is not in the same language as the oath. Interestingly enough, it is not in the same language as the principle goal of the society defined earlier. I am interested in a justification for this wording. It is a controversial wording in the profession and I would ask the minister to explain the government policy as to why it is worded this way.

**Hon. Mr. Tracey:** It is worded that way because the draftsman brought it into us in this manner. I do not see anything the matter with it the way it is written. Perhaps the type of wording is a little different than some of the other areas. My major concern, as the minister responsible, is that it protects the public.

**Mr. Kimmerly:** I am trying to be as reasonable and constructive as possible, but I am going to make a suggestion that this clause be stood over in order to receive a statement of government policy. I would identify several problems, and I can assure the minister that the wording is a source of some controversy within the profession. The profession is, in no way, united as to the proper wording here and, in different jurisdictions, the wording is different. The problem area is that the phrase "public interest" is extremely wide.

<sup>17</sup> There is some justification for leaving the test extremely wide and I understand the government's position; that the primary interest of the government is the protection of the public. However, it goes on to say "or conduct that harms the standing of the legal profession generally". Now, that is a little different than the public interest and it may well be that a rift exists in the legal profession, or with the legal profession being largely a small conservative body, they may define that in peculiar ways.

I would advise the House that, at some points in Canada's history, membership in registered political parties has been deemed to harm the standing of the profession, generally. Various activities, which may be deemed by the majority of the profession to harm the profession, may be sought in the public interest by a majority of the people. One example is advertising, where it is clear — and I know it, personally, because as a lawyer, I and my firm, in the past, advertised our fee schedule about some categories of work — it was the opinion of some members of the profession that that action harms the standing of the profession, generally.

Obviously, I do not agree, but they feel that and, by and large, it is those people who are in the positions of power in the profession. I would ask the minister to justify that wording.

<sup>18</sup> The next problem is in the last line. Under this wording, it is possible to censure a lawyer for conduct completely unrelated to the practice of law. He may be walking in a peace march, for example, or — your imagination can run wild with possibilities. The

definition is extremely wide here and I would ask for an explanation of the government's policy in selecting this wording, specifically about those general questions. If the wording said "unprofessional conduct is conduct against the rules and ethics", I would have absolutely no problem. The wording is extremely wide and I am asking the clause to be stood over to receive an explanation and debate on the wording.

**Hon. Mr. Tracey:** I do not know if I am prepared to have it stood over. As for the remarks in regard to the standing of the legal profession generally, the member across the floor is a lawyer and I quite often heard him say that a person has a recourse to the courts. If he feels he is unjustly treated by the Law Society, he has the access to the court the same as any other individual does. Quite frankly, although I can understand that perhaps he is somewhat concerned that maybe the legal profession would jump on him he tried to advertise, I think that might make a good test case in the court, if he wanted to fight them.

As far as conduct disgraceful or dishonourable outside of the practice of law, I think that if a person is acting with disgraceful or dishonourable conduct outside of the practice of law, there is a fairly good reason why, perhaps, he should not be practicing law and should be censured. Certainly he should be censured by the Law Society because he is bringing dishonour to the whole profession, not just himself.

**Mr. Chairman:** Shall we recess for 15 minutes and then we shall return and go on to Clause 25?

*Recess*

<sup>19</sup> **Mr. Chairman:** I will call Committee to order.

Before we go back to Clause 25, on page 18 there is a typo in subclause 8: "repimand" should be "reprimand".

**Mr. Kimmerly:** The answer to the concern that I raised was that there is an appeal to the courts. Now, that is not an answer at all because if the courts consider the matter on appeal, they are going to look at the direction that the legislation instructs them to in this clause. The court will not apply a different test than the legislation sets out: it could not. It will look at other matters, such as whether the discipline committee acted properly, for example. I would renew the request. This is a very serious matter.

<sup>20</sup> The minister has acknowledged that it is there largely because the draftsman put it there and the Law Society did not complain, or did not complain very hard.

I would ask for an explanation, in a public forum, as to the wisdom of the wording in that section and a statement of the wording in other jurisdictions. It is readily available and could be collected in the matter of an hour or two, I am sure.

**Hon. Mr. Tracey:** It is not my intention to stand it aside. I have been in contact with the legal draftsman, who informs me that this is a distillation of Alberta's act and British Columbia's proposed act. It is also based on judgments that have been made in the courts, in this matter.

The member across the floor made mention of a clause, something like "conduct unbecoming of a barrister or a solicitor", or something along that line. This is even more defined than a statement such as that. It is felt that if the legal profession and if the Law Society feels that it is something that is becoming of a lawyer and it is taken to the discipline committee, the member who is before the discipline committee does have the option to go through the appeal process and have it appealed. My advice has been that the Law Society did not have a problem with the way in which it is written and it is not my intention to withdraw it.

<sup>21</sup> **Mr. Penikett:** I have been listening to the debate on this and I must admit to being slightly troubled by it. I have no problem with the notion that if a lawyer dips into a client's trust account, that he be tossed out of the society, or gets disbarred. I have no problem with the fact that if the lawyer does some other kind of thing that is, frankly, crooked — such as attempting to corrupt the proceedings in the courts or do something else like that — he can be bounced.

What bothers me a little bit in terms of the language in a law like this, which states that someone who is in such serious violation can

be disciplined — and I am obviously not a lawyer, but as someone who just reads the English language — is that someone whose conduct is disgraceful can suffer some remedy. I would have some fear of the potential of some kind of McCarthiest potential in this. It might allow someone who was otherwise a good lawyer but offensive to society — let me try to think of an example — such as someone who was a fanatical Muslim or something and whose lifestyle offended people, or someone who was a Communist or someone who was, in his private life, perhaps an outrageous homosexual, who might give offense to other members of the Law Society, or who might be regarded as disreputable because his private life, religion or sexual orientation or something that did not really have any bearing on their practice of the law, to be so disciplined.

22 The minister says that they have the right of appeal. The court, and I heard my colleague for Whitehorse South Centre say that the court really could not deal with the issue except as it has been defined by the law society. In other words, if it is deemed acceptable for them to be bounced for some reason, because they were disgraceful, then the court might well uphold it. I assume that there is some protection in the *Charter of Rights* against the worst kind of abuses, but it is not clear in the *Charter* if someone's political orientation, for example, can protect them from this kind of prejudice.

It is not clear in the *Charter*. There are cases, in fact as I understand it, that have gone both ways, such as the case of the people who were fired by the Saskatchewan government because of their politics. Some of them got settlements. There is another case in Prince Edward Island where someone was fired by a new Conservative government because of his politics. In fact, I understand, that that decision has not been resolved yet. There is another case in New Brunswick where someone was disciplined in some way because of his politics, but I think that they did settle that one. In any case, I understand the *Charter* is not clear on that point.

I only put this as a reasonable concern to the minister. The language here seems to me to say that someone whose conduct is offensive to the society, but which is not illegal, could cause them to not suffer in their professional standing, but to in fact suffer loss of income or their status as a lawyer, as a result. That does concern me.

23 **Hon. Mr. Tracey:** It would also concern me, for example, if a lawyer, who is practising law in the territory and was supposedly upholding the rights of the citizens of the territory, was, for example, maybe on the side running a porno shop, or something like that. That would be very offensive to society and also offensive to the legal profession, I would suggest, and would be deserving of censure.

My legal advice is that this should not be changed. It should be left. There are many arguments that could probably be made to change it, and there are just as many arguments that could be made to refute them. So, I will restate it again: it is not my intention to withhold this section.

**Mr. Kimmerly:** Before the break, the minister made comments about disgraceful and dishonourable conduct that does not relate to the practice of law. I would answer that by saying, on a correct reading of the wording the conduct that could be censured, "not relating to the practice of law", does not need to be disgraceful or honourable; under this wording, only "contrary to the public interest" or "harm the standing of the legal profession", generally. 24 I have absolutely no problem with the section about being contrary to the code of professional conduct and ethics. I have no problem with criminal acts. That is, if a lawyer commits criminal acts, for example, a robbery or a theft, there should be censure and courts have clearly upheld that, at least, insofar as indictable offenses go, but not summary conviction offenses.

The major problem I have is that it is entirely possible that there is an act complained of, which is not contrary to the public interest, but which the profession deems harms the standing of the profession generally. Under this definition, it would be censured whether or not it relates to the practice of law.

In the past, there have been abuses by law societies against members, albeit very, very few, but they exist in the law reports.

There are famous ones about a member or a potential member who was, at one time in his life, a member of the Communist Party. That was a long time ago and it would not occur today, but other situations do exist. When the country is at war — if it ever is in the future, I sincerely hope not — public emotion occasionally acts extremely irrationally and there is a potential for harm.

The most important point I wish to make is that this is a matter of some public importance and the minister has stated he made a phone call and he received advice and he is not going to change it. 25 He also said there are various arguments that can be made for it and against it. I know, as a fact, this is a controversial matter within the Yukon profession, because I have personally heard controversy from various people within and without the three large firms. I would implore the minister to carry out the debate, in public, for 15 minutes or so. It is a worthy debate and the public deserves that attention to this section. I, again, ask him to stand it over for one day.

**Hon. Mr. Tracey:** I do not know what the member is talking about: public debate. This is a public forum. This is public debate, right here. Just in the interests of getting through some of this act, I will stand this section over, but there are going to have to be some very strong arguments made for me to recommend change to this.

I recognize that the member probably feels that he has a complaint, but he is usually in a minority of one or two, in the territory. For example, he raised the issue of advertising. He wanted to advertise and no one else wanted to do it.

However, in the interests of trying to get through some of this bill, tonight, I will stand it over until the next day we deal with this.

**Mr. Penikett:** I appreciate the minister standing it over. I would want to say to him, though, that I grant him his point that this is a forum for public debate, however, debate does require the joining of the issues. With respect, I do not think the minister has responded properly, yet, to the concerns that have been raised on this side.

One of the difficulties, I admit, when we are dealing with questions like this is that when you do have only one lawyer in the House, it makes it particularly difficult. You cannot even hear what Mr. Chairman would say is a lawyer's argument. The fact of the matter, though, is that I think it is really being personally abusive to talk of my colleague being a minority of one when it comes to questions of advertising, because I can tell you that, from a considerable number of people who are consumers of law, they are very strong supporters of such provisions as people advertising their fees.

26 **Hon. Mr. Pearson:** If you will allow, I would like, before the section is stood over, to ask the member for Whitehorse South Centre a couple of specific questions about that section.

He indicated that he had no problem with a statement that "conduct contrary to subsection 8, is conduct deserving of censure" and that it should say that in the act, in this section or someplace else. If I understood him correctly, that is what he did say. What I really want to know is, does he believe that disgraceful or dishonourable conduct is also deserving of censure, or disgraceful or dishonourable conduct, whether or not the act relates to the practice of law, is conduct deserving of censure, or must the act be one that relates primarily to the practice of law?

**Mr. Kimmerly:** Disgraceful or dishonourable conduct is a very wide word and incapable of real definition. The inclusion of those words would be an extremely wide test.

It is my opinion, personally. Although I am not able to say that it would be generally accepted in the profession or not, it would certainly get some support. Disgraceful or dishonourable conduct connected with the practice of law should certainly be included.

Criminal conduct outside of the practice of law should be included; not traffic tickets, but serious criminal law. My position is that it would be perfectly acceptable to put in a test where a discipline committee or a judge on appeal defines "dishonourable conduct" within the practice of law. That would be acceptable. Certainly, criminal conduct within or outside the practice of law would be acceptable in my view.

27 **Hon. Mr. Tracey:** Would the member across the floor not also think that dishonourable conduct outside the law should be a reason

for censure?

**Mr. Penikett:** Let Mr. Kimmerly get in in a second, Mr. Chairman. I would like to respond, because the minister raises a valid point. It depends how you define "dishonourable conduct". If you are saying that dishonourable conduct is, frankly, illegal conduct, — someone is in violation of the *Criminal Code* — I have no problem with that.

The minister, representing his own point of view, said that he would find a lawyer who was operating a porno shop offensive. I think it is probably true that most people in this community would find a lawyer operating a porno shop offensive. I do not know if it is a nice legal point that someone who would argue that that person was such a successful role player that they could be a lawyer for eight hours a day and a porno shop operator at night. There may be a large number of lawyers who would find a lawyer who was loan sharking on the side to be offensive, even though it was legal. There may be people who would find a lawyer who gambled, who frequented poker parlors, as someone who was not worthy of conduct. I do not doubt that there are lawyers in this town who enjoy gambling. There may be people who regard that, because it is illegal, as offensive, and that would bring them into dishonourable conduct.

In fact, if you are a frequenter of a gaming house in this town, — there are gaming houses that have been shut down — and you are betting in such a place, you would be a found-in, and I do not doubt that you could be charged. I am not naming any names. I do not want to get into technicalities, but you could be convicted, and there have been people in this town convicted of being found-ins in such a place. It is possible that such a person may be a lawyer and there may be people of such a religious persuasion that they may find that profoundly dishonourable and would not want to see them practice law in this town.

There could be other people who may find a lawyer who was a real estate speculator as someone who was involved in an activity that was incompatible with the honourable profession of law. There may be some people who would find someone — God forbid — who was a Moonie, who went around in a — what do do Moonies wear? — white robes and bald head and go out with their tamborine at noon hour, to be unacceptable for the practice of law because judges like them to wear suits and ties and act like average, middle-aged, middle class, middle brow kind of people.

There might be a lawyer who was a perfectly good lawyer who was a Hari Krishna up at the airport bothering people, trying to get them to buy flowers. Some people might say that was dishonourable or incompatible.

I make my point only in response to the minister's point that what may be dishonourable to some may be honourable to others. The point I would share with my colleague is that it is very very hard to define where the boundaries should stop and start in something like this.

**Hon. Mr. Tracey:** Before the member across the floor gets up, there is one point that has been overlooked here: the people who are sitting in judgment are also lawyers. They are also lawyers, and some of them may be judges the next month, who knows? They are also lawyers. That is one point that has been overlooked. They are not being judged by the public, they are being judged by lawyers.

**Mr. Kimmerly:** In some instances, I would rather be judged by the public than by lawyers. The minister could think of an example where he would, too.

*Laughter*

In answer to the question about dishonourable conduct outside the practice of law, it is extremely difficult to define. I do have problems with that definition, but I could add, in a constructive way, that, practically speaking, most of the cases involve incompetence due to encroaching alcoholism or mental illness or physical disability, and possibly senility, there is no retirement age if you are a business person. It is those questions that are very difficult questions and those are the things that, in Victorian times, we defined as dishonourable or, practically speaking, most of the cases involved those situations.

I have absolutely no problem with a reasonable definition of incapacity, which, in fact, exists in other sections — at least, is

referred to — but, the phrase "conduct outside of the practice of law contrary to the public interest" would be a more exact phrase to lawyers than "dishonourable conduct outside the practice of law".  
 In any event, it is my position that the test within the practice of law can be and should be fairly general. Outside of the practice of law it should be specific and related to incapacity such as mental illness or alcoholism; a physical illness. In Ontario, personal bankruptcy is included, which is an interesting concept because of lawyers' trust funds. The test should be specific concerning conduct outside the practice of law.

**Mr. Chairman:** Shall the rest of Clause 25 be stood? Are you agreed?

*Clause 25 stood over*

*On Clause 26*

*Amendment proposed*

**Hon. Mr. Tracey:** I move that Bill No. 4, entitled *The Legal Profession Act* be amended in Clause 26 on page 20, by substituting the following for subclause 10: "Each committee of inquiry shall be composed of three members of the discipline committee."

**Mr. Kimmerly:** This is a good amendment, and we support it.

*Amendment agreed to*

*Clause 26 agreed to as amended*

*On Clause 27*

**Mr. Kimmerly:** Concerning these subsections, I have absolutely no problem, but I would question why the Executive makes the rules. Would it not be more appropriate if the discipline committee made the rules?

**Hon. Mr. Tracey:** No, I believe it should be the Executive. We are dealing with conduct of a student-at-law. It is not a case of his being before the discipline committee; all it is setting the rules of conduct.

*Clause 27 agreed to*

*On Clause 28*

*Clause 28 agreed to*

*On Clause 29*

**Mr. Chairman:** In Clause 29(3), the third line from the bottom, you will find there is a printing problem. Is that agreed?

**Some Hon. Members:** Agreed.

*Clause 29 agreed to*

*On Clause 30*

*Clause 30 agreed to*

*On Clause 31*

*Clause 31 agreed to*

*On Clause 32*

*Amendment proposed*

**Hon. Mr. Tracey:** I move that Bill No. 4, entitled *The Legal Profession Act* be amended in clause 32, at page 26 by adding the following subclause. Subclause 9 "Subject to subsection 26(12) where the chairman of the discipline committee directs that the matter concerning the member's conduct be referred to a committee of inquiry and the member, whose conduct is being inquired into requests that the committee of inquiry be so constituted, the chairman of the discipline committee shall convene a committee of inquiry that (a) does not include any member of the society who resides in Yukon; or (b) does not include more members of the society who reside in Yukon than the number that the member whose conduct is being inquired into consents to".

**Mr. Kimmerly:** Mainly for the purposes of the public interest, I would ask for a brief explanation of the reason for this amendment.

**Hon. Mr. Tracey:** We felt, and the majority of the society members felt, that the existing rules were satisfactory and that the society would appoint outside members to the discipline committee. However, there has been a great deal of concern expressed by some members of the legal profession through the media and so forth.

In order to make sure that their concerns are addressed, we have made it possible for them - if they feel that the possibility of being ill-treated by a local member on a discipline committee is a problem to them — to choose to have outside members, or one outside member, and one local member. There is also the possibility that the member being inquired into could be subjected to the costs of an inquiry and for the costs of bringing in outside members in. In all

circumstances, that could put too much of a burden on them, so we have come up with this method to allow the member to either have outside members, or one outside member and one inside, if he so desires. The government, still has one laymember who will sit on the committee of inquiry.

*Amendment agreed to*

*Clause 32 agreed to as amended*

*On Clause 33*

*Clause 33 agreed to*

*On Clause 34*

*Clause 34 agreed to*

*On Clause 35*

**Mr. Kimmerly:** There is another problem in Clause 35(1). I am not going to ask to stand it over, because it is obviously going to take longer than the time allotted, in any event.

Firstly, on subclause (1), there is a very peculiar wording; I have never seen it before. It is my understanding that the Law Society has argued the point, already, with the deputy minister and the deputy minister was not persuaded by the collective wisdom of the lawyers, which is unfortunate; however, I will attempt to continue the argument.

I do not believe that the phrase in the last two lines, "that establishes that fact or issue on the basis that it is more likely true than not", is the legal test known as the test of the balance of probabilities. If the word "likely" were taken out and the word "probably" put in, I would have no problem. But, the way it is worded, in my view, is extremely confusing and it would certainly puzzle the courts. The same section, incidentally, appears in Bill 19, *The Children's Act*.

The legal test, the balance of probabilities, is a time-honoured, well-understood legal test. Lawyers and judges understand it very well; it has been defined by courts time and time again; it has evolved into a very practical and workable test.

The phrase "that is to say" is extremely confusing, because it appears to mean, in the common meaning of the words, that the test, the balance of probabilities, is going to be explained in common language so everyone understands the test; however, it does not do that, in my view.

The problem is that the legal method of coming to a decision is obviously very different from a scientific method or a political, or a democratic method. It is based on an adversarial system and it is, because of the system, based on incomplete evidence. If you present incomplete data or incomplete evidence, it is very dangerous to say, "on the basis of incomplete evidence, I am going to decide one way or the other because there is more evidence on one side or the other". There should be notion of probability; that is, that enough evidence is introduced to meet what lawyers call an onus of proof and what one side attempts to prove can be said by the judge or the discipline committee that "that is probable". This wording is deficient in my view, and that is, I believe, a virtually unanimous opinion of the Law Society.

**Hon. Mr. Tracey:** We will look into the comments that the member has made before we proceed again with the bill.

I move that you report progress on Bill No. 4 and beg leave to sit again.

*Motion agreed to*

**Hon. Mr. Lang:** I move that Mr. Speaker resume the Chair.

*Motion agreed to*

*Mr. Speaker resumes the Chair*

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

May we have a report from the Chairman of Committees.

**Mr. Brewster:** The Committee of the Whole has considered Bill No. 7, *Public Utilities Act*, and directed me to report the same without amendment.

Further, the Committee of the Whole has considered Bill No. 4, *Legal Profession Act*, and directed me to report progress on same.

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

**Some hon. members:** Agreed.

**Mr. Speaker:** May I have your further pleasure?

**Hon. Mrs. Firth:** I move the House do now adjourn.

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

*Motion agreed.*

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

*The House adjourned at 9:30*

**The following Sessional paper was tabled April 4, 1984:**

84-4-15

Communication from the Solicitor General of Canada respecting the development of a directive to the R.C.M.P. on legislators' privileges and immunities. (Speaker)