



The Yukon Legislative Assembly

Number 12

4th Session

25th Legislature

HANSARD

Monday, April 9, 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 Philipson	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

Whitehorse, Yukon
Monday, April 9, 1984 - 1:30 p.m.

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

Prayers

DAILY ROUTINE

Mr. Speaker: We will proceed to the Order Paper.
 Are there any returns or documents for tabling?
 Reports of committees?
 Petitions?

PETITIONS

Mr. Kimmerly: I have two petitions — very similar to petitions presented last week, but clearly addressed to the Assembly — on the subject of **The Children's Act** and the philosophy in it. The total number of different names is now 2,187.

Mr. Speaker: Are there any further petitions?
 Introduction of bills?

INTRODUCTION OF BILLS

Bill No. 23: First reading

Hon. Mr. Ashley: I move that Bill 23, *An Act to Amend the Government Employee Housing Plan Act*, be now introduced and read a first time.

Mr. Speaker: It has been moved by the hon. Minister of Justice that a bill, entitled *An Act to Amend the Government Employee Housing Plan Act*, be now introduced and read a first time.

Motion agreed to

Bill No. 101: First Reading

Mr. Kimmerly: I move that *An Act to Amend the Financial Administration Act (No. 2)* be now introduced and read a first time.

Mr. Speaker: It has been moved by the hon. member for Whitehorse South Centre that a bill, entitled *An Act to Amend the Financial Administration Act (No. 2)*, be now introduced and read a first time.

Motion agreed to

Mr. Speaker: Are there any further bills for introduction?
 Notices of motion for the production of papers?
 Notices of motion?
 Are there any statements by ministers?

MINISTERIAL STATEMENTS

Hon. Mrs. Firth: I rise today to announce what many Yukoners have been waiting for since Yukon's new *Recreation Act* came into force, and that is the appointments to the new Yukon's Recreation Advisory Committee, the committee that will help this government in setting future policies respecting recreation and provide valuable advice on determining funding priorities for recreational funding.

These appointments today represent the culmination of the commitments formalized in the new *Recreation Act*, which was passed by this House last fall. It also represents a new beginning for recreation in Yukon for it recognizes the significance and importance of recreation in relation to the quality of life in Yukon. In the broadest sense of the term, recreation touches the life of every Yukoner.

In recognition of this diversity under the recreation umbrella, this new act contains a process for the selection of the Yukon Recreation Advisory Committee members, which ensures full and equal representation of the arts, of sport, and of rural and urban residents. The Committee, to ensure the equal representation I have just mentioned, is comprised on the following basis: four representatives from community recreation as nominated by municipali-

ties and local authorities; four members from sport, as nominated by sports groups registered under the *Societies Act*; four representatives of the arts, as nominated by the arts groups registered under the *Societies Act*.

As well, the selection process spelled out in the act ensures at least 12 members; there must be equal representation between rural and urban areas. Also to ensure continuity, six members will be appointed for one year terms, and six for two year terms. These appointments will also include four members from the former advisory committee who will serve a one year term.

I am sure that all members of this House cannot be anything but supportive of this selection criteria in view of the excellent balance it strikes to meet the diverse needs and interests of Yukoners. Because of the many qualified nominations received, these new appointments also represent good balances in other ways. For example, of the 12 members, five are women, and seven are men. There is also, represented by this group, a wide range of experience at all levels of recreation, sports, and the arts; from athlete, artist and participant, to official, leader, and coach; and from executive member and administrator, to local councillor.

There is also represented here a diverse range of professional skills, from educator, community youth worker and bookkeeper, to manager, senior park official and photographer. The geographic representation includes Whitehorse, the north Alaska Highway, Carmacks, Carcross, Faro, Dawson and Old Crow.

This government and, I am sure, the hon. members opposite, applauds the endorsement of these 12 Yukoners who will provide a valuable guiding mechanism for the future of recreation in Yukon. I am excited by the potential that this new Advisory Committee represents and I look forward to hearing its recommendations and views.

Our new *Recreation Act* has not only been praised by Yukoners, but also by recreation experts across Canada. The public input process was extensive, which, in turn, has resulted in the development of an act that represents the broadest possible spectrum of recreational concerns in Yukon.

Mrs. Joe: I rise in support of this new act that came into being. Also, as I went over the list of the appointees, I noted that there were a number of people who are well qualified to sit on this committee.

I also noted that the minister had chosen to re-appoint her appointee under the new act, as was under the old act — which is fine — but I would like her to know that I have talked to a number of other groups who had other names that were suggested at that time, and who probably would have been just as qualified.

The member has stated here that the five women and seven men on the committee were a good balance. It may be a good balance, but I do not find that it is an equal balance.

I am not going to delve into the Ministerial Statement too long, but I would like you to know that we do approve, in general, of the majority of people who are on this committee.

Hon. Mrs. Firth: Just to clarify the record, on the comment made by the member for Whitehorse North Centre regarding the appointment of my personal member on to the YRAC committee, it was a suggestion by the old YRAC that that person was prepared to sit on the new YRAC committee if nominated by a group, to maintain the continuity of the old committee. That is why that individual is sitting on the new YRAC committee.

As to the unequal representation of men and women, due to the restraints of the legislation being very specific as to the numbers of representation, we were unable to find six men and six women. We did try very hard, but because of the restrictions of the nominations, we were unable to.

Mr. Speaker: This brings us to Question Period. Are there any questions?

QUESTION PERIOD

Question re: School tax

Mr. Penikett: I have question to the Minister of Economic Development. On Friday, the Municipal Affairs Minister re-announced a school tax for businesses and an increase in the

residential school tax rate. Could I ask the Minister of Economic Development: how will this policy aid businesses and the economic development in this city if the net effect is to increase taxes for individual homeowners?

Hon. Mr. Lang: Of course, that is a decision that has to be made by the municipality, not by the Government of the Yukon Territory.

I think a number of points have to be made. First of all, we have increased, from approximately \$500,000 some three years ago, in transfer payments to the City of Whitehorse, to \$1,200,000 in unconditional transfers. That does not take into account, for example, our agreement for the Transit Commission and various other cost-shared agreements that we have with the municipality.

The object of the exercise was recognizing and acknowledging the major blow that has been dealt to small business, not only in Yukon, but across Canada. A recognition of that is to try and keep our property taxes down to a minimum. We are doing, in our small way, the best we can, recognizing the facts of life the way they have been presented to us, on this side of the floor, and, I would assume, on the other side.

With respect to what took place last year, it would, perhaps, be more appropriate to point out that the previous Council was the one that made the decision to move into the area that we had divested ourselves of, with regard to property taxation, and then decreased the property taxes to the residences of the Whitehorse area. It should be further pointed out that, in most cases across the territory, as far as the municipalities are concerned, there are going to be more or less maintaining the status quo on property taxes within their communities.

Mr. Penikett: It is, of course, nonsense to say that the minister has vacated the field, as long as the school tax is maintained.

The Friday announcement means that school taxes paid by individual homeowners — many of whom are unemployed and suffering considerable loss of income — will now be at a rate 40 percent higher than those paid by businesses. I would like to ask the Minister of Economic Development, as he is wearing that hat: has the government studied the effect of this differential and the effect of the school tax itself on the diminished purchasing power of those people who will, in fact, be inclined or otherwise to use the services of small businesses?

Hon. Mr. Lang: I believe that is a fallacious argument, because we have looked at it. The increase in the school tax, which will be up by .01 percentage, amounts to approximately \$10 on every \$100,000 of assessment. It is in keeping with the policy that we have of regaining 11.5 percent of the costs of the core educational curriculum offered in Yukon.

Mr. Penikett: To quote the minister, "Someone is still going to have pay; the money is still going to have to come out of the same people's pockets". I would, therefore, like to ask a supplementary to the Minister of Finance and ask him exactly how the merchants in this city are to benefit from these tax decreases when, when at the same time, their customers will suffer a loss in purchasing power, as a result of these offsetting increases?

Hon. Mr. Pearson: The facts of the matter are that each taxpayer will be required to pay an additional \$10, or fraction thereof, in school tax, depending upon what his assessment is. If their assessment is \$100,000, he will have to pay \$10 in additional school tax. The break that we are offering to the small businesses here in Whitehorse amounts to one-half million dollars.

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Question re: Agricultural land subdivision

Hon. Mr. Lang: I just wanted to make a correction for the record. During Question Period on April 5, 1984, the MLA for Mayo enquired as to what protection exists to prevent individuals from subdividing agricultural land released by the Yukon Government and thus speculating or allowing these individuals to sell land to speculators after an agreement for sale of agricultural land is completed, and title transferred from the Yukon government.

There are two forms of protection to deal with this problem. (1) under the agreement for sale of agricultural land the purchaser covenants and agrees not to subdivide the land at any time, either during the term of the agreement or subsequent to the issue of the

title. Thus, when the agricultural endeavours specified in the agreement for sale have been completed to the satisfaction of the government of Yukon, title to the land will be transferred to the applicant at the Land Registry office, but the right to subdivide will be reserved from the title. Authority to impose such a condition on an agreement for sales derives from Section 5(1) of the *Lands Act*; which states that, "where the Commissioner intends to sell Yukon lands, he may enter into any agreement for sale of these lands with the proposed purchaser, which agreement shall contain such terms and conditions as the Commissioner deems appropriate."

Further to that, before title is issued for agriculture lands, such lands shall be zoned under the *Area Development Act* as agriculture land with the stipulation that such lands cannot be subdivided into parcels of less than 160 acres.

Question re: School taxes

Mr. Byblow: Further to my colleague's question on the business tax break and the homeowner tax increase, I have a question for the minister of education. Does this tax rate adjustment indicate cuts in educational services?

Hon. Mrs. Firth: With all due respect, I would suggest to the member that he wait for the budget to be tabled.

Mr. Byblow: I take it, that that is a maybe or a yes. My next question would be to the government leader. Is it still government policy to collect 11.5 percent of the overall operation & maintenance educational costs through the school tax on property?

Hon. Mr. Pearson: Yes.

Mr. Byblow: In light of this form of taxation being inequitable, unfair, and regressive, is it still the policy of government to continue with the collection of school tax on property?

Hon. Mr. Pearson: Does the hon. member really believe that that question deserves an answer?

Question re: Liquor sales

Mr. Kimmerly: To the minister responsible for the Yukon Liquor Corporation and for alcohol abuse in the territory. The minister stated that the hours of sale of alcoholic beverages were not correlated with alcohol related problems. Is the minister aware of any studies of any kind to back up such a statement?

Hon. Mr. Ashley: First, I would like to correct the record: I am not the minister responsible for liquor abuse.

As for studies being involved, I am not aware of studies that are out in the public about those types of things.

Mr. Kimmerly: Has the minister consulted with any Indian bands concerning this important government policy?

Hon. Mr. Ashley: Personally, no, I have not. I do know that when policies are being decided, the views of anyone affected are considered.

Mr. Kimmerly: Is the minister aware, or has the board made him aware, of any research that the Liquor Corporation has carried out on this important question?

Hon. Mr. Ashley: I just advised the member opposite that I am not aware of any. I will get back to the member if I find any or if I am given any different information.

Question re: Porcupine caribou herd management agreement

Mr. Porter: Being as my favourite minister is not present today, I will direct my question to the government leader.

Last week there was a meeting held in Edmonton regarding the Porcupine caribou herd management agreement. At that meeting, a 20-page draft agreement was tabled but not signed. Is it the position of this government that they are in support of the tabled draft agreement?

Hon. Mr. Pearson: I am sorry, I cannot say yet. That draft agreement has just arrived on my desk. I truthfully had the opportunity to look at only the first couple of pages of it, nor have I had an opportunity yet to speak to our officials who were at that meeting.

Mr. Porter: When the Porcupine caribou herd management agreement is finalized, will the government leader give the House his undertaking that he will table that agreement in this legislature?

Hon. Mr. Pearson: There are a number of signatories. I notice that no one has signed the agreement yet. I do not want the member leaving the impression with the House that we are the only ones who have not signed it. No one has signed it yet. Certainly, the decision as to when and how that agreement might be made public will be one that will be taken amongst the signatories to the agreement.

Mr. Porter: The government leader is correct. The draft agreement tabled in Edmonton concerning the Porcupine caribou herd was not signed, but rather was initialled by five of the six participants. The participant who had not initialled the agreement was this government.

I would like to ask the government leader, is it because the government negotiator present at those negotiations did not have the mandate to sign, or simply the negotiator chose not to initial the agreement?

Hon. Mr. Pearson: As I said, I have not had the opportunity to speak to any of the officials who were at that meeting, therefore it is impossible for me to answer the question.

Question re: Correctional centre mobile work camp

Mrs. Joe: I have a question for the Minister of Justice.

An article in the latest *Yukon Info* publication mentions the correctional centre's mobile workcamp and that they will be tested and put into use in the near future for projects outside of Whitehorse. What additional services will be required to implement the units in those communities?

Hon. Mr. Ashley: This debate is going to have to be carried on during the budget. I cannot go into things that are going to actually require expenditures of money.

Mrs. Joe: Another question with regard to those units: has his department a present list of projects in those communities that the units will be used in?

Hon. Mr. Ashley: As I have already stated, I cannot advise the members opposite, yet, whether it is going to be used in other communities this year until the budget is tabled.

Question re: Agricultural lands options

Mr. McDonald: I have a question for the Minister of Municipal and Community Affairs. The regulations pursuant to the *Lands Act* state that an agreement holder for agricultural land may tie up an additional 1,000 acres-plus of adjacent lands for a period of five years, as optional land for the purposes of expansion. Can the minister state whether this option for more land is granted to agreement holders upon request and whether or not the land is sold at development cost?

Hon. Mr. Lang: I believe, in the method that is employed, it is held at their request and if they wish to proceed from the first stage of their development, the option for the purpose of the additional acreage, at the size of 160 acres per parcel, is made available.

Mr. McDonald: Perhaps the minister could clarify whether the option is for 160 acres at a time or up to 1,000-plus acres — 420 hectares?

Are the performance guidelines for receiving additional adjacent lands the same as those for the original parcel, or are they relaxed? In any case, are they standardized in any manner?

Hon. Mr. Lang: We have not been in a situation where an applicant has completed his or her first commitment on the first parcel, but I can assure you that it will be a standardized procedure and it would be at the allocation of 160 acres in addition to whatever they have received, in order to ensure that the land that is being released is being utilized for the purpose that it was set out to be, and that is for agricultural purposes.

Mr. McDonald: Perhaps we can investigate the detail of the regulations in the estimate's debate. In any case, in relatively crowded, high demand areas for agricultural lands, how is the existing farmer's desire for expansion reconciled with the desire of new farming interests for agriculture? More specifically, in the Whitehorse area, are farmers permitted a full 1,000 acre option on Whitehorse Crown lands?

Hon. Mr. Lang: It depends on the application that is put

forward. In most cases, to my knowledge, the applicants have just applied for 160 acres and, in many cases, not for the further option of expansion; that is in most cases. In other cases, where the land is available and is arable, then they have taken the opportunity of applying for the second option. It depends on the application, and as to what is being proceeded with.

All I can say, from my knowledge of talking to the people who have applied and have met the requirements, is that they seem to be quite happy with what we are doing. Incidentally, the people from Alaska, who had the opportunity of reviewing the policy for land disposition for agriculture, felt that we were doing it in a very logical manner.

Question re: Government conditional grants

Mr. Penikett: I, too, have a question for the Minister of Municipal Affairs. Public mention has been made of conditional Yukon government grants to the City of Whitehorse for lighting and line painting on Mountainview Drive. Does the minister responsible for Mountainview Drive also have any plans to make funding available for the upgrading of the Whitehorse South Access Road, which is also seriously potholed?

Hon. Mr. Lang: If my memory serves me correctly, I believe that is a Department of Highways responsibility and I really cannot speak for their plans with respect to that particular corridor of access into the City of Whitehorse. I think it is safe to say that there is going to have to be some upgrading on Mountainview Drive and I am very pleased to see that the member opposite is supporting it.

Mr. Penikett: We always like to help look after the minister's constituency. Does the minister's government have any plans to repair the potholes in the BST surface on Mountainview Drive, or does it believe that the installation of lighting will enable motorists to dodge the existing potholes, and therefore make improvements to the road unnecessary?

Hon. Mr. Lang: It is too bad that the leader of the opposition does not go around to the various ridings so he can speak adequately on behalf of the territory. If he did drive up that corridor, he would find that the BST has been removed and there has been some upgrading for the purposes of further application of BST, probably in the month of June.

Mr. Penikett: Believe me, if I were given \$32,000 to make a tour of the Yukon, I would do it once a month.

Could the minister indicate what amount of conditional funding his government proposes for Mountainview Drive, and does he have any plans for funding other programs in other parts of the city?

Hon. Mr. Lang: I am more than prepared to stand up and talk about the funding of other projects within the City of Whitehorse. One only has to look at the arena that is being prepared for the purposes of tender by the City of Whitehorse. There is \$2.2 million put forward for that particular project. There is also a million dollars given, unconditionally, to the City of Whitehorse for the purposes of capital expenditures and, in some case, are further cost-shared with the Government of the Yukon Territory.

Further to that, we are looking at the possibility of cost-sharing a curling rink structure that is in the neighbourhood of \$1.5 to \$2 million, depending upon the terms and conditions brought forward by the city. That will probably be done in the year following.

Further to that, we have an agreement with the city with regard to Mountainview Drive, which the member opposite was party to when we signed that agreement with the City of Whitehorse. We are living up to our obligations.

Further to that, we also have put a considerable amount of financial aid towards the City of Whitehorse swimming pool that we were very pleased to participate in.

When you start looking at things of this nature, you can see that there is a commitment by this government to ensure the quality of life of the people of Whitehorse is maintained and hopefully enhanced.

Question re: Predator control program

Mr. Byblow: I have a question for the Minister of Tourism. The Yukon Association of Wilderness Guides have added their voice to those condemning this government's predator control

program and they charge that their interests, which are of significant tourism appeal, is clearly being threatened by the program and the boycott. How is the minister addressing the concerns of the wilderness guides?

Hon. Mrs. Firth: I have met with one of the members of the wilderness guides, and I have been in correspondence with the president of the Wilderness Guide Association, Hector MacKenzie, on the telephone and we are presently having discussions.

Mr. Byblow: The position of the wilderness guides is quite clear. They call for this government to come to its senses and scrap the wolf and grizzly reduction program and they state their case repeatedly. Why has the association not received a reply from the minister to their letter of March 14th?

Hon. Mrs. Firth: The association has been sent a reply. I cannot say that they have received it. I received the letter from Hector MacKenzie, the president, this morning, at which time I phoned him and told him I had sent a reply. He indicated to me that he would make the appropriate correction, saying that the minister had replied to his. We replied on the 26th of March.

Mr. Byblow: The minister has not addressed the question of concerns that the wilderness guides had posed to this government, and the continuing problem exists that an impact upon Yukon is severely being threatened in markets of tourism around the world. I would ask the minister pointedly: why is her department, and her government, permitting this contradictory policy of threatening tourism on the one hand, and its responsibility for encouraging it on the other?

Hon. Mrs. Firth: I am not quite sure what kind of answer the member is looking for other than that I am sure he would like for me to say that the Department of Tourism disagrees with the policies of the Department of Renewable Resources. I think I made it very clear in an interview I did with the Whitehorse Star and the *Yukon News* that that would not be the case.

If the member wants to get picky about it, I can go again into a long list of efforts this government has taken to ensure that we do not get a bad reputation internationally and that we do have accurate information available in our foreign offices and in the foreign offices of other governments. I have indicated to the member that I am still discussing with the wilderness association people their concerns and am trying to express to them the facts that we have and the facts that we are going to be presenting. I do not know what else the member would like me to do.

Question re: Alcohol abuse

Mr. Kimmerly: To the minister responsible for the Liquor Corporation, which is responsible for alcohol abuse in the territory. The minister has recognized that the corporation makes "moral decisions", or considers its moral responsibility. Has the minister given the board the benefit of the government's policy views on the matter of the availability of liquor in bars?

Hon. Mr. Ashley: I am not sure I understand the question. I will take it on notice and see if I can understand it when I read it in *Hansard*.

Mr. Kimmerly: Has the the government made its policy clear to the board, concerning the availability of liquor in Yukon drinking establishments?

The minister obviously does not understand that, as well.

Is it the policy of this government that the relatively limited hours of operation of bars here, as opposed to, for example, in Alaska, is beneficial to the alcohol abuse problem here?

Hon. Mr. Ashley: There are number of things that he is asking. I will take the question on notice and get back to the member.

Question re: Porcupine caribou herd management agreement

Mr. Porter: Seeing that I did not get an answer for my last question to the government leader, I would like to ask him again.

About the government negotiator, who was represented at the Porcupine caribou talks in Edmonton, did he or did he not have the mandate to initial or to sign any agreements that were discussed and negotiated at those meetings?

Hon. Mr. Pearson: Yes, our officials go to all of these

meetings with the mandate to initial any agreement that they think is fair and equitable and reasonable.

Question re: Women in labour force study

Mrs. Joe: I have a question for the minister responsible for the Women's Bureau. Hopefully, I will get an answer for it.

In December, 1981, the study on the women in the labour force was announced and then later shelved by this government. Since the cost of this study would not appear to be too costly, why was this study not completed?

Hon. Mr. Ashley: We discussed this a number of times and I believe that the answer at the time was — and probably still is — because of budgetary restraints.

Mrs. Joe: Would the minister undertake to provide this House with the amount of money it would cost to reactivate and complete this study?

Hon. Mr. Ashley: Yes, I can do that.

Mrs. Joe: In April, of 1982, the minister responsible for the Women's Bureau at that time said, "The Women's Bureau of this government is a high profile branch". Since that is clearly not the case today and the women of Yukon are very concerned, I ask the minister if he would describe the present level of priority of the Women's Bureau; is it medium or is it low?

Hon. Mr. Ashley: The priority of the Women's Bureau is still high.

Question re: Secondary industry

Mr. McDonald: I have a question for the Minister of Economic Development.

There have been some laudable initiatives taken by individuals — most notably the mayor of Whitehorse — recently, to promote secondary industry in Yukon. One such proposal, recognizing the availability of power, minerals and skilled manpower, was to encourage the building of a silver smelter. What specifically has the government done to support this particular initiative, in terms of determining the viability of the project?

Hon. Mr. Lang: I have had some preliminary discussions with the mayor.

Mr. McDonald: The obvious question to ask the minister is if he can detail his discussions with the mayor in a little more detail by determining whether or not the project is viable in terms of market and in terms of silver production in the territory?

Hon. Mr. Lang: I am having some discussions in the department on this matter, and until I find what technical expertise is available to give me some idea of the viability of such an option, I cannot really comment any further, but we will follow it up and if there is an opportunity there, I am sure the government will be more than prepared to support it in conjunction with industry.

Mr. McDonald: Of course we will follow it up again as well to ensure that the minister is doing what he says he will do.

As a point of general principle, just to clarify one of the minister's statements, does the government believe that it has a responsibility to coordinate such projects by assisting and bringing together industry and project hosts?

Hon. Mr. Lang: There is no question of that. I think we demonstrated it on the North Slope with the possibility of 600 jobs being there. I often wonder where the opposition was?

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

GOVERNMENT BILLS

Bill No. 10: Third Reading

Mr. Clerk: Third reading, Bill No. 10, standing in the name of the hon. Mr. Pearson.

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

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

Motion agreed to

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

Hon. Mr. Pearson: Yes, Mr. Speaker. I move that Bill No. 10 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. government leader that Bill No. 10 do now pass and that the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I shall declare that Bill No. 10 has passed this House.

Bill No. 2: Third Reading

Mr. Clerk: Third Reading, Bill No. 2, standing in the name of the hon. Mr. Lang.

Hon. Mr. Lang: I move that Bill No. 2, *An Act to Amend the Municipal Finance Act*, be now read a third time.

Mr. Speaker: It has been moved by the hon. Minister of Municipal and Community Affairs that Bill No. 2 be now read a third time.

Motion agreed to

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

Hon. Mr. Lang: Yes, Mr. Speaker. I move that Bill No. 2 do now pass and the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. Minister of Municipal and Community Affairs that Bill No. 2 do now pass and the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I will declare that Bill No. 2 has passed this House.

Bill No. 6: Third Reading

Mr. Clerk: Third Reading, Bill No. 6, standing in the name of the hon. Mr. Ashley.

Hon. Mr. Ashley: I move that Bill No. 6, *Miscellaneous Statute Law Amendment Act, 1984*, be now read a third time.

Mr. Speaker: It has been moved by the hon. Minister of Justice that Bill No. 6 be now read a third time.

Motion agreed to

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

Hon. Mr. Ashley: Yes, Mr. Speaker. I move that Bill No. 6 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. Minister of Justice that Bill No. 6 do now pass and the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I will declare that Bill No. 6 has passed this House.

Bill No. 14: Third Reading

Mr. Clerk: Third Reading, Bill No. 14, standing in the name of the hon. Mr. Pearson.

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

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

Motion agreed to

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

Hon. Mr. Pearson: Yes. I move that Bill No. 14 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. government leader that Bill No. 14 do now pass and that the title be as on the Order Paper.

Motion agreed to

Bill No. 21: Third Reading

Mr. Clerk: Third 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 third time.

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

Motion agreed to

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

Hon. Mr. Pearson: Yes. I move that Bill No. 21 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. government leader that Bill No. 21 do now pass and that the title be as on the Order Paper.

Motion agreed to

Bill No. 22: Third Reading

Mr. Clerk: Third 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 third time.

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

Motion agreed to

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

Hon. Mr. Pearson: Yes. I move that Bill No. 22 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. government leader that Bill No. 22 do now pass and that 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 that the House resolve into Committee of the Whole.

Motion agreed to

Mr. Speaker leaves the Chair

COMMITTEE OF THE WHOLE

Mr. Chairman: I call the Committee of the Whole to order. At this time we shall have a brief recess until 2:30 and when we return, we shall go on Bill No. 15, *An Act to Amend the Mental Health Act*.

Recess

Mr. Chairman: Committee will come to order.

We shall now go on to *An Act to Amend the Mental Health Act*. We are on Clause 2(2), "detain".

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

Mr. Kimmerly: I have not exhausted all of the debate, which is reasonable, but I have certainly exhausted the points that are necessary to make, in this area.

The position that I was expressing — I guess it was almost two weeks ago, now — is that, because of the other powers granted in this legislation, of enabling detention under various conditions, it was crucial that detention be narrowly defined and not generally or widely defined, as is here. I was specifically concerned about administering drugs, especially mind-altering drugs, before a person is judged by a court to be mentally disordered within the meaning of this act.

I would ask the government, in light of the discussion previously, and also in light of the public attention that rose in the last little while about this act, if they have considered their policy at all, and do they not see the wisdom of the restriction, especially as to the use of drugs, to cases only where it is absolutely necessary?

Hon. Mr. Phillipsen: I would likewise ask a question, in light of the comments made publicly by the medical people in town, as to whether the member opposite has reconsidered his position and chosen to see things from a different light?

Mr. Kimmerly: It is a question and I will answer it. There were some letters to the editors, which clearly evidenced by their content that they do not understand a solicitor's duty and are reacting — I will use the word "petulantly" as opposed to "rationally" — concerning the real issues. The answer is no, I have not changed my position in any way.

¹⁷ It is my view that the debate in the media concerning the doctor's letters about a particular media story clearly indicates a lack of understanding on the part of those members of the medical profession of the civil libertarian issues involved here. It is absolutely clear that you start to realize whose toes you are stepping on if you start to change things, or to propose that things be changed. The real question in my view is: why do some people perceive that their toes were stepped on?

The questions concerning civil liberties that are asked here would not be asked in larger jurisdictions where there is a familiarity with these kinds of problems.

¹⁸ **Hon. Mr. Philipsen:** I am sure that the medical practitioners in town will be very happy to know that they do not understand anything and are petulant. I would like to assure them that they are in good company with people who are not understood by the member for Whitehorse South Centre.

I think that the member for Whitehorse South Centre is also being a little bit out of line when he suggests that the members of the medical profession in Yukon do not understand the problem. He, obviously, is thinking that they have all come from here, studied here, been trained here and never gone from here. The reverse is obviously true; they have all come from other areas of Canada, studied in other areas of Canada and, I would suggest, they are all very well aware of the problems inherent and encountered in the mental health field.

Mr. Kimmerly: This is probably an unconstructive exchange and is getting off the topic, but I wish to make it clear that I chose my words very carefully. I did not say "the medical profession here". I said "some members who wrote letters" demonstrated a lack of understanding about, primarily, legal issues, which is an entirely different statement.

Hon. Mr. Philipsen: I would like to say, for the doctors, that there are probably some members here in this House who do not understand medical issues.

¹⁹ This was a very crucial provision. It contains a new definition for a mentally disordered person for the purpose of involuntary committal. It is clear here that the definition is not intended to define those who psychiatrists might call psychotic, although many of those people might be included here. The purpose of the definition is a narrow one and is a legal one, as opposed to a medical definition, and it is clearly for the purpose of involuntary detention, which certainly should not include all of those people who may be called mentally disordered; at least, from time to time. I have many general comments, but I will start with a very specific one, which is not the most important.

²⁰ What is the policy behind, or what is the justification for, the inclusion of the phrase "for the protection of the patient's property, or the property of others"? Why is that in there?

Hon. Mr. Philipsen: This section deals with incompetency in some areas and if a person had his brain injured or in an accident of some kind, this would act would be used then for property management. It would allow a trustee to get into a bank account so that the money could be taken out to pay a mortgage payment or something like that, to protect the person's property when he is in a position where he is not competent enough to protect his own property, thereby not losing it or suffering a loss through incompetency.

Mr. Kimmerly: I recognize it is the incompetency subsection loosely labeled. There are other procedures, by use of the courts, to deal with a civil process to enable the property of a mental incompetent to be dealt with. Why is the government making the protection of property a criteria in defining mentally disordered person for the purposes of involuntary detention?

Hon. Mr. Philipsen: As I stated earlier, we will be coming forward with a new mental health act in the future, and with that will be a companion bill; a competency act. This is in here to cover the area of competency until such time as we have both companion bills forward in the legislature.

Amendment proposed

Mr. Kimmerly: On the basis of that explanation, I would propose an amendment to the bill. I would move that Bill No. 15, entitled *An Act to Amend the Mental Health Act*, be amended in

clause 2(2) at page 1 by deleting from the definition of "mentally disordered person" in (a) the words "or for the protection of his property or the property of others."

²¹ The minister appears to want to disagree before he has listened to argument but I think it is important to listen to the rationale for this amendment.

It is perfectly proper and it is perfectly sensible to have laws governing the property of mental incompetents. It is probably most appropriate to allow the laws to deal with mentally disordered persons of various kinds and also the kind of mentally disordered person who is in no way dangerous to himself or others. That possibility now exists.

The minister is referring, also, to new legislation expected in the near future, but there is obviously some confusion here. The principle that I am placing before the House is that protection of property should not be a test whereby people are involuntarily detained or kept in mental institutions.

I referred to an example of a case that I dealt with — I referred to it a while ago — of a married woman who had separated and whose husband was attempting involuntary committal proceedings, not on the grounds that there was a danger to the woman or anybody else, but on the grounds that she was dissipating her property or spending her money and this was evidence of instability.

²² I would argue very strenuously that the test should be that where a person is exhibiting symptoms such that it is reasonable to predict there is, or will be, a danger to himself or to other people, force or involuntary committal may be justified. But in other cases, I submit that the principle that we should follow is that detention is not justified.

If the consideration is protection of property, it is entirely possible to move in a court to protect that property without making an application for what is, in essence, imprisonment of a person, or involuntary detention of a person. I ask the minister and the government to seriously consider this proposed amendment and to explain its view on the question.

Hon. Mr. Philipsen: Obviously, the argument I put forward earlier about an individual being incapacitated by an accident or an injury and this needing to be in here to protect his property if he was not able to protect his own property, has not satisfied the member opposite. I, therefore, not being of a legal mind, would ask that we stand this section over so I can have my own legal opinion made of this amendment, and we can carry on with discussion of the *Mental Health Act*.

Mr. Kimmerly: I agree and would suggest that (a) and (b) are virtually identical and that both (a) and (b) be stood over.

Hon. Mr. Philipsen: I have no problem standing both sections over.

Clause 22(a) & (b) stood over

On Clause 3

Mr. Kimmerly: I have a question. Why was the 60 day time period selected as opposed to the normal 30 days?

²³ **Hon. Mr. Philipsen:** The shorter the time for the appeal, the less time you have to prepare for your appeal, so the extra time is in the patient's favour. The extra time was given so that one could prepare for appeal.

Clause 3 agreed to

On Clause 4

Mr. Chairman: In subclause (1) there is an "s" missing from "subsection"; and "is" should be "are". Is that agreeable?

Some hon. members: Agreed.

Mr. Kimmerly: I am extremely concerned about clause 4(3)(4), because it specifically empowers the authorities to keep an alleged mentally ill person or a mentally ill person, as defined by the act, in a jail. Practically speaking, the only alternative would be in a jail, at the present time. I would have no problem if there existed a psychiatric group home or something like that, or even any kind of a group home where the person could be placed, but clearly we are contemplating detention and we are contemplating conduct creating danger to others. Clearly, the purpose of the act is to allow the authorities — either the medical authorities or the police — to put a person in a jail cell in order to keep him secure. It is my view that in 1984 that is totally unjustified, with the possible

exception of a situation in a community — such as, say in Beaver Creek or Ross River or Old Crow, or a small community — and only until the person can be flown or driven to a hospital. Once a person gets to a hospital, it is in my view, cruel and unusual to place that person in a jail cell because of considerations of danger.

²⁴ I would like to mention that there were two cases, in the past four or five months or so, where that actually occurred, and they were both cases where the individual involved refused to take medication. The hospital made the statement, through an individual, to the court that it would not accept that particular patient if it was not empowered to administer certain drugs.

In my view, what occurred was wrong, in that in that case the decision should have been that the person be released, subject to legal conditions, or kept in the hospital. It is wrong to keep a person who is mentally disordered, or allegedly mentally disordered, in a jail cell. Given the facilities in Whitehorse now, that simply should not exist and I would ask the minister for any policy justification that he may have concerning that particular section.

Hon. Mr. Philippen: I think we are back to the same point, again, that the member opposite is making a bit of an error in feeling that police are going to place people in the police cells. The only person who can admit a person is a physician, a physician who is a member of the medical staff of the Whitehorse General Hospital.

I find it particularly difficult to stand here and debate a one-sided debate with the member opposite, on cases that have happened in the hospital, which he speaks of, that neither the hospital, through confidentiality, or the department, through confidentiality, or I, can debate. If the hospital made a determination that it was not prepared to accept a person who would not accept treatment, or not keep him in the hospital, it, obviously, felt that there was a need to not have that person in the hospital; the physicians made that decision.

²⁵ One of the reasons for 4(3)(4) would be that if you had a number of individuals in need of being in a secure facility and the hospital was full, you would have to have this section in here to allow the people admitting the patient to put him into another secure facility until there was room to put him into the secure facility in the hospital. Without this section in here, you would have great difficulty in doing that, and you may be putting the hospital in an untenable position when it did not have a secure facility.

There may even be times when there could be a patient who the hospital felt, under no circumstance, could it keep him in the secure facility that they do have, and a secure facility would have to be sought.

Mr. Kimmerly: I have great difficulty with that because what the government is saying is that if the present facilities are overloaded, we can put people in jail in order to keep them. I simply cannot accept that.

The second statement is that there may be a person who is so dangerous that the facilities at the hospital are not secure enough. The government frontbenchers are calling across the way and saying, "Well, what are we going to do with them"?

You do not put them in jail. They could go to other institutions. I would say it is preferable to fly a person to a larger institution outside with more secure facilities than to put people into jail.

This principle accepts the possibility that a mentally disordered person can be put in jail in order to keep him secure. The policy that I, as a legislator, wish to express is that that is never justified. Mentally ill people should not be put in jails. There is a provision here, now already cleared, concerning the power to administer drugs in order to detain a person. So, that problem is already covered by other sections.

²⁶ In 1984, it is simply unacceptable to put mentally ill people in jails. If the facility here is not adequate, then either change the facility or transport the individuals to an adequate facility, but do not put them in jail. On this section I wish my disagreement to be recorded and I will call for a committee vote on the section and the purpose of doing that is on the record. I have not proposed an amendment, but it is my wish to vote against this clause; therefore, of deleting the clause, because of the principles that I expressed. I understand, under the rules, the specific names are not recorded, but the Chairman asks members to stand and counts. For the record,

I will vote against this particular section.

Mrs. Joe: I would also like to stand and voice my objection to this section of the bill. I think that my colleague for Whitehorse South Centre was speaking the truth when he said that detaining people in a jail or a place such as a jail is cruel and unusual punishment, and it is. You have a person who has been apprehended and who is alleged mentally disordered. You have a person experiencing, already, some very terrible experiences, and if you were to follow that through with putting him in a jail, if there were no other facilities available at that time, then I would submit that that only adds to the experiences that he is feeling at that time. I would have to disagree with it as well.

Mr. Kimmerly: I would ask for a recorded vote within the rules on the question.

²⁷ **Mr. Chairman:** The count is seven yea; five nay. Subsection 4(3)(4) has been cleared.

Clause 4 agreed to

On Clause 5

Amendment proposed

Mr. Kimmerly: On Clause 6.1(3), I will propose an amendment immediately. This section has already received media attention and our position is well established.

I would move that Bill No. 15, entitled *An Act to Amend the Mental Health Act*, be amended in Clause 5, at page 3, by deleting in subsection 6.1(3), the expression "more than 120 hours"; and substituting for it the expression "more than 24 hours".

In speaking to the amendment, it is clear that this is a particularly controversial section and it is clear that we consider an extremely important provision. The present law allows for an involuntary detention, on the signature of two medical practitioners, for 72 hours; that is, of course, three days. This refers to the time period between when two doctors sign a certificate and when the person must be brought before a court, either a judge or a justice of the peace.

²⁸ This amendment in the government bill simply changes the period from three days to five days. It is our position that some period of time is justified, but the period of time should be the absolute minimum that is practicable or feasible.

I wish to make an analogy between this and the criminal law, fully recognizing that this is mental health law and not criminal law, but there are analogies, perfectly proper, on the basis that the same principle, which is that the freedom of the individual is at stake. The legal principles and the practical limits as to time are analogous.

In the criminal law, there is a procedure and a provision whereby a person can be arrested, and that is entirely proper. There are powers to arrest a person and the law is that if a peace officer arrests a person, that person must be brought before a judge or a JP as soon as practicable, and in any event, before 24 hours. That is, if 24 hours goes by, the only legal course of action is to release the person.

That provision has existed for a long time and is working. Indeed, many argue that the 24 hours is a long period in many respects, especially where JPs are readily available in all of the cities and the country.

This mental health law is different as to the purpose in some extent because the argument is frequently made that the detained person is not a criminal at all; he is not to be punished but to be protected and possibly treated. It is very important to consider the practical ability of, especially a psychiatrist, but also doctors, to adequately diagnose, and it is important to consider the period of time in which diagnosis characteristically occurs. The minister will know that the position of the sole psychiatrist here is that the diagnosis is made fairly frequently and, in any event, within a few hours at most. That position is clearly stated in his position paper that he presented to the minister.

The potential abuse, of course, is that if the diagnosis is wrong, either based on wrong information or wrong interpretation of the information — which I am arguing is an extremely likely event given the general state of medical science in this area — the possible harm done by keeping a person a long period of time, when it is unnecessary, is great. I would be very interested in the possible arguments as to the

expectation of whether making the period longer or shorter increases or decreases the number of actual applications. I am extremely interested in any information of a practical nature on that particular point.

It is very clear to the patient and also to any lawyer representing a patient in this situation. The situation, universally, is that the doctors sign the committal and there is then a consideration as to whether or not a subsequent court proceeding will occur.

¹⁰ Many — and I do not know the statistics — of these committals simply lapse and no committal application is actually made to the courts.

The information that is most commonly given to the patient or the patient's legal representative is "We will see; at the end of the period, we will see. If the patient improves, we will drop the application and, if the patient does not improve or gets worse, we will continue". The patient, if the patient is objecting and concerned, is in a state of limbo and that state of limbo is extremely stressing and disquieting to the particular patient involved.

I would make the argument that the practical arrangements can all be made, easily, within 24 hours. In most cases, the court arrangements are not initiated until the last day — usually the last few hours, in any event — and it is a compelling argument to the court that the time period is expiring, therefore you had better make time for it. I would argue that, if the practical arrangements can be made in the criminal situation for the benefit of alleged criminals, as a matter of social policy and, indeed, social morality, it is certainly justifiable to make the practical arrangements for people who are ill or allegedly ill.

In summary, I say most forcefully that, in light of the information, the diagnosis is characteristically made within a few hours, at most. Why is there a proposal to extend the period from three days to five days?

¹¹ **Hon. Mr. Philipson:** May I assure the member opposite that it is not as he has quoted before; that the doctors want weekends off.

The reason that this has been raised from 72 hours to 120 hours is to help protect patient rights, not the reverse, as the member opposite seems to think. It gives time to ensure that full and proper assessment is undertaken. It ensures the proper notice is given to permit the patient and his or her counsel to prepare for the hearing. So, if the member opposite, who may be representing a patient, was at one of his 11 percent conventions, he would not have to hurry away. We would not want that to happen. It is to avoid unnecessary committals.

This last point is important. Many patients, after a few days of confinement, especially if provided with treatment, improve to the point where committal is no longer necessary. However, if assessment, treatment and organization of a hearing must all be completed prior to the expiry of 72 hours, a hearing with negative findings is almost assured. The patient who may have been fit for discharge after four or five days, or who is prepared to continue treatment voluntarily after four or five days, has his or her rights significantly affected, as well as the stigma attached to his committal.

There is also the practical issue, of doing the necessary organizational work and providing the necessary notices within the very short time allowed. It is also worth noting that other provinces have initial detention periods without an automatic hearing from two weeks to definite periods. Yukon is the only jurisdiction with a short detention period after which a court hearing is mandatory. It is the only jurisdiction where court hearings are required at any point.

The reason for the 120 hours is practical. It is to ensure patient rights, and in no way are we trying to place a patient in a situation where he may be taken into a court when he is in an aggravated state that could be reduced, with a short amount of time, and the 120 hours, from every indication I have had, is going to help the patient remain out of a committal situation and protect his rights and also protect him from having property transferred if committed.

Mr. Chairman: We shall recess until 3:50.

Recess

¹² **Mr. Chairman:** I will call Committee of the Whole to order.

We are now on the amendment, clause 5(1); 6.1(3).

Mr. Kimmerly: The minister made a comment about the time period in other provinces. He stated it in a very peculiar way and I wish to put on the record more complete information about other jurisdictions. I am taking the information from the government's discussion paper. In Quebec, a person is assessed upon his arrival in hospital and a decision as to the necessity for "closed treatment" is made within several hours.

In Alberta, a person may be detained for up to 24 hours and two physicians are to examine him independently during that time, in order to decide about certification.

¹³ The person may be treated against his will during this time. In Manitoba, a person arriving with a medical certificate or warrant may be detained for up to 21 days.

In Nova Scotia, a person may be admitted involuntarily for observation for up to seven days. During that stay, he must be examined by a physician within 24 hours of his arrival and by a psychiatrist within three days and a decision made with regard to his formal admission.

In Ontario, involuntary patients can be held for examination for up to five days. In Yukon, the present period is 72 hours, or three days. From the same paper, it is clear that there is a distinction made between initial assessment and keeping a person without court process after the initial assessment. It is interesting that the following statement is made in the government's discussion.

¹⁴ "It is not made clear how long a psychiatrist can detain a person after his arrival in hospital for the purposes of examining him. In practice, the psychiatrist on call sees the person almost immediately and makes a decision within several hours, at most".

So, it is clear that what we are talking about is a period of time after a diagnosis is made. It is clear that two doctors have already signed a piece of paper, stating that the person is to be involuntarily committed for a period of time. There are, really, two time periods relevant: the first time period is the time period when the arresting person, or some other person, physically detains the person and brings the person to a doctor, and the doctor examines the person — in Yukon's case, it is two doctors — and makes a diagnosis.

¹⁵ It is possibly tentative but, in any event, the doctors must be acting on a clear opinion that they have that the person is mentally disordered within the meaning of the act. After that time is over, there is another period of time where the person can be involuntarily detained without going to court. That period is now three days. The government is proposing to increase it to five days, and the rationale or reasons, as I understand them, are that they say this protects patients' rights. That is a remarkable statement, but it is frequently made about these kinds of laws; it allows for proper notice. Well, that is a totally fallacious argument, and an argument with no merit whatsoever, for the following reason: in a case where notice is not given, or inadequate notice is given, or the proper people are not all notified, it is always possible to get an adjournment from the court in order to achieve proper notice.

¹⁶ In a case where a person is being detained and that person requires something to be done for his interest and requires notice or more time, he can always, at his request, get more time. This occasionally does come up, although it is more often the case that the patient expresses the view that he wishes to get on with it, and get out of there, if possible, at the earliest moment.

The notice argument, as a protection for the patient, is a totally fallacious argument, in that if the patient requires extra time, and desires it, he is perfectly able to a consent for that purpose. Indeed, extending the time period works exactly the other way. It gives the authorities more time in order to serve the proper notices; however, practically speaking, the notices required here are to the patient himself and the notice to him should be immediate.

That raises another point that is covered in later sections. There certainly have been cases where involuntary committals were made by the signature of two doctors and the patient has claimed that he had no information about that until he tried to leave and then he found out about it, which is, of course, an abuse and should not ever occur.

¹⁷ The second argument is that a longer time would avoid unnecessary committals. Well, I am interested in any concrete

information that the minister can bring forward to justify that; and it requires justification. It is certainly possible that if a person is in a state of crisis or temporary stress, he will get better over time, sometimes. If a committal were made and the person, immediately afterwards, got better — in layman's language — it easily could be the case that committal is dropped or changed. That argument really simply acknowledges the tenuous nature of the predictions or diagnoses in the first place.

The minister also commented about the possibility of a person voluntarily staying after a certain period of time. I say to that, certainly, that is consistent with a shorter period, as opposed to a longer period.

The minister stated, "Every indication I have had" leads him to propose a longer period. What is the source of your information? If you are saying that I am not surprised if a hospital or doctors look for more power or wider latitude, that is not surprising at all and, indeed, is to be expected.

³⁸ The patients, I would suggest, would give a different indication, or have a different position. It appears to me — and I would be pleased to be proved wrong, although I do not think I am — that the minister has listened to representatives of the medical profession, and has extremely little information from the legal profession, especially from legal experts in the field — of which there are absolutely none in the Yukon territory, myself included — and has not listened to patients' groups.

This is clearly an issue upon which opinions have differed historically. I will argue this more directly under the definition section that we have already stood over. It is clear that when doctors are forming opinions about involuntary commitment, they are not acting in the traditional medical sense. They are performing an act of social control. The members opposite are impatient with that statement. Perhaps I will emphasize it as it is obviously important.

I will quote from a book entitled, "Law, Liberty and Psychiatry", by Thomas Sussez. On page 43, he is talking about commitment of the mentally ill, and he states, "It should be evident that the psychiatrist who recommends commitment or who accepts involuntary patients for 'treatment' acts neither as a scientist nor as an ordinary physician who treats only consenting patients. What then is such a psychiatrist's role?"

³⁹ "His role is to exert social control on a socially deviant person — and authorities are named — and as such, it is similar to the roles of policemen, a judge or prison warden".

Hon. Mr. Philipsen: I was going to ask if I could have the book tabled so that I could read the whole thing in context.

Mr. Chairman: You will wait until the hon. member is finished speaking. Proceed, Mr. Kimmerly.

Mr. Kimmerly: The psychiatrist, when making a prediction or a diagnosis pursuant to this act is, constitutionally, acting in a legal way more than he is in a medical way. It is perfectly proper for a doctor or a psychiatrist to make a medical diagnosis concerning mental illness. That is a medical process. After that process has occurred, the psychiatrist, if considering involuntary confinement, goes another step and makes a decision or a recommendation that is primarily not a medical decision or recommendation at all, it is primarily a legal one.

The psychiatrist is, at that point, becoming an officer who is engaged in social control as opposed to medicine *per se*. The psychiatrist makes a prediction as to the potential danger that that person represents and those dangerous criteria involve very many value judgments.

⁴⁰ There are lots of people who do dangerous things, but those dangerous things are socially acceptable. For example, in the area of sports, race car driving, boxing and hockey, I suppose, could be three examples. Those activities are probably objectively more dangerous than the kinds of things that committed mental patients characteristically engage in, but there is a value judgment as to the propriety, in a social control sense, concerning what mental patients do.

It is clear that, at the point where two doctors have already signed a committal, the waiting period after that is not primarily for the purpose of diagnosis. Diagnosis has already occurred; the doctors

are already of the opinion that the person is to be detained. The policy questions involved are questions of social control and the rights and freedoms that we will recognize as a society for those people who are or might be suffering from some form of mental illness.

Our position is that the Alberta test is the better one to choose; that some period of time is appropriate. It is entirely feasible and practical — indeed, it is working in the Province of Alberta now — to choose a short test and the shorter the better.

⁴¹ It is our position that it is appropriate, in a major way, to draw an analogy to the criminal process, which is also a social control process. It is inappropriate to afford mental patients, or allegedly mentally ill people, less protection than we afford alleged criminals. It is simply inappropriate that we refuse that fundamental right of freedom and due process of law to this extent to those unfortunate persons.

Hon. Mr. Pearson: I must say that if I did agree with one statement that the member opposite made in that long tirade, the one statement that I could agree with was that he is not an expert. That is a fact; he is not an expert, nor am I. I believe that my grey hair gives me some credibility to know what common sense is. The member opposite is not even talking common sense anymore.

He knows very well that what we are dealing with here are people who are in the hospital and who have not yet been committed. We are the only jurisdiction in Canada — the only jurisdiction — that undertakes to send patients to the court for committal. That is a fact. Whether he wants to argue with me all day or all night, it does not matter. That is a fact. What he is talking about is a patient who is going to be committed to an institution. That is not what we are talking about here at all.

The 72 hours, I would like to point out to you, has been in effect in this territory since 1971. We have never had a problem with it until this past winter. That is a fact of life. The issue has never been raised in this territory until this past winter. I wonder how far we have to look for the reason why we are debating this now. If you would like to know, the reason that we are at 120 hours now is because the member opposite was able to prove quite conclusively that 72 hours was not enough and that the medical people needed 120 hours. They have to have 120 hours in order to have more time to help the patient.

It gives them two days longer for very necessary treatment in some cases. It is much more likely that anyone who has been in a situation for five days is more likely to go into that situation voluntarily than someone who has to make the decision after three days.

⁴² It is common sense, and I will not accept the argument from the member opposite to anything different.

He suggested that all that is going on here is that doctors are looking for more power. It is not true. It is not true at all. I am quite convinced that if the doctors in the territory did not have to deal with this matter, they would feel much more comfortable, but the fact of the matter is that we are in a situation where the doctors in Yukon must deal with this issue. They have made, to us, what I think is a very valid, well-documented request. They have to have 120 hours. It is fairer for the patient. It is more equitable; it is better for the hospital; it is better for the courts; it is better for everyone, it seems, except for the member opposite.

Mr. Penikett: I was interested in the government leader's comment that he is not expert, and I accept that. I would be curious though, since we are once again in this peculiar situation of the legislature having to pass judgment on things without having expertise available to the legislature; whatever expertise may or may not have been available to government. Therefore, on a procedural question, I would be interested in knowing whether the government leader would be willing, in the interest of informing all members of the House on a very important issue, in having the experts who made their views known to the government, and who have obviously influenced the government on this question, called before the bar of the Committee as witnesses so that we could put questions to them; both as to their status as experts and to the basis and the logic for their recommendations.

Mr. Chairman, I am sure you would admit, as the government

leader, by implication, did just now, that their arguments and the reasons for the recommendations that the government has accepted have not been defended adequately or logically by the members on the front bench opposite.

Hon. Mr. Phillipsen: The people of whom the member opposite speaks made those representations to me in my office. They are reflected in this piece of legislation and that should suffice.

Mr. Penikett: It would not suffice in any other legislature in the British Commonwealth. No government that has no expertise in its front bench is going to come to a House and say, "Accept my word; I have consulted some expert; I have consulted one expert; I have consulted an expert who agrees with me", or "I have consulted the only expert available and he tells me this".

Most legislatures — not ones as small as this, but most legislatures — in something as important and critical — I am not talking about the medical problems because that....

Mr. Chairman: Order. Order.

Mr. Penikett: Let us talk about putting people away for five days, in violation of the *habeus corpus* traditions of our society. Let us talk about that as a serious matter, not just a medical problem, but as a civil libertarian problem, and let us talk about the practical medical problem. Let us talk with the experts; let us have them come here and tell us why it is necessary, and not just tell the minister in confidence in his office, but tell the legislature that has to pass the laws. Let us ask him some questions. Let us ask the government leader if he will agree to do that. Let us ask the minister if he will agree to do it.

It is not acceptable here, nor anywhere else, for a minister to say, "Well, I had a chat with this fellow in my office and he tells me this". That, by the way, would be called hearsay evidence, in reference to another bill.

It is not fact, it is not evidence, it is not even information; it is the minister's interpretation, as a lay person, of what an expert has told him.

Hon. Mr. Pearson: What is the member saying; that the advice that we get and transmit to this House is not factual? What? Are we lying? Is that what he is saying? Come on, Mr. Chairman.

Mr. Penikett: What I am saying is that in Committee we are entitled to examine the evidence that members are bringing before us but, unfortunately, since the members opposite admit their fundamental ignorance about these matters, and since we do not have these experts available for us to examine and to question, as we would, as any other legislature in the English speaking world would do. Except for the fact that the members opposite here do not like the democratic process of having the public speak to the legislatures, on the record, in public, because you are like the one-party state here, where you have everything as a *fait accompli* by the time it comes to the legislature. Go look at some other legislatures, elsewhere. Go look at every other legislature in this country, where with a bill like this we would have witnesses before the committee to advise us and of whom we could ask questions and get answers, and not depend on the minister's interpretation of expert opinion. This is the only place left in Canada where this happens.

Hon. Mr. Pearson: We have said that we are not experts on this side of the House. The leader of the opposition has to give us that there are no experts on the other side of the House, either, but I have got to tell you that we are better informed by experts than they are over there, simply because we have had advice in respect to this.

Mr. Chairman: Order. Mr. Penikett, I am going to let you continue, but then we will back to the clause we are on after you are through.

Mr. Penikett: If he is saying that, then, he is admitting that he has been an accomplice to denying information to one side of the House, one group of legislators, on a piece of information. The logic of that is that he should be willing to call witnesses before this House.

They do not want it that way; they want to do it in a closed shop, behind closed doors, have their private discussions and then come to the House and say, "We are experts because we have talked to the experts. You guys have not; the legislature cannot, just the

Cabinet can".

The fact of the matter is that they will not let us have informed discussion here or have the benefit of informed advice. They will not let the House hear the questions and make their own judgments, as a legislature, which is what our proper role is. When the government leader says that there is no expert on this side — and there is just as much expertise, I suspect, on this side as there is on the other, because I, for one, have taken the trouble to consult with some people on this matter, including, as it happens, members of my family, who have more expertise than anybody over there on this question. In fact, it is not as quick and easy as the members opposite say.

Admittedly, I think the question —

Some hon. member: (*Inaudible*)

Mr. Penikett: He talks about members opposite; this member here, the member they are pointing to, has, in fact, worked as a psychologist, prior to becoming a lawyer. So, that is not relevant; he is here in his role as a legislator. He is not here as a lawyer, he is not here as a psychologist —

Mr. Chairman: Order. Order. I think everybody must address the chair and, when you are not standing up, please be quiet.

Mr. Penikett: I would like to hear, on this point, in respect to the arguments for 24 hours, or under 20 hours, versus 72 hours. I would like to hear some substance. I would like to hear some evidence.

What we have had said in essence comes down to this: the minister says, "I have been told by people involved that such and such". That does not give us any hard information about the processes. It does not deal with the real question. The real question — the serious question, not a frivolous question about someone being tied up for five days as opposed to 24 hours or 72 hours; a real question — is about a person's rights, not administrative convenience, or professional convenience, but a question of a person's rights. A very serious question.

I am not trying to cheapen the debate by intervening in this way, but I want to say...

Some hon. member: You drag us down.

Mr. Penikett: I drag you down? I heard the minister over there make some silly partisan shots about 11 percent, after my colleague had made a serious speech; chippy, petty, and pathetic. I have to go a long way down before I get as low as the members opposite, just let me say that.

Mr. Chairman: Order, let us get back to the point, please.

Mr. Penikett: I want to hear some evidence, not some hearsay.

Hon. Mr. Lang: I have been listening to this debate with a great deal of interest. I want to make a couple of points as a member of this House, who has spent some time in this House. Because the member opposite has served in one capacity at the federal level, he pretends to be an expert in respect to the proceedings of this House. We have made it very clear in respect to the committee and the procedures of this House. It was up to us, as government and opposition, to go out and seek the information, as far as we know where it is and how we can be provided with that information as factually as we possibly can get it.

This is what the minister has done. Armed with that information, we bring forward our arguments to this House. It would be very easy to revert back, as we did prior to party politics, to have witnesses in the chair and we could spend days. Forget this bill, but look at the principle of what we are speaking, as people come forward on the budgetary items, et cetera, and the story goes on.

I resent the implications that the member opposite feels that it is a necessity to bring forward people to the Committee of the Whole. This bill has been on the Order Paper for well over 10 days. In fact, the government leader has made it very clear: the reason this bill is before us is because the inadequacies of the present bill were brought forward to the attention of the medical profession and the hospital by a number of individuals. I will not name any names in this House, but that is a fact.

It was working very well prior to that. I resent innuendos from the side opposite that the members on this side of the House are not concerned about people's rights. I want to assure the members opposite, there was a great deal of debate in respect to just how

much time should be provided for the purposes of assessment and treatment prior to going to the court.

The member opposite for Whitehorse South Centre, with whom I disagree violently, who believes because of his past experience, that the only ones who know how to handle a situation happen to be a judges.

45 This is designed, principally, for the purposes of doing assessment and treatment so that one does not have to go through the very agonizing, very humiliating procedures that would be necessary for a court hearing, if it can be avoided. It is very clear. The Minister of Health and Human Resources has stressed that in respect to this particular principle we are speaking to.

The members opposite say that we do not have any experience in this particular legislation. I am here to tell you that we have more than you have, and it is not because we have somebody who happens to be a past member of the bench. We happen to have somebody who worked, on a daily basis, in a hospital, who happens to be, because of prior personal experience, fairly knowledgeable in respect to what goes on, not day by day, but minute by minute. Dealing with people who are sick is a very distasteful thing. This is a very subjective area.

I will give the member for Whitehorse South Centre, who took the opportunity of this House and our time as well as his own, to give us a lecture from a book that he brought forward. The fact is: it is a very subjective area.

I want to assure members opposite that we are doing everything we can in this bill, as the Minister of Health and Human Resources has said, to ensure that people, if it comes to that, will get due process. It is very clear and unequivocal. Compare it to the old legislation and compare it to the legislation across this country, the member for Whitehorse South Centre will agree that it goes a long ways to ensure that the individual and his rights are as protected as possible.

I just want to make a point here. I have heard the members opposite talk about the individual. Of course, this is what this legislation is about. But this legislation is also brought forward in the public's interest, for the protection of the general public. The fine line we have to walk is that there may be a situation where someone is violent or could be violent or where people could get hurt. This bill has to apply to the territory as a whole, from Old Crow to Watson Lake.

When you talk about five days, in respect to section four as opposed to section six, which brings it all together, you have to have the ability to protect those professional people who are dealing with the immediate situation, so you can get in and out. You may have a situation where you have two days with no airplane service, and that is possible. I know from personal experience.

It would seem to me, when you take a look at this, it says up to 120 days, depending upon the individual case. I resent very much members saying that they know more than the medical profession. These are the people who deal with it. These are the people, as the government leader has indicated, who are forced, because of circumstances, to deal with these situations which, as I indicated earlier, are very distasteful. They do not want to deal with them any more than anyone else does. The member for Whitehorse South Centre talks about another institution.

Hon. Mrs. Firth: There is none.

Hon. Mr. Lang: The fact is that there is none. That is a fact, a proven fact.

If the member for Whitehorse South Centre wants to take them into his own home, perhaps, then, we could look at the legislation from that point of view; but, the fact is — let us be realistic — that is not the case. We have a situation, medically, where people are in a situation, in most part not of their own making, but a situation where we are taking into account, as I said earlier, the public interest, as opposed to the individual's interest.

There are enough safeguards in here to ensure, with all the probabilities that could come up, that the individual's rights are going to be protected. I resent very much the innuendos from that side, with respect to the principles of what we are speaking of here. The bill has been here — it was not introduced yesterday — to be discussed today. It is an area in which, at least, one member of

their caucus has been obviously involved. I mean, he has tried to get front page news coverage every second week, as far as I can make out, depending on what was in the news. So, obviously, I would suspect the members opposite have already made up their minds, in any case.

Mr. Penikett: I think the minister made an accurate statement when he said he disagreed violently with my colleague. I think that is about the only accurate statement he made.

He talks about innuendo but, of course, one cannot escape noticing that he is not above that, himself, particular in respect to his last remark about front page of newspapers, but then, we have come to expect that from him, so, perhaps, we should not expect anything better.

I think the questions about due process are important here. I do not think anybody is arguing that the process being employed here is superior, but we should not delude ourselves that our situation here, with respect to our ability to deal with mental health problems, is superior: it is not. We only have one psychiatrist; we do not have any proper mental health facility.

As I understand it, the staff on the medical wing do experience special problems with mental health patients. In fact, I have had nurses say to me that, in some cases, they would rather deal with an intensive care patient than a mental health patient, not because the persons themselves may be suffering a great deal of anguish, but they may be very hyper. They may bother other patients, they may be getting around to the other rooms, they may be popping in and bothering people. The facility we have here is not great — I think everybody would admit that — for dealing with that kind of problem.

The minister suggests, somehow, that they have been able to ascertain the views of the medical profession on this question. I think they have certainly heard from some members of the profession and I assume the minister responsible has had fairly extensive discussions with the one psychiatrist. However, I want them to know that, even within the medical community in this town, there is, quite predictably and not surprisingly, a difference of opinion on this question.

Hon. Mr. Lang: So we are wrong and you are right; is that it?

Mr. Penikett: I am not suggesting that anybody is wrong or right. I made a much more modest point, an accurate point, a truthful point: that there is a difference of opinion about this matter.

47 There are differences of opinion in the medical profession. There are doctors who believe that some physicians are far too inclined to sedate patients who are hyper and who are difficult. There are doctors who believe that patients who come in who are hyper and so forth, need a different kind of response, need to be put into a jacuzzi, need to be activated, need to be allowed to get out and run around and use their energies, rather than sedated and kept in a hospital ward.

There are people who come in, I expect, into care who are violent. There are people around who may be in and out of hospital with quite serious mental problems. I submit, that if it is difficult to identify those problems and difficult to treat those problems in 24 hours, I suspect it is also very difficult to deal with them in 72 hours and almost as difficult to do it in 120 hours. From what I know of mental health problems and mental health patients, and mental health hospitals, there are very, very few people who have any substantial improvement in that kind of period of time, unless their problem is really very transitory. Even people with a very common problem in this part of the world, such as depression, do not recover from it, unless they are manic, in that kind of time period. If you look at the course of psychiatric care, for most people who are seriously mentally ill, I suspect the treatment goes on for quite a long period, at least a year in most cases, for a serious problem. Those people who are institutionalized tend to spend a much longer period than that.

I raised the point, or got into this discussion, only because I would prefer, for my own peace of mind — it is not inappropriate that I use that phrase in this case — when we are dealing with a question like this, which affects people's rights, and which is being justified largely on professional administrative grounds — I do not mean public administration — that we hear some detail. I would

prefer to hear from the people involved in having to deal with these problems, and without getting into particular cases, and betraying privacy in any way, I would feel more comfortable and more happy if we were able to question them, and not, as the minister says, do private consultation. That is not the only role for a legislature. A legislature, when it is debating important issues like this, is entitled to certain information. It is also entitled to assess that information. It is also entitled to conduct its own inquiries, not as individuals, but as a legislative body. That is why you have committees elsewhere; we do not have them here.

I agree that it has probably taken more time. Sometimes when you are listening to somebody who is possessed with a great deal of detail on the subject explaining things to us, sometimes I think ministers can do a more precise and expeditious job of doing it. There are matters like this where, I think, with no disrespect to the Minister of Education, that in questions of psychiatry and mental health problems, there are none of us who are sufficiently enough informed in this House to be able to adequately provide other members with the kind of information that would enable us to make an intelligent judgment about some of these issues.

At least we have not been provided with sufficient information of that kind on the floor of this House, I suspect.

Mr. Kimmerly: The debate in the last half hour was instructive for some purposes. I submit, basically to enable a realistic analysis as to the level of debate here and what is actually occurring, not so much as to the real question at hand. The real question, of course, is how long should the period be before you must go to court. It is interesting that the three Cabinet members who have spoken have said different things about that particular point.

The minister responsible says, "Every indication I have had..." — was the phrase he used — to justify his advice that five days is a better period than three days or one day. The government leader stated that it is a "well-documented request", and he also stated that I, through various cases in the courts, established that 72 hours is not enough. He used the phrase "proved conclusively". That is absolutely wrong, but anyway that is what he stated.

Then the minister from Porter Creek said an entirely different thing. He says, "It is a very subjective area". That is what he said. He also said it was debated carefully. He did not say where; presumably either in Cabinet or caucus or both. However, his opinion is that it is a very subjective area and it was solved through debate. The government leader states, "It is a well-documented request" and the responsible minister was a little more general.

I am interested in the documentation, because I have received the position paper that the minister received and it is written primarily by the only resident psychiatrist and there is a letter of transmittal by the director of Health Services who simply agrees.

I have read very carefully the statements made in writing by the psychiatrist and he does not make a recommendation. It is really very interesting that he does not make a recommendation; he simply points out various facts and points out various considerations.

Now, I think it is entirely appropriate to point out the issues and the considerations that should be addressed. It is interesting that he, on paper, does not make a recommendation. Perhaps, verbally, he did; however, the request from our side, concerning listening to expert testimony, is, in this particular case, most appropriate.

Someone said it is not so serious that men are afraid of the dark; the real tragedy is when men are afraid of the light. In this case, there is an opportunity to debate this question on a fairly high level, on the level of information and the level of public policy. In the last little while, the debate is on who is an expert and who is not — as if that really mattered, in the long run — and whether it is well-documented or not and on whether we trust the statements that the Cabinet makes about its expert advice. That, of course, is a line of debate that can only be non-productive, ultimately.

I do agree with the member for Porter Creek East when he states it is a very subjective area. It is, of course, a very subjective area. The experts clearly disagree; or, those who would be generally recognized as experts in the area.

I clearly disagree. It is a controversial area, as well as being a subjective area. Lawyers may be expected to have a different perspective than doctors. Mental patients may be expected to have

an entirely different perspective again.

As legislators, the proper perspective that we should have, as a matter of public policy, is to weigh potential danger against infringement on individual rights; where is the best balance for us in Yukon now? There are particular concerns that make our situation a little different from everybody else's. One of them is that it is a rural area and there is only one psychiatrist, which is a very, very significant factor in deciding the policies involved.

Another is, if a person is to go outside to an outside mental institution, we can expect a greater disruption, socially and with regard to distance and removal from family and community, than would be the case in the large cities where the bulk of the population is in the provinces. Those two practical considerations are important ones. There indeed are many others.

I would submit that what is necessary is for the government to say why. What are the reasons for asking for five days as opposed to one day? We know, or we think we know, that either the hospital or the psychiatrist requested it. I am not sure which, but perhaps both or perhaps one or the other. What are the reasons? What are the alternatives? The reasons given so far are for notice. That is obviously adequately met and is not a serious reason; to possibly avoid unnecessary committals.

Further debate could occur around that, and also that persons in the hospital for longer periods are more likely to stay voluntarily. That is a reason identified by the minister and the government leader and, indeed, it is in the report to the government. I am very curious about that because the statement is made but not backed up in any statistical way, or scientific way; it may be true, I do not know. If it is true, I am skeptical about what the reasons would be for that. Why is even three days not an acceptable compromise? Why is five days sought? I would emphasize that these are people who are now involuntarily treated and they are treated on the say so of two doctors, and the doctors are not acting primarily medically; but they are acting primarily socially or legally, or as agents of social control.

Amendment defeated

Mr. Kimmerly: As the amendment was defeated, it is our position that we are strongly opposed to subsection 3.

Mr. Chairman: In 5(1), the "s" is missing from the word "sections". Is that typo agreed to?

Some hon. members: Agreed.

Mr. Kimmerly: With regard to 6.3(1), I would ask the minister for a word of explanation about the conception of the board and the way it was constituted. What are the policy reasons for constituting the board in that way?

Hon. Mr. Philipsen: The board is constituted this way to ensure that we have two medical practitioners, one member of the Law Society and three other persons, as it states here. Those three other persons could be any other persons; it could be another doctor, it could be three members of the medical profession, it could be three laypersons.

The question has been raised before by the member opposite about the hospital not being represented on the board. It, naturally, would not be represented on the board: no staff from the hospital, from health and human resources, the psychiatrist or any of those people would be represented, as it would be a conflict of interest. I do not think this needs to be discussed any further.

Mr. Kimmerly: Well, I do, and the minister will forgive more questions about the policy reasons.

I fully understand the minister's answer. It was a very clear statement, but it did not answer the question that I asked: what are the policy reasons for constituting the board with six members; with three laypeople and three professions: two doctors and one lawyer? Why was the board made up that way? What are the reasons for the constitution of the board in this fashion?

Hon. Mr. Philipsen: It was felt that it was in the best interest of the board to be constituted in this manner.

Mr. Kimmerly: Presumably, the three other persons recognize that it is appropriate to have a lay interest or a citizen interest. Was that one of the policy considerations?

Hon. Mr. Philipsen: It is always in the best interest of a board of this type to have a full spectrum on the board, so that no areas

are missed in the consultation.

Mr. Kimmerly: There is beginning to be fairly extensive literature on these kinds of boards; some of these boards are simply rubber stamps in other jurisdictions. Some of them are fairly effective, or are more effective than others.

I would expect some rationale from the government as to the appropriateness of these people on this particular board. It is clear that the policy is that the decisions are not going to be made by a traditional court. They are going to be made by a board and it is clear that one of the policies is that citizens or representatives of lay people should be there. It is clear that the board is to have some particular expertise and there is a provision for doctors and lawyers. I am interested. The government must have some rationale. I am pleading with the minister to tell us why the make-up is as it is.

Hon. Mr. Philippen: The two medical practitioners would be on the board to ensure that the patient would be getting full representation from the people who deal with matters of this type on an ongoing basis. The member of the Law Society would obviously be there to ensure that the patients rights were looked after. The three other persons could be any person from the community; they could be lay people; there could be another doctor, it could be another lawyer. There would be three other persons to ensure that in no way was the patient, or the person being represented by this board, missing any area that may help him in his problem.

Mr. Kimmerly: I could also ask: why are the various interests or various expertise balanced as they are in the constitution of this board?

Hon. Mr. Philippen: I am not sure what the member opposite would like. Would he like more members on the board? Would he like it two, two and two? Is there a problem that the member sees? I do not see any point in this type of questioning if he does not come to a point in what he is asking.

Mr. Kimmerly: I am not making representations; this is not an adversarial question. I am interested in, for example, what the policy reasons are for three citizens and two doctors, as opposed to three doctors and two citizens. What are the policy reasons to have two doctors to the one lawyer? Why not various other make-ups?

Presumably, the people on the board are going to vote and the constitution of the board is important. I was asking for a word of explanation about all of that, but, presumably, the minister is either not immediately aware of it or not willing to tell us.

Mr. Penikett: I would like to try a different kind of question regarding the board, which might, hopefully, help to improve the House's understanding of the minister's intention in this regard.

With respect to the three people who are not professionals — in other words, the three people other than the two doctors and the lawyer — given that he is proposing two and three, as opposed to two and one, it would indicate to me that he has some notions about who those people might be or what kind of people those might be. I would ask him a very general question about that: has he done any thinking about that? Does the number three provide him, in his own mind, with some opportunity to have a balance between gender, or some balance between age or urban? Does he have some other sort of professional experience — perhaps nurses or former patients, or something like that — who he wants to see represented on the board? Could he illuminate that point?

Hon. Mr. Philippen: I would hope that we would have someone, as the leader of the opposition has stated, from the medical profession, in the line of nursing. I would hope that we would be able to get somebody from the ministerial association and I would, perhaps, be looking at having, as you said, it gender-oriented, so that it was not all one or the other in gender.

Mr. Kimmerly: Is the minister also interested in appointing a layperson who has some claim of being an advocate for patients' rights?

Hon. Mr. Philippen: In all instances we would be addressing this issue with people who would be interested in patients' rights.

Mr. Kimmerly: I would obviously understand that, but if a person is available who is, for example, a member or a nominee of a Mental Patients Association or some association particularly interested in these questions, would the minister be favourably inclined to review the application of a person who would call

himself an advocate for patients' rights?

Hon. Mr. Philippen: Naturally, this board would be enhanced by a person who had that type of ability and certainly someone with that known ability, if their name was to come forward, would be favourably looked at.

Mr. Penikett: Might I, at this point, just ask something about the medical practitioners who would be on this board? Let me be honest about this. I inherited from my father some skepticism about the psychiatric profession. I will be frank in stating, not a bias, but a point of view that may consciously or unconsciously bias me.

I would expect, with two lawyers in a room or two psychiatrists in a room, there would probably be disagreement about many things. Some medical practitioners in this community have been more involved in the treatment of mental health patients than others. Some of them are more adequately trained, I assume, than others to do this. None of them, with the exception of the psychiatrists, would have had real background in the field, or at least would be properly regarded as a professional in the area of mental health problems.

Might we assume that the medical practitioners who may be appointed to the board, would be people who would be active in the treatment of mental patients, either in partnership or concert with the psychiatrist or otherwise, or would it be the minister's inclination to have people who were not busy with that work but who were competent physicians who, in fact, had a different kind of medical practice? Obvious ones might be surgeons, or people who were doing other kinds of medical work. In other words, would he be inclined to have people whose practice is heavily involved with this kind of patient, or would he be inclined to have people who were more disinterested, if you like. In other words, they did not have a practice involving mental patients.

I cite that because I guess there is still some question in my mind about physicians' roles in this whole business when they are not trained as psychiatrists, and I state that only as a lingering concern.

Hon. Mr. Philippen: As I stated before, no one would go on this board who could be shown to have a conflict of interest. Naturally, the psychiatrist would be asked to sit on the board. No person at the hospital, a staff member of the hospital would be asked to be on the board. In the matter of the doctors, I would seek the advice of the Yukon Medical Association. I would sit down and discuss it with them, as to who would be the representatives who they feel would best serve the interests of the people whom the board was going to affect. The same would have to be true for the Law Society. I would like to find someone who would be the furthest from a conflict of interest that it would be possible to get on the board.

Mrs. Joe: In regard to the establishment of this review board, I cite the Recreation Advisory Committee that has specific ways of appointing people to a board. A lot of prior work was put into the *Recreation Act* and we came up with a Recreation Advisory Committee nominated by those groups of people in the communities who were well-versed in that area.

I have a hard time trying to understand the reason for three other people. The minister says that they are going to be careful in selecting the people, ensuring that they have interests in that area. I think if this were a little bit more specific, we would have an easier time in trying to deal with it and accepting it the way it is.

Hon. Mr. Philippen: I think that the amendments we have before us would probably be as long as *The Children's Act* if I were to list every person who could not sit on the board.

Mr. Penikett: I have one final question regarding the board. In distilling what the minister has said about the board, I am inclined to think he might end up with, as he has given in his answers, the lay members of the board being interested people in the sense that they might be people with some association or some experience in this area but, in respect to the professional people, he is looking for disinterested people — disinterested in that they do not have an ongoing interest.

Could I just ask the minister one last question on that point? This is pertinent since we have discussed it before, about the role of professionals in our society. We have a very small professional community here, both in the legal fraternity and the medical

profession. From the minister's experience or knowledge, can he say how many doctors there are in town right now who are involved in committals of mental patients? Is it a large number? Is it a tiny fraction of them? Is it two or three, five, six, ten? I do not know how many doctors there are in town, but I assume those people who are surgeons and the people who are in general practice and not spending a lot of time at the hospital would not be involved with this very much. Could he answer that question for me?

Hon. Mr. Philipson: I would hope I could. The number of doctors in Yukon at the present time is, I am sure, 32. I believe there are three specialists presently in Yukon, so that would bring us down to 29. We would have, I think, three doctors out of the community, which takes you down to about 26 doctors. I believe that any doctor, as a general practitioner who would happen to be at the hospital at the time a person came in, would probably be asked to help assess a person. It could happen. I would suggest then that probably a disinterested person, as you put it, or a person with a lack of a conflict of interest, would be someone who dealt mostly with obstetrics of gynecology or something in that area and was not, on a day-to-day basis, dealing in the field you are discussing.

Mr. Penikett: From the minister's description, could I assume that one of the three specialists he talked about might be the psychiatrist, when he was going through the list? That is not really my question, it is just in passing.

Hon. Mr. Philipson: No, there would be a tremendous conflict of interest in putting a psychiatrist on to a board where the psychiatrist was involved.

Mr. Penikett: I appreciate the minister's answer. So, it could be a large number of the positions, in this town, at least, when they were on duty at the hospital, who could find themselves in situations where they were involved in this process. I only take it for granted — and I could be wrong — that some of them would be more inclined to commit people and some less inclined to commit people, because there would be, inevitably, professional disagreements or different kinds of philosophical approaches to this kind of situation or to the problems of mental people. Some, I know from my own experience, are more inclined to give drugs; others less inclined to give drugs, and so forth and so on. There would be, no doubt, a variety of opinions, in any case, even if not as expert as one might hope for in perfect circumstances.

When the board is functioning and it is reviewing the circumstances, and so forth, that it goes through in its duties, in the latter part of this section, would it have the power to establish its own procedures or does the minister anticipate, because we have such a large number of professionals involved and it is such a formal kind of thing, that there might be some kind of what we call "rules of natural justice" or "tribunal proceedings", or is it going to be simply just a committee that meets and reviews the circumstances? Does he expect to have minutes or does he expect it to hear representations from people? Could he just indicate something about that?

Hon. Mr. Philipson: The board's powers and duties are listed below, I think fairly specifically, and we may address that as we go through this issue.

I think one area that I would like to clear up. You said that some doctors would be more inclined to commit than others. The committal would be done by a judge, not by doctors; doctors would do the assessment and doctors would do the treatment. So, after the time period has gone by, the judge would ask what the assessment was.

The board, itself, would function so that, say, if a person happened to be committed to the Alberta hospital and you asked, "How is a person doing?", the board would have the legislative authority to have that information given to it. That would be one of the reasons the board would function.

Other than that, the board would function for all the areas that are listed below, and it is to ensure that the patient is not left in limbo, in any way.

Mr. Kimmerly: I would ask about the conception of this board. Is it the minister's conception that the board actually sees the patient from time to time?

Hon. Mr. Philipson: I would think that it would be almost

impossible to take a board and send it to an Alberta hospital, or an area in British Columbia, to view a patient. The board would review the report of the institution that the patient was placed in and make its determinations from that report.

Mr. Kimmerly: If the patient is here, is it the minister's conception that the patient could appear before the board, or not?

Hon. Mr. Philipson: As it states right here, "the board shall have the power and duty to review the circumstances of (a) all admissions and detentions under section 6.1, as soon as practical after admission, (b) all committals under section 6, as soon as practical after the committal, and (c) the custody, treatment, and mental and physical condition of all persons committed under section 6, at intervals of not more than 60 days after the committal of that person."

The board may wish to see a person, but I do not believe it says here that the board shall go and see each person who is going to be admitted.

Amendment proposed

Mr. Kimmerly: I am going to propose an amendment and I would like to explain that I believe that there is probably no real difference between the minister's position and ours. In speaking to the amendment I am going to be trying to identify the points of agreement as well as the points of possible disagreement.

I move that Bill No. 15, entitled, *An Act to Amend the Mental Health Act*, be amended in clause 5 at page 4 by deleting in subsection 6.3(2) the expression "the duty to review" and substituting for it the expression "the duty to conduct hearings to review".

⁹⁹ In speaking to it, the purpose is to clearly instruct the board that it is its duty to conduct hearings and it does not specifically state whether or not the patient should be there or if there is a right for the patient to be there. It implies that it is a hearing or it clearly states that there should be a hearing, which means that the board must meet. My intention is to explore the rights, if any, of a patient to present his side of the case if he feels that it is warranted. I will be interested in the minister's position on that.

Mr. Chairman: Order please. It being 5:30, we shall recess until 7:30.

Recess

Mr. Chairman: Committee will come to order.

We are now on an amendment to subsection 6.3(2).

Hon. Mr. Philipson: In speaking to the amendment, and having time to reflect on it over the supper break, due to the fact that we are dealing with a person who would probably be committed and the board looking into this would be studying the committal of someone already in an outside jurisdiction, it would seem to me that a board could not travel to an outside jurisdiction because it would not have legislative ability to hear a matter in a jurisdiction other than Yukon. It would be inconceivable to me to think that the jurisdiction where the person is being kept would send a person back here to have his case reviewed.

I, therefore, submit that the way this is written is the way it should be written. I would ask the member opposite to consider that a review situation is a non-confrontational situation whereas, I believe, a hearing, you may find, could become a very confrontational situation. That is just an aside from the obvious that the person would not be here to sit in review.

¹⁰² **Mr. Kimmerly:** It is somewhat surprising to me; firstly, because the minister on his second reading speech stated that in the past the general situation was that committed mental patients were sent outside. One of the reasons for these amendments was because of the increasing capacity and more importantly, the increasing practice of keeping people here. That does not address the problem of the people here. Secondly, I really question the minister's assumption that we have any authority or continuing authority over people physically located in the provinces. The legal position would be that they are under the jurisdiction of the province or territory where they are. In that case, I do not see the problem. These people would largely be in Alberta and there is a provision in Alberta for a periodic review and the patients would be governed by that jurisdiction when there.

103 Really, this provision, so far as any legal effect goes, is for the patients who are here.

The minister is calling question. He obviously is not prepared to explain or debate any further. I would ask the minister what his concept is of the process whereby this board operates? Is it contemplated that the patients actually appear before the board or not?

Hon. Mr. Philipsen: No. Further to this, the member opposite stated the area of the committal and what he was saying was that in my second reading speech I stated that it is becoming more and more apparent that, given a reasonable amount of time, rather than the person being committed, they would be able to be treated and be back on the street. That is the basis of our previous argument about a short term before a committal, or a long term for treatment, and to have the person on the street. I do not see where he is equating this to the board.

Mr. Kimmerly: I will ask the question again: is it contemplated that the patient would appear before the board in person or not?

Hon. Mr. Philipsen: It is contemplated that they will review the circumstances of all admissions and detentions. It is not contemplated that the board will sit and hear or see each patient, no.

104 **Mr. Kimmerly:** It is actually very startling, because what is being proposed here is a board that is going to look at records and not see the patient, so the patient does not get an opportunity to present his or her case. The minister has stated it is a review board and is not contemplated to be confrontational; I believe that was the word he used.

If a patient is committed and the 60 days go by and a review is scheduled, under this legislation, is there a procedure of the patient to appear before the board and explain his or her reasons for wanting to get out?

Hon. Mr. Philipsen: Obviously not, if the patient is held in another jurisdiction, because the board is not going to the jurisdiction. If the other jurisdiction, which has the control over the person at that particular time, deems it necessary to keep the person in the situation that he is in, it is obviously not going to send the person back here to appear before the board.

I did not say that no person would ever not appear before the board; I said that I did not believe that each patient or each person in a circumstance would appear before the board.

105 **Mr. Kimmerly:** I can play cat and mouse too. If the patient were here in the Whitehorse General Hospital and the patient wished to appear and make representations to the board, where is it in the legislation that the patient is guaranteed that right to representation before that board?

Hon. Mr. Philipsen: That would be a decision of the board, itself, when formed; whether or not they would be in a position where they would be reviewing cases that were here. I am sure that if a board was formed and a person was here locally and made application to speak to the board, every reasonable effort would be made to have the board hear the person who wished to be heard.

Mr. Kimmerly: It is now clear that what the minister is stating is that there will be a review, but there is no right for the patient to actually appear. It will be a decision of the board.

We strongly disagree with that. There should be a right to appear and state one's case and there should be a right to legal representation. That is not to say there should be representation in every case, but if the patient is asking for legal representation and to appear before the board for a review, why should not that be guaranteed in this section?

Hon. Mr. Philipsen: This board is specifically here as it states and its duty is to conduct a review of the circumstances of all admissions and detentions. It is not hearing process.

106 **Mr. Kimmerly:** If it is not a hearing process, what use could it possibly be, except as a rubber stamp? That is a very serious question. If there is no right of a hearing, why have the thing?

Hon. Mr. Lang: We have to look at the situation realistically. The people who are in these unfortunate circumstances are located outside the territory, and we all accept that as fact, in view of the present population of the territory and the fact that the numbers of people who are in those circumstances make it very difficult to

justify an institution of any kind.

At any rate, the point is that this forces the other jurisdictions, that have people from the Yukon in their care and custody, to review the particular cases of those people they are caring for on our behalf. The board that is structured is obviously going to be in contact with those institutions in order to ensure exactly what is the situation of the individual in question. Therefore, the people who are responsible for the care of those individuals will know that at least someone is interested. To date, we have had nothing.

I think it is a step in the right direction. I see where the member is coming from in respect to the hearing process and I recognize that it would require lawyers and everything else. If we ever get to the point where we have our own care facilities, perhaps this will have to be seriously looked at. But we have to look at the limitations of what we can do as a government vis-a-vis our sister provinces. This seems to be a step in the right direction to ensure that those people who have been taken into care are reviewed on a very consistent basis.

I say to the member for Whitehorse South Centre, who recognizes he is always right — unlike me, whom is prepared to listen to logic and reason — what we are doing is in the best interests of the patient in view of the present situation in Yukon and the sister provinces.

Mr. Kimmerly: That last statement is an example of why we should call experts. Those statements are wrong from several points of view.

The experts or knowledgeable people who will read *Hansard* would be chuckling at our arrogance and ignorance if it were not such a serious topic. They are more likely to break into tears. The debate here is a very sloppy one and extremely uninformed, and that is an example.

107 The legal jurisdiction over patients who leave here and are in institutions in the provinces ends. Those people are under the legal jurisdiction of the province in which they reside. I am absolutely certain that they would provide information for us to review the cases here but, if it cannot be a hearing and if the board has no power to do anything, what use is it? It may be an information-gathering board, but it is a completely lame duck board.

The board under this jurisdiction will have power over patients who reside here and there undoubtedly will be some. In the past months, there have been and there undoubtedly will be more. Clearly, where this board will come into play and where it does have legal jurisdiction is where the patients are physically in the territory.

The minister is telling us, and the minister for Porter Creek is telling us, that there can be a review, but not a hearing. There is no right for the patient to appear and make his case known. I say, we totally disagree with that; in fact, it is a step backwards in that there is now a right to apply to a court and conduct a judicial hearing.

Mr. Penikett: I am a little concerned about this matter, in that, when I first read this bill, I thought the board was a potentially useful device; that is why I asked the minister questions about his procedures. However, I must say it seems, so far, to be more form than substance.

The closest analogy in sitting here thinking about it, I suppose, is that it is something like a parole board, but that is really not a very good analogy, even if it was not an unfair comparison between the different kinds of institutions from which people might seek release; but even in a parole board, I gather, one can make appearances and make representations.

108 The problem I see with respect to patients who are held in institutions outside the territory — not only the ones addressed by my colleagues — prompts a simple practical question. The review board here is entirely dependent upon the information or the opinions of the institution where the person resides. If there is a treating physician or psychiatrist in that place who says that the person involved is still manic depressive or is still schizophrenic — I must say I was worried about those terms because I understand even psychiatrists themselves cannot agree on the definitions for them — that information comes back presumably to the review board here and then what do they do? They say, well okay, the person is still schizophrenic or whatever, and they do not have any

other information. It seems to me, the review then just becomes a rather useless formality. Even if there was some dispute, or there might reasonably be some dispute about the state of the person's health, there is no information that the board can review other than the information from one source. That seems to me a bit of a problem.

A few weeks ago I was in North Battleford and you may know that that is the sight of one of the older mental hospitals in this country. In fact, it has been there quite a long time. I am not sure how long, but it is a very old institution. I was talking to one of the professionals who worked there. They were talking about one of the problems of people whom they have in that place; that they have people in there, who the people on staff are quite prepared to admit are not mentally ill. They are people who were committed because they were deaf or could not speak English or they may have been there when they came in, but are now there for quite a long while. In fact, they do not have any place else to go. What family they may have had may have passed away and they are literally so old that they are just as well off to stay in an institutional surrounding with people who they know and who they feel comfortable with, and who are probably kind and care for them.

Whatever reforms are entertained in this act in terms of improving the process for mental patients, it seems to me, would be severely blunted, or negated, if we had a situation where someone was, once he had been through the proper process initially, was then put into a mental hospital or mental institution and either, for any number of reasons, had no independent assessment of their condition. The situation, I suspect, in many of those places in southern Canada — even the most modern ones, as in many places the staff is overworked and in many cases they are probably underfunded — is that the patients do not have the sort of individual care that a wealthy client might have in a big city where he could afford his own psychiatrist. You could have a potentially serious situation there, where once the person is in there, these reforms are not effective because the review board does not have any way of looking at independent information. It seems to me that with any review process, normally — if we were reviewing something — the only way we could grapple with a problem or with an issue would be to have some way of defining the issue. Presumably the way you start to define an issue is where you have a difference of opinion between two contending forces.

☞ I might have a family member, or any member here might have a family member, in a hospital and we, having visited them, might say, "He seems to be a lot better; he seems to be well enough to come home and now I would like him to come home", and may make some kind of representation but the institutions says, "No, go to the review body and try to have the case reviewed". Even the mandatory review, I think, does not seem to be a very meaningful process because all you are going to have to deal with, if they are in an outside institution, is the official opinion of that institution and it does not seem to me that there will be any other information before the body so it does not matter whether the board is expert or whether it is inexpert, whether it has lay people on it or professional people on it.

All that could happen, if the hospital said, "No, Mr. X is still, we think, schizophrenic". What do you do with that? They are not in a position to disagree. Perhaps the best they would be in a position to do is ask some questions. Perhaps those questions would be answered. I do not see how the board will be effective in that situation.

Hon. Mr. Philipson: I will give a very short answer to a very long question. Your answer was given to you by the member sitting beside you. When the person is committed to an outside institution, it becomes the authority. We would not be the authority at that point. What we would be doing is to set up a board with the legislative authority to be able to have information from that authority that now has the responsibility for that patient to report to. At the present time, if the Director of Health in Yukon phoned the Alberta hospital and asked, "How is patient X doing"? they may tell us but they would prefer to have a review board or a group of individuals with the authority to tell that information to.

We are trying to set that board up so we can increase our

communication between the areas that people are sent to and the situation the way it stands now. I do not envision a time when we will be flying a review board from Whitehorse to the Alberta hospital to sit down and physically assess an individual who is in that institution. We have sent them to an institution where the job of those people is to try to treat individuals with these kinds of problems and return them to society as quickly as possible.

The reason we went to the longer period, previous to this, was to try to keep people out of a committal process and treat them here so they did not end up in institutions. This is the whole thrust behind this. We have now set up a review board that has the ability to ask how a person is doing on an ongoing basis, so all people who fall under this area are assured that someone is checking all the time to ensure that when they have the opportunity to return to society, that that will happen. No one is going to be left sitting somewhere in one of these institutions.

I would like to point out that, at the present time, there are more and more people apparently in need of these types of institutions and there is less and less space for these people. I do not believe for a moment that the institutions wish to have people come in and sort of file them away so they can fill their institution up. In my heart, I do not believe that that is part of the process.

☞ **Mr. Penikett:** I am not suggesting for a minute that, somehow, the institutions are operating on some kind of voracious per capita basis and trying to fill every bed available. I suspect that, were a functioning person in society — someone with a job or an income and self-respect and, perhaps, position and a household, and so forth — would lose that status, and that is what is involved when they become a member of a mental institution, their re-entry into society is not an easy proposition. In many cases, they may have lost their ability to earn an income and maintain a household and so forth and, for all sorts of reasons — not because of any commission of any evil — but because it becomes easier, in some cases, for the patient to stay there than to face society again.

That is not what I wanted to point out. I wanted to pursue the minister's answer a little bit. I understand the point that he made about information and I think that is, essentially, the same point made by Mr. Lang. I think, as far as it goes, it is not a bad idea that we should have some kind of checking-up on our citizens who have gone outside to other jurisdictions. I think, insofar as it goes, the idea that the institution should have somebody here that they have to report to is a good idea. I throw it around in my head: why should it not be the minister, and I guess there are probably real ethical questions there about privacy, and so forth, that it should not be the minister.

However, if it is only, basically, going to receive information of this kind, or if it is simply going to basically receive a report, which may be a few pages long, about the condition of patients X, Y and Z, or whatever number of Yukoners there are out in a particular institution, periodically, why do we have a board? It seems to me that if we are really not going to do an awful lot with that information, or if it we are just basically going to receive it, why not just have a registrar, or someone like that, who is bound by statute to hold the information in confidence or to act in some way, in the same way as we have a public trustee for people who are deceased? Maybe there should be a trustee, because, it seems to me, if all they are doing is receiving this information it could well be done by a trusted and loyal and confidential public employee. It seems to me the only value in having a board would be when there is something that may be in dispute that requires the judgment of a jury of citizens, if you like, a group of citizens. Could the minister explain that?

Hon. Mr. Philipson: I would envision that this board not just receive such information as patient X in such and such a position and then, good, we have checked off Patient X and now go to Patient Y. I would imagine that the report would come in stating this and this and this has been done, this is the progress and so on and so forth, and they would study that report and then go back to the institution where the person is and say, "What is the prognosis? How many more days do you expect? Should we get in touch with you in another 14 days? When can we expect to bring the person back home? Can he be treated locally; we have these things

available".

I certainly do not envision the board as a group of individuals who are going to rubber stamp: "Well, he is still in the institution and he is still in the institution". That is not what I envision here, at all.

Mr. Penikett: All right, if it is not going to do that, and if it is going to take the inquiry process or supervisory role that the minister talks about — he suggested, also, that where Patient X is in an institution, they say, "Well, the institution said they may be ready to come home in a month or two" and the board is saying, "Well, we will check back with you in two weeks" — is the minister then suggesting that the board would have some kind of continuing role in assisting that person's re-entry into this community or re-integration into this community?

Or, what would their role be? I am not sure I understand what he is suggesting there. Would they just simply suggest to the institution that there are — we do not have any psychiatric social workers — able to assist them or there is the psychiatrist who is ready to see them when they arrive. How does he see that working?

Hon. Mr. Philipson: I would see that working in this way: If a person did the 60-day check and the person was still in the institution, and the information came back and they went back again and said, "Is this person close to a position of being returned to this jurisdiction", that would, in fact, keep the person out there on the minds and uppermost in the thoughts of the institution where he is being kept. So, if it is a questionable area, they know that the concern from this area is such that we are always wishing to have a person returned back into society here as quickly as possible. That is how I would see it functioning.

Mr. Kimmerly: For the patient who does not go outside, but who stays here, how does the minister see the board functioning in that case?

Hon. Mr. Philipson: They would review the case the same as they would on the case outside because to remain equitable you would have to review all cases equally. Therefore, the same method would be employed in both cases.

The point I think that should be major here is that if a person were to be kept here, it would seem to me that a person would be kept because we do not have a place where a person could be kept if they were in very grievous difficulties. I would suggest that if a person was being kept here, he is being kept under fairly close supervision, but in an outpatient type of situation and probably being looked after by drugs they have available now to stabilize a person and keep them within the society. I would not imagine that we would be keeping patients for 60, 120, 180 days in the secure room in the hospital. I would imagine that if that were the case, the person would be sent out where the facilities would probably be a little better for an ongoing period of time.

Mr. Kimmerly: It is certainly accurate to say that no one would contemplate keeping a person in the secure room for long periods in the neighbourhood of 60 days. There certainly have been, and it is contemplated that there will be, patients at the hospital who are admitted patients, not outpatients, there for psychiatric reasons, and committed under the Yukon legislation. For those people, I am proposing a board with the duty to conduct a hearing. It is obvious that the minister is not. His policy is substantially different. The board is only going to receive information without a hearing and make recommendations concerning other applications. In Yukon that would contemplate an application to a court.

¹² Why is it not possible, in the minister's mind, that that board could actually be a review board that conducts a hearing and makes a decision as exists in some other jurisdictions?

Hon. Mr. Philipson: I think the only way I could answer that would be carry it on further. If you were to give a board that kind of power — to hear and possibly release a person — I would suggest that that same board would then have the same power to hear and intern a person.

The other area the member is talking about is Ontario. In Ontario the board does have the power to commit. Recently, that power has come into question and is being questioned in the courts as to whether it does have that power, so I suppose that would be my answer to the member opposite's question.

Mr. Kimmerly: For the person who is a patient here and wishes to make an application to get out, is the minister saying that this board would be irrelevant for that particular purpose, for that particular patient?

Hon. Mr. Philipson: I missed a portion of the question. I think it would be a good place, at this point, to state that what we are dealing with here are amendments to an existing piece of legislation. If we were to get into very substantial changes, substantial arguments that you would come into with a new piece of legislation, I would think an area for any heavy debate on this type of thing that I believe the member opposite is suggesting, would be best suited during the discussion of the new act itself or the companion bill, the *Competency Act*.

Mr. Kimmerly: I agree that a new bill is the time to debate these major issues but it is clear that there is a board established here and it is set up as a review board. One of the statements made by the minister in justification for it was the increasing probability of mental patients actually staying here. This board is a vehicle that may assist them.

¹³ It appears to me that the statements made in the last hour or so would clearly indicate that the purpose of the board and the usefulness of the board is solely to receive information from institutions that house mental patients who were former Yukoners and committed from the Yukon, or initially from Yukon. That is well and good in itself, but it is a very limited purpose. And if we have the board, why not give the board power to conduct a hearing into the status of a mental patient who is here and who is interested in a review of his status? That certainly will come about and it would be a welcome addition to our mental health law.

Amendment defeated

Mr. Kimmerly: In 6.3(3), to whom is it contemplated that the recommendation concerning application would be made?

Hon. Mr. Philipson: The recommendation, I would imagine, would be made to the director of health.

Mr. Kimmerly: That is very interesting. Is the minister then contemplating that a civil servant in his department is going to be making applications, presumably in other jurisdictions and possibly in courts?

Hon. Mr. Philipson: No, this gives the department the opportunity to see how people who are under the care of the department ultimately are doing and faring and keeps us on top of the wellbeing of the people who are in our care.

¹⁴ **Mr. Kimmerly:** What role will the public trustee have, or the trustee named in the various committal orders?

Hon. Mr. Philipson: The board would also, I imagine, be in touch with the public trustee as well.

Mr. Kimmerly: Is it contemplated that the application would be made in the name of the public trustee or the name of the director of health?

Hon. Mr. Philipson: In the name of the public trustee, the director of health would be informed as to the wellbeing of the patient because he is in control of the department that is ultimately responsible for the area of health.

Mr. Kimmerly: With regard to 6.4(1)(a), I am interested in the restrictiveness of this section and I am interested in why there is no section concerning information about the board of review. Or is the minister contemplating that that information would be given to a patient?

Hon. Mr. Philipson: I am sorry, I am unclear as to the nature of the question; possibly, if the member opposite could rephrase it, I can answer it.

Mr. Kimmerly: Subsection 6.4(1)(a) proscribes that information is going to be given to the patient, concerning the proceedings under this act, that will or might effect the particular patient. Is it contemplated that the patient is informed of the deliberations of the board of review, or not?

Hon. Mr. Philipson: Yes. I am sorry I did not understand. The reason that this is written this way is that we do not wish to have someone be able to walk in to a patient, who is clearly disturbed and does not understand what is happening, and have him or her be informed of something and walk out. You could say the patient has been informed, but the patient may clearly not understand what he

had been informed of.

So, this section is written in such a manner as to make it necessary that the patient is in the best possible light to receive any information about him that is happening at that time. Yes, he would be informed of a board.

Mr. Kimmerly: Was the issue of information about the treatment or the treatment program considered? Why is there no section prescribing that a patient be told of the treatment program, or at least the simple aspects of it? For example, the issue of informed consent or simply information concerning the drugs administered to a particular patient.

Hon. Mr. Philipsen: The person who is detained has the right to retain counsel to represent him in proceedings. He has the possibility of being eligible for legal aid to help him retain counsel. All of these avenues are open to him and I am sure counsel would explain all the possibilities, and the doctors would explain it if the person was in a frame of mind where the person was capable of understanding.

Mr. Kimmerly: I was also interested in the patient's information concerning the treatment given the patient, specifically drugs. It appears to me that there could be a subsection here requiring the authorities or doctors involved to inform the patient of the drugs that are prescribed and information about the drugs. For example, major effects and side effects and things of that nature. That would be a welcome addition to this bill. Was that considered at all?

Hon. Mr. Philipsen: The rights of the patient was considered in every aspect of the amendments to date. If a person is in need of a drug to stabilize him, and is in a position where he does not understand anything that is being told to him, I think it would be very difficult to tell him, "We are now giving you a drug". The drug is there to stabilize the patient and to try to get him to an area of comprehension. At the point that this section would come into play, everything would be described to him as soon as possible. He has the right to retain legal counsel; legal aid is available and all avenues are open to them at that point.

¹⁶ The vast majority of patients, albeit not all, do understand and are capable of understanding, information about the nature of drugs and side effects and things like that. When a person is involuntarily detained, there is an unfortunate tendency to pay lesser attention to his wishes, concerns and information. It would be a welcome addition in our view if — perhaps in the bill to come in the fall — there was a section requiring patients to receive reasonable information concerning the medications administered to them and information about expected side effects and the like. Some doctors routinely do that; some doctors do not. Some patients are extremely interested and go to extraordinary lengths to get that information, and some patients are supremely uninterested.

It would be a step forward and a recognition of patients' rights in the general sense, to require information about, especially, medications, but also other psychiatric treatments; especially where the patients ask for it. I would recommend the addition of that principle to the bill that will probably come before us in the fall.

Hon. Mr. Philipsen: I thank the member opposite for his remarks in this regard. I assure him that when the legislation is drafted in the fall, we will certainly look at this area that he has raised.

¹⁷ **Mrs. Joe:** I have a couple of questions that I want clarified with regard to this section. Who is it who determines how soon "practical" is, and who informs the patient of his rights?

Hon. Mr. Philipsen: It is very hard to determine what is a reasonable amount of time, as in "practical", but the determination would be made by the medical authorities. The person under whose care he is would have to tell him what his rights are, at the moment that he felt the patient was able to understand what was happening to him.

Mrs. Joe: The patient may very well not know anything with regard to his rights until he is, possibly, out in Edmonton, or wherever it is that they send our mental patients.

Hon. Mr. Philipsen: No, I think we are quite a long way off the point where we get to that. You are assuming that a person is going to be assessed, go before a judge and never have a lucid moment in that amount of time; no, I would not think that a

reasonable thought.

Mr. Kimmerly: I have a question with regard to subsection 6.4(1)(c). I was interested in this because it recognizes a right to counsel at a review, presumably before the board. I am glad to see that, but I am interested in why the minister gives a right to counsel at a review, but not at a hearing?

Hon. Mr. Philipsen: The review would not be a hearing before the board.

Mr. Kimmerly: With regard to subsection 6.4(1)(d), it is probably appropriate for a question or two about legal aid. The *Legal Aid Act* does not specifically mention mental health applications: the Minister of Justice may know. Is it contemplated that in the new act that we are expecting that there will be a specific recognition in the scope of the legal aid plan to include representation for these people?

¹⁸ **Hon. Mr. Ashley:** I am afraid the member opposite is going to have to wait and see what is in the new act when I table it.

Mr. Kimmerly: An answer like that prompts me to make a speech, because I was asking for information; a very legitimate request. I was simply asking for information. I was asking if it was considered or not.

I know, in practice, the legal aid committee does grant legal aid for these applications, but it is not specifically covered in the act and in times of restraint, it is those kinds of things that may be, shall we say, overlooked or cut back. It would be reassuring if the minister stated that the policy of the government was that legal aid should be granted in appropriate cases for these kinds of cases, reviews, or appeals.

Hon. Mr. Ashley: The member opposite is going to have to wait until we come out with the new policy, which is to be established in the new act. Until then, the current policy exists and that is the way it will be.

Mr. Chairman: We shall now recess for 15 minutes.

Recess

¹⁹ **Mr. Chairman:** Committee will come to order.

We will now go on with 6.4(2), at the bottom of page five.

Amendment proposed

Mr. Kimmerly: With regard to subsection 6.4(3), I would propose an amendment.

I move that Bill No. 15, entitled *An Act to Amend the Mental Health Act*, be amended in Clause 5, at page six, by deleting in subsection 6.4(3) the expression "shall be given reasonable opportunity to consult counsel from time to time.", and substituting for it the expression "shall be given opportunity to consult counsel."

In speaking to the amendment, I would say it is a very simple amendment, in keeping with the philosophy of granting reasonable patients' rights. The right to consult counsel should not be restricted; the wording in the bill restricts the right; — incidentally, for the first time. It has never created any problem, to my knowledge. It is a fundamental right to consult counsel. It should not be restricted as it is in the bill.

²⁰ **Hon. Mr. Philipsen:** I believe the reason that it is written the way it is is to keep the person who is in a distressed situation from continually calling hour after hour for counsel to come in and I would say "reasonable opportunity" and "from time to time" does not limit the ability of the person in this situation to consult with counsel on a fairly regular basis.

Mr. Kimmerly: Call question on division, Mr. Chairman.

Hon. Mr. Lang: For the record. The member for Whitehorse South Centre, drawing on his legal background which he so prominently displays at times and is more than prepared to put forward his legal counsel: at times it is worthwhile, and other times I might argue that point. I would like to ask him, with the way the particular section in question is drafted, what is the purpose for the particular amendment? If you go with the amendment, I think that the point being with the section in question, is the fact that we talk about reasonable opportunity to consult counsel from time to time, which gives that opportunity if a hearing is called or a review process is called or that type of thing. It would seem to me from

where I sit that the section is fairly clear. Legal counsel is available at the appropriate time, when legal counsel, perhaps, should be brought in by the individual in question.

21 Taking that into account, it would seem to me that if you are going to change the amendment the way it has been presented by the member for Whitehorse South Centre, I would say to him, if he is going to change it to "shall be given opportunity to consult counsel", without the caveats in the section, would it not — and I am asking as a layman now — then be construed in the legislation to mean that any time he or she wishes counsel, and the appropriate time is not for the purposes of counsel be drawn into whatever the situation is at hand?

Perhaps the member for Whitehorse South Centre could comment on that, as a member. Hopefully his being a member of the legal profession will not cloud his ability to give an opinion.

Mr. Kimmerly: We were in a position to win a vote and I am sure the minister will keep talking until the situation reverses itself. It now has, I see.

It has never, to my knowledge, been the subject of a complaint or abuse. The right to consult counsel should exist independently of the timing of any particular review or court application.

22 It may be that the patient wishes to consult counsel in order to start an application or to simply receive advice about what is occurring in the patient's life that day; that does occur commonly, although not necessarily frequently. I have certainly, as a lawyer, been called into the hospital to simply give advice to a patient and no application existed and no court proceeding came of it, but the patient received the advice he was looking for.

It is, in my view, unjustified that we qualify the right to counsel here. I know of no other bill or no other jurisdiction — although, I admit, I have not specifically looked — where the right to counsel is qualified. Surely, if the patient is asleep, surely, if the patient is drugged beyond ability to converse intelligently, there will not be an incident created about that, at the particular time.

23 The only problem that I can see is a concern about the issue of whether the right to consult counsel includes an implied right to consult or instruct counsel in an undrugged fashion. That argument was raised in the court in the last couple of months.

In my view, this wording does not address that issue and would simply not help us. The bill does not address that issue. It is not included in our law concerning the jailed person's right to consult counsel. A convicted criminal, in jail, has the right to consult counsel and it is not restricted. The restriction here is admittedly very wide but the restriction should not exist at all. It raises all sorts of questions. Who is going to say what is reasonable? It does not specify it here. What is "from time to time". In my view, this restriction really adds nothing, however, as a matter of principle the right to counsel should not be restricted at all. There should simply be a statement that there is a right to consult counsel. It is a very simple amendment.

24 **Hon. Mr. Lang:** The member opposite has gone back to his own experiences, which I appreciate. The way I read this section here, is that it specifically refers to section 6(1), detainment. Section 6(1), the way I read it, outlines the procedures and the fact that you have to have two medical practitioners in that period of time prior to going to the judiciary, if that is the case, but there is that period of time for assessment and treatment.

In the section you are referring to it does cover violent behaviour where drugs are to be administered, and this kind of thing. That is the way I read the section. I submit to you that the way in which the section has been put forward is the reasonable way to cover that event in the situation you have referred to where the argument has come up in court. The individual under care has taken the various drugs for the purposes of calming him down and subsequently he is in a situation where it is appropriate to have legal counsel to discuss exactly what options are available to the individual in question.

I would submit that the section does take that into account and that is the reason it is written in the manner that it is, if you read that carefully. It refers specifically to section 6(1) and also section 6. I think it does cover that eventuality if that situation does arise. Here, once again, we are dealing with cases where you have individual situations and the appropriate situation as far as the

individual in question is concerned. The medical staff who has to administer the necessary drugs or whatever has to be taken into account with respect to an individual situation.

I do not think we should accept the amendment from the point of view that it is very specific. It is referring to specific sections with respect to the subsection we are talking about.

Mr. Kimmerly: I understand the argument, but the reference to the two sections, of course, refers to any and all of the methods whereby a person is involuntarily committed. It could be worded, "a person who is involuntarily committed" and it would mean the same thing. It is a little more exact if you say, "under the section", but 6(1) is the five-day provision and 6 is the permanent provision and there is no other section allowing committals. All it really means is that a person who is committed under this act shall be given right to counsel and it is a restricted right.

The principle involved is that the amendment simply gives a clear right to counsel without a restriction and I say that a mental patient's right to counsel should not be restricted. The minister is saying it is because of the administration of drugs or something like that.

25 It is our position that the opportunity to consult and instruct counsel should be unrestricted and that is what the amendment means. The section of the bill is really fairly deceptive. It may appear to laypeople that a power is being granted here, or a right is being granted; in fact, it is not. Something is being taken away here. There is now a right to counsel implied in the *Constitution* in common law, and by the courts. This restricts it. There is no reason to restrict it and it is unjustified to restrict the right to counsel.

Amendment defeated

Clause 5 agreed to

On Clause 6

Clause 6 agreed to

On Clause 7

Clause 7 agreed to

On Clause 2

Mr. Chairman: We are now back to clause 2, which was stood aside earlier.

Hon. Mr. Philipson: In connection with section (2)(a) and (b), which was discussed previously. My understanding of what the member for Whitehorse South Centre was proposing is correct: that being that we amend these two subsections by deleting all that portion of each subsection commencing with the phrase "for the protection of the public", we are, in fact, very much broadening the definition of a mentally disordered person. That is, we would be saying that someone who is mentally disordered is anyone who requires treatment, supervision, or care and control. I am sure that is not what the member opposite intends. He does not wish to broaden the definition of a mentally disordered person, I am sure. If I misunderstood him, and he wishes simply to delete that portion of each subsection commencing with "or for the protection of his property", claiming, as I believe he did, that an order would be obtained from the court in connection with the mental competency of an individual to manage his own property, or the property of others, I am informed that this, perhaps, is possible under the *Judicature Act*.

26 I am informed, however, it is not effectively dealt with under the *Judicature Act* and it is, therefore, necessary to include the concern for the protection of an individual's property or the property of others in these two subsections of section 2.

Previously, I used the example of the need to take control of the property of a mentally disordered person, in order that he not forfeit his property by virtue of default. For example, on a mortgage payment, well, then, a disordered state of mind. The same could be said of property that he might be managing for others. Another example that comes to mind might be an instance where a mentally disordered person was deliberately, in his disordered state, destroying the other individual's property.

In any event, this matter of restraining someone from damaging another's property by court order, or obtaining managerial responsibility for a mentally disordered person by virtue of a court order, is not effectively accomplished under the *Judicature Act*, as was suggested. It is, therefore, necessary to include these in this

amendment.

If we had in place a competency act, these matters of property management could be addressed under such legislation, and need not appear in the *Mental Health Act*. As we are all aware, there does not now exist a competency act and, until we are able to put one into place, it is imperative that we include the concern for individuals' property in these amendments.

Mr. Kimmerly: First of all, I was not stating that this widens the definition; indeed, it is in the old act, although the property of others is not identified in the old act; that is a very minor issue.

I would disagree on a matter of policy. I am fully aware that the *Judicature Act* deals with the question, in a very general way, but there certainly is power in the Supreme Court to make a court order or provision for the maintenance and management of property, if a person is judged mentally incompetent.

It is a very different test to go that route and, indeed, the implications for the individual are very different, as well. It is one thing to be removed from the management of your own property; it is quite another to be detained involuntarily and treated involuntarily. The two results are, by no means, mutually exclusive.

It is entirely possible to have a person uncommitted or walking around and remove the person from the management of his own property, and those are different issues.

The difference in policy that I would express is, it is not justified to take such drastic steps as to involuntarily detain a person and involuntarily treat a person simply to protect the property. If it is most appropriate to protect the property, there is a legal mechanism that would work, although it is not well spelled out in the competency act that would govern the situation.

On the situation where a person is destroying the property of others, or potentially destroying the property of others, that would clearly come within the meaning of protection of the public. Courts have consistently interpreted the phrase "protection of the public" to include the principle or the proposition of the lawful enjoyment of private property belonging to individual members of the public.

I say, on a matter of policy, we obviously disagree. If it is simply a matter of protection of property, this act should not be brought into play and the *Judicature Act* or the new competency act should be used.

Mr. Kimmerly: Did you make a ruling, Mr. Chairman, as to the vote on the amendment?

Mr. Chairman: It is a tie vote; five, five. No, someone did not vote, so it is five to four. The amendment is defeated.

Amendment defeated

Mr. Kimmerly: I was going to propose an amendment to clause (b) with exactly the same principle. I will simply enunciate for the record that I have prepared an amendment and I will not waste everybody's time by arguing it a second time. I will make no statement as to whether or not it was a waste of time the first time. I have at least exercised my right as a member of this place to express my point of view on the subject.

That particular amendment was probably one of the least important of the concerns I have on this particular section. It is a positive step to clearly define the test as a test of dangerousness; that is, protection of the person or protection of the public interest. It has been demonstrated though, that doctors, and specifically psychiatrists, are fairly poor predictors of dangerousness and their ability to make this judgment should not be simply accepted without question. I want to explain that carefully, because in this debate members opposite have misinterpreted some of the statements I have made about the medical profession.

It is not accurate to say that the medical profession generally, or psychiatrists in the generic sense, are able to predict dangerousness with any degree of efficiency at all in an objective sense. Indeed the opposite is true. The empirical studies on the point have clearly demonstrated that first of all there is a wide division of opinion; or there can be expected to be a wide division of opinion among doctors or psychiatrists on any particular case.

It is quite reasonable to expect doctors or psychiatrists to make medical diagnoses. If they are deciding to put a person in this category or not, that is not a medical diagnosis; that is a legal judgment or a judgment with primarily legal implications. It is very

important for members to understand, and the review board to understand, and the public in general, that these decisions are properly public policy decisions that should be made by courts and not by professionals or experts.

Certainly, the courts should listen to professional advice and evidence on the points, but it is clear that these categories are not designed to be medical diagnoses, they are designed to be categories made on a public policy basis as a social control mechanism. There are substantial problems with this definition here. The definition in (a) starts out in a very wide sense, considering condition of arrested or incompleting development of mind, whether inherent or induced by disease or injury.

That part is primarily the subject of medical expertise or medical diagnosis, but it then goes on to say that he requires treatment, supervision, or care and control. That is extremely wide. The decision about requiring supervision or care and control is largely a question of public policy or public concern and is not primarily a medical question at all.

It then goes on to say "for the protection of the public or his own protection". That, again, calls for a value judgment and it calls for a prediction concerning the need for protection. That is a prediction of possible dangerousness. It has been clearly demonstrated that the so-called professionals or experts' opinions are as often wrong as right in these situations. Was there consideration given to alternate wording and more narrow wording for the principle involved in the phrase "requiring treatment, supervision, or care and control"?

Hon. Mr. Philipson: We always consider very carefully what we put down in wording.

Mr. Kimmerly: Well, that, obviously, does not satisfy me. If the minister refuses to debate the points, I will simply make speeches about them, which is less interesting, I am sure, to everyone concerned.

I would comment that "care" and "control" are extremely wide words; it is an extremely wide phrase and I would ask the minister why such an extremely wide test was used? What is the policy consideration around using such a wide test?

Hon. Mr. Philipson: Obviously, the member opposite wants to talk on and on and on about this, but I suggest, due to the time, you will have to report progress on the bill.

Motion agreed to

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

Motion agreed to

Mr. Speaker resumes the Chair

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

May we have a report from the Chairman of Committees?

Mr. Brewster: The Committee of the Whole has considered Bill No. 15, *An Act to Amend the Mental Health Act*, and directed me to report progress on same.

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

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

The House adjourned at 9:30 p.m.