



The Yukon Legislative Assembly

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HANSARD

Wednesday, April 11, 1984 — 1:30 p.m.

Speaker: The Honourable Donald Taylor

Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake

DEPUTY SPEAKER — Bill Brewster, MLA, Kluane

CABINET MINISTERS

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

GOVERNMENT MEMBERS

(Progressive Conservative)

Bill Brewster	Kluane
Al Falle	Hootalinqua
Kathie Nukon	Old Crow

OPPOSITION MEMBERS

(New Democratic Party)

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

(Independent)

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

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

Whitehorse, Yukon
Wednesday, April 11, 1984 - 1:30 p.m.

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

Prayers

DAILY ROUTINE

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

Are there any returns or documents for tabling?
 Reports of committees?
 Petitions?
 Introduction of bills?
 Notices of motion for the production of papers?
 Notices of motion?
 Are there any statements by ministers?
 This then brings us to the Question Period.

QUESTION PERIOD

Question re: Liquor mark-ups

Mr. Penikett: I have a question for the government leader. On March 27th, and again on April 5th, the government leader gave an undertaking to provide this House with the mark-ups on alcoholic beverages sold by the Yukon Liquor Corporation. The Corporation now says that publication of this information would be counterproductive. Why is it counterproductive for the government leader to not keep his promise on this question?

Hon. Mr. Pearson: The corporation did not say it would be counterproductive; I said it. I signed that answer. That is the answer. I respectfully submit, it is the only answer that I can give to the House.

Mr. Penikett: The government leader still has not explained why. Yesterday's legislative return, referred to by the government leader, says, "Should there be any indication of adverse affects on the industry by our pricing policy ... the policy would be subject to change". Since YTG agrees that the federal tax is already pricing us out of the tourism market, and since Yukon mark-ups of up to 135 percent and Yukon taxes of 10 percent are added on top of the federal taxes, logic dictates that our current prices are already —

Mr. Speaker: Order, will the hon. member please ask his question.

Mr. Penikett: Will the policy be changed? Mr. Speaker, you permit long rambling answers over there. I want to put my question.

Mr. Speaker: Order please, order please. It is the intention of the Chair to attempt to give every member the best possible time in order to ask questions and to give answers. It makes it difficult for the Chair if members decide that they wish to use the Question Period for debating purposes which, of course, is contrary to the rules of the Question Period. That is why it is difficult for the Chair to have to keep intervening though, according to our rules, I must. If members will recall, they did ask for a change in the guidelines respecting Question Period, where even a supplementary question does not normally allow even a preamble, we have allowed a one sentence preamble. Now these preambles are becoming debates.
 Order please.

Now, if it is the intention of the House to use the Question Period for debating purposes, then I would strongly suggest that the House consider changing the rules in order to permit this and perhaps cancel the Question Period and have this time set out for debates. If it is the intention to carry on by the rules we have laid down for ourselves, then it would really assist the Chair, as your servant, if everyone would try and abide by the rules.

Mr. Penikett: On a point of order, Mr. Speaker, I would advise you that my preamble was one sentence long, but I would also advise you that I am having a good time. It is just that I object to members opposite having such a long time.

Mr. Speaker: Perhaps if members ask brief questions, they will receive brief answers.

Hon. Mr. Pearson: I agree. The question was not brief; however, being cognizant of the points made by you, I will be very brief with the answer. The answer is no.

Mr. Penikett: Does the government leader have any objection to the use of the *Access to Information Act* to obtain the information I have requested about mark-ups?

Hon. Mr. Pearson: No. In fact, I would be most pleased to make sure that the leader of the opposition got the information that he is looking for on a confidential basis, because it would not be counterproductive if I was able to give him that information on a confidential basis.

Question re: Tourism boycotts

Mr. Byblow: My question is to the Minister of Tourism. It should have a 60-word preamble.

A phone survey conducted by our office yesterday afternoon indicated a number of people in the tourism industry have already noted slow tour bookings and they anticipate that the tourist boycott will cause a further reduction in the number of bookings that will be made over the course of this season.

What measures has the minister's department put in place to monitor the health of the industry, for example, on a week-to-week basis, as the boycott spreads?

Hon. Mrs. Firth: We have had a meeting with the Yukon Visitors Association, and they are monitoring that situation for us. As for travel agents, and so on, indicating to us that they have noticed a decline, they have not called the Department of Tourism to indicate that to us. However, we have called a travel agent and there was one who indicated to us that they had had a cancelled tour. It was that travel agent's personal opinion that the reason for the cancellation was as a result of the boycott, but he had no evidence to substantiate it or back it up and could give us no reason why he felt that way.

Mr. Byblow: Can the minister tell me if there are any procedures currently in place, by her department, which allow it to compare the volume of this year's bookings with those made for the same time a year ago? If so, what are the results of these comparative analyses?

Hon. Mrs. Firth: We have not done a comparative analysis. We do not have anything in place that can allow us, on a weekly or bi-weekly or monthly interval, to see if bookings are up. All we do know, according to the inquiries we have had and reports that are made to the Yukon Visitors Association, is that our inquiries have increased some 19 to 20 percent over last year. Now, I am not positive of the figure, but it is in the range between a 17 and 20 percent increase.

We, in the department, receive, some days, 3,000 inquiries for information regarding Yukon and coming to Yukon. So, as for monitoring whether there has been a decrease in bookings and so on, we do not have services available to do that.

Mr. Byblow: In answer to a question from my colleague for Campbell, yesterday, the Minister of Renewable Resources referred to the tourism benefits brought about by consumptive tourists, or hunters, in other words. Has the Minister of Tourism's department conducted any kind of a study of the comparable contribution to the Yukon economy by consumptive and non-consumptive tourists?

Hon. Mrs. Firth: We all have consumption. We have not done a comparative analysis. I know, personally, when I have been out representing the government and I have been questioned about the outfitting business and its contribution towards tourism, I have traditionally used the figures of some \$4,000,000, \$5,000,000 or \$6,000,000 a year that the outfitting business contributes to the Yukon economy.

As we have seen from the past statistics, the contribution through tourism is steadily increasing and we are anticipating that that increase will continue.

Question re: Alcohol abuse

Mr. Kimmerly: I have a question for the minister responsible for the Yukon Liquor Corporation.

I asked, Monday, about the minister's statement that alcohol abuse was uncorrelated with alcohol ability. There is scientific

literature on this subject. Will the minister direct the Yukon Liquor Corporation to survey that literature?

Hon. Mr. Ashley: I believe they probably already have but, if they have not, I would like the member opposite to make it available to me and I will give it to them.

Mr. Kimmerly: I would ask the same minister if he has consulted with the RCMP in Old Crow about this issue?

Hon. Mr. Ashley: The Yukon Liquor Corporation has been dealing with the RCMP on issues in Old Crow.

Mr. Kimmerly: The answer is obviously no. The minister stated on Monday that he has no information supporting the statement that alcohol abuse was uncorrelated with alcohol availability. As this is simply a statement of opinion by the liquor board, why does the government follow this opinion as a matter of government policy?

Hon. Mr. Ashley: That is argumentative.

Question re: Predator control program

Mr. Porter: Hopefully the government leader will answer questions I will put to him. Yesterday in the House, the government leader, in reply to a question put to him by the opposition leader, stated that he has the support of the CYI on the recent predator control program. In view of the fact that not one executive member of the Council for Yukon Indians has stated the position on the matter, where does the government leader get his information from?

Hon. Mr. Tracey: The CYI came out publicly in favour of the control program in a joint press release with the Yukon Fish and Game Association and various other associations approximately two months ago.

Mr. Porter: I also understand that none of the CYI executive approved that press release. On Friday, March 16th, the president of the Fish and Game Association stated that his association has reservations about the method and lack of information involved in the bear control program. In light of the statements made by the president of the Fish and Game Association, how can the government leader claim that the association supports his government's bear removal program?

Hon. Mr. Pearson: I do not profess to hear every statement made by the president of every association in this town on any specific day. The president of the Fish and Game Association may well have stated what the member opposite has said, but I would want to hear that. I would want him to tell me that. I am not prepared to accept the statement in this House that that is what was said.

He has just told us that the CYI does not support the predator program. We have proof that the CYI does support the program. There was a press release from the CYI.

Mr. Porter: I would like to address this final supplementary to the Minister of Renewable Resources. On March 30th, the minister announced a relaxation of the game regulations to allow hunters to take black bears on a year-round basis in parts of game zones 7, 9 and 5. As well, the regulations permit hunters to take three black bears a year, provided that one comes out of game zones 7, 9, and 5. Why is the minister encouraging den raiding, which means smoking out the bears from the dens while in hibernation?

Hon. Mr. Tracey: That is a frivolous question that I do not want to even bother answering.

Question re: Legal Aid Committee

Mrs. Joe: I have a question for the Minister of Justice. I understand that the Legal Aid Committee, in preparing its report, considered the combination of legal aid and native courtworkers. Can the minister tell us if the native courtworkers were consulted during the research process?

Hon. Mr. Ashley: The native courtworkers are not part of the consultative process at this point. I will get the names of the committee members for the member opposite, if she would like. They met to discuss, solely, new changes to the *Legal Aid Act*.

Mrs. Joe: Can I ask the minister if the final report from the Legal Aid Committee does recommend that they combine the legal aid and courtworker program?

Hon. Mr. Ashley: That had nothing to do with the report.

Mrs. Joe: The minister said yesterday that the legal aid study was actually in preparation for legislation that is being drafted and is in the consultative process right now. Who is being consulted and when can we expect the legislation to be tabled in this House?

Hon. Mr. Ashley: As the members opposite were advised in the Throne Speech, we intend to do it this Session, if at all possible. The federal government is also heavily involved in financing the legal aid plan in Yukon, so it is part of the consultative process. That is where it is at right now.

Question re: Agricultural land

Mr. McDonald: I have a question for the Minister of Municipal and Community Affairs. The minister has said that his department, in determining whether requests for agricultural land are acceptable, reviews land use conflicts where they arise. Can the minister be more specific in outlining how the department determines there to be a conflict and explain the procedures whereby they settle the conflict?

Hon. Mr. Lang: What takes place is that the land being applied for is reviewed by the Government of Canada, if it affects it, and by the territorial government departments involved. If there is perceived to be land use conflicts, those particular aspects are brought forward to the Agriculture Development Council, and taken into consideration upon making a decision.

Mr. McDonald: It is very interesting. A person has expressed concern to me that the department, in reviewing applications, only determines a suitability of land for agriculture production and does not take into account concerns raised by other departments in other levels of government representing other land use interests. Can the minister state whether he has entered into any kind of negotiations with these departments to permit the prospective farmer to apply for agricultural land using a one-window approach?

Hon. Mr. Lang: The system is designed for "the one-window" approach so that the individual applying is not put into a situation where he is going from government office to government office trying to find out what the exact situation is with regard to applying for a piece of property.

I will double check to ensure that the other departments affected are doing the necessary reviews of the land that is being applied for and, perhaps at a later date, I could report back to the member opposite to ensure that the procedures are being followed.

Mr. McDonald: I will accept the minister's promise to get back to the House regarding that issue.

Until such time as the minister does return, is the minister prepared to request of his department that it prepares a check list of various government department interests, such as Canada Lands and Forests, water resources, Department of Fisheries, Department of Environment, et cetera, et cetera, to ensure the farmer, himself, until such time as a one-window approach is achieved — that any unforeseen land use conflicts will not impede his receipt of land?

Hon. Mr. Lang: I find it difficult to understand why we would be bringing in fisheries; we seem to have enough problems with the water board. It would seem to me that we will look at the appropriate departments and I am confident that, in most cases, they are being consulted. If they are not, then they will be.

Question re: Marine parks

Mr. Penikett: I have a question for the government leader, in his capacity as the minister responsible for intergovernmental affairs.

A recent Parks Canada draft policy on national marine parks leaves unanswered some questions about territorial participation in the establishment of marine parks, such as in northern Yukon. Has the government leader sought any participation in this process and has he been rewarded by any search?

Hon. Mr. Pearson: I am aware that we have made some representation, particularly with respect to the establishment of a national park, and maybe some sort of a marine park, up on the north coast of Yukon.

I am sorry, I do not have any information at all. I could make inquiries and I will get back to the member on that.

Mr. Penikett: Is it the position of the Government of Yukon

that aboriginal claims agreements with such groups as the CYI and, I suppose, the COPE, in this area, entitle aboriginal peoples to any participatory right in the establishment of those parks in those areas?

Hon. Mr. Pearson: In the COPE agreement, the one that is signed, there is a provision with respect to national parks. It is an agreement between the Government of Canada and the COPE in respect to how they are going to participate with the Government of Canada and the national parks people in the administration of that park.

Mr. Penikett: Has the government leader any explanation as to why the low water mark, rather than the high water mark, has been selected as the boundary between marine and territorial components of marine parks to be established adjacent to existing coastal national parks?

Hon. Mr. Pearson: I am sorry, I just do not have any idea at all.

Question re: Faro school repairs

Mr. Byblow: I have a question for the minister responsible for government services.

It has been reported to me that government services personnel have been working underneath the Faro school — not for lack of office space, but to shore up the foundation of the building. Can the minister tell me exactly what repairs are taking place to the building?

Hon. Mr. Philippen: I would suggest that the member opposite is making a presumption: it may be for lack of office space.

The repairs that were necessary have been made. They have finished the repairs to the foundation.

Mr. Byblow: Given that they are repairs to the foundation of the building, can the minister assure me that his department is continually monitoring the movement of the building and that the building is clearly safe and poses no hazard to the occupants of the facility?

Hon. Mr. Philippen: The soil experts have been up in that area. They have taken samples and they have taken them to Vancouver for analysis and we will be expecting some results in the near future.

Mr. Byblow: The minister must be reminded that he did not address the question of safety. I wish he would. One further consequence of the movement of the building was a major flood in the school library last week apparently from a shifting roof. Can the minister assure me further that he will address this repair immediately so that there will not be any further need for closure of the library?

Hon. Mr. Philippen: We, in government services, address all problems as promptly as possible. We always ensure that the safety of the individuals in government buildings is topmost on our minds.

Question re: Liquor policy

Mr. Kimmerly: Again, to the minister responsible for the liquor corporation, which is responsible for alcohol abuse in the territory. I asked questions on Monday concerning the government's policy. I will ask the same questions by taking very simple steps. Does the government have a policy on the availability of liquor in Yukon liquor establishments?

Hon. Mr. Ashley: The question is really ludicrous. Obviously there is liquor available on the shelves of the liquor outlets.

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

Hon. Mr. Ashley: I believe the Yukon Liquor Corporation board sets what hours the establishments are going to be operated.

Mr. Kimmerly: Has the government made any policy whatsoever, concerning the availability of liquor, known to the liquor board?

Hon. Mr. Ashley: I believe that is what the legislation does.

Question re: Disposal of wild game

Mr. Porter: Glad to see the minister previous has answered a question here today. My question is to the Minister of Renewable Resources. What is his department's policy with respect to the

disposal of wild game that has perished accidentally?

Hon. Mr. Tracey: The policy in regards to that is to have the game brought in to the Game Branch. The game is protected. In some instances it goes back to the person who accidentally killed the game. In most instances it goes to a charitable organization such as Maryhouse.

Mr. Porter: I have a question about the consumptive use of wildlife. A couple of months ago, a calf moose that died after running into the airport fence was reportedly served up at a banquet for the Canadian Lawyers Association. Can the minister confirm that, indeed, that calf moose was fed to a group of wealthy lawyers, certainly wealthy compared to the average Yukoner?

Hon. Mr. Tracey: I certainly can. Part of that moose, I understand, was made available for the lawyers' convention here in the territory, and I think it was beneficial for the territory that the moose was made available. We also have a game dinner every year put on by the Fish and Game Association, for example, that draws people into the territory. I think it was very beneficial to have it available for the lawyers when they were here.

Mr. Porter: In the policy statement, the minister talked about charitable organizations. Maryhouse and the Salvation Army has not received any meat from the Department of Renewable Resources since 1982. Skookum Jim put a request in to the same department last summer, but did not get any. Is it the policy of this government that disposal of wild game should not be given to the needy in society, but rather given to the rich and affluent, such as lawyers?

Speaker's Ruling

Mr. Speaker: It would appear that that question is argumentative and I think I will rule it out of order.

Question re: Visible minorities

Mrs. Joe: I have a question for the minister responsible for justice.

One of the recommendations in the report of the Special Committee on Visible Minorities in Canadian Society states that the Solicitor General of Canada, and his provincial and territorial counterparts, should provide cross-cultural training for police corrections administration, prison staff and judicial system personnel. Since cross-cultural training in Yukon is not mandatory, can I ask the minister if his department intends to comply with this recommendation?

Hon. Mr. Ashley: We have been doing it.

Mrs. Joe: It is not true, Mr. Speaker.

I now have a question for the government leader. The Visible Minorities Report clearly recommends the implementation of affirmative action programs to include visible minorities. Can I ask the government leader his government plans to implement such an affirmative action program?

Hon. Mr. Pearson: That report is just out and it has some recommendations in it. I am sorry, I am not going to make a speech. I promised myself that I was not going to make any more speeches in Question Period, so I shall not. The short answer is: we have not considered it yet.

Mrs. Joe: I would like to ask the minister if he has read the report and recommendations and if he would respond to them by tabling his response in this House?

Hon. Mr. Ashley: *(Inaudible)*

Question re: Black bear hunting

Mr. Porter: I will pursue my question with the Minister of Renewable Resources. Hopefully, he may be encouraged to answer some of the questions.

On March 30, the minister announced relaxation of the game regulations to allow for the hunting of black bear on a year-round basis. Why did his department make that decision?

Hon. Mr. Tracey: Finally he has asked a question that was not frivolous. The reason why it was opened on a year-round basis is because there is no reason why we should have a closed season on black bear. Any time a person runs into a black bear, and they have the ability, it is legal to shoot it.

" **Mr. Speaker:** There being no further questions, we will proceed to Orders of the Day, motions other than government bills.

MOTIONS OTHER THAN GOVERNMENT MOTIONS

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

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

Mr. Kimmerly: Next sitting day.

Mr. Speaker: So ordered.

Motion No. 10

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

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

Mr. Kimmerly: Yes.

Mr. Speaker: It has been moved by the hon. member for Whitehorse South Centre THAT the Standing Committee on Rules, Elections and Privileges review the rules and practices of the Assembly governing the format, presentation and reception of petitions; and

THAT the Committee develop and report to the House recommended amendments to Standing Orders 65, 66 and 67, which would set practical guidelines for the format of petitions and which would provide a more appropriate method for determining whether petitions are in order.

Mr. Kimmerly: I intend to be very brief on this motion and to simply identify a problem, which I rather expect the government will agree with. The specific stimulus for this motion was Petitions 1 and 2, presented recently in this House by me, which were ruled unacceptable as they did not comply as to form.

Subsequent to that ruling, I received several phone calls, some of them fairly angry and, indeed, all of them expressed frustration with the government. This will be of interest to the government because the people who spoke to me expressed the view that the government was not listening and would not accept a petition signed by over 900 people. I am sure the government would not want that kind of impression to be held by many citizens in the territory.

The principle that I wish to advocate here is that if citizens go to the trouble to present or prepare and sign petition, and if a responsible member of this House sees fit to present it, that that petition should be considered by the Assembly and by the government, virtually regardless of form. There certainly should be some minimal rules: for example, profanity should not be allowed — and I am sure everyone would agree with that — and those sorts of things.

The point is that if citizens present a petition and if it is within the jurisdiction of the House and if any member feels it important enough to present the petition, it is my view that the principles of the rules should be that the form is of extremely little importance. In this particular case, petitions 1 and 2 were not accepted and petitions 4 and 5 were accepted, and the only change is that on the latter two petitions there was typed at the top, "To the Legislative Assembly". That change is extremely minor. It is of a clerical nature, especially as the body of the petition clearly addresses itself to all members of the Assembly. The principle that I wish to propose is that the substance of the petition is far, far, more important than the form and perhaps better procedures could be looked at with a view to relaxing the requirements as to form or possibly supplying and making publicly known a form for petitions, which could be readily available, or something like that.

Petitions are relatively little used in democracies but it is an area, or a mechanism, whereby citizens can speak to government directly. It is a useful procedure and in this time and era, when many citizens feel an alienation from government, this type of communication should be encouraged by all reasonable means.

Hon. Mr. Lang: To begin with, my definition of brief as opposed to the member's opposite, is obviously entirely different. I recognize that the member opposite is doing his best to ensure that *Hansard* is filled to its capacity on any given day.

Speaking to the motion, I am a little disappointed about the fact that a member of this House would bring forward to all members

that people had called him and said that they were angry that the government would not accept their petition.

First of all, the petition is to the Legislative Assembly. I think the member opposite has his responsibilities over and above partisan politics to tell them the method for expressing a view to all members of the House, for or against any given issue.

I am sure the member opposite — knowing his tactics and the way he operates — did not inform them or attempt to make the effort to ensure that the people were aware that it was because of the method that they employed in presenting the petition that it was not accepted. It was not the fault of the government.

I do not know if the member opposite had read his rules prior to working with these people in bringing forward the petition, but it is very clear and very simplistic, with respect to the rules that we have drawn up, of what form has to be taken as far as a petition is concerned. I find it totally and absolutely ludicrous that the member opposite would say that we should not be bothered with having to have a caption as to where that particular petition was going to go.

I think it is important, in form, to be directed to the Legislative Assembly, as opposed to continuing to perpetuate the misconception that the member opposite spoke of, that it is coming to the government, as opposed to the members of this House.

It is interesting to note that, since the advent of party politics, a total of 14 petitions have been tabled in the Legislative Assembly and, of those 14, five had been tabled this Session. The member opposite spoke about the alienation from government by the general public. In view of the past, I would say that the question of petitioning the government has not been the most urgent thing on the minds of the general public, except, perhaps, if the member opposite is involved and then, perhaps, that might change somewhat, because he attempts to get support for his point of view, at times.

What that means in numbers is that, in the previous five years, from 1979 to 1983, inclusive, only nine petitions were tabled; in other words, two per year. Of the 14 petitions that were tabled, eight were accepted by the House, as they did follow the form that is necessary. It should be pointed out that, until this Session, there has never been a complaint in the instances where the Clerk has reported unfavourably, with respect to the format that has been brought forward.

Just to give a history lesson to the member opposite — I recognize that he is a mere mortal and that, sometimes, things do become remiss with his recollection — it should be pointed out that the Standing Committee on Rules, Elections and Privileges did consider the issue of petitions only one short year ago. In the report of the standing order, tabled in the House on March 29th, 1983, the committee had the following to say about petitions: "The Committee recommends that the anachronistic language now required in petitions be altered to take on a somewhat more modern form. The Committee also recommends that the Ontario practice of requiring Cabinet to respond to petitions within two weeks be adopted".

I think all members are aware that the House concurred in the report and the result is found in the up-to-date wording of the model petition shown in Appendix 2 of our Standing Orders and in Standing Order 67(1), which states: "The Executive Council shall provide a response to a petition that has been received within two weeks of its presentation".

It seems strange to me that the member for Whitehorse South Centre, — who has requested revisions to the rules governing petitions — or one of his caucus members, would have raised this concern one year ago.

Just to go further into this to give us some comparison, I think it is important to note that our rules are similar to those in all other jurisdictions across the country. In fact, there is not one case where the rules of another House concerning petitions are markedly different from our own. I recognize that the principle of bringing forward a petition is the method to express a view on a certain subject, but in the world of politics, let us be honest; we all know that the actual political impact of a petition is the actual presentation in the House when it occurs, as opposed to what takes place afterwards.

Just to summarize the arguments from my point of view as a

member in this House, first of all, we have not used petitions a great deal. The Standing Committee on Rules, Elections and Privileges studied the issue one year ago. The experience of other jurisdictions does not point the way to any required or recommended reforms. I want to make the point that I feel that if a member of the general public feels strongly enough about an issue to the point that he or she wishes to start a petition so that an expression of a view can be brought forward, I think, in fairness to the members of this House and the general public, that those people should acquaint themselves, to some degree, with the very simple rules that are involved in bringing forward a petition.

It disturbs me a great deal that the member opposite would be prepared to accept — and I am sure, in view of his antics in the past, he would accept anything — as a member of this House, any document of any kind for the purposes of bringing it forward. In my view, unlike the member opposite, bringing forward a petition is a very serious matter. The signing of a petition is a very serious matter, because you are putting your name forward and taking the responsibility for signing your name on that particular document and expressing its point of view.

I have talked to a number of people who signed that document and once I was told what they were told for the purpose of persuading them to sign that petition, I was amazed because, in some cases, there was so much misinformation brought forward that I think there has been abuse in the petitions I am referring to.

15 And I want to conclude by saying that I believe there is a responsibility on anyone who feels that strongly about an issue to acquaint himself, to some degree, to the rules, as far as petitions are concerned. I will not accept the principle that the member opposite has put forward that you can bring in a petition on a piece of toilet paper, but you cannot use profanity.

Mr. Penikett: I will not say that the member's speech was brief, it certainly was not. Nor will I say that the member's speech was short, because that would not be kind. I will say that the member's speech was small in every sense of the word, and I think we can probably use that term now with new and enlarged meaning.

The minister said a great many things in his speech and one or two of them were interesting. Very few of them were true. He gave me, in his dissertation, no reason not to vote for the motion, which is a very simple one; which is simply to send the question to committee; send the subject of petitions to committee. I was not clear about what the member said, whether he liked petitions or whether he did not like them; whether he liked to have more of them, or whether he liked to have less of them. Clearly there is, in this community, a new interest in the subject of petitions. Perhaps it is time the legislature had a look at it again.

Mr. Porter: I agree that the member for Porter Creek East has a different definition of what brief is from the member for Whitehorse South Centre. I must say though, that the Minister for Municipal Affairs' version is simply a longer version of brief. I will today, now, show him what brief is.

In his comments he implied that the member for Whitehorse South Centre had been responsible for initiating the recent petitions as they speak to *The Children's Act*. I think it is for that very reason that we should look at the guidelines that govern the drafting and use of petitions. Many of the people in the communities do not have access to the rules of the House as they speak to petitions. I think it would be a very simple matter to draft up, in an understandable form, a standardized form of petitions and make those available to the public. If the public wanted to initiate petitions on their own, to this legislature, they could then do so. I do not think that we should be put in a position where the members of the legislature should have to be in the process of initiating petitions. It is a very simple motion, very uncontroversial. The entire House should support it.

Mr. Kimmerly: In response to the member opposite from Porter Creek East; he talked first of all about knowing my tactics. Well, I contemplated rising on a question of privilege, because that is against the rules; impugning a motive to other members. However, I decided to deal with the point in debate.

16 I say that the minister, in saying what he did, was implying

misinformation to this House. What happened when the people phoned me to complain —

Mr. Speaker: Order please. The hon. Minister of Municipal and Community Affairs, on a point of order.

Hon. Mr. Lang: Would the member opposite entertain a question?

Mr. Kimmerly: No, Mr. Speaker.

I am going to explain what happened, and I will make no pretense about being brief. I realize that occasionally I do go on at length here and I did not want to go into details and add extraneous information, but it is obviously necessary. What happened when those people phoned me and expressed indignation was that I pointed out to them that it was a ruling of the Speaker. Those people would probably back me up if they cared to. I know they would, if they care to make themselves public.

I have another point. The member for Porter Creek East heckled and said, "Get your rules straight. It is the clerk". He is wrong. The ruling is the Speaker's ruling. What occurs in this Assembly is: the Speaker asks the clerk for a report, which the clerk makes and the Speaker makes a ruling. In that procedure, I find some issues to question for the following reasons, and I would raise these issues in Committee, which is the perhaps the best place to raise them. If a clerk is asked to review a petition as to form, he has very specific instructions and he is acting as a clerk and it is his job to look at the rules and decide if they are complied with in the particular petition.

The Speaker, when making a ruling, has more discretion. We recognize that many Speaker's rulings — certainly the vast majority of them — contain an exercise of judgment in which the Speaker's judgment is called into play and a decision is rendered.

17 The Speaker has more discretion and more scope to exercise judgment than does the Clerk, who is operating under, in some cases, fairly stringent guidelines and is instructed more narrowly. Indeed, Petitions 1 and 2, as they compare with Petitions 4 and 5, are excellent examples of that, because Petitions 1 and 2, in the body of the petition, speak to the members of the Legislative Assembly; but, in a clerical sense, they are not addressed to the Legislative Assembly at the top or at the beginning. In the body of Petitions 4 and 5, the same address to the Assembly occurs and there is a further clerical statement, in the nature of a salutation, at the beginning.

It would be possible for an officer exercising discretion to rule Petitions 1 and 2 in order; that is a matter of discretion. In the procedure that we follow here, the Speaker receives a report from the Clerk and, in the past, has always acted on the report. The procedure could be fruitfully looked at, in order to maximize discretion.

The member also says petitions are not the most urgent thing we have to deal with; that is certainly an accurate statement, but they are very, very important. I briefly alluded to the principle in my introductory statement that this is an age where many citizens feel alienated from their elected politicians, from governments and from people in power, generally, and a petition is a mechanics, it is a procedure, which has worked in the past, for citizens to speak directly to their elected representatives.

Many petitioners are frustrated with the limitation of their involvement in government to vote once every four years and they feel a compelling need to speak directly on a particular issue, and this is a time-honoured method of achieving that.

18 Although it may not be the most urgent, it is very important. It is certainly an acceptable and a frequent use of petitions for members to use a petition to back up and emphasize a particular point they wish to raise. Indeed, I have done that on the subject of medicare, in the past, as well as my colleagues. It is also a perfectly acceptable and desirable use of petitions that citizens, independently, circulate a petition to try to get the attention of the legislature and ask a member to bring the petition before the House. That, I submit, is an even more important use of petitions and is part of our democratic tradition, going back a very, very long way.

It is important that citizens feel that, when they do that, they are listened to. I predict that when a group of citizens gets together without the benefit of a member of this House among them, the probability is that they will address the petition or write the petition

in a simple and understandable way, to laypersons, and will probably not think to specifically address it by way of a salutation to the Assembly or any other body.

The minister from Porter Creek said that petitioning citizens should acquaint themselves, to some degree, with our rules. I would ask: are our Standing Orders in the public libraries and the school libraries around the territory? I do not know, but I seriously doubt it. It is not an easily understood, or a common, procedure for non-members of this Assembly to be looking at our Standing Orders. Indeed, I venture to say that probably 90 percent of Yukoners do not even know of the existence of Standing Orders, per se.

If a petition is worded in plain English — or, perhaps, French — that we can understand, and it is about an issue within the purview of this House, we should at least give the citizens of the territory the courtesy of considering it.

¹⁹ In fact, if it is sent to the wrong place — for example, if it is a matter in the federal jurisdiction or the municipal jurisdiction — it would be a very easy matter to simply say that, receive the petition and say this is not within our jurisdiction, it should go to the Commons, or an LID, somewhere. Citizens would appreciate that simple information.

Considering petitions 1 and 2, and 4 and 5 in this session, the minister from Porter Creek made unkind statements, and, perhaps, innuendos.

Mr. Speaker: Order please. The hon. Minister of Health and Human Resources on a point of privilege.

Hon. Mr. Philipsen: I do not believe I ever made statements like that.

Speaker's Ruling

Mr. Speaker: Order please. Again the hon. members are rising on points of privilege, which indeed they ought to know are not points of privilege. Points of privilege are very rarely ever brought before a House. Once again we have a dispute between two members as to allegation of facts. This cannot be construed as a point of privilege, and does really not constitute a point of order. The hon. member for Whitehorse South Centre.

Mr. Kimmerly: The minister from Porter Creek East is the member I was referring to. He made statements about those four petitions in this session. He clearly stated that I was involved in preparing them and circulating them, which is an inaccurate statement. He clearly said there was abuse and misinformation concerning those petitions. I have no individual knowledge of that. That is a matter to consider when the petitions are considered by the government. I will raise the issue in a discussion of *The Children's Act* in committee, where it is properly raised, and make the general statement, which I have made before, that there is abuse and misinformation on both sides of the debate, some of it coming from the government.

I have probably gone on long enough. It is unfortunate that the debate has descended into very sensitive specific issues that were unnecessary. The principle that I wished to express is that I was aware of some citizens who were very upset about petitions 1 and 2. They may well ask: are the signatures of the 940 people who signed petitions 1 and 2, somehow less worthy than the petitions of the 1,230 people signing petitions 4 and 5?

²⁰ Obviously they are not. I am simply trying to say that it would improve the image of this House, and indeed all members in it, if we made every effort to be as open as possible in receiving the views of citizens of the territory. Lay people in the territory had some difficulty in accepting our rules about that issue and, in my view, it is unreasonable to expect the clerical nicety that we may expect from members following our particular Standing Orders than from the general public. We should be a little more understanding. It is a simple motion calling for that and I think I have made the point and I would recommend that all members vote for the motion.

Motion No. 10 defeated

Mr. Speaker: We will now proceed to Bills other than Government Bills.

BILLS OTHER THAN GOVERNMENT BILLS

Mr. Clerk: Bill No. 101, standing in the name of Mr. Kimmerly.

Mr. Speaker: Is the hon. member prepared to deal with item no. 1?

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

Mr. Speaker: So ordered.

We will now proceed to Government Bills.

GOVERNMENT BILLS

Bill No. 23: Second Reading

Mr. Clerk: Second reading, Bill No. 23, standing in the name of the hon. Mr. Ashley.

Hon. Mr. Ashley: I move that Bill No. 23, *An Act to Amend the Government Employee Housing Plan Act*, be now read a second time.

Mr. Speaker: It has been moved by the hon. Minister of Justice that Bill No. 23 be now read a second time.

Hon. Mr. Ashley: *An Act to Amend the Government Employee Housing Plan Act* is a bill that proposes a number of changes, mainly minor in nature, designed to clarify the existing legislation governing the buy-back program. One amendment will provide the government with some protection by requiring eligible employees to make a responsible effort to sell their home on the private market prior to being eligible for purchase under this program.

In addition, the purchase price payable under the program is being reduced by two percent. The maximum purchase price of \$68,400 is, however, being retained. The size of the revolving fund is to be increased to \$1,500,000. This increase will ensure the revolving fund has adequate capacity to allow the program to operate in the foreseeable future.

Houses that have been acquired under this program, while in possession of the Corporation and awaiting resale, will be rented to the public at market rental rates, a change from the present requirement of renting these homes at economic rents.

With these few amendments, eligible employees owning homes, which qualify for the buy-back program, will continue to enjoy the benefits of this program, an incentive that this government hopes will continue to encourage more employees to become and remain homeowners throughout Yukon.

²¹ *Motion agreed to*

Bill No. 15: Third reading

Mr. Clerk: Third reading, Bill No. 15, standing in the name of the hon. Mr. Philipsen.

Hon. Mr. Philipsen: I move that Bill No. 15 be now read a third time.

Mr. Speaker: It has been moved by the hon. Minister of Health and Human Resources that Bill No. 15 be now read a third time.

Mr. Kimmerly: I rise to make our position clear on this particular bill. At second reading, we supported various principles, which we continue to support. However, what the bill does is less desirable than the principles that we spoke of at second reading.

I wish to raise five points and the five points all refer to principles in the bill, expressed by, in some cases, specific sections and, in some cases, a collection of sections. First of all, for the first time in my knowledge, the right of a mental patient, or an alleged mental patient, to legal counsel has been restricted. We do not support that.

The restriction is stated, in general terms, and is, of course, subject to interpretation. It is my opinion that, given the *Charter of Rights* in Canada, the courts would have little difficulty with the principle in the bill and the courts would simply disregard it. However, the principle is there. It has been voted on and accepted by majority in the committee and we wish to say, loudly and clearly, that we are opposed to that principle and we say it now.

The second principle is that the period for which a person can be involuntarily held before going to court — that is, on the signature of two doctors — has been increased from three days to five days. Now, the minister, in speaking to the bill, was very clear about the purpose of these particular amendments. The particular amendments

were to plug a few points, which he considered loopholes, and which came up over various cases in the courts in the last little while. That principle was not one of them and that principle is added here in what, we feel, is an unjustifiable and unjustified way and we do not support that; indeed, my position is the period should be decreased to one day.

In any event, it used to be three and it is now going to be five; that is wrong, we do not support it. That reduces the civil liberties and rights of mental patients or alleged mental patients and that principle, in our view, is quite wrong.

²² The third point is that there is a review board established but the review board has no right to hold hearings and the patients have no right to be there and present their case. The constitutionality of the board is questionable, in my mind. In any event, it is a lame duck board and although we support the principle of reviews, and a review board as a general principle, we do not support the provisions for the board in this bill.

There is also, as a fourth point, now a specific power to administer mind-altering drugs to patients and alleged patients; people who are detained under this legislation. These mind-altering drugs in most instances are dangerous drugs. We do not support the principle contained in this bill allowing the use of these kinds of drugs for people who are detained before a court has made a decision as to their mental competence.

Fifthly, and finally, there is now a power to place mental patients in a jail. We believe that that is a travesty of justice. We believe it is cruel and unusual punishment and we believe that most Yukoners would back us up in that assertion. In the past, some mental patients, or alleged mental patients, were placed in a jail, although there was no specific law about it. We believe the provisions of the law should have gone exactly the other way: to prevent the abuse of housing mental patients in jails. It is just simply wrong.

We know that there is to be a new mental health act in the fall. We know that we are promised public consultations. The consultation process that brought about these amendments was most undemocratic; in our view, it was quite narrow and wrong and there was consultation with only one side of a very important issue and not the other side. The urgency of the amendments is no where near as important as the principle of sensible and rational consultation with all interested participants in the debate.

We look forward, in the future, to constructively debating with the government and consulting with the government and any other interested groups and the medical profession and the legal profession to get a better bill. We are obviously going to have a new bill and we all hope it will be a better bill, in the fall. If the process of public discussion occurs properly, it is our view we will get a better bill in the fall. It is also our view that it is necessary to correct the wrong principles that will be established in our law in this bill.

²³ We regret these five principles and do not support them, in the strongest terms.

Motion agreed to

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

Hon. Mr. Philippen: I move that Bill No. 15 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. Minister of Health and Human Resources that Bill No. 15 do now pass and that the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I declare that the motion has carried and that Bill No. 15 has passed this House.

Bill No. 4: Third Reading

Mr. Clerk: Third reading, Bill No. 4, standing in the name of the hon. Mr. Tracey.

Hon. Mr. Tracey: I move that Bill No. 4, *Legal Profession Act*, be now read a third time.

Mr. Speaker: It has been moved by the hon. Minister of Renewable Resources that Bill No. 4 be now read a third time.

Mr. Kimmerly: If the member for Porter Creek East promises not to speak, I will be very, very brief.

I am rising to say that it is our view that, although there are

problems with the bill that we do not agree with, in principle and in general and in totality, this is a good initiative and we support the principle and the independence of the legal profession, as it exists everywhere in the British Commonwealth and, especially, everywhere in Canada, today.

It is a proud moment for the legal profession, because we were the last jurisdiction to do it and now, absolutely everywhere in Canada, the legal profession will be independently governed and that is a part of our tradition of individual freedom and civil liberties that we all hold so dear.

Motion agreed to

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

Hon. Mr. Tracey: I move that Bill No. 4 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. Minister of Renewable Resources that Bill No. 4 do now pass and that the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I will declare that the motion has carried and that Bill No. 4 has passed this House.

Bill No. 20: Third Reading

Mr. Clerk: Third reading, Bill No. 20, standing in the name of the hon. Mr. Tracey.

Hon. Mr. Tracey: I move that Bill No. 20, *An Act to Amend the Dental Profession Act*, be now read a third time.

²⁴ **Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 20 be now read a third time.

Motion agreed to

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

Hon. Mr. Tracey: I move that Bill No. 20 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. Minister of Renewable Resources that Bill No. 20 do now pass and that the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I will declare that Bill No. 20 has passed this House.

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 will now call Committee of the Whole to order. We shall take a short recess until 3:15. When we return, we will go on to Bill No. 19, *The Children's Act*.

Recess

Mr. Chairman: I will call Committee to order.

Bill No. 19: The Children's Act

On Clause 1

Hon. Mr. Philippen: I see the review of this bill by the Committee of the Whole as a culmination of the public review process. While the provisions and philosophy of the bill have been widely and, at times, hotly, debated over the winter months, it is here in this committee that it will receive the closest scrutiny. Indeed, the review by the committee will be most meaningful, because of the authority of the committee to recommend amendments to this House.

I have said it before, and I say it again, *The Children's Act* is a good piece of legislation that deals in a positive way with a broad spectrum of issues relating to the wellbeing of children in Yukon.

²⁵ The hon. member for Whitehorse South Centre has gone to great

lengths to make us aware of some public opposition to the bill. Certainly I and my colleagues and staff are concerned to ensure that the bill is the best possible to deal with this important and difficult subject.

The bill originally introduced last spring has been substantially revised as a result of community and other discussions. I am distressed that only about a dozen copies of the new bill have been picked up by members of the public. Nevertheless, we remain receptive to constructive and informed comment. That is what I hope to receive in the forthcoming deliberations of this committee.

We, on this side of the House, have mentioned since day one, that on *The Children's Act* we were, and have always remained, open to suggestions as to where the proposed legislation is particularly offensive to members of the public. To this end, I wish to advise you, and members opposite, that it is my intention to propose at the proper time and place in the bill, that is now before us, the deletion of the requirement to report and the fine requirement in the Section 117, as well as propose an amendment to Section 169, dealing with hearsay and make it comparable to the similar section in the just passed *Legal Profession Act*.

I do not propose to prolong debate concerning the general principles of the proposed *Children's Act*. It is now time for us to get to work on the clause by clause review of the bill. I look forward to receiving specific recommendations for the improvement of the bill as the work of the Committee progresses.

Mr. Kimmerly: I thank the minister for that obviously constructive introduction. His approach is certainly constructive, as opposed to combative, and I will respond in kind.

The procedure, as we see it, is problematic, because our opinion of the bill is different from the government's, in that the government is starting out with the proposition that it is a good act and is freely admitting, obviously, by its attitude and its statements, already, that the bill can be improved and it is looking forward to a constructive debate and constructive improvement. Our position is different in this respect: although we look forward to constructive improvement, it is not our position that we should immediately go into a clause-by-clause consideration and suggest particular improvements to particular clauses.

The reason for this is that it has already been our statement and our vote in the House that the principle of the bill is flawed, that the basis of it is wrong.

It is impossible to consider some of the sections of the bill in isolation from some other sections. Just as an example, section two and section 110 act together, which I have already identified.

I propose to be some little time. I do not propose to be brief in general debate for those reasons. It is important to get at some of the principles of the bill in general debate; and I say "constructively". If we can reach an accommodation on the principles, the clause-by-clause consideration would then go very fast; however, if we cannot, unfortunately, it would not.

It is my view that it is not only desirable, but it is our duty, as loyal opposition, to be extremely careful about this bill because of the wide-spread public debate it has caused. Indeed, it is interesting to think about the public debate and analyze it.

The member for Porter Creek East just a few moments ago was accusing me of shady — shall we say — tactics. It is, perhaps, important to clarify at the beginning some of the public statements and the public positioning and the principles contained in the various petitions, for example, in order to clarify the ground. I say that in the most constructive spirit.

During the second reading debate, the minister made a statement that the public debate had been healthy. I made a statement that the public debate had been unhealthy. There is very clearly a difference of opinion there. It is clear, and it is strange — there is an old saying that "politics makes strange bedfellows" — that there is an alliance, if you will, on an issue between a segment of the population that is traditionally considered right wing, or on the right end of the political spectrum, and the people on the left, such as I. There has been name calling about what kind of a bill it is; is it a Conservative bill, a Socialist bill, a fascist bill, or a bill with no particular denomination. That debate, I believe, is probably quite unhealthy and quite unconstructive. I do not wish to take up any

time in going through that, although, if it is raised, I will certainly answer any points on that score coming from across the way.

I would like to start by asking some questions. I would like to ask the government leader a question. I do this sincerely in the spirit of cooperation and a constructive approach to the debate on the bill. I listened to a radio broadcast — I believe it was last week, I forget the date — it may have been a Monday — where the government leader spoke on the CBC for approximately four minutes. It was exclusively on the topic of *The Children's Act*. I personally heard it, although I did not make notes about it and I did not get a transcript.

I heard the government leader say that this bill is not a bill that took away any power from the courts. I am going to ask a question about that in the spirit that it was clearly a major issue in second reading, and it has clearly been a major issue in the media attention that the bill has received, that there is a controversy about whether the bill does, or does not, take away power from the courts.

I have — I believe it was in the last Session — clearly stated in this legislature that a document signed by the previous minister was a lie, which was very strong language, Mr. Chairman. It is not my intention to name-call back and forth or to shout at each other. That is obviously unconstructive, but I would ask the government leader if he does not accept the proposition that whether or not this bill does, or does not, take away power from the courts is a controversial issue in the public mind? I ask that very simple question.

Hon. Mr. Pearson: I do not believe that it is a controversial issue. It was one that was raised, surprisingly, by the leader of the opposition, at second reading. I wanted to make the point, because I do not believe that it is true that there is power taken away from the court. In fact, the only thing that this bill does is delay the inevitability of a case going to the court. There are options put there for use prior to going to court. Hopefully, it will avoid some of the cases going to court. However, the legislation, the way I read it, is very clear.

Before the director can take any specific action and any permanent action, he must go to the court and seek the direction of the court. I believe that that is very clear in the legislation.

Mr. Kimmerly: The government leader has been here longer than I have. He has been associated with this Assembly as a clerk and has been a member longer than I have. I am sure he will agree that one of the problems here is that very often we do not listen to what the other side is saying, that the communication is deficient and that probably both sides are better at expressing their policies than at listening to and understanding the other side's policies. I certainly believe that. I think that that is true.

I was trying to listen very carefully to the answer and what I heard was the government leader saying that he does not believe it is a controversial issue and the bill does not take the power away from the court. I believe that is what he said.

On the second issue, about taking power away from the court, it has clearly been stated by me and the leader of the opposition that we believe the bill does take power away from the court. It is clear to us that the government leader, anyway, — and probably the entire government — believes it does not take power away from the court. That is clearly a difference of opinion or a difference of interpretation of the bill. It is, in my view, most constructive to go through the details, in the days ahead, and analyze whether it does or does not, and debate the points. The government leader should accept that it is a controversial issue —

Some hon. member: Only with you, Roger.

Mr. Kimmerly: They are saying across the way, "Only with you". Well, the definition of a controversy is a disagreement, and I say that it should be accepted that a petition signed by more than 2,000 people talks about the lack of accountability. It has clearly been, in the media, that one of the major issues — perhaps the major issue, perhaps the crux of the whole matter — is who is to have a general superintendence over children? Is it the director or the courts? That is clearly a controversial statement or a controversial issue.

I would ask the government leader, again, because of the communication that is occurring off the record, if the government

leader believes that the general superintendence over children should be with the courts or the director of child welfare?

Hon. Mr. Pearson: I sincerely hope that the member opposite, who is raising these questions now, has read the bill, because, if he has, he would know that the courts decide where these children who have to be placed in care are going to be placed in care.

It is true, once the courts have decided where the children are going to be placed in care, the general superintendence of them here, like everywhere else in Canada, falls to the director of welfare. It is a fact, in this legislation, that the court decides where a child shall be placed.

Mr. Kimmerly: Forgive me for mentioning a specific section, but I believe it is productive in general debate to do it now. On page 65 of the bill, section 110(6), there is a statement that I will read: "The director shall, in accordance with this act, have general superintendence over all matters pertaining to the welfare of children".

I would ask, in view of the government leader's statement that the director does not have general superintendence and that the courts do have general superintendence, what does that section mean?

Hon. Mr. Lang: On a point of order, at this stage of the proceedings of the bill, it is my understanding, under the rules, that we are to go with general debate and getting into the specifics of a clause is reserved for dealing with the clause specifically in order.

Mr. Chairman: I feel that he was just simply using that in one of his arguments, and I find that if I let them do this, it cuts down the general debate.

Hon. Mr. Pearson: I am not prepared to answer that kind of a question, because the minister responsible for this legislation is the person who should be expected to answer these questions. I stand by what I said before. The member, being a lawyer, knows full well that the legislation is very clear. There is nothing taken away from the courts. The courts still have the same responsibilities as they had before. The only thing we have tried to do — and we have tried to do it for the people — is make this legislation allow as much interplay among the director of child welfare, the family and the child, prior to it going to court as is possible.

We are trying to avoid, in every case, going to court, because there simply is not anything as traumatic as going to court for a child. I am sure everyone will agree with that.

The object of the exercise is not to cut into the so-called jurisdiction of the courts; that is not what we are about. We are trying to put together legislation that is going to be most beneficial to children.

Mr. Kimmerly: The government leader stated that I am a lawyer and I know full well certain things. I know nothing of the kind. In fact, my opinion is different from the statements made by the government leader. I am going to try to get at the same principle or the same general issue from another direction. I would put the minister on notice that that particular section will be coming back time and time again, and that it is a particularly problematic section, especially as it relates to Section 2. The minister will be aware of the present provisions in the *Judicature Act*, that are relevant to that issue.

I want to make it clear that I am trying to get at the same general issue. It is a general principle that it is most appropriate to bring up now. It affects a number of clauses in the bill and it would be impossible to amend the various clauses in isolation from each other.

I am going to ask about the procedure whereby this bill was drafted and the procedure in relation to the general issue: the general superintendence over all matters pertaining to the welfare of children. I have questions for the minister, but perhaps a question for the government leader, because a lot of it occurred prior to the minister's tenure in the present portfolio he has.

It is common practice when drafting bills like this to go through the court cases and the case law that have occurred in the past and to look at any problems that may have arisen. There is a very simple example in the last bill this committee studied, the *Mental Health Act* amendments, where it was clearly, simply, and blatantly stated by the minister, quite properly, that the bill was in response to various court cases. It is obvious — and everyone will accept it

— that one of the things that legislative drafters do is to look over the cases that have occurred in the last little while.

"This is done to identify what they perceive to be problems. I would ask a very simple question of the minister: is he able to say if, in the preparation of this bill, that that procedure was followed?"

Hon. Mr. Philipson: Nothing was left out in the examination of the need of children in the preparation of this document.

Mr. Kimmerly: It is a general answer, but I will accept it as a yes.

In the preparation of the bill and the consideration of the cases occurring in the past, did the deputy Minister of Justice, at the time, Mr. Pdraig O'Donoghue, or his staff, go through the cases that occurred in the courts in the previous several years prior to the drafting of the bill?

Hon. Mr. Pearson: I feel I should answer, probably, because the minister was not a part of the Cabinet at that particular time. I want to assure the member opposite that there was a considerable amount of expertise used and a tremendous amount of research done. The research amounted to something close to one year, and one of the major issues looked at was case law, not only here in Yukon, but from all across Canada.

Mr. Kimmerly: It is clear that that procedure was followed, in a general sense.

Did the officials of the government — I would ask the minister, or anybody who can answer or who is able to answer — go through the child welfare cases that were brought to the courts in Yukon, in the previous several years or so, with a view to identifying the cases that the government had lost or where the applications of the director were unsuccessful, with a view to looking at those specific cases?

Hon. Mr. Pearson: You know, if we were not doing this on such amicable terms here, I would feel some resentment at such a question. The innuendo, I respectfully suggest, is very, very bad. I am sure that the member opposite recognizes and realizes that this legislation is here for the benefit of children, not for the benefit of the director of welfare. It is not here for the benefit of the courts; it is not here for the benefit of the Conservative Party of Canada; it is not here for the benefit of the NDP. It is here for the benefit of children.

Hon. Mr. Lang: On a point of order. In consideration of the way the debate is proceeding I would ask the Chairman if it would be in order for me to ask the member for Whitehorse South Centre some questions in order that there is equal time on both sides.

Chairman's Ruling

Mr. Chairman: I believe that I made my ruling twice, Mr. Lang. On November 7 and March 10, you have the ruling there and it was never challenged by this House so, unless it is challenged, it will remain that way.

Mr. Kimmerly: I am quite aware of the innuendo. In order to avoid the innuendo, I am going to make a direct statement, a statement from my personal knowledge. The statement I make is that officials of the government, before the minister's tenure, within the Department of Justice, canvassed the various cases going through the Yukon courts in the child welfare area in the previous few years with a view to identifying the issues where the judge had decided against the application of the director of child welfare, with a view to changing the provisions of law so that those cases would have been decided differently by the courts.

Now, I was very careful. That is not an innuendo; that is a statement, and it is a statement from my personal knowledge.

Hon. Mr. Pearson: I am here to tell the member that he is wrong, wrong, wrong, wrong. I happen to know that every case was reviewed, not just the select cases, but every case, as I said in the first statement I made, not only here in Yukon but a large number of cases from all across Canada. As I said, this work went on for very close to one year. I am sorry I cannot remember exactly how long. It was between 10 months and a year that was taken up by an officer in a Department of Justice reviewing case law, not only here in Yukon, but all across Canada.

The fact of the matter is that this legislation is here, once again,

not for the benefit of the director, or not for the benefit of the courts, but for the benefit of the children.

Mr. Kimmerly: I have certainly no argument with the statement that every case was looked at, and also that cases outside Yukon and cases outside Canada were looked at. That is not a rebuttal of the statement I made. I made a very precise statement.

I wish to get at the same issue by a slightly different way. I will come back to the first two ways. This is not an exhaustive examination of those issues. I will come back to them. I would like to ask this question. It was before the minister's tenure, so I will ask the government leader: was the government leader aware of substantial tension between the Chief Judge and the judges of the territorial court and the deputy minister of justice concerning child welfare issues, over the past four or five years?

Hon. Mr. Pearson: I think I have to rise on a point of order. I have to ask you a very serious question. I would really like to know. I would like to have a ruling from you, Mr. Chairman, as to what relevance to this bill that question has? I would really like you to tell me why the member opposite has asked that question in respect to this bill. It has absolutely no relevance whatever. I am not going to be put on the witness stand. I am not going to be interrogated by the member opposite. I simply refuse to be. If he wants to ask me question about this legislation, fine and dandy. He is treading on very, very shaky ground. He happens to have been a member of the judicature of this town. He is coming from there and now raising questions of concern between himself, possibly, and the former deputy minister of justice. It is highly improper, Mr. Chairman.

Mr. Chairman: I will hear Mr. Kimmerly before I rule.

Mr. Kimmerly: There were really two grounds made on the point of order. The first, that the question was irrelevant and the second that it was improper on some sort of confidentiality grounds. I would assume. I would like to address both points.

Firstly, on relevance, I gave a very long speech at second reading — it was approximately two and a half hours, I believe — and I spent some time on exactly this issue. I was not ruled out of the order, at the time; indeed, it was not complained about then.

I stated in the second reading speech that there was a tension between the courts in the past years on child welfare matters, and a tension between the courts and the Director of Child Welfare on these matters, and the deputy minister of justice, who was involved in the same tension as a counsel in the courts on these matters. The general principle that we are debating is the question of the general superintendence of the director or of the courts over child welfare matters.

The question is: does the bill take away power from the courts or does it not? That is the relevant issue, and the particular cases that went before the courts and the kinds of tensions that existed and the way they are resolved in this bill is particularly relevant to exactly that issue; exactly that issue.

The issue is the protection of children and the way that goes through the courts and who has the power: the courts or the director. The practices and the procedures and the tensions that exist in the courts are exactly the proper things to talk about if you are addressing that issue.

So, it is clearly relevant. It is a relevant question. If you wish, I can give additional facts to establish that the tension did exist, and does exist, and I can continue to do that.

As to the assertion that it is an improper question; what occurs in a court is generally public. In child welfare courts, the public is not generally allowed, but the decisions of the courts and the procedures that the court follows are clearly in the public domain; they are clearly public issues.

It is a fact that I was a judge in the Territorial Court during the period I am talking about. It is a fact that I have personal knowledge about these issues, and I make a clear, bold assertion that it is entirely proper for me, in this Chamber, to state publicly any personal knowledge that I have acquired in that capacity, which is not a breach of a solicitor/client duty, or something like that.

In any event, if I were in breach of any of those duties, it would be a matter for some other forum; for example, a judicial council or with the Bar Association, not here. I fully intend, here, to use the

public knowledge I have about public matters, whether it occurred in a court or not, and that is entirely proper.

Chairman's Ruling

Mr. Chairman: On the point of order. I would like to rule, under *Beauchesne*, 768(2), "Debate on clause 1, if it is not the short title, is normally wide-ranging, covering all principles and details of the bill".

Hon. Mr. Pearson: On a point of clarification, are you ruling then that his questions in respect to very personal matters between a former deputy minister of justice and either current members or former members of the judges in this territory are matters relevant to *The Children's Act* and should be discussed here and now?

Mr. Chairman: It is wide-ranging, and he is dealing with the law which is one of these things. Do you wish to challenge my ruling?

Hon. Mr. Pearson: No.

Mr. Porter: The question that was put was clearly put in the context of the relationship to this particular legislation. The member clearly stated "in reference to matters that affected child welfare". I think, on that basis alone, that the ruling you have delivered is totally in order.

Hon. Mr. Philipsen: Am I to understand that I no longer have to worry about questions I ask of the member opposite in his previous profession? I have been very careful, at other times, not to do anything that would, in any way, infringe upon his rights. Am I now to understand from you that this no longer exists and I can speak of judgments he made in his previous profession and the effect they may have had on different situations?

While I am standing, there was a question asked. That question was dealing with 110(6). The question asked was: does this particular section take powers away or diminish the court's authority and give power to the director? Indeed, it does not, and if the member opposite would care to look in his old *Child Welfare Act* under section 5(2), he will find exactly the same wording. While I am on my feet, I might add - and I think I have to because I have been listening to this — we do not seem to be talking about *The Children's Act*. I do thank the member opposite for opening my eyes as to why he is opposed to this. I think I now understand where he is coming from. I hope everybody else does now.

There is a position here that the member opposite, I believe, philosophically, differs from probably every legislature and probably every person in Canada. The position of the director is to look after the child before he goes to the court. The court makes the decision. The court, when making that decision, places the child in the care of a guardian, who could be the director or a parent, and at that point the court's responsibilities end. If the member opposite would care to read legislation from other areas, he will find that as a fact. If he reads the Cavanaugh Report, he will find that not only is it a fact, but it is a recommendation of the Mr. Cavanaugh, who is not a mere bureaucrat. He is an eminent judge who put the Cavanaugh Report out for the Alberta government.

The member opposite seems to think that once the child is placed in the care of someone, that the court then should have supervisory power over either the director, the parent, or whomever. That is not the function of the court. Other legislatures in this country believe that that is not the case either.

Mr. Kimmerly: I would ask if the government leader is intending to answer my question?

Hon. Mr. Pearson: No.

Mr. Kimmerly: It is unfortunate that we have received procedural haggles already. There are accusations on both sides, I suppose. It is very important for me to establish certain facts. It is very important to make public the very destructive tensions that have occurred in the past between the director of child welfare and officials working under his supervision, and the courts in the Yukon. This particular bill directly affects that relationship. Indeed, I spoke about it. Yes, it changes it dramatically. The government leader stated, possibly off the record, that it changes it dramatically. I totally agree. This legislation, if passed, changes dramatically

the relationship between the director of child welfare and the courts. It changes it over the practice of the last, approximately, five years.

¹⁹ That is the major issue.

The government leader wishes to make a statement. I am going to sit down and allow him to, then speak again.

Hon. Mr. Philipson: I would ask if the question, simply put, would be: is the problem we are having here a problem that was in the past between the member, in a previous profession, and a person who no longer is employed by this government, and is that why we have all the problems that we currently face with a piece of legislation that is for the welfare and the good of all the children in Yukon, today?

Mr. Kimmerly: No.

The tensions that occurred when I was on the bench were a progression of tensions from before my tenure and I know, from personal experience, because of my practice in the courts, that the tensions have now substantially increased, which is not a statement about any particular personality. The tensions are not, primarily, because of personalities; they are because of strongly-held, divergent views about what the law actually is concerning the welfare of children.

Hon. Mr. Lang: You did not answer the question.

Mr. Kimmerly: I am being told that I did not answer the question: I would like to answer the question, in light of your previous ruling about questions in this direction.

Mr. Chairman: Order, please.

Mr. Kimmerly: I want to answer it and I will.

Mr. Chairman: We will go on with general debate.

Hon. Mr. Philipson: I think that the member opposite has asked you for a ruling on whether he could answer a question that I asked directly. I would be interested in hearing the answer to the question of whether the problem that we have with *The Children's Act*, which is before us today, dealing with the welfare of children, is something emanating from a problem that the member opposite had while he was judge in the courts in Yukon with a previous member of this government who was acting as a deputy minister. The question is simply put and I think a simple yes or no would suffice.

Chairman's Ruling

Mr. Chairman: We are here to debate *The Children's Act* with the minister who is responsible for the legislation. I would submit that there would be little point in asking a question of the members opposite, unless they care to answer.

Hon. Mr. Philipson: It is you who has let this go to this point, because we had asked before to talk on the general area of the debate. It was not I who raised this question, originally. I asked...

Mr. Chairman: Mr. Philipson, order, please. Are you challenging my decision?

Hon. Mr. Philipson: No, it is just a general statement.

Mr. Chairman: All right.

Mr. Kimmerly: I respect your previous rulings, but I wish to sneak in — even if I am out of order — the answer is no. It is a simple answer. I have answered.

It is important to raise these issues, because it gets to the crux of the problem or the question that the majority of Yukoners believe is the crux of the issue, which is: who should have general superintendence over children, the courts or the director of child welfare?

²⁰ It is a controversial statement — it is an extremely controversial statement — for the government to say that this bill does not change the relationship between the courts and the director, or for me to say it does change the relationship. I will say, as clearly and as simply as I possibly can, that this bill drastically changes the relationship between the courts and the director of child welfare as it relates to children's matters and it substantially reduces the discretion of the courts and it substantially increases the discretion of the director of child welfare.

It is constructive to accept those propositions as the controversial propositions and the principles that we should be debating in

general debate, and to look at the situation in as factual a way as we can to discover how it came about and what we can do to correct it.

Hon. Mr. Philipson: The statement has been made that this is dramatically changed. I have made the statement before. It is recorded in *Hansard* that the director's powers have not been increased and that there is no way in the world that the director's power will diminish the court's authority. I have stated that the legislatures throughout the land are in agreement with this same principle; that the court makes the decision of where a child should be placed and the guardianship or care is then given to a parent or the director or someone else. The court, at that point, gets out of the situation.

The statement has been made that it dramatically changes from what we were previously operating under. The first thing I suppose I should read is section 110(6), which I believe is on page 65: "(6) The director shall, in accordance with this act, have general superintendence over all matters pertaining to the welfare of children".

That is the issue we are debating. That is the issue in general debate that the member opposite has raised. I now read to you from the *Child Welfare Act* that we presently operate under: "5(2) The director shall have general superintendence over all matters pertaining to the welfare of children in accordance with this ordinance".

I graciously submit to you, Mr. Chairman, that there is nothing changed, and the area that is being raised as a dramatic change by the member opposite is not there, and not true.

²¹ **Mr. Kimmerly:** I have two points. The first one is that we were originally talking about who should have general superintendence. The government leader stated that it should be the courts. That is on record. That is the first and most important statement. It is my view that 5(2) of the old bill and 110(6) are both wrong....

Mr. Chairman: Order, order.

Mr. Kimmerly: ...but more importantly, to answer the minister's argument, the new act does substantially change that principle. It is true that the sentence or the clause stated in 5(2) of the old act and 110(6) of the new act are the same. They are identical. As far as they go, considering only that section, they are the same.

However, if you look at clause 2, clause 2 is in the new act but is not in the old act. In the old act the analogous law, or the previous law, was in the *Judicature Act*. It clearly is stated that in all matters relating to the welfare of children the court shall apply the laws of equity. That is a very short section, but it is pregnant with meaning, to use an old phrase.

The legal profession has no difficulty in interpreting and generally agreeing on the import of that provision. What it means is that the principle of equity, which can be loosely stated as the courts general superintendence over children, continues to exist. It continues to exist as part of the law of equity that comes to us from our common law tradition. The way it is worded here, because of the meaning of clause 2, read in conjunction with clause 110(6), in all matters that this act speaks about and in all matters where the director comes into play — which, if you go through it all is almost all matters relating to children imaginable — then the situation is reversed.

²² The law, as we know it now, is drastically changed. I say that as a clear, precise statement. It really does no good for me to say it is, and for you to say that it is not.

It would be much more constructive if we looked at the factual situations that exist here in Yukon, at the way this law was written and the purposes, specifically, for which the drafters looked at the past cases in order to change the law so that the court results, in future, would be different. I have said this at public meetings before: when I go through this bill, I can identify a case or two, where I was sitting as a judge, that would be changed because of the changes in the bill. I can identify cases that I have done as a counsel for some party or other, where the result would have changed if this law were in effect. Indeed, I can identify a provision that would change the result in every major controversial child welfare case that I know about; that has occurred.

That particular statement was made — that particular statement, in words very similar — by several other lawyers at a Law Society

meeting approximately a year ago.

Some hon. member: (Inaudible)

Mr. Kimmerly: No, it was not a public meeting, but it was not a meeting from which the public was excluded; it was simply a private meeting.

Hon. Mr. Lang: A private meeting... (Inaudible)

Mr. Kimmerly: That is right, it happens all the time.

The debate started out with a declaration of a constructive attitude. The constructive attitude, I perceive, has fallen apart. Perhaps, I would suggest it is an appropriate time for an adjournment — well, after the member opposite speaks — and upon reflection, we may be able to be slightly more constructive.

Hon. Mr. Lang: I have been listening with a great deal of interest to the debate...

Hon. Mrs. Firth: You have not been interested in it.

Hon. Mr. Lang: ...that has proceeded here.

A number of areas have disturbed me in respect to the procedure that has been employed by the member opposite. First of all, he did not begin, in my opinion and from my experience, discussing the principles of the bill. He began from the point of view of an interrogation. I got the distinct impression that a number of us were before the bench and there is one individual who is in charge of making a decision and he wanted to interrogate those people in respect to what they had to offer.

I take offense to that, because I think it is very important that we look at the principle of the bill itself. I find that the member for Whitehorse South Centre has taken it upon himself to lead the debate on the principles of the bill to the point that troubles me very much, as a member of this House, in referring to his own personal background as a member of the judiciary. From his own experience on the bench, he is making public statements in this House, with obviously no thought of how they could perhaps affect what has gone on in the past.

I feel at a disadvantage from the point of view that the judiciary is supposed to be separate and apart from the political arm of government to the point that we know that if you phone a judge and you are a minister of the Crown, you do not remain a minister of the Crown. That has been proven at the federal level, and at the provincial level as well. I find myself in a situation where I would like to perhaps discuss some of the actions of the member opposite when he was a member of the bench. There were a lot of things done by the member opposite, when he was a member of the judiciary, that really brought into focus in the public's mind whether or not what was being done was proper. That is a fact. People would come to me and ask, "Why"? I would say, "That is the bench; we have no prerogative to go in..."

Mr. Porter: Mr. Chairman, on a point of order, I believe that the member is clearly straying from the issue at hand, which is the *Child Welfare Act*.

Mr. Chairman: We shall recess for 15 minutes and I shall rule on the point of order when we return.

Recess

Mr. Chairman: I will now call the Committee of the Whole to Order.

Chairman's Ruling

Before we proceed I am going to suggest that both sides have strayed fairly close to being outside the area that they should be in this act. I will give them a choice: they can either continue this way or be sensible and get back on general debate.

I might also suggest that, if you cannot stand the heat in the kitchen, then get out of the kitchen.

Hon. Mr. Lang: When I ended prior to the brief recess that we had, I was speaking about the question of the judiciary and one individual, a member of this House, using his background in raising the questions pertaining to his own background, and perhaps cases. I just wanted to conclude that aspect of it by saying that I find myself at a disadvantage because I do not believe that it is my privilege or my right to bring up the record of anyone who has

served in the past on the bench, or is presently serving. I think it brings into disrepute the question of the judiciary, which really brings our system of government and how our government structure is formed into question.

There were a couple of comments that were made by the member for Whitehorse South Centre in the interrogation that took place up to now. What concerns me is that there seems to be a preoccupation with what is good for the judges and what is good for the lawyers. I do not recall, really, at any time, what was in the best interest of the children.

It is *The Children's Act*, and it would seem to me that that should preoccupy all members, no matter what political party they belong to — or, for that matter, the general public — with respect to this act and how it will apply, generally, and how it will apply to those cases that, unfortunately, will have to come under the auspices of this piece of legislation.

I think it is a safe statement to say that if there was no child abuse or child neglect, and if there were not situations where children were abandoned and this type of thing happening in our society today, this bill would not be here.

I want to refer back to some of the comments that were made by the member for Whitehorse South Centre. I want to, I guess, in part, take him to task, but, more importantly, clear the public record with respect to the members on this side of the House and where they stand, as far as *The Children's Act* is concerned. First of all, the act is not designed to be a piece of legislation that creates a "police state"; that is not the intention nor the principle of the act. That is very clear and unequivocal.

I think it is important that the general public realize that on the petitions that the member for Whitehorse South Centre refers to, which were brought forward to this House because of the controversy of this act, I think there has to be some clarification, for the record, with respect to what has been going on, from house to house, as far as the petitioners are concerned.

I think it is important that the general public realizes, in respect to the situation at hand, that there has been misinformation; there has been untruths brought forward with respect to the understanding of this bill. I think it has to be clarified.

I want to give you an example of what has taken place with respect to one particular petitioner who did knock at a home. The individual in question was fairly knowledgeable on the subject and he permitted the individual to put forward his points of view in his efforts to get this individual to sign the petition.

For an example, some of the questions that were brought forward were as follows: do you know that the director of child welfare is Swedish? The fact is that the director of child welfare is not Swedish; he happens to be of Scottish descent. The member for Whitehorse South Centre would probably say that that is an inaccurate statement. I would say that is an untruth.

Another point that was made was: do you know that they have just passed a law in Sweden that forbids anyone to physically discipline children in any way? Also, the statement was made that if they pass *The Children's Act* and Ross Findlater is allowed to continue as the director of child welfare, being Swedish, he will not let anyone physically discipline his children? That is an absolute lie, because the bill is very clear and specific.

Under subsection 118(2) of Bill No. 19 in *The Children's Act*, it states that physical discipline of children does not, in itself, bring the child within the definition of being in need of protection.

The other statement that was made at this home was that they hire social workers in the residential programs and they abuse the children who are there. That, once again, is not true. Social workers are not hired to work in residential programs; child care workers work in residential programs and are, in Yukon, given the title of youth service workers.

The other statement that was made was that the children are worse off in the residential programs than they are in their own homes. That is not true. The reason the children are in care with the department responsible for it is because there is a very unfortunate situation in the home environment.

I think it is important that all members recognize that, as far as what has gone on — the controversy with respect to this act — the

facts have not been presented as they have been written. I will be the first to admit that there were problems with Bill No. 8, major problems, and we foresaw those problems and withdrew the bill for the purposes of looking at a redraft.

It has been said, and it was said earlier in the confines of this House, that it was an inaccurate statement that the member for Whitehorse South Centre was not involved, at least indirectly, with the petitioners who brought forward those particular documents to express their opinion, which I defend as their right to do.

« It has come to my attention —, and maybe the member for Whitehorse South Centre can correct the record, as it has been stated specifically in the newspapers that he had no involvement whatsoever as far as the petitions are concerned — and was stated to me that at a public constituency meeting that the member for Whitehorse South Centre talked about plans of action, as far as stopping *The Children's Act*, and one of those methods was petitions. I was told that he provided the petitions which could be circulated.

I wanted to put that on the record, in order that we get the debate that has gone on today in a fair perspective.

I want to speak as a member of this House, as an MLA responsible for a region of Yukon. I would not be party to a bill that was brought forward that was designed to destroy the family unit. It has been said by the member for Whitehorse South Centre, I believe at times, that this bill takes away from the family unit as opposed to supporting the family unit. That is not correct. That is utter nonsense. This bill is designed, where possible, to ensure that the family unit stays together.

I think it is important, when you take a look at this bill, that there is a clear principle enunciated in the bill that states that the main purpose, where possible and where feasible, that the department — and for that matter the judiciary — has to take into account the family unit and where possible keep it together. But the unfortunate realities of what we face today is the fact that you have people who abuse their children or other people's children. It concerns me when I have the member for Whitehorse South Centre standing up and all he has talked about is the judges and the lawyers. You can read on a daily basis throughout North America of situations where children have been abused, and seriously abused.

We have had a case here, not too long ago, where there was a child murdered. That is the reason that this bill is before this House and here for our deliberations. It is unfortunate that these types of things are happening in our society today to the extent that they are, in comparison to, perhaps, 40 years ago. But, it is fact. It is there and it is there to be seen.

This bill, when it is passed and brought into affect, is going to affect a very small number of people. The member for Whitehorse South Centre laughs, but I look across at the member for Whitehorse South Centre and I take a look at his past. I can discuss his past rulings, or whatever the case may be. I am saying to the member for Whitehorse South Centre, he is not beyond fault.

« His track record speaks for it.

As for the principles of this bill, it is designed, as I said earlier, to keep the family unit together. We have removed those sections which would appear to infringe on the civil rights of people. Access to one's dwelling has been revised. The minister responsible has indicated that at the appropriate time he would be bringing forward an amendment in respect to compulsory reporting.

I am saying that as a government, as MLAs, as representatives of the public, that this side of the House is listening to the people of the territory. I submit that the bill before us has a number of very positive aspects in comparison to the old act. In the old act, for example, illegitimate children were covered. In the existing *Child Welfare Act*, they are seen and treated quite differently along with their parents.

It is important to realize that Bill No. 19 establishes equal status for children. Children are children and the principle behind this is that they be treated equally regardless of the marital status of their parents.

The custody, access and guardianship clearly defines the role of the director and the people within the department, giving them direction, through legislation, as to what can be done and what

cannot be done. It is much better from the point of view of the people who are under this particular legislation that it be clearly defined, and it is.

I think the minister and his staff have to be commended for trying to define these areas of concern for not only ourselves, as legislators, but for those people who come under this act.

The one area that I resent very much is the inference, on a partisan political point of view, that the people on this side of the House are doing everything they can to bring down the family unit. That is not correct. I think it is in very poor taste to bring that type of an argument forward regarding a piece of legislation of this kind to the confines of this House, or, for that matter, to perpetuate on the street, that type of propaganda, because, I think, in the long term, it brings this House and all members into disrepute.

« I think it is important — and I emphasize this — that this act clearly permits a family to discipline its child. The misinformation that is being propagated that this is not permitted is not correct. In the drafting of this bill, it was very clear, and we were very concerned, that the parental rights to guide your children had to be protected and had to be protected as much as we possibly could. I think we have accomplished that, with respect to the bill that you have before you.

I do not share the view of the member for Whitehorse South Centre, who talks about the judiciary and the lawyers as if they are going to do everything they can, in their wisdom, on behalf of children, once they have been put into care, whether it is back into parental care, whether they be put back into foster homes, or whatever the case or circumstances might be.

I find it very disillusioning that the position of the director of child welfare is being put into the context of almost wanting to go into people's homes for the purpose of taking their children. The innuendoes that have been brought forward that a person with that responsibility would look forward to doing that does a disservice to the general public and to themselves when they even infer that someone in that position would want to do that.

I recognize full well that there have to be safeguards in the guidelines of the bureaucracy. I want to say that, within the department, they are very concerned that they have some definitive guidelines so they know where they can operate.

When you take a look at the bill, it does it. The bill does do that. When you take a look at the old act, the director could do anything. Now, the member for Whitehorse South Centre is obviously not listening, but I think he should read it from that point of view, and compare this act to the present, existing act.

When you go through, step by step, there is no question that when a major decision has to be made, with respect to the welfare of a child and what is going to be the guiding force in his or her life, the court will make that decision.

« But the other principle that has to be made very clear is that I think and I believe that where possible the department should be able to work out between the family and the child the problems as opposed to going to court.

In fairness to the department, to my knowledge, they have been successful in many cases, as opposed to going to court and the anxiety and the very traumatic experience that people have to go through as a family; mother, father, and child. I think that is an area that perhaps should be debated in its fullest in this House. I do not share the member for Whitehorse South Centre's point of view that all of a sudden a decision has to be made and you rush off to court. I think that if there is room to be able to solve the problem, or room to work out the problem, it should be done with the family.

Just in concluding my remarks, I think it is important that the general public realize that there are other sections in the bill where we talk about adoption, which is a major area of concern. I think we all have people in our ridings who at one time or another have come forward and said that they are interested in adopting. This particular section of the bill is a very positive section, as far as the general public is concerned and clearly defines what can be done.

I just want to say to you, Mr. Chairman, that you have my deepest sympathy in respect to the debate, the way it has progressed to date. I do believe we should be debating in the fullest as much as we can in respect to the principles of the bill and not turn this into

an interrogation, where all members of this House not only become uncomfortable, but I would submit to you, from your perspective, on ruling.

Therefore, I would submit to the member for Whitehorse South Centre, who stands up in order for the public to see that he is a very reasonable man and then he proceeds to bring down the debate to the point where it becomes a total confrontation. The minister responsible has said, if you have brought forward an amendment or an idea, in respect to one section of the bill, he is prepared to listen to it. If there is credence to your argument, he may be prepared to make a change. I find it very difficult to accept that we have a person here who happens to be of legal training, who stands up and says he is right, as far as the legal meanings of the words is concerned. We, on this side of the House have drafted this legislation with full legal consultation and also the assistance of the provinces. One mere mortal in this House, because of his legal background, is standing up and saying that that is wrong.

« We have been advised, in respect to his argument on equity, that this does pertain to his arguments, but he says, "No, it does not". I have not heard any layman's argument as to why it does not. I just want to assure the member opposite that we have what we consider to be top legal advice and we are within the legal framework, as far as Canada is concerned and the provinces are concerned.

Mr. Kimmerly: The phrase "a gut wagon speech" was used before, I think, most appropriately.

I would like to point out, so the error is not compounded, that the minister referred to a case and said that a child was murdered. That case is before the courts and the assertion by a minister of the territory that there was a murder is extremely loose language and I would point out to the minister that he might, in future, be more careful. It would be entirely probable that those remarks would be brought before the court in that particular instance.

The minister also began by speaking about me and about my record as a judge, and although it is not on the topic, you must allow me to respond. It is most improper to attack a member of the bench or the bench collectively, however, it is quite appropriate to talk about the principle of cases that judges have decided from time to time. It is quite appropriate for a judge to refer to a case that he has decided in general terms with a view to describing the principle in the case, the general factual situation, and bringing the public or any public body, even a private body, to a consideration of those principles. I have done that already. I will continue to do that and, in my view, it is indeed most informative, as a legislator. With the background that I do have, it is my duty and I will use whatever knowledge or experience that I may have in exercise of my public duty, which is to consider this legislation and express my views, the views of my constituents and the views of my party on the principles in the legislation. I will continue to do that.

« Also, Mr. Chairman, I wish to say, because it is difficult for you and, also, it is difficult for me. I will not stand behind any judicial privilege: I will not raise objections. As the Chairman said, "If you cannot stand the heat, get out of the kitchen". Well, I can stand the heat and I would be pleased to discuss the principles involved in the cases that I have decided.

However, there is a grain of truth about one aspect of the statement that the previous member spoke about and there is a duty, on all citizens, to respect the integrity of the courts. A judge does not decide a case as an individual, he decides a case as an officer of the court and of the state.

The minister spoke, at some length, about Bill 8 — the previous bill — and he stated, "We foresaw those problems and we withdrew the bill". Well, I can speak about that issue, too. "Foresaw" is an interesting word. You withdrew the bill after you were hit over the head with those problems. I say that Bill 8 passed the Cabinet and passed the Conservative caucus and the minister, at the time, publicly defended it in the same terms that the present minister publicly defends Bill 19, and you ask the public to continue to trust you, after proposing Bill 8. It is ludicrous!

It is probably unconstructive to go back and talk about Bill 8, and I do not intend to do it, but I will answer the points made about Bill 8 from the other side.

The minister also spoke about the petitions and he said that I said

I had no involvement and he talked about a constituency meeting. I want to set the record straight about that. The statements of the minister were clearly unadulterated innuendo; he was implying that the statements I made about being uninvolved with the petition are not true or are, in fact, lies.

« I will outline what I did, for the record. I was there; you were not.

I conducted a meeting. A number of constituents were there and there was discussion about ways to stop the bill which came from the meeting and I responded to it.

I had, in a file, the wording of old petitions which were presented about Bill No. 8. I read those to the meeting and some people talked about the wording of the petitions. I then said, after considerable discussion, "It is probably better, if you people want to do petitions, that you write the petitions, and you circulate them or whatever". I said, "If it is a petition about *The Children's Act*, and if you give it to me, I will present it to the legislature". That is my involvement. Those facts are accurate. I was there at the meeting.

In any event, I would say that I am not trying to say that it was wrong to be involved or I should not have been involved. If I had written it, if I had gone door-to-door with it, so what? How is that even relevant?

I made a statement of the petition. It was in the media. I made that statement because the media asked me about it. If that is relevant, fine, I will talk about it, but I do not see any importance in it, frankly.

The minister gave an example about what occurred in somebody's house regarding the petition and a conversation about if the director of child welfare is Swedish or Scottish.

« Well, I do not know if that occurred or not, but I am prepared to believe it. I am prepared to believe it and it probably occurred. If somebody says it occurred, then I have absolutely no evidence that it did not.

I say about that what I have previously said that the public debate has been unhealthy. There has been substantial misinformation on both sides. I have read into the record the government statements protecting the bill and I say that those statements are inaccurate. They are not true. They are lies. The minister or anybody can say somebody tried to persuade a person to sign a petition by giving him inaccurate information, wrong information or lies — I do not care what the words are — I am perfectly prepared to accept that those kinds of things go on.

However, I say — and it was the first statement I asked the government leader this afternoon — the wrong statements or the statements interpreted as being wrong by either side have occurred on both sides of this debate. I was trying to get the government leader to admit that the principle about the relative power of the courts and the director of child welfare were controversial. There is a raging controversy about that.

The government leader says, "Where? There is no controversy". Well, public opinion will judge that. There is obviously a controversy; by definition there is a controversy. I have more than 2,000 signatures that disagree with the government leader.

Hon. Mr. Lang: You have to discount a lot of them by the way they were obtained. What are you talking about?

Mr. Chairman: Order, please.

Mr. Kimmerly: Obviously, they are not listening.

Mr. Chairman: Proceed, Mr. Kimmerly.

Mr. Kimmerly: The minister who last spoke talked, again, about my past, and I am going to respond this way: it is all very well for you to try and personalize the debate, but it just will not wash.

« I am speaking here as a representative of my party, which got 37 percent of the vote in the last election. There is a petition with over 2,000 signatures. Surely to God you cannot say it is just me. It is not just me.

Mr. Chairman: I must caution you, Mr. Philipsen, you have about three minutes.

Hon. Mr. Philipsen: I believe that all members of this House know me for my brevity.

The member for Whitehorse South Centre says, "It is just me". The member for Whitehorse South Centre stood and publicly admitted in this House that he knew that things were being said to get signatures on a petition, which were not accurate.

Some hon. member: He did not say that.

Mr. Chairman: Order please.

The time being 5:30, we shall recess until 7:30.

Recess

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

Before we begin general debate, I want to read out a little philosophy to you that, maybe, some of you can reflect upon. It was spoken, on July 4th, 1885, by the hon. Theodore Roosevelt: "But as you already know your rights and privileges so well, I am going to ask you to excuse me if I say a few words to you about your duties. Much has been given to us ... and we must take heed to use aright the gifts entrusted to our care. It is not what we have that will make us a great nation; it is the way in which we use. I do not undervalue for a moment our material prosperity; like all Americans, I like big things; big prairies, big forests and mountains, big wheat fields, railroads, ... big factories, steamboats and everything else. But we must keep steadfastly in mind that no people were ever yet benefited by riches if their prosperity corrupted their virtue".

Bill No. 19: *The Children's Act* — continued

Hon. Mr. Philipsen: Thank you very much for that.

Mr. Chairman: You are welcome.

Hon. Mr. Philipsen: I started out in this debate, earlier on, with what I considered was a positive view — the member for Faro shakes his head; I hope he has just got an itchy neck — and I would like to return to that positive point of view.

I have listened to the member opposite describe the areas, in general debate, that he found we would have difficulty with. One of those areas, I believe, was an area we addressed yesterday by amendment in another piece of legislation, which the member opposite said he found a non-contentious issue:

"I have stated in this House that we will be bringing forward the same amendment to hearsay evidence. Another area that the member opposite said he found that he was going to have problems with was in the area of reporting. I said at the start of general debate that I had every intention to bring forward an amendment in that area when we reached that point in the debate.

The third area that I have been listening to is that it seems to me that the member opposite feels that the director has too much power and that is the third area of contention that the member opposite has. On that point, I beg your indulgence and the indulgence of the members assembled. I am going to describe, at length, not briefly, the differences and comparisons between the director's powers under the old act and the new. I will not attempt to be exhaustive on the comparison of all points, but rather I will be covering some of the major issues. The first issue is the grounds for intervention by the director.

The scope of the definition of "child in need of protection" is potentially broader under the existing child welfare act and "worse" is a more indefinite meaning. It is more easily colored by personal views of the interpreter — whether it be a social worker or a judge — than is the definition of a "child in need of protection" under Bill No. 19.

"The existing *Child Welfare Act* speaks of children who are not being properly cared for, who live in an unfit or improper place, by reason of depravity on the part of the person in whose charge the child is, have a child who is associating with an unfit or improper person who is not his parent, or who is begging in the street, house or place of public resort, and who is loitering in a public place or who is being allowed to grow up under circumstances tending to make him idle, desolute, delinquent or incorrigible, or without proper education.

Bill No. 19, clause 118, uses more precise, descriptive language. It is more definite in its meaning. It is narrower in its potential

scope and it describes criteria that are more objective and, therefore, less likely to be coloured by the personal views of the interpreter, whether it be a social worker or a judge.

Let us emphasize that the interpretation that matters is the interpretation of the judiciary. It is the judges who will decide if a child is in need or protection. It may be that the member for Whitehorse South Centre will continue to try to argue about the generality and vagueness in our description. Well, people can read the words and decide for themselves. Of greater importance, we must all remember and emphasize that these words describing a child in need or protection are not being inserted to avoid the subject of human thought. Rather, there is already an extensive body of judicial decisions providing guidance, annotation and explanation for the concept of a child in need of protection.

"On interpretation of words such as those used in clause 118 of the bill, surely we can trust the judiciary to avoid abusive interpretation and application of clause 118. It is the judiciary, not the director or social workers or bureaucrats, who will control the interpretation and application of clause 118.

On the evidence required to justify intervention by the director, under the existing *Child Welfare Act*, the director or a peace officer or a person authorized by the director may intervene and, without warrant, apprehend the child where he has reason and does believe that the child is in need of protection.

Bill 19 proposes to set a stricter test of the evidence required. It proposes to require more convincing evidence to justify even initial intervention by the director or social worker.

Bill 19 proposes that the director or an agent of the director or a peace officer will be able to intervene only where he has reasonable and probable grounds to believe and does believe that a child is in need of protection. That standard not only requires more convincing evidence than the existing legislation requires, but it is also the same standard as is used to justify the laying of criminal charges. It is a standard well understood by the judiciary and law enforcement people generally.

Note, also, that under the existing *Child Welfare Act*, where the evidence to justify intervention exists, the director does not ever need a warrant to intervene. Bill 19 proposes that a warrant will be necessary, in most cases. For the purpose of this investigation, the director cannot enter any place without a warrant, unless the occupant apparently in charge of the place consents to entry without the warrant.

"For the purpose of taking a child into care, the director cannot take the child into care without a warrant unless the director or an agent or a peace officer has reasonable and probable grounds to believe and does believe that the child is in immediate danger to his life, safety, or health. These are aspects in which Bill No. 19 is significantly restricting the powers that the director already has, and significantly expanding the authority of the judiciary beyond what the judiciary now has. It is the judiciary who will issue the warrants.

On the action by the director: after taking a child into care, under the existing legislation, if the director decides to intervene, and has grounds to intervene, there is only one way in which he can intervene; namely, apprehend the child and take the child to court proceedings. Bill No. 19 proposes useful alternatives. Some people are dishonestly representing that this is an area in which the director is given increased powers that he can abuse to the detriment of the children and parents. The mere fact that the director would, under Bill No. 19, have alternatives does not mean he has greater power.

The alternatives have been put in expressly for the benefit of the parents and the child. One alternative is for the director, having removed the child from a place or situation of danger, simply to return the child to the parents when the parents request it and the danger no longer exists.

"Obvious examples of that kind of cases are the five-year-old child who is wandering around the streets and who is only to say that his name is Johnny and that he lives over there. The child is in need of protection, but there is no reason to take court proceedings and there is no reason to take the child into care. Rather, the situation merely requires that he be kept in safety until his parents are found and he can be returned to them.

Another obvious example is where a parent leaves a child in the care of a babysitter for an evening or the duration of their three week holiday. Things go amiss; the child is in need of protection from the conduct of the babysitter, but there is no need to protect the child from the conduct of the parents. The situation merely requires that the child be taken into care until the parents can be found, come home and, to their own great relief, resume the care of their own child.

In cases such as these, why should the law force the parents to be subjected to court proceedings when the director himself is not proposing that there is anything amiss in the parental conduct.

Bill No. 19 does give the director this useful alternative that the existing act does not give him. Bill No. 19 gives the director a further useful alternative that he can use in cases where he does have reasonable and probable grounds to believe the child is in need of protection from his parents. Instead of taking the child out of the home of the parents and putting it into his own care pending court proceedings, the director can serve notice on the parents to tell them that he is making the application to court in relation to their child.

There are neither enhancements or restrictions on the power of the director. There are alternatives that are of demonstrable benefit to the parent and the child, and will help minimize the disruption to the family, even in cases where court proceedings can, and should, be taken.

The fourth issue, which is access to the child pending court proceedings and during temporary committal. Under the existing *Child Welfare Act*, once a child is apprehended, the director is the guardian of the child and, as an automatic consequence of that, has the exclusive right to decide whether a parent can have access to a child. Similarly, under the existing act, if the judge commits the child to the temporary care of the director, the director becomes guardian and, as a consequence, has the exclusive right to determine whether the parent, or anyone else, can have access to the child.

The existing act does not authorize the court to make any order in relation to access by the parent to the child. The child is in the care of the director.

Bill No. 19 proposes a major change in this respect. In 138(2), (4) and (5), Bill No. 19 proposes that during the time the child has been taken into care, and before court proceedings have been concluded, and also during the time of any temporary committal of the child to the care of the director, the parent shall have reasonable access to the child with the consent of the director, such consent not be unreasonably withheld. If the parent believes that the director has unreasonably withheld consent, the parent can apply to the judge, who has the authority to set the terms and conditions of the access.

¹⁷ Bill No. 19 proposes a significant restriction on the power that existing law gives to the director and simultaneously proposes a significant enhancement of the authority of the court and the rights of the parent over what the existing law gives.

On the appeal variation and determination of judge's orders, under the existing *Child Welfare Act* a parent who wants to appeal the decision of a justice of the peace or territorial court must appeal within 30 days. If the parent does not appeal within 30 days, then except perhaps, in extremely unusual circumstances, the rights of appeal is lost and the court has no authority to extend the time of appeal. Bill No. 19 proposes that the parent has an absolute right to appeal within 30 days and — a significant change from existing law — it proposes to confer on the court the power to permit an appeal after the expiration of the 30 days. Bill No. 19 continues and expands upon existing *Child Welfare Act* provisions about the variation and termination of temporary committal orders.

In relation to permanent committal orders, Bill No. 19 makes an important innovation that is potentially very beneficial to parents. Under the existing act, in cases of a permanent committal order, if the parents let the time for appeal slip by, they are out of luck, except possibly in very unusual circumstances where they could demonstrate to the courts that made without the jurisdiction to make it or that an order had been obtained through fraud or illegal means. The innovation in Bill No. 19 is that the parents who have changed their living conditions can come back and apply to have even a

permanent order terminated in the circumstances described in 145(3). In this respect, we are unique, although Nova Scotia has a provision that might lead to the same result. Whether we are unique or not, it is a significant boon to the parents and potentially the child.

Court procedures becomes a potentially detailed and technical field. Bill No. 19 describes and clarifies the procedure for child protection court proceedings. It provides some guidance and certainty and respect of matters that are now vague and uncertain under the existing act, such as service of notice, the purpose of the proceedings, adjournments, and the types of orders that the judiciary may make. In view of the criticisms about this section, may I remind you that the grounds upon which substitutional service can be permitted and the authority for authorizing substitutional services are the same as are provided in the supreme court rules for civil proceedings generally, with this exception: namely, we have introduced the idea that the director may serve notice of the first application to the court by substitutional service without first getting the court's authorization. Where he does so, the court may later, either ratify the service or refuse to ratify it and require the director to serve the notice again. There is good reason for this option. The first application must be made very quickly, no later than seven days.

¹⁸ When the child is taken into care, it is frequently impossible even to locate, let alone get notice served personally on, some person entitled to receive the notice within that time.

In this respect, I would also point out another major innovation that Bill 19 makes. I refer you to clause 126(2). It can happen that a person who is entitled to receive notice of the proceedings never receives notice and, nonetheless, the proceedings quite properly and legally go ahead, with the result that an order is made.

An obvious example is where the judge authorizes substitutional service. Notice is, in fact, served in the manner authorized by the judge but it later turns out that the person entitled to receive the notice never, in fact, received it, even by means of the substantial substitutional service. Under the existing law, that person has no remedy; if they did not receive the notice and did not get to court, tough luck.

Clause 126(2) of Bill 19, now gives that person a simple, straightforward remedy. This kind of provision is not an enhancement of the director's powers, it is an enhancement of the authority of the court. More to the point, it is a potential benefit to the parent and, perhaps, also to the child.

Imagine the case of a mother and father separated, where a child is in need of protection from the conduct of the custodial parent and the other parent is off working or travelling in some unknown or remote location and cannot be found. Eighteen months after the court proceedings have concluded, that parent comes back on the scene and is both willing and able to provide a good home for the child. Under existing law, that parent has no remedy that the court can grant; his only remedy under the existing law is to knock on the director's door and beg. Bill 19 gives him a remedy; the court can give him what he wants if the evidence justifies giving it to him. He is not left at the mercy of the director.

I think that what I have said about it gives positive indication that these passionate statements to the effect that the powers of the bureaucracy are being enhanced and that the powers of the court are being cut down are rhetorical generalities, based on ignorance, misinterpretation or dishonesty.

Insofar as it is useful to make any generalization about the matter at all, it seems to me the statement has to be that the powers of the bureaucracy have been decreased and the authority of the courts has been increased.

What is more to the point, such generalities are not intrusive. What is instructive is to understand what the bill is saying and why it is saying it and to compare its provisions to the provisions and possibilities under existing legislation.

We have taken care to try to describe precisely the function and the powers of the court. I hope, for the record, that this demonstrates that the director's powers have surely not increased or that the court's powers have been lessened.

¹⁹ **Mr. Kimmerly:** That was, I suppose, a pleasant change from

the level of the debate that occurred in the last hour or so this afternoon. At least it is informational.

I would wish to say at the outset that the minister made a statement just before the break at approximately 5:30, something to the effect that I was aware of improper practices and I supported it. That statement is absolutely wrong and I correct it, for the record.

The minister talked about some non-contentious issues about hearsay, opinion evidence and reporting. I would comment about that. It would be most constructive and useful if the government would present the wording of its amendments on those issues. I would point out that yesterday on the *Legal Profession Act*, an amendment was presented to us; we were required to vote on it immediately and there was no opportunity to study the matter and to consult. I would say, it would be most constructive if the proposed amendments were presented, perhaps not formally, but to have the wording made known to us so we can study it.

I say this about hearsay: I have already received from a member of the public, a representation about what the proper rule should be and it is slightly different than the amendment in the *Legal Profession Act* and that representation, in my opinion, did have some merit. I would ask the minister to propose the amendments or make them known in good time and give us a chance to properly consider them.

The principle about opinion evidence might very possibly be different here than under the *Legal Profession Act* before the disciplinary board and the Supreme Court, in those cases.

10 The receipt of opinion evidence by persons qualified as experts and, therefore, entitled to give opinions about the areas of their expertise is well known to the courts.

The area of the law of evidence, where laypeople or ordinary people give opinions in court, is a little more unsettled and it is in that area that we especially have concerns; especially as opinions about the ultimate issue in this case are clearly opinions as to whether so and so is a good mother or father, or whether a particular child is well looked after or neglected. Opinions, in that area, must be very, very carefully dealt with. I am interested in the proposed new wording and I ask for it.

The government also indicated, this afternoon, that it is prepared to — well, not only prepared to, but is going to — delete the sections about the public reporting suspected child abuse. I am very interested in what the proposal actually is. Is it to delete that clause or to change the clause in some way? I am interested in that issue.

The minister spoke about the old section six, in the old act, and the new section 118, in this act. I am not going to go into it in detail, because that is an area that could be debated when we come to the clause. I will say, though, generally, that there certainly are some sections that are really extremely widely worded. It really does not add a lot to the debate for the minister to say that the tests are all made very much more narrow, when some new tests are mentioned — some of which he did not mention in his speech — and those new tests are new to the law or are not defined or elaborated on by case law.

I would specifically ask for a legislative definition of what is proper or competent care? What is normal development? What is probable danger? What is psychological harm? What is harassment by means of threats? Those very general words are very troubling and I would anticipate a lively debate on section 118.

11 The more important comment that I would make now in general debate — and I emphasize that this is the more important comment — is that it is a false way of reasoning, or it is not the best way of reasoning or arguing, to simply compare the existing act and this proposed act. I do not think anybody in the public debate has ever said the existing act is a good act. It is certainly our opinion that the existing act is very substantially flawed, and is a very, very poor act. It is certain that a number of the principles involved in it or the legal issues that it addresses are vague.

It is clear that the director of child welfare has extraordinarily wide powers under the existing act. That is not a controversial statement, I do not believe. The minister and I will not be disagreeing that there are very, very wide powers in the old act that should not be in the new act. The better way of arguing, or the better way of considering this act, because it is a new, comprehen-

sive act in a difficult area — it is a replacement act, it is not an amendment or a series of amendments — is to decide what we believe the public policy should be in these areas, and not be confined as if we had blinders on to looking at the old act and the way the new act changes the old act.

I have not approached the bill from that point of view and I refuse to. I will consider the principles in the old act, but we must consider the general principles, especially in general debate, in light of what is the best policy for child welfare, or for the protection of children in Yukon, and define the policy in words and instruct the director and the courts by means of the legislation as to what policy must be followed.

12 It is certainly true, when you speak about section 110(6), that the same section exists in the old act. That is, in no way, an argument in favour of its retention. That is a bad section in the new act; it is a bad section in the old act. I will be making the argument, after we establish more of the facts around the general issues, that the policy of the government, if it is that the family unit is the building block of society, if, generally speaking, the children are best protected and looked after by their parents, then it is wrong to give the general supervision over a child's welfare to the director.

The proper course of action is to state in the policy of the law what the rights, duties and obligations of parents are, and, likewise, for children, then to go on and say that where that breaks down in particular circumstances, the state or government will intervene. That is the principle that we will be advocating here: that there should be a clear statement in the law, so people can understand it, and lawyers can interpret it, which, in fact, could be taken from the case law from the Supreme Court of Canada in these areas as to the paramountcy of the claim of natural parents to look after their natural children. Include adopted children in that.

This bill does not state that and it should state that and we will not be content until it does state that. That principle is a principle that the government says it supports.

Indeed, there is an article written by the minister, or the minister's name is on it, in the newspaper today, advocating the point of view that the law should support the family unit to the maximum, except for difficult cases where the parents are absent or obviously not fulfilling their parental duties.

13 Why can there not be a simple statement of that in the bill? I have looked at the bill; I have gone over it from front to back; read every section; reread it and that principle is not in the bill. It is not in the bill and it must be in the bill. There must be a statement of the paramountcy of the rights and the duties of the natural parents.

There is a section stating what the policy of the director must be. That is in the bill, but that is a different statement. It is an entirely different principle to say the director has general superintendence over children and the director's policy will be. That is not a sufficient statement of the principle. The statement of the principle must be that this legislature says that the natural, blood bond between parent and child will be the law of the land and is the law of the land and can only be interfered with in certain circumstances, and the circumstances are defined in clauses like clause 118. We will not rest content until that principle is there.

There should also be a statement of principle of the rights of children. This bill is a children's act. Children do have rights and one of the rights is to remain in their parents home, because the vast majority of children wish that. It is natural for them to do that and that is the very best protection of the rights of children that exists. I could refer to the laws of nature and religious laws and religious beliefs very strongly held in this territory.

The minister talked about court procedures and about how there are some court procedures spoken of here that are improvements on the existing act. I wish to go into a discussion and I will ask a question about clause 2, or the general principle of the paramountcy of the laws of equity and the powers of the director of child welfare.

14 The minister for Porter Creek East said, about 4:30 or 5:00 o'clock, that the government had obtained a legal opinion about that point, and perhaps about other points as well. I ask the minister this question: will he table that legal opinion?

Hon. Mr. Philipson: There were a lot of points and issues. I

hope I have been able to note the majority of them. The amendments were the first issues that were raised. Unlike some people who might like to think it, I do not believe there has been a time since I have been involved in *The Children's Act* that I have not been free, open, honest, receptive, and I am sure that there will be no difference now. When I have the amendments and the wording that is acceptable I will try and have them to you in enough time that you can see them.

The definitions are something that we definitely will debate and, I agree, it will be an interesting debate. You said it was an important comment, comparing acts. I, too, would agree that there are problems with the old act, otherwise we would not be standing here today discussing this. You also mentioned how much power the director had under the old act. I wonder, as I stand here, why we are discussing the abuse of the director's power in the new act when it is greatly limited over the previous act and the powers were not abused there. I know this is what you feel is a moot point. What is it that makes everyone think that all of a sudden we have a new piece of legislation and because of the new piece of legislation the director is going to go out and abuse his powers. He is one of the people who wished the new piece of legislation brought in. He is one of the people who helped to draft what his responsibilities would be.

While we are on the subject of the director and his accountability, I would imagine that the director is one of the most accountable people in government, from the position that he has and the type of job that he is charged with on a day-to-day basis. I have no doubt he has done an extremely fine job and has not abused his powers in any way.

We have discussed the family unit. You say it is not in the present piece of legislation before us. It gives me great cause to wonder if you have read all sections. I believe I could point you to sections 107, 108, 109 and 120, to name a few, that state the principle.

¹⁵ I have a question on parental rights that I wonder about, also, in my mind, as you are talking.

I, personally, do not feel I need something written down to tell me what my parental rights are. I know what my parental rights are. My problem is with the person who abrogates his parental rights and places a child in a position where he needs protection, for any reason. Society can decide, and has decided, what limits a person can go to before society needs to step in and help a child; to defend the defenceless. That is what society has charged government to do. If parents did not abrogate their authority, there would be no need for child legislation.

The member for Whitehorse South Centre tells me this is a child's act. I am absolutely and positively aware that it is a child's act. I have been trying to say that for months. The child is not abrogating his authority over the parent; it is the parent who is doing the disservice to the child. This legislation is to ensure that a child placed in a situation where he has no way to combat it is not going to be left in that situation, because society will not allow it.

The rules of equity will be very interesting, when we get into the debate on sections. I am sure we will discuss the rules of equity at length. When we get finished with general debate, I will welcome the clause-by-clause debate on *The Children's Act*.

Mr. Kimmerly: I have a fairly long reply to that speech and I will give it, but before I do, I would remind the minister that I asked a simple question: will the minister table the legal opinion referred to by the minister from Porter Creek East?

Hon. Mr. Philipson: I am sorry, I thought the member for Whitehorse South Centre was talking to another member. I am the member for Porter Creek West. If you are asking me to table something someone else was speaking from, no, I will not.

Mr. Kimmerly: I would ask a question to the Minister of Economic Development, the member for Porter Creek East, Mr. Lang. Will you table the legal opinion you referred to earlier today?

Hon. Mr. Lang: I think, once again, the member opposite has taken what I said out of context. I said that we had legal opinions, or legal minds, — I forget what phraseology I used — to give us advice in respect to the drafting of the bill that is before you. The point I was making to the hon. member, my fellow mortal, was that

we did draft our legislation along the lines of every other jurisdiction in Canada, with some minor changes.

¹⁶ The point I was trying to make was that we were assisted all the way down the line by various people with legal backgrounds in respect to the drafting of the bill.

Mr. Kimmerly: What possible reason can there be, in the public interest, for you to receive legal opinions, at public expense, to keep them secret, and to deny this Assembly the benefit of those opinions?

Hon. Mr. Lang: The member opposite does not understand the procedure that we employ for the purposes of drafting legislation. We have people who are either on contract or people, in combination with members of the justice department, who have legal backgrounds who work with us on a daily basis for putting into draft form principles that are enunciated in legislation. On the allegation that there was a legal opinion on this particular piece of legislation, the point I was making was that we had legal expertise, employed by this government, to help us draft a piece of legislation that would meet the needs of 1984 in Yukon and also have some continuity with other provincial jurisdictions.

I cannot accept the inference and the attack by the member for Whitehorse South Centre. We are not trying to hide anything. The Minister of Health and Human Resources has spent all summer, 26 meetings, going out with what was prepared and distributing information, so that people would be aware of what the bill was all about.

I cannot say any more than that. I notice that the member opposite does not bring forward his legal opinions in written jargon. Perhaps he could consult other lawyers and bring in his legal opinions and then we could debate those as well. I do not see the relevance of the attack by the member, because the principle of the legislation, as the minister has said so well, is to discuss protection for children who need protection. Not once, in the principles of the legislation that we are talking about, have I heard the member opposite talk about children and the problems that children today have because of the existing situation.

Mr. Kimmerly: I will carefully check *Hansard*; however, it is my memory that the minister stated, approximately three or four hours ago, that they had obtained an opinion on the effect of section 2, concerning the effect of the laws of equity. He made a statement about what the opinion was and he said, "I have not heard an explanation in layman's language" that he understood.

¹⁷ The minister is reading a document. Perhaps that is it.

I have the following questions: is there a legal opinion? If there is, why will the minister not table it? I am going to persist in this line of questioning, because it is fair, fitting and it would add to the debate if all members, who have a duty to consider this legislation, had the benefit of whatever expert advice exists on the points.

Hon. Mr. Lang: I would like to point out, from *Hansard* — I have a copy of what was said this afternoon — I stated, for the record, for the member opposite — and please listen, as opposed to making allegations across the floor of this House. I said, as follows: "I just want to assure the member opposite that we have what we consider to be top legal advice and we are within the legal framework, as far as Canada is concerned and the provinces are concerned".

I do not know how much more explicit I can be, in view of what I said earlier, with respect to the first allegation that he made of what I meant. I resent the inferences that the member opposite brings forward in this forum. It makes it very difficult to have a civilized debate with the member opposite.

Mr. Chairman: I think, it being 8:30, Mr. Kimmerly, we will recess and you can come on the floor first.

Recess

¹⁸ **Mr. Chairman:** I will now call Committee of the Whole to order.

Mr. Kimmerly: The minister from Porter Creek East read a —
Hon. Mr. Lang: On a point of order. I am the MLA for Porter Creek East.

Hon. Mrs. Firth: The Minister of Municipal and Community

Affairs.

Mr. Chairman: I find some of these points of order are really not points of order; they are just simple methods to gain the floor and deprive other people of the right to speak.

Mr. Kimmerly: It was stated, before the break, that the Blues of *Hansard* indicated what was said. For easy reference, it will be on page 242, at approximately the top of the left-hand column, in the second paragraph. To complete the quotation, it states this, "We have been advised, in respect to his argument on equity, that this does pertain to his arguments. But he says, "No, it does not. I have not heard any layman's argument as to why it does not."

¹⁹ I am interested in the layman's arguments and I am also interested in the legal arguments. The minister has clearly stated: "we have been advised". In the context of that statement the minister was talking about legal opinions. It was also interesting that the government leader motioned and spoke off the record at exactly that time and told the minister to keep quiet. The question I have asked is: the minister has referred to being advised, and has stated in context that he has a legal opinion about section 2, or the principle of equity, which I have raised in the media and here, and I would ask the minister to table that opinion and in the alternative, to explain what possible reason could there be for not tabling that opinion?

Hon. Mr. Philipson: I am happy once again to enter this debate. The area that we are speaking of is the rules of equity, and the discussion centres around the legal opinion of the rules of equity. For the edification of the member for Whitehorse South Centre, the person whose legal opinion that we are going on, basically, is that of professor Alastair Bissett-Johnson, who is an authority who was seconded to this government from Nova Scotia. He is a professor of law in Nova Scotia who has written three books in the area of child abuse and on child law and is known and fairly well reknowned for his capabilities in child law.

²⁰ Obviously, other lawyers were involved in this and one, naturally, would be our legal draftsman. As for tabling the efforts of these people, you have it before you in *The Children's Act*, and that is already tabled. I can see no problem with what we are faced with now.

Mr. Kimmerly: Let me explain the importance of this matter. We have debated, for three or four hours now — perhaps five — the general principle of the powers of the court and the implication of this bill as it affects the powers of the court. I have stated that clause 2 is absolutely crucial and is very important. It concerns the laws of equity. I explained that in my second reading speech.

I am not an educator, and whenever I try to explain legal concepts here, I get heckled and abused for possibly putting on airs about superior knowledge or something like that. This issue is very, very crucial and it is going to be necessary for all of us to understand the implications of clause 2 as it affects the laws of equity.

²¹ It is necessary for us to clearly understand that. Everybody knows I am a lawyer and I am the only lawyer in the House. That puts me in one sense, in a very difficult position, as opposed to a privileged position. I have a lawyer's knowledge about the laws of equity. The laws of equity are not commonly understood. They are not the subject of general knowledge in this community or in this House. I have made brief efforts at trying to explain them. I remember at a public meeting that I attended in Porter Creek, I raised the issue to the minister and he made a comment to the effect that everybody knows that lawyers operate in courts and they argue and one of them is wrong and one of them is right, so I will accept 50 percent of what you say. It is a facetious attitude like that, that is destructive to these kinds of debate.

There is obviously a very important principle here. It is obviously and clearly our duty to understand it as lay people and to receive advice of experts on the point. I am firmly convinced that I can talk until I am blue in the face about a legal principle and the only response I will get from the government, if I am convincing enough, is that it will get another legal opinion to see if I am right or not.

²² The subject of legal opinions is a difficult one for all of us to understand, including lawyers. There are substantial rules in *Beauchesne* about legal opinions and their place in parliamentary

procedure. Why can this House, whose duty it is to pass on this most important of questions, not receive, in public, the benefit of any and all legal opinions that exist? What possible public policy reason could there be to deny that expert advice? Be it right or wrong, it would certainly add to all of our understanding of the issue. Why can we not see it?

I promised before the adjournment that I had a response to the minister's second speech tonight and I will give it now. I will return to the question of the legal opinions at a later time, because I promise that I will not give up on this point. I will continue with it.

Hon. Mr. Philipson: (*Inaudible*)

Mr. Kimmerly: The minister is asking to answer it now; I will allow him to do that.

Hon. Mr. Philipson: I thank the member for Whitehorse South Centre for allowing me the opportunity, interrupting his general debate and allowing me to answer the questions. I would ask this question — not to be argumentative and not to be provocative — but we listen at great length to issues where the member stands and says "In my opinion". We have never once stood up and said, "Would you please show me where it is written that your opinion is correct?"

That aside, I think we have been asked the question by the member for Whitehorse South Centre about the existing rules of equity. I believe that he deserves an answer. It is not, as he states, that he has not been able to get an answer for four or five hours; it is the first time he has asked me the question. I am very prepared to answer it.

Section 2 emphasizes that the welfare of the child is paramount and the existing rules of equity that protect children, and which are set out in the *Judicature Act*, are re-enacted in Section 3, insofar as they are not specifically displaced in this or other legislation.

I can go on, at length. Naturally, I am not a legally trained man; I am a layperson. I have been absolutely aware from the onset of this legislation that the member for Whitehorse South Centre is going to debate the rules of equity.

²³ If I were a lawyer and he was not, that would be an area that I would definitely seek to have a discussion about. Naturally, I have tried the best I can to read different descriptions about the rules of equity. The member for Whitehorse South Centre is quite correct; there are volumes written on this.

I have taken the advice of the legal minds who helped to put this piece of legislation together. Obviously, those views would be reflected in my statements. If the member for Whitehorse South Centre wishes to debate the sections below section 3 in the rules of equity and the reasoning behind them, at this particular point in time, I am absolutely happy to give that member the value of what I have been able to, I hope, understand from the legal mind, who teaches law, who writes books, who is an authority on the subject, and I hope that I will be able to give it as succinctly as possible in the fewest words possible that this legislature, and the member for Whitehorse South Centre, would understand why this section is written in this manner.

Thank you.

Mr. Kimmerly: The minister speaks about legal authority. In legal circles, when we talk about authority, we talk about which court the particular authority is a judge of and it is absolutely clear that the authorities in the legal profession are the judges.

It may be necessary to argue law here. I hope it is not, but it may be. The Supreme Court of Canada has clearly enunciated principles about the parental bond and about the tests that the court must follow in order to make an order that would have the practical effect of severing that bond. Those tests are not the same as what is here in this bill.

About the particular expert who wrote books, that particular expert also appeared in the courts here and before the judges here, and I appeared against him on a number of cases. I will not be so petty to say that it is a real test of the lawyer as to who won, but in all of the cases I had with him, the argument I was presenting carried the day in the court and the argument he was presenting did not.

²⁴ It is a very different thing to talk to an academic, a professor, a person who writes books and teaches law, especially about family

matters, than it is to talk to a practicing lawyer who does family law, and especially the judges in the family courts. The perspective of those two classes of people is very, very different and is well known in the legal fraternity. More about that later, but it is unconstructive to argue points about who is the better recognized authority who is advocating each side in the legal world. That carries very little weight. Even the most authoritative are occasionally wrong.

The minister spoke about the principles protecting the family unit in sections 107, 108, 109, and 120. I re-read those and in re-reading them it is absolutely clear that those are directions as to policy given to the executive council member and the director. They concern supplying services and taking reasonable steps to safeguard children and promote family conditions that lead to good parenting. All of that is well and good, but if the minister continues to say that those sections meet the argument that I put forward — that nowhere in the bill is there a clear statement as to the rights and duties of parents and the parental bond with children — I will continue to argue the point. It is not good enough to say that the director shall have general superintendence and the director shall follow this policy, even if the policy is to protect the parent-child bond and protect families.

²³ Our belief is that that bond simply exists. It is obvious. It is a fact of nature. Our law should recognize that it exists and re-affirm that it is our social structure that the parental-child bond is paramount to other interests. That statement of principle should be made here, and to say that the director has general superintendence is to set up a person who is not an elected official, who is an appointed civil servant, who can accurately be called a bureaucrat — although I do not wish to give it a pejorative label — who has the duty to supervise families, to supervise a parental-child bond.

We do not support the principle that any person in that position — indeed, any person at all — should have that general superintendence. That exists in nature and the law should simply re-affirm it and guarantee it as our right under the law.

The minister spoke about the well-meaning attitude of the director and the possible abuse of the director's power. He made the statement that the director has not abused his power in the past, so there is no reason to expect he will in the future.

There are people who have argued to me, and who have argued in public meetings, that the director has abused power in the past. It is important to not personalize this issue. It is absolutely clear — I believe it would be uncontroversial — to state that the powers, as exercised in the past by the director, were certainly disagreed with by some people. It is certainly accurate to say the courts have occasionally, in the past, made a decision opposed to the decision of the director, or in apparent conflict. It is not really the issue whether or not the individual who occupies the director's position is well-meaning.

²⁴ I will readily concede that there are not directors of child welfare in the whole country who are not well-meaning, and who would go around intentionally abusing their powers. Nobody is saying that. The concept of a government official's abuse of power is an extremely difficult one, and a good way to describe it is to use the police as an example, because they have the longest history of association with the courts and consideration of allegations of abuses of power.

To make fairly general statements, I would like to explain it this way: the overwhelming majority of police officers are well-meaning people. They are well-trained, have a difficult job to do and they try to do it to the best of their ability under the constraints of the conditions imposed on them. Every now and again, there are stories in the media where citizens encounter individuals or incidents where they clearly believe there is abuse of police power.

Every now and again, a policeman is convicted of fraud or something like that. It is clear that there are occasional bad apples in the barrel. That situation will exist with directors of child welfare and social workers who are officers working under the supervision of directors of child welfare.

As individuals, they are overwhelmingly well-meaning, good people. It is counterproductive to talk about the individuals and it is useless in this forum, I would submit.

We all know that if you give a police force, in any society, unlimited power, it take that power. We have a fine tradition in a free and democratic society that we will not tolerate what we know as a police state or a totalitarian state.

²⁵ If the legislative arm of government gives any police force of any kind — bylaw officers, game officers, RCMP officers, officers under child welfare legislation, any legislation at all — vast discretionary powers or unlimited powers, it is those people who gradually grow into a kind of arrogant attitude, an attitude that they run the show; they are not accountable to citizens generally, and we have trouble and revolutions.

It is absolutely clear that officers who have executive power, any state power, have to have checks and balances. There is a very long tradition in our society of establishing that. The major day-to-day checks and balances on the police force are the courts or the judicial system. It is a very sensitive issue as to what powers the police have, and the Crown attorneys have, as to what powers the courts have.

In the criminal area, and with the police, it is fairly generally well settled now. It has been settled over the last, in excess of, 1,000 years. In this case, for this act, the real issue is what is the appropriate amount of power to give to the director and what is the appropriate check and balance that the courts have over the discretionary acts of the director? That is the real issue.

It is not a good argument to say that it was not abused in the past because of the intention or the well-meaning attitude of any individual. The individuals are not as important as the constitutional powers, especially discretionary powers entrusted to those individuals.

²⁶ If you give the most well-meaning individual unlimited power, eventually, abuses will occur.

I have gone on at some length, but it is an extremely important point that we centre on the issue of the proper discretion to give to the director. In a general sense, the totality of some of the additional powers mentioned in some of the sections here, in our opinion, make the new bill very dangerous, indeed.

Hon. Mr. Philipson: I have a limited amount of time now, obviously, but I think I would like to state, for the record, that the director is accountable; he is responsible. The courts make the decision about whether the director has, in fact, acted in a reasonable manner when they make the decision about whether the director has taken a child into care or not.

In the past seven years, for the record, there were two instances when the judge suggested that the child who had been taken into care could have been left in the family, but did not discount the fact that the director had acted properly in removing the child from the family for his protection.

So, just in a general sense on what the member for Whitehorse South Centre was discussing, and not wishing to end debate — because I would like to continue with what I have to say tomorrow — I would, at this point, like to report progress.

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 Chairmen of Committees?

Mr. Brewster: The Committee of the Whole has considered Bill No. 19, *The Children's Act*, and directed me to report progress on same.

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 9:27 p.m.