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HANSARD

Thursday, April 12, 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
Thursday, April 12, 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 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? Statements by ministers?

STATEMENTS BY MINISTERS

Hon. Mr. Tracey: I am pleased to advise the members of this House that the policy for erecting highway signs, which advertise businesses or societies within communities, is now in place. This policy will not apply to roads under municipal jurisdiction. The formulation of this policy follows an extensive process of consultations begun by the Minister of Tourism, Recreation and Cultural Heritage in 1982.

Private commercial signs advertising businesses outside communities have been allowed on numbered Yukon highways since February 11th, 1983, under the private highway signs regulations. Continued consultation has been initiated by me with organizations such as the Downtown Businessmen's Association, the Yukon Visitors' Association, the City of Whitehorse and the Chairman of the Association of Yukon Communities to extend the sign policy to all Yukon roads.

⁰² In rewriting the regulations to incorporate the new policy, no material changes have been made to the policy for signs advertising businesses located outside communities. This government has had to carefully balance the need for the businesses and societies to advertise their services against considerations of highway safety and the wilderness aesthetics that attract visitors.

Under the new Department of Highway signs regulations, the minister will establish a restricted or sign free area for each community, then a zone will be defined commencing at the limits of the restricted area in which private signs will be allowed.

A business or society located within the restricted area will be allowed to place one sign on each Yukon highway in each direction within the zone.

Generally, the sign-free area will be in the central part of the community, with signing allowed at or near the outer limits. I have directed my department to commence consultation with each community to advise me in establishing the signing zones in the restricted area. I am confident that this process of consultation will ensure that signing will be allowed in the most acceptable areas.

It must be stressed that the Department of Highways and Transportation is responsible for all territorial highways. Control over highway signing must rest with the Department of Highways and Transportation to ensure that the standards of highway safety are maintained.

Information and application forms required to obtain a permit to place a private highway sign will be sent to the foreman of the various maintenance camps. Anyone outside Whitehorse wishing to obtain a permit to erect a private highway sign, whether advertising a business located within or outside a community, or anyone wishing to place a tab on a visitor facility sign, should contact the road foreman in his area.

⁰³ Persons in the Whitehorse area may obtain the required information and forms at the headquarters of the Department of Highways and Transportation at the Lynn Building. Highways officials will be placing markers to show the location of each signing zone as they

are established. The fees have not changed and are \$25 for a permit to erect a private highway sign and \$100 for the supply and installation of each tab.

Every private highway sign must comply with the new private highway sign regulations by May 5th, 1984, or a notice will be sent to the owner by the deputy minister of highways and transportation ordering removal of the sign.

I should point out that this is actually an extended period of grace, as the old private sign regulations required removal of non-complying signs by April 1, 1984.

Applications may be made for permits to erect rural signs at any time and the old forms will still be accepted. Signing zones have to be established and marked before applications will be processed for permits for signs advertising businesses within communities. I will be sending each community a letter confirming the location of the signing zone when consultations are completed with that community. The exact dates when the process is completed will vary from community to community. Thank you.

Mr. Byblow: I must say that we are pleased to hear today's statement. In general, we are supportive of the general policy put forth by the minister on highway signs. The minister, of course, will recall the very frequent questions raised by this side of the House over the past two years over the lack of clear policy and some confusion and delays to constituent inquiries from those interested in placement of promotional signs.

⁰⁴ Particularly, I am pleased that the municipalities are being given the opportunity for input on setting their own policies respecting signs. It is clear that they could opt to vary, to conform or be identical in their policies to those of this government's.

It would be fair to raise a couple of concerns that come to mind, in listening to the minister. One relates to the potential problems over the intentions of the government to make applications for signs through the highways maintenance camps. This, in fact, may prove to be more difficult, rather than convenient, and could create some delays. I suspect that Whitehorse will still have to approve the applications and it may be more expeditious to broaden the procedure for rural applications.

Another concern that comes to mind, in listening to the minister, is the question of junction signs. No specific reference was made to this and, because this relates to community and regional promotion, it will be necessary, I believe, for some measure of flexibility in the regulations permitting this. We do have a situation where they may not necessarily fit neatly into a zone.

I think, additionally, there may be the need by this government to exercise some greater leniency than May 15th in the removal of current, non-conforming signs; I am sure that the government will.

⁰⁵ In conclusion, we are encouraged by the announcement of the policy and look forward to specifics in regulation.

Hon. Mr. Tracey: I would like to comment on a couple of issues raised by the member across the floor. The reason why we are making the application for signs available in the government highway camps is in order to facilitate quick delivery of those application forms to businesses outside Whitehorse. Those application forms will also be available in government offices in the territory. We are just trying to spread them out even more in the short term.

It is not our intention to allow businesses to advertise with their own private highway signs at each junction, otherwise we would end up with a mess of signs at every junction in the territory. We are presently working on an additional provision that would perhaps allow the government or the Department of Tourism to erect a large billboard-type sign directing the tourists to the specific area, and perhaps allowing kiosk-type information areas and allowing private advertising signs in that area with a pull-out and a stop.

We do not feel that it would be beneficial to us or to businesses in the territory to allow each junction to be cluttered with signing.

Mr. Speaker: Are there any further statements by ministers? This then brings us to the Question Period.

QUESTION PERIOD

Question re: Tourism revenue

Mr. Byblow: I have a question for the Minister of Tourism. According to the most recent *Yukon Info*, although Yukon border crossings, last year, increased by only eight percent, the tourism revenue estimated by the minister's department is stated to have grown by 50 percent. Can the minister explain why her department's estimates appear to show that so few more tourists have spent so much more money during the course of the recession last year?

Hon. Mrs. Firth: I do not think it is a 50 percent increase in the revenues, however. I will have to check the figures for the member's specific question about why the revenues have increased so much in comparison to border crossings. I do not know if he is aware that numbers of visitors have also increased considerably. I cannot remember right off the top of my head if that figure was included in the article in *Yukon Info*, but the numbers have increased from approximately 350,000 or 360,000 visitors per year to almost 400,000 visitors per year. That could account for the increase in the monies.

Mr. Byblow: The border crossings went up by a small margin, the revenues went up by 50 percent from \$51 million to \$77 million. Yesterday, the minister stated that tourism revenue from outfitting was about \$4 to \$6 million a year. Since this represents less than 8 percent of the total \$77 million estimated by the department of the revenue from tourism last year, is it still the position of the minister's government that it is worthwhile jeopardizing this high percentage of Yukon tourism revenue by the current predator control program?

Hon. Mrs. Firth: I do not believe that we are jeopardizing the tourism revenues because of the decision we have made in renewable resources.

When we were faced with the potential boycott, we had three options, really, to pursue. We could ignore the threat of the tourism boycott, or we could declare war and an all out fight with Paul Watson and the Project Wolf and the subsequent people who have joined the boycott, or we could have taken a rational approach like we have. I have taken that approach. We, in the Department of Tourism, and in consultation with renewable resources, decided to take that approach upon the advice that we had received from other provinces who had similar problems and who had more experience in this area than we did.

That approach was to do as we are doing. I have just finished signing some — it must be at least 500 — letters by now, that are going out to various foreign offices and areas to give information regarding our predator control program. We are continuing to keep up with the positive advertising in tourism and our positive marketing efforts. I really do not know if there is any way that we, in Yukon, can combat the forces of these boycotts.

Of course, I am sure the members opposite will say that we had another option and that was to cancel the predator control program. That was not an option. We had made a decision, as a government, based on the biologists' information. The member for Campbell has reassured this House that the biologists are credible and that the Department of Renewable Resources has some very experienced staff in those areas, so we thought we had made a responsible decision when it came to predator control and we are going to continue on with that decision.

Mr. Byblow: The minister alluded to this in her answer today and she stated the other day, that the alternative to her government's predator control program would be that we would have no moose, as a final bottom line.

She stated, further, that this was indicated by biologists within the renewable resources department. Is the minister prepared to table in this House the information by that department — or her department — that substantiates that assertion, that there will be no moose in the territory?

Hon. Mr. Tracey: I am sure that every member of the opposition has a copy of the study that we have done. It has been made public and it also has been tabled in the House by me, about a week and a half ago. I do not know what more the member wants.

The member for Campbell has been provided with a stack of information — that I do not know if he has gotten around to reading

at all, yet, but, certainly, he had a few hours' worth of reading there — which was made available to the opposition members. What more does the member want?

Question re: Land claims

Mr. Kimmerly: I have a very easy question, to the government leader, about land claims.

He has promised that when the agreement-in-principle is accepted by the federal Cabinet, it will be tabled in this House. He has also promised an opportunity to debate the agreement-in-principle here. When the agreement is tabled, will there be a resolution concerning it, so that we may debate it here in this House?

Mr. Speaker: The question would appear to be hypothetical; however, I will permit an answer.

Hon. Mr. Pearson: You are right, it is completely hypothetical, but I want to make sure that the record is clear.

I did not promise that I would table the agreement-in-principle when it is approved by the federal Cabinet. I did promise that the moment that I have the approbation of the two proponents in this land claim settlement, the Council for Yukon Indians and the Government of Canada, I would table the agreement-in-principle in this House.

Mr. Kimmerly: We have asked for a caucus briefing on land claims and were promised a confidential briefing. When the government obtains the permission of the other two parties, will the government remove the confidentiality restriction on the opposition caucus briefing?

Hon. Mr. Pearson: Certainly. The moment that we are told that we can make this public, we shall do so.

Mr. Kimmerly: Just for the record, if the agreement is tabled this Session, will the government leader promise an opportunity to debate it in this Session?

Mr. Speaker: Order, please.

Speaker's Ruling

Mr. Speaker: That question is purely hypothetical and quite out of order.

Question re: Territorial capital funds

Mr. Porter: The Minister of Municipal Affairs looks quite lonely there, so I think I will ask him a question. Are Yukon Indian bands eligible for territorial capital funds?

Hon. Mr. Lang: It depends exactly what it is for. There is an overlap of responsibilities between the Department of Indian Affairs and the Government of Yukon Territory. In many cases, the government has moved in where it would legally be said to be the Government of Canada's responsibility and we, as a government, have provided services because we believe them to be needed.

Fire protection is an example. Another example is that we are looking at the sewage situation in Old Crow, along with various other things. It is almost on a community-by-community basis, depending on the situation.

They definitely do not come under our legislation as far as the municipalities are concerned. The member opposite was here debating the *Municipal Finance Act* a number of days ago. One, of course, has to be incorporated as a municipality, but if there is an area where we can help, and can see our way through to do that, we make every effort. I think our track record proves it.

Mr. Porter: In view of the fact that the Department of Indian Affairs has recently announced that it has drastically reduced the capital funding to the bands, and in view of the fact that this government has set a precedent in the community of Old Crow by way of funding a community hall, would this government be prepared to accept proposals from the bands for projects similar to those that have been built in Old Crow?

Hon. Mr. Lang: Just for the record, I do not have the information in front of me, but I recall that we had a cost-shared program with the federal government that assisted the people of Old Crow through the Resource Corp. I would be very reluctant to go in and fund or cost-share a project that would duplicate what is already in a community, if the member is referring to an example such as building a separate hall in a community when there already is one

two blocks down the street. I think that if a submission was put forward that made good sense for a community, we would definitely look at it.

I just want to point out that our capital budget has been set, and it is very difficult to change priorities at this time in respect to the forthcoming budget for 1984-85, as the member well knows.

Question re: Visible minorities

Mrs. Joe: I have a question for the government leader. Yesterday when I asked the government leader about recommendations made by the Special Committee on Visible Minorities, he indicated that the report had not yet been considered by his government. Does the government leader intend to study the report?

Hon. Mr. Pearson: I do a tremendous amount of reading and I will get a recommendation from the responsible people in the government as to whether or not they think that I should read the report, whether I should see a summary of the report or whether I should just look at the recommendations. I am quite confident that, at the appropriate time, the report will cross my desk.

Mrs. Joe: I would like to ask the government leader, then, if his department recommends that he does study the report, if he would, because of its importance, table a response in this House?

Hon. Mr. Pearson: It is impossible for me to make that kind of an undertaking.

Mr. Speaker: The question, again, is hypothetical.

Question re: Banking services in Mayo-Elsa

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

Of course, the minister knows that the Mayo-Elsa district remains without local banking services of any kind, which merely prolongs the hardship in the district. Can he state the nature and extent to which negotiations have gone on, to date, between the government and the banks to provide the service in the area?

Hon. Mr. Pearson: We have, as a government, asked all of the banks that do business in the territory to provide us with proposals respecting the provision of banking services in Mayo. I am sorry, I do not know exactly what the response to that request for proposals has been, to date. However, I will have it researched and will advise the member as soon as I do have something definite to say.

Mr. McDonald: I thank the government leader for his commitment.

Has the government performed any independent survey of the Mayo-Elsa-Keno district to determine the extent to which the bank will be used, in order to verify, one way or the other, the claims made by the banks?

Hon. Mr. Pearson: We did a tremendous amount of work, a year ago — possibly a year and a half ago — when we were trying to continue banking service in the Mayo-Elsa area. I believe that we have a fairly good feel for how much a bank is required in that particular area.

I want to assure the member opposite that we, as a government, are very, very concerned about this issue. We would like to see banking services provided to the people who live in that part of the territory. We are prepared to, I believe, given the right set of circumstances, subsidize that banking service, if necessary.

Mr. McDonald: Is the government actually soliciting proposals from the banks for part-time or full-time service?

Hon. Mr. Pearson: We have asked for proposals: what we have said is, "What can you do to provide banking service in the Mayo-Elsa area? What are you prepared to do? What would it cost this government for you to provide banking services?"

I do not know for sure, but I am quite sure, though, that whatever we are going to be buying, it would not be full-time banking services. I believe that would be out of the question. I believe that that would be far too expensive, or else we would not have to buy the service. I think that we are looking at a part-time service and I do not even know if it would be once a week, once every two weeks or twice a week; I have no idea. We will have to see the proposals and we will have to see what the cost is going to be.

Question re: Economic development committee

Mr. Byblow: My question is to the Minister of Economic

Development. Yesterday's papers reported the establishment by the City of Whitehorse and the Whitehorse Chamber of Commerce of an economic development committee to encourage economic development in the territory. Does the minister's government plan to participate in that committee?

Hon. Mr. Lang: I intend to be talking to the mayor on this particular subject. I have indicated to him already that we are prepared to consider an economic council that would represent the territory. That is the direction I would see the government going. We have the responsibility for the total territory, not just one municipality. I would definitely see at the same time participation from Whitehorse, just as I would other parts of the territory.

Mr. Byblow: The minister calls reference to the formation of a Yukon economic advisory council and since yesterday's announcement appears to preempt the establishment of such a council, by the minister's government, my question to the minister would be to ask whether it is his full intention to still proceed with the creation and formation of the Yukon economic development and advisory council as directed by resolution of last week?

Hon. Mr. Lang: I think that the resolution speaks for itself, along with the votes and proceedings.

Mr. Byblow: The minister has not said whether he is confirming his intentions to proceed with the creation of that committee. I would put a question to him this way: why does it appear that the City of Whitehorse is doing his department's economic development work?

Hon. Mr. Lang: I cannot speak for the mayor of Whitehorse. I told him in confidence approximately two or three weeks ago that we were looking at this avenue for the purposes of forming an economic council for the Yukon. If he thinks it is a good idea for the City of Whitehorse, that is his prerogative. I assure the member opposite, as I did the House approximately one week ago, that if we set up — which I intend to, everything being equal — an economic council for the Yukon territory, it will represent the Yukon. It will not represent just Porter Creek.

Question re: Alcohol and Drug Services

Mr. Kimmerly: About alcohol abuse. The minister responsible for alcohol abuse does not understand the questions so I will ask the minister responsible for alcohol abuse treatment. Firstly, can the minister tell us when the person-year recently removed from Alcohol and Drug Services will be restored?

Hon. Mr. Philippen: When we feel it is in the best interests of the department that he works for.

Mr. Kimmerly: In other jurisdictions, there are alcohol research foundations studying about liquor laws and liquor treatment. Has the minister considered bringing these two functions within the same department?

Hon. Mr. Philippen: Not to the best of my knowledge.

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

Hon. Mr. Philippen: I think he has asked the wrong minister.

Question re: Wolf harvesting

Mr. Porter: To the Minister of Renewable Resources: it was reported on the CBC that 105 wolves were taken in the Finlayson Lake area near Ross River, and I would like to ask the minister how many of that number was taken by aerial hunting conducted by government officials?

Hon. Mr. Tracey: I have the figures here, as soon as I find them.

Mr. Speaker: Perhaps that is the type of question that ought more properly to be addressed as a written question, but if the minister has the figures at hand he may proceed.

Hon. Mr. Tracey: There were 77 wolves removed by the department out of the 105. The rest were removed by hunters and trappers.

Mr. Porter: Can the minister tell the House what percentage of the total wolf population in the Finlayson Lake area the 105 wolves represents?

Hon. Mr. Tracey: Yes, we estimate that it is close to 75

percent of the wolves in the Finlayson caribou herd area.

Mr. Porter: Does the minister's department plan to continue the wolf removal program in the Finlayson area and can he, at this point, give me the cost of the program for that particular area?

Hon. Mr. Tracey: We are not continuing the program. We have removed enough wolves for us to gather the information we need to see whether the caribou population will rebound to the level we hope it will.

Incidentally, while I am on my feet, I will tell you that the cow/calf ratio has increased from 16.5 in 1983 to 34.2 cows per calves in 1984. We are hopeful that in the period of the next five years we will be able to increase the caribou herd back to the level that it was a few years ago.

Question re: Game killed accidentally

Mrs. Joe: I also have a question for the Minister of Renewable Resources. Yesterday, the minister stated that it is his department's policy, in most instances, to provide accidentally killed game to charitable organizations. Can the minister tell the House if a similar policy is followed in the case of confiscated game?

Hon. Mr. Tracey: Yes, although if the person who has the game has killed it accidentally, he can apply and get the game back.

Incidentally, there were allegations made by members across the floor that we were not giving the killed game to charitable organizations. I would just like to give you some figures.

In the last 18 months, we have given one caribou to an old age pensioner; we gave the other half of the moose that was used for the lawyers to a local native lady. We have given three sheep to three native families in the Haines Junction area, and two moose in the Haines Junction area. In Watson Lake, we have given one native family a moose. In Ross River, we have given one moose to a needy native and in 1982, one moose was split between the Maryhouse and the Salvation Army.

Question re: School busing

Mr. McDonald: There are no moose given to Mayo; I will have to ask questions about that.

I have a question for the Minister of Education. Some weeks ago, the minister was asked about her government's position regarding the resolutions passed at the last Annual School Committee Conference, pertaining to school busing. Has the government developed, since that time, any firm position regarding the splitting of the territory-wide umbrella busing agreement to permit rural contractors to bid on rural routes?

Hon. Mrs. Firth: No, we have not.

Mr. McDonald: Another resolution, of course, requested that the regulations stipulating a 25 student minimum be relaxed for rural bus runs. What is the government's position regarding that request?

Hon. Mrs. Firth: It remains the same.

Mr. McDonald: It is non-existent.

Can, specifically, Stewart Crossing and Stewart Highway residents, expect any resolution to their problem, prior to the next school year?

Hon. Mrs. Firth: I cannot say, at this time.

Question re: Faro school safety

Mr. Byblow: I would be pleased to offer the minister some advice on the subject.

I raised, with the minister responsible for government services, a constituency concern, yesterday and, in my opinion, I did not get a satisfactory answer. I would, therefore, like to ask the Minister of Education if her department is monitoring the physical movement of the Faro school and can she assure me that the building is clearly safe and poses no hazard to the occupants of that facility?

Hon. Mrs. Firth: I anticipated the member would ask this question; the subject is called Del Van Gorder School, Faro, Yukon. The foundation: the foundation in the new addition of the Del Van Gorder School is being monitored by government services' construction manager, in conjunction with the Department of Education and in conjunction with the surveyor engaged in Faro, to determine whether there is any day-to-day changes.

The building appears stable, although \$5,000 has been spent recently for the installation of minor structural supports in the crawl space. EBA Engineering Consultants Limited has been engaged for the purposes of a geotechnical site investigation and are in the process of assembling a consultants' report, which will be acted upon when received.

The school is sound for occupancy and of no danger to the students or the staff.

Mr. Byblow: I appreciate the minister's preparedness and reassurances.

She will recognize that there is some potential seriousness to the situation, should there be much more movement in the facility. I would like to ask her if she is providing, through her department, any regular reporting of the physical condition of the school to the local school committee and, if not, will she consider it?

Hon. Mrs. Firth: I would just like to reassure the member for Faro that we will do everything in our power possible to save his school and I am sure he can relay that message to his constituents.

Mr. Byblow: But, I asked the minister if she was going to report to the school committee? Does the minister not know that she should answer a question related to what I have asked?

Can the minister, at this time, advise me whether or not her department has any plans for the infamous, decrepit portables currently located near the school and not being used and which were promised to have been removed several years ago?

Hon. Mrs. Firth: We are still looking at those decrepit portables.

Question re: Ambulance fees

Mr. Kimmerly: I gave notice of the question on ambulance fees. I asked a question April 7, 1983 and followed up with a letter August 24, 1983. I would ask the minister if there is now a policy concerning ambulance charges for senior citizens?

Hon. Mr. Philipson: Unlike the member for Faro, the question is being addressed to the responsible minister for the area. Unfortunately, if it is being addressed to me, I am not the responsible minister for that area. The Minister of Municipal Affairs is the minister under whom ambulances come. Seeing that it was addressed to me, by letter, I returned the letter to the member opposite and in answering that letter, I suppose for the record, I would have to give you the answer.

Ambulances are operated by municipal and community affairs, not health and human resources. That department sets rates and service provisions. The only act that permits government payment for ambulance charges is the *Travel for Medical Treatment Act*. The act authorizes payments for ambulances only when that ambulance trip was a component of medical travel, as defined by legislation. There is no other jurisdiction in Canada that ensures ambulance charges. However, I would like to state for the record that if any senior would find a hardship in having to pay an ambulance fee in the city, he would need only to go to the senior social assistance worker and explain his problem to get relief.

I am assured that the report will deal with all areas respecting seniors in Yukon and the services to them.

Question re: Highway signs

Mr. Porter: I have a question for the minister responsible for highways signs. In his ministerial statement today, he said there were no real changes to the regulations, other than what was enunciated in his statement, from February of 1983. Will section 9 of those regulations announced in February, 1983, be changed as a result of a redraft of the regulations?

Hon. Mr. Tracey: I do not even know what section 9 is. He should ask me a written question.

Mr. Speaker: Yes, perhaps that should be a written question.

Mr. Porter: Section 9 of the regulation states that —

Speaker's Ruling

Mr. Speaker: Order please. Perhaps the hon. member will state his question as a written question. Members are to ask questions, not to make statements.

Mr. Porter: I am asking a question about section nine.

Mr. Speaker: I am afraid the minister is not capable of asking questions of a member. Perhaps if debate is desired on this subject, the hon. member could put a motion on the subject, or produce a written question to which, I am sure, he would receive a reply.

Mr. Porter: Under the regulatory changes announced by the minister today, will people who erect signs be required to place those signs within four kilometres of their place of business?

Hon. Mr. Tracey: Yes. There is no change from the existing sign policy in regard to outlying areas. We have now broadened that coverage to cover all of the municipalities and there will be an area set up for erecting highway signs, within which highway signs can be placed.

Question re: Finlayson cow/calf ratio

Mr. Porter: I have another question to the same minister, the minister responsible for renewable resources. In his response to a previous question I raised, he stated that in the Finlayson area, the cow/calf ratio has increased from 16.5 in 1982 to 34.2 in 1984. As most of the cows calve in the month of May, I would like to ask the minister how he can feel confident to predict the cow/calf ratio for this year, when those calves have yet to be born?

Hon. Mr. Tracey: Obviously the member across the floor cannot add very well. 1983 is the winter of 1982/83 and 1984 is the winter of 1983/84. This spring will be the 1985 year.

Mr. Speaker: That concludes Question Period. We will now proceed to Orders of the Day. May I have your further pleasure?

Hon. Mr. Lang: I would 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

¹⁵ **Mr. Chairman:** I will now call Committee of the Whole to order.

We will now take a short recess.

Recess

Mr. Chairman: Committee will come to order. We shall now go on to *The Children's Act*, Bill No. 19.

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

Hon. Mr. Philipsen: At the time of adjournment of debate, last evening, the member for Whitehorse South Centre had been going on, at some length, describing to us his concerns about the potential abuse of authority that is assigned to the director in Bill No. 19.

I might point out that Bill No. 19 is quite explicit as to what the responsibilities of the director are and I would suggest that the director of family and children services, as identified in this legislation, has his duties are more closely regulated by regulation than, perhaps, any other position in the government.

It should be clear to anyone reading this legislation that the director's actions are scrutinized on a day-to-day basis, as well as the actions of the staff who report to him, by the courts, which are established to determine whether the action that the members of the department have taken are, indeed, the appropriate actions under the circumstances.

The member for Whitehorse South Centre, earlier on in the debate last evening, expressed his concern about clause 110(6), which states, "The director shall, in accordance with this act, have general superintendence over all matters pertaining to the welfare of children". I would draw your attention to the phrase in this subsection, which states "...in accordance with this act".

This act, in numerous sections, details what the director shall do and his actions must be in accordance with this act. That subsection, in itself, defines the limits of his authority and indicates

the degree to which he will be held accountable.

¹⁶ Being a lawyer, the member for Whitehorse South Centre will be more familiar than I am, as a layman, with the extent to which an individual can be compelled to do that which the legislation states he shall.

I will address this only briefly. I am not a lawyer, and I am not as familiar with it as I might perhaps like to be. My understanding of it is, however, that the director, if he is not fulfilling his responsibilities, can be compelled to carry out his responsibilities by way of a *writ of mandamus*; which I believe would be issued by the Supreme Court, at the discretion of the Supreme Court. In extreme circumstances, where the director or the department had acted in an illegal manner, an aggrieved party could launch a civil proceeding against the director or member of the department.

I would trust that the member for Whitehorse South Centre, as well as the general public, would already be aware that the director functions in a capacity as an employee of this government. The performance of the director of family and children's services is reviewed on an annual basis and I would like to assure members of this House and the general public that if any employee of the government has not performed his or her duties adequately, that individual soon ceases to be an employee of this government.

The accountability flows from the director to the deputy minister, and from the deputy minister to myself. In the instance in the director of family and children's services, you will note that Bill No. 19, *The Children's Act*, indicates, at section 110(1), that the Commissioner in Executive Council may designate a public servant to be the director of family and children's services.

¹⁷ May I point out that whom the Commissioner-in-Executive Council may designate, may also be removed of that same designation, if the individual filling the position of director of family and children's services performs his functions inadequately.

To be the director of family and children's services, with the responsibilities that are set out in this legislation, is not an enviable position. It is a difficult position to fill and it is made all the more difficult by the close scrutiny to which the position rightfully is subjected. Because of the responsibilities of this position, there is a close liaison between the director and the deputy minister.

I would like to change the subject slightly at this point and take up another matter that the member for Whitehorse South Centre raised last evening. He spoke about the paramountcy of the parent/child bond and seemed to say that clause 2 of the bill tended to undermine that bond. The exact opposite is the fact. Clause 2 states that the best interests of the child shall prevail where they are in conflict with the interests of the parent. This does not, in any way, lessen the importance of the parent/child bond.

It must be obvious to everyone, including the member for Whitehorse South Centre, that it is in the best interests of the child to maintain that parent/child bond in his own home setting to the strongest degree possible.

¹⁸ The importance of that child-parent bond, which, in most instances, translates into custody, must not be seen to be greater than allowing the court to act in the best interests of the child. It may not always be that the parents' rights of custody should be permitted to prevail over the best interests of the child.

Where a parent has violated his or her right of custody to a child, perhaps, as an example, through the abuse of that child, the parents' rights of custody or the parent-child bond should not prevail over what the court might determine to be in the best interests of the child; that being, to remove the child from the care and custody of the parent who has abused the child and award custody to the other parent or, in proceedings under paragraph 4, to the director.

Let me repeat that important point: it must be obvious that it is in the best interests of the child to maintain a strong parent-child bond in the child's own home. As we all know, it is not always the case that parents carry out their responsibilities of providing a child with the care and nurturance, which are the right of every child. In those instances where a parent abrogates his or her responsibility to provide a child with care and nurturance, with medical treatment and clothes, food, education and discipline and fails to supply the child with the necessities of life and good upbringing, then if the

child is found to be in need of protection, the court may well decide the maintenance of the parent-child bond simply — because some would see that as being of paramount importance — is not in the best interest of that child.

The member for Whitehorse South Centre spoke of the sanctity of the rules of equity. I am sure that the member for Whitehorse South Centre is better acquainted than I with the rules of equity.

¹⁹ However, I do know that statute law takes supremacy over the rules of equity. In this act, in section 3(1), we are stating that the rules of equity affecting custody and education of minors shall prevail over common law rules.

We then go on, in the second clause of this section, to indicate that the other rules of equity — and, here again, the member for Whitehorse South Centre will know them better than I — do not prevail in or over this statute. My understanding is that where a matter, which was previously dealt with by the rules of equity, becomes the subject of a statute, such as children's laws have been under Bill No. 19, that the statute then takes precedence over the rules of equity.

The Children's Act, Bill No. 19, would give more explicit directions in dealing with the matters affecting children than would the rules of equity, which might touch on the subject. Many aspects of parts 1 and 2 remedy serious defects in existing commonlaws and rules of equity.

Bill No. 19 was drafted in an effort to provide the public, and the director, and the courts, with explicit information as to how children in Yukon territory are to be treated. I think it is dishonest to suggest that justice is not being served by indicating in this act, as has been done as well as in the *Judicature Act*, in 10(1)(k) that the rules of equity shall not prevail any longer. What we have done with Bill No. 19 is to give the courts much clearer direction as to what authority they have in matters dealing with children than is available to them under the rules of equity.

I believe that is all I will say at this particular time.

²⁰ **Mr. Kimmerly:** I said yesterday that the past debate had been unhealthy in many of its respects, and I also talked about the problem of communication in places like this and the importance of listening to and understanding the positions of the other side of the debate.

In view of that, this morning I carefully read through and went over yesterday's debate. I wish to emphasize and go over a few of the points raised yesterday. Indeed, I promised yesterday that I would come back to it. I will address the points raised by the minister in his prepared speech just now. I will combine two of them, one of the recent points raised and one of the major points raised yesterday.

We talk about the law of equity. I should say that yesterday I spoke exclusively about clause 2. I should have further identified clause 3(2), which is more directly about equity and the minister spoke about that.

I raised the proposition that clause 110(6), which says that the director has general superintendence over the welfare of children, and the previous sections, specifically clause 3(2), worked in concert; or, if you take the effect of both of them, you have a substantial change in the existing laws and the rules of equity. The inherent jurisdiction of the superior courts is very substantially changed.

I was asking the government leader if he would explain, in view of his assertions about the powers of courts, the effects of clause 110. He refused to do that and referred the question, essentially, to the minister responsible. I wish to again ask that question.

²¹ **Mr. Kimmerly:** How does the minister explain, in view of the assertion he makes, that the power of the courts is not changed and that the principle that you wish to follow is to support families? How do you explain the far reaching implications of clause 110(6), or the principle in that clause?

Hon. Mr. Philipsen: Obviously, I have been as specific as I could in my previous statement. I do not think that anybody wishes me to go over it again. I have stated that the power has not changed. I have stated that the principle is to support the family units to the best of our ability in this piece of legislation. Unless the member opposite wishes to be specific, I am afraid that I cannot

answer generally.

Mr. Kimmerly: I acknowledge that it is impossible to explain the meaning of that clause in the theoretical framework that the Cabinet is publicly espousing, presently. Why is it not possible to change the principle in that clause to state that the principle should be that the director should have general superintendence over the welfare of all children who are wards of the government?

Mr. Chairman: Mr. Kimmerly, do you think that some of this you could discuss while on that clause instead of general debate?

Mr. Kimmerly: No, Mr. Chairman.

I will ask this question — it is the same question, but I will explain it a different way — I have said that the meaning of the words of this act is that the director of child welfare has general superintendence over children. The government has stated, no, that is not really so. I would ask why is it not possible to state in the law the principle that the director has superintendence over the affairs of Crown wards, but to not state that the director has superintendence over the welfare of all children. Why is that not possible?

Hon. Mr. Philipsen: I think it is fairly obvious, if a person were to read this in its proper light. It does not say "the welfare of all children". I was fairly specific in my statement before, "that the director shall in accordance with this act". No child is going to come under his care unless it is in accordance with this act.

²² It is for the welfare of children — not "all" children, as the member across the floor was saying. I think, for the record, I am going to read this once into the record: "110(6) The Director shall, in accordance with this Act, have general superintendence over all matters pertaining to the welfare of children".

Mr. Kimmerly: If it said the "welfare of all children" or "the welfare of children", it would make absolutely no difference. The welfare of children means the welfare of all children.

"In accordance with this act" is limiting to some extent, but the residual power is, if it is not spoken about in the act in some other section, with that wording, with the director, especially if you consider clause 2, and more especially, clause 3(2), which affects the tradition of the law of equity and the inherent jurisdiction of superior courts. The effect of all of that is that the director shall supervise the welfare of children. I would ask: why will the government not, if they say that means the welfare of children who are wards, who are taken into care under section 118, state that; state, "The director shall, in accordance with this act, have general superintendence over all matters pertaining to the welfare of children who are made wards under this act"? If that is what you mean, why can you not state that?

Hon. Mr. Philipsen: There is no point in saying it.

Mr. Kimmerly: The question will not go away. The government can sit there, mute, not answering it, but it is a most responsible question. It has not been answered; it will not go away.

Mr. Chairman: Order. Order please.

Mr. Kimmerly: The public debate that I have been aware of, which is pretty well all of the public debate, has identified a distinct nervousness on behalf of many parents. Parents have said to me at public meetings, "I feel threatened, I feel threatened by this act". The government states, "There is no reason to feel threatened. You should not feel threatened. This will only benefit children; among them, your children".

The fact is, parents do feel threatened. The government policy is that the director will not supervise all families or supervise all children. That should be specifically stated in the law. If it were specifically stated, parents would not feel threatened; they would have no reason to be threatened.

²³ If the policy is that the director should have superintendence over Crown wards, it is simple to state that. If the policy is the director should have superintendence over all children, over children who are not Crown wards, then this is the way to state it. As it is here, in 110(6), it is stated very generally.

We have said that it is part of our policy — it is not the complete policy, but it is part of it — that the director should not have general superintendence over children. The director should have control and superintendence over Crown wards, over children taken into care, both temporarily and in permanent care. That is a very important distinction. It is a crucial distinction.

I say, as loudly and as clearly as I can, that if that change were made, the legitimate fear of parents in the territory would, in large measure, be met. I make the suggestion in as constructive a way as I possibly can.

I am going to ask a question now, and explain it this way: the minister talked, yesterday, about the Cavanagh report. It is a very interesting report and I would refer to the report — incidentally, I was intending to refer to it extensively, at later stages in general debate and also in specific debate — on page 173, of the report — and this is in Chapter 22, entitled "Hearing Procedures and Appeals" — the following statements are made: "Permanent wardship is a change in status. The ordering of a change in status is an inherent jurisdiction of the Superior Court". I wish to emphasize the phrase "inherent jurisdiction of the Superior Court", because it is that concept that, I state, is violated in this bill. There is an inherent jurisdiction in the Superior Court to have general supervision over all matters pertaining to the welfare of children.

When a statement like that is made, the meaning of the word superintendence is rather crucial. The way a director, or any executive officer of any government department, has superintendence over matters is very different from the way courts have superintendence over matters. The reason for that is that courts do not go looking for problems. Courts are passive; they wait until problems come to the court.

It is our philosophy of child welfare, which we wish to express in *The Children's Act*, that for the vast majority of families, or most children — children not in need of protection — the superintendence over those children should be passive. That is, it should only occur if a problem is brought to court. Neither the government, nor any arm of the government, should go looking for problems. It is our belief that the vast majority of the public will, in the territory and in the country, is that parents and the children themselves do not want a director or anybody else — anybody — second guessing internal family affairs unless there is some danger to the child or the child is responsibly suspected to be in need of protection. Then, it is necessary to step in.

The inherent jurisdiction of the superior court is a concept that is necessary to understand before understanding the rules of equity. Section 3(2) on page 1, states, "the rules of equity shall not prevail over the provisions of this or any other act". If that section were changed or elaborated upon so that it was clear that the inherent jurisdiction of the superior court was specifically maintained, and the superintendence of the director was subservient to the inherent jurisdiction of the superior court, that would go a long way toward alleviating any fears that parents feel.

Hon. Mr. Philipson: One of the first statements the member for Whitehorse South Centre made was that he had been talking to parents who tell him that they feel threatened. I am not surprised, after hearing some of the things that have been said around this territory.

I think, for the record, at this point I would like to state that I went around to every community in this territory. I was preceded around this territory by other individuals. There are members opposite who sat in those meetings with me, and chaired them. The chairman, himself, sat in meetings with me and chaired them. Anyone who attended knew that the first hour of any one of those meetings was taken up with people asking questions about issues that they had been told about by someone else, which, when the debate was finished and it was explained what was written in this piece of legislation, were unfounded.

In a great many instances, people came up afterwards and said, "Thank you, very much. We now understand the difference between what is here before us, and we can see is here before us, and what we are being told". So I have no problem understanding that there are certain parents who have said, "I feel nervous".

The member for Whitehorse South Centre is making a statement that is, simply put, just this: that he wishes the court to make a decision that a child should be placed in need of protection. Then, he is saying the court shall continue to be the person who is looking after the child. The basic principle that we are dealing with here is that when a child is in need of protection and comes to the director and goes before the judiciary, when the judiciary makes a decision

that the child should be placed, then the judiciary has done its job.

I would like to expound upon that. The member for Whitehorse South Centre has stated that he has read the Cavanagh Report. I would direct that member to page 168.

In reference to family court judges, dealing with child protection matters, he says that their function is to decide if the child should be committed to the government officer's care and that, "they should not be asked to, nor should they, make orders that subsequent conduct of the guardians of the child, the child or anyone else involved. The guardians have the duty to place the child where they consider best for the child. They would not need a judge's order, coupled with conditions to carry out their duties. Natural parents do not need court orders to help them carry out their duties, except in very unusual circumstances. The temporary or permanent guardian should not need them, either."

In that quotation, Cavanagh is using "guardian" as his reference to the government official to whose care the child has been committed and he uses "guardianship" in the same way that we use "care and custody". Cavanagh emphatically reiterated the fundamental principle that, in these child protection matters, the judiciary should perform only a judicial function; namely, determining, at the conclusion of the hearing, whether evidence established that the child is in need of protection and ought to be committed to the care of the government official, who would then arrange for the proper care and custody of the child, without any further reference to the court for the duration of that committal.

I think I have stated, previously, that the legislation of every other common law jurisdiction in the country is based on the same fundamental principles. I do not know what else I can say in this regard.

Mr. Kimmerly: I think we are getting somewhere. I followed the quotation on page 168. It was stated that I am stating that, after a wardship decision is made, the court should continue to supervise the child: that is inaccurate.

The minister may or may not be surprised, but I am very pleased to tell him that I fundamentally agree with the quotation he read, on page 168. Let me try to put it into layman's language. We accept the principle that, where a court makes a finding of need of protection and makes a wardship order, that the director of child welfare should acquire all of those rights that a natural parent would have.

We are stating that it is our policy or our philosophy that the courts, or the inherent jurisdiction of the court, is passive. We are saying that when a finding of a Crown wardship is made and a child is under the supervision of the director, which is quite proper — I mean, that is the logical person to carry out the duty — supervision of the court should be the same as the supervision of a court for any other child with his natural parents or his step-parents, or whatever.

It is entirely proper to say — and we agree — that the director should have general superintendence over the affairs of Crown wards. There is no problem with that, at all.

There has been significant tension in the courts over the problem of where a wardship order is made, who has jurisdiction to determine visits, or schooling, or anything like that; the courts or the director. We accept that the power should reside with the director and the statement that you made, that I believe that the courts should continue to supervise, is not accurate. There should be some residual inherent jurisdiction, but it should be no more and no less than what the court would have in any other situation.

Hon. Mr. Philipson: Obviously, I am way over my head. I am not a lawyer, but I am going to keep trying. I would like to have it on record that I stated I am not a lawyer. I probably will have to say it more than once or twice before this piece of legislation is through.

The inherent jurisdiction of the superior court that is mentioned on page 173 of the Cavanagh Report, refers to permanent wardship orders. I fail to see, how this inherent jurisdiction of the superior court is threatened by Bill No. 19. The permanent orders and temporary orders that are made under Bill No. 19 are made by a court, not the director.

Mr. Kimmerly: We are getting somewhere. This is constructive, I believe. The difference between the statements on page 173

of the Cavanagh Report and the statements that would be made in Yukon is explainable by a very simple fact. In Alberta, the procedure is that temporary orders are made in the family division of the provincial court. Permanent orders are made in the court of the Queen's Bench. Those are analogous in Yukon to the territorial court and the supreme court. The makeup of the courts is only slightly different here. It is a very arguable proposition and I am interested in debating it; that the recommendation of the Cavanagh Report should be followed and we should change our law to provide for temporary orders to be proceeded with in the territorial court and permanent orders in the supreme court. If that were the case, the recommendations in the Cavanagh Report would be exactly applicable to the Yukon situation.

Under this legislation, under Bill No. 19, it is my belief, if it is not substantially changed, that it would be an improvement to change the jurisdiction so that permanent orders can only be made in the supreme court.

That would be an improvement. Mr. Justice Cavanagh obviously agrees with that, or, to put it in perspective, I agree with him.

Our policy is that the better course of action is to establish a unified family court, but I will get to that in order, and we will debate it shortly.

In response to the minister's comments, though, I do think we have discovered a point of agreement — which certainly pleases me immeasurably — and it appears to me that with further discussion, we probably could come to an agreement or an accommodation about the principles concerning the inherent jurisdiction of the superior court and the definition of the principle that after a wardship order is made, the director has general superintendence. I would not argue with that, but before a wardship order is made, it is certainly our policy to oppose the power of general superintendence in the director.

Going on to other points, in answer to the minister's first speech that he made a little while ago, the minister made points about the scrutiny of the activities of the director, and stated that the director was scrutinized on a day-to-day basis. I did not really understand if he meant scrutinized by the court of scrutinized by the deputy minister or by the minister, or what body. I will be interested in further debate on that point.

I am mindful of the debate on the supplementary estimates where we were told that the minister was told he cannot know about specific cases, and if that is the case, I cannot see how there is any scrutiny or accountability on a day-to-day basis. There is obviously a concern about confidentiality, but there must also be a paramount concern about accountability or scrutiny on a day-to-day basis, and I am interested in that.

The minister stated, about 110(6) on page 65, that the phrase "in accordance with this act" defined the limits of the director. I have already spoken about that, but if the wording was that the director shall have —

Hon. Mr. Tracey: On a point of order.

The member across the floor is continuously talking about sections in the act. We are supposed to be on general debate, not talking about specific sections.

Mr. Chairman: I believe that both sides are pretty well doing that. I have already suggested, once, that we try to stay on general debate and I would trust that the members will do that.

Mr. Kimmerly: The principle there is that, if the statements were that only the powers granted under this act were the director's power, I would accept the minister's statement, but the wording is not that way.

That section grants a very wide, sweeping power and limits it only a little bit, in accordance with the sections of the act. Incidentally, that is why it is necessary to talk about the principle in the context of general debate, because it calls into play the other powers in the other sections of the act.

The statement that it defines the limits of the director is technically true, but it is almost a trivial statement, because it defines the limits only in the narrowest of senses and, in the wider sense, there is no limit.

The other point the minister made is about civil proceedings against the director. I am interested in that point, because I believe

it is not quite as simple as the minister states it is. I forget the number of the section — in any event, it is a specific section and could be dealt with in a clause-by-clause debate — but there is a section granting an immunity. The real rights to sue anybody are problematic, in my view. I believe they are unclear, under this act.

The minister also stated, and he used language that I stated that clause 2 undermines the parent-child bond. That is a similar kind of principle to what he stated last night when he said that he did not need any act or anything written down to tell him what his parental rights are.

No legal clause on a piece of paper undermines something biological or spiritual like a parent-child bond. I understand the statement that nobody needs something written down to tell him what the bonds are or what the parental rights are or, for that matter, a lot of children's rights. What we do need written down is a protection for those rights that exist in our day-to-day lives.

The minister will understand, because he, when he was first elected, brought a motion before this Assembly concerning the protection of property rights in the *Canadian Constitution*. We all know that we have property rights. We own our personal belongings, our houses or whatever may exist, but it is a good idea to put, in law, guarantees of those kinds of rights. We agree with the principles of guaranteeing in law, rights that we believe exist. Incidentally, property rights are among them, but parental rights are more important than that.

It is necessary — it is essential — that the law guarantee and protect those rights. It is obviously not necessary to tell individual citizens what they already, in the very general biological sense, simply know. A parent of a child assumes a parental duty and parental rights and it is only for us to protect them, and that distinction should be made here.

The minister talked about the law of equity and stated that it is a principle that the statute law has supremacy over the law of equity. That, as a simple statement, is technically right.

I certainly do not argue with that, but I have tried to elaborate, in some detail, about the inherent jurisdiction of the courts and the way — especially section 3(2) and section 110(6) operate — that this bill purports to take away the inherent jurisdiction, which is part of the principle of equity concerning child welfare matters.

Mr. Chairman: Order, please. If you do not mind, we shall recess for 15 minutes.

Recess

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

Hon. Mr. Philipson: I have a couple of points. The first, I would like to make is that, in listening to what the member for Whitehorse South Centre had to say, previously, am I now to understand that the member from the opposite side has had a change of heart and would now support a like motion, as I put forward before, on property rights? This would be something of interest to me.

The other matter that I would discuss would be in the area of the director being held accountable. I would say that since matters dealt with by the director and social workers come before the courts daily, the work is scrutinized on a day-to-day basis; that is to what I was alluding when I made the statement earlier. In his supervisory discussions with the deputy minister, confidentiality is not breached, so he is accountable, on a day-to-day basis, and he is accountable to the deputy minister.

Mr. Kimmerly: The comment about the accountability or the day-to-day scrutiny of the director is the only comment I will respond to. I would refer the minister, or his officials, perhaps, who may be listening or who read *Hansard*, to page 208 of the Cavanagh Report, and that is in chapter 29, which describes the findings of the Cavanagh Report about the director of child welfare.

"It has been suggested that it is inherently bad management practice to let the performer judge the quality of his performance". We agree. He then proposes a system that would get around that objection, which is specifically applicable to the Alberta situation, considering that there are several thousand children for the director

to supervise.

In Yukon, the situation is much smaller and the director of child welfare has a direct superintendence or authority over the officers or the social workers who carry out the various duties under the present *Child Welfare Act*.

11 The director is the supervisor of the people who actually go to court. The director, himself, is not characteristically found in courtrooms.

It is then the case, if the minister's statement is correct, that there is a day-to-day scrutiny. Just assuming that it is correct for the moment, that the social workers who actually look into individual cases and go to court are scrutinized or supervised on a day-to-day basis by the courts, and are also supervised administratively by the director, it is something of a schizophrenic situation and it is no wonder that the life expectancy of a social worker in this department is extremely low, in terms of staying on the job. The job turnover is phenomenal.

There is a real and substantial problem in that area. I wish to get at it, or describe it, in different words. It is most important that we communicate here, so far as is possible. The member for Porter Creek East stated yesterday that he was concerned about what he felt was a preoccupation with what was good for the judges and good for the lawyers. He thought it would be more beneficial to talk about what is good for the children.

12 In my view, it is not particularly constructive to talk about what is good for the judges or what is good for the lawyers or what is good for the director; those statements are of the same quality. Also, there is a discussion about the tension between the power of the courts, or the judges, and the power of the director or, perhaps, even the minister, who is responsible for the director.

I think it is important to spend a moment analyzing what we mean when we talk about those particular issues. When we talk about the power of the court, what we are really talking about is the place of a particular process, because the court, although it may be a building somewhere and it may have particular individuals staffing it — such as reporters and clerks and judges and lawyers — in essence, it is a process. It is a process for solving problems or, more precisely, solving conflicts.

So, when we talk about the power of the courts, what we really mean is what kinds of conflicts are we going to give to the courts to solve. What we should be thinking about is that particular problem or conflict best solved by a judicial method, or a legal method, or by an administrative method, or a bureaucratic method.

13 We should look at what principles the court follows. The courts were the first bodies, or it first came from the courts, that the principle that should be paramount is that the conflict resolution should be decided with the goal of maximizing the best interests of the child.

If we look at it in that light, it is easy to say that what the courts say they are interested in — or to put it more precisely, the goal of the resolution process that occurs in courts — is to discover the best interests of the children and arrange things so that that occurs.

Now, the policy that the director of child welfare will tell you he follows is really virtually identical; the policy is that he is promoting the best interests of children. He will certainly tell you that and the minister is repeating that constantly.

14 If both of the those bodies or both of those concerns are talking about the best interests of the children, why is there a conflict between them? There is a conflict between them, that I have alluded to yesterday; indeed, described in general terms, yesterday. It really boils down to the checks and balances that are placed on the director or his officials very much like the checks and balances that the judicial system places on policemen, or any other executive officers.

When talking about the power of courts, we are really off track. What we should be talking about is what kinds of problem resolution should be solved by a judicial method. When we solve a problem by a judicial method, the fundamentals of it are that everyone gets a chance to have his say and to call before the court what evidence he wishes in order to prove his case. The courts have a superintendence over the process, and make a decision because it

is necessary for somebody to make a decision. It only comes into play when people do not agree; that is, when there is some conflict between various parties who are involved with a dispute.

In the case of Bill No. 19, it is clear that the director is one of the parties who goes before the court — or, the director's subordinates are the parties who actually go, but he supervises him. It is also clear that in drafting this bill the director was intimately involved and that is absolutely uncontroversial because it has been publicly stated. There is no problem with the director being involved, per se; indeed he is a person who is most knowledgeable and his input is crucial to the drafting of the bill. But what about all of the other people who were in conflict in those cases in the past? Where were they when the bill was being drafted? They were not consulted. This bill was drafted essentially by a small group of people in a long process of meetings. The essential actors, in terms of authority structure in this government, were the director of child welfare and the deputy minister of justice, or lawyers acting under him.

15 It is also interesting that the deputy minister of justice, at the time, is no longer with us, and a very substantial part of the reason for that is because of child welfare matters. It is also clear that the child welfare court, in the past approximately five years, or so, has been a very unhealthy battleground between the jurisdictions claimed by a judicial process and by an administrative process.

I stated, yesterday, that I had personal knowledge about part of the procedures whereby this bill was drafted and I made a very clear statement about that. I will elaborate on it by saying, today, that the tension in the child welfare court, over the last five years or so, in Yukon, has been extremely unhealthy. I would refer, also, to the Deschesnes Report of a couple of years ago that corroborates that.

In Alberta, there is a similar tension, but in a very general sense. The systems there are very much larger and the tension is very much more public between parents' groups and representatives of people who advocate parents' rights and what is perceived as a fairly active group of social workers, who, it is perceived by some, interfere in what should be internal family matters.

In Alberta, there was a study of the existing Alberta *Child Welfare Act* and the *Social Care Facilities Licensing Act* and the child welfare system, generally. It was conducted by a Mr. Justice Cavanagh, and he reported, October 20th, 1983, which, of course, is after Bill 8 and before Bill 19.

I would ask the minister, because the issue is of general importance, especially to Bill 19, and because the Cavanagh Report has been referred to and quoted from, if the government has considered, at all, a procedure that had been followed in Alberta to get to the bottom of some of the Yukon problems in the child welfare system? Specifically, would the minister not agree that it may be useful to get an independent review of the problems that we have here?

16 **Hon. Mr. Philipson:** No, I would not agree to that at this particular point in time.

One of the areas I think I would like to speak to would be the life-expectancy that was mentioned by the member opposite. Just to clarify the record, I think the member opposite already knows this — I am surprised he even mentioned it — the life-expectancy of social workers here is better than in most jurisdictions. Some social workers have been here 14 years. It is not unusual for workers to remain here in the department for more than five years. The accelerated leaving that he spoke of earlier was, in large part, due to pregnancies, and also to people going away on educational leave.

The director does not deal with individual cases, but he does participate in case conferences with social workers. An inventory such as Judge Cavanagh suggested, is maintained by the director. Wards are monitored on a regular basis and Bill No. 19 will require this. I suggest that the tension in the department that the member opposite speaks of, and refers to, exists more in his mind than in reality.

Mr. Kimmerly: I hope some of the social workers who appear in courts hear that the minister believes there is no tension or that it exists only in my mind, because some of them, or the courageous among them, may be at his door to tell him what is really going on.

The authorities in Alberta, — or in the Cabinet, I suppose, ultimately — because of substantial public pressure, deemed it

appropriate that there be a study of the child welfare system there. Much can be learned from their mistakes and the way they are solving them and, also, from other jurisdictions.

I would recommend to the minister, and I will follow this up outside of the debate of *The Children's Act* as well, that the particular tension in Yukon be looked into. I would state that the minister's saying there is no tension is simply not believable to me. It may be that the minister knows of no tension; that is believable, although incredible. I am referring to tension between the social workers who appear in courts, especially their supervisors — being the director of child welfare and the deputy minister — and the judicial officers in the territory.

I was referring yesterday to the time when this bill was substantially written. The government leader refused to answer one of my general questions. The reason why he refused to answer is that he knows full well he has direct personal knowledge of the tensions. He is not interested in exposing them publicly. They do exist, and they are very serious, and they are relevant, especially to this bill. This bill was drafted by one party to that conflict during the time when the conflict was most intense. The legal profession and persons involved in the child welfare area who are around the court end of it, are all, more or less, aware of the seriousness of the problems that have existed in the last four or five years.

I am going to mention one example, which is not the best example of the tension, but it is an example of why it is a real problem. It is peculiarly relevant to this act, especially the principle of the act, around the licensing of child care facilities and more specifically the lack of a requirement of a licence for facilities under the direction of the director of child welfare.

There was a 14-year-old boy who was housed in the Wolf Creek Centre, which at the time housed both Crown wards and juvenile delinquents. That centre, as a physical plant, no longer exists. The principle of it and the facilities program continues to exist partially in a group home, and partially in the assessment centre beside the liquor store. The boy was perceived as a discipline problem. He was a native child from the rural Yukon and he did not enjoy at all being cooped up.

Substantial disciplinary measures were taken against him.

To make a long story short, he spent in excess of 10 days with no clothing, except his underwear, in an isolation cell, on a restricted diet and with restricted stimulation. The general conditions were akin to conditions in the worst of Canada's federal penitentiaries and were far worse —

Mr. Chairman: Order, please. We are talking about *The Children's Act*. I believe that you are getting on to something that is in the past and has nothing to do with *The Children's Act*. I wish you would come back more to *The Children's Act*.

Mr. Kimmerly: It is necessary to describe, by an example, the reason why the tension exists between the court..

Mr. Chairman: Order, please.

I think that when you start talking about the tension in the department, that is an organizational thing. I do not think that has anything to do with *The Children's Act*.

Mr. Kimmerly: I challenge your ruling.

Mr. Chairman: I will now leave the Chair and call in Mr. Speaker.

Mr. Speaker resumes the Chair

Speaker's Ruling

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

May we have a report from the Chairman of Committees?

Mr. Brewster: The question is an appeal to the Speaker, pursuant to Standing Order 42(4), of a decision of the Chairman of the Committee of the Whole, as follows: when Bill No. 19 was being considered in Committee of the Whole, Mr. Kimmerly, the member for Whitehorse South Centre, was discussing, by way of an example, the tension existing between child welfare officials and the court on a particular case.

The Chair then said that he did not think that this was relevant to the general debate of the bill.

Mr. Speaker: Is there any discussion on the point made by the

Chairman of Committees?

Mr. Kimmerly: The point is that we are on general debate on Bill 19, and one of the major principles in Bill 19 is the relationship between the jurisdiction of the courts and the jurisdiction of the director of child welfare. More specifically, under that general principle, there is a subsidiary principle concerning the jurisdiction of the director to supervise child care facilities for children-in-care, and the possible supervision over that by the courts.

I am addressing that specific principle and I wish to raise a true example that actually occurred a few years ago. It takes approximately three or four minutes to explain the example. Without actually explaining it, the purpose of the example is to show that the jurisdiction of the court and the jurisdiction of the director, and the accountability of the director to the court or any other body, is a significant problem area of which must be dealt with in the bill.

Hon. Mr. Lang: In speaking to the point that has been raised, I just want to say that I have been in the aside of the debate, but I have been listening with respect to what has taken place. I want to refer you, Mr. Speaker, to section 42(2), where it states very specifically, "Speeches in Committee of the Whole must be strictly relevant to the item or clause under consideration".

The area that we are involved in is speaking to the principle of the bill. The member opposite, in my view, is taking a very wide interpretation of this particular section, to the point that during the course of the debate, he has referred to past members of the civil service who are no longer with us and are in no position to defend themselves. I would submit that I believe it has gone beyond speaking to the principle of the bill to the point where we are almost at the situation of talking about personalities and bringing forward aspects that are not related to the bill at hand. Therefore, it would be my contention that the chairman, who I believe has patiently, and with the utmost fairness, run the course of the debate today, should have his ruling upheld.

Hon. Mr. Pearson: I, too, want to rise and point out to you that I have been listening very carefully, as well. The fact of the matter is that the chairman did not interrupt the general debate. It is my opinion — I expressed it to the chairman yesterday — that he is allowing the debate to range in too wide an area. He suggested to me that he felt it was right and proper at that time and I was prepared to accept that; however, I must say that I agree with him now.

Specifically, the member opposite was referring to a specific case that happened in a facility that no longer exists, and was probably done by people — as the Minister of Municipal and Community Affairs has indicated — who are no longer here and is completely, in my estimation, irrelevant to *The Children's Act*, which is before us at this point in time.

Hon. Mr. Philipson: The Wolf Creek example is one where a former judge had a matter mentioned to him and he had it investigated privately rather than reporting it to the director of child welfare, as the law requires. The allegations of the assault laid were investigated by the police and were found to be completely unfounded. The details, I am informed, are not at all as the member for Whitehorse South Centre mentioned and outlined. The juvenile had the same food, in the same amounts, as anyone else, for example. This was also a *Juvenile Delinquency Act* case and not a child abuse, nor a child abuse matter.

Mr. Speaker: Order please. I think the Chair has heard sufficient comment on this matter. It would appear that the whole dispute would arrive around the laws of relevancy, in terms of political law, that is. It is often difficult, when dealing in general debate — which I assume in the Committee was the case — with any topic, and in consulting *Beauchesne*, it says under 768(2) that debate on a bill, and the debate on clause 1 — which I assume is what your Committee Chairman has been doing — is normally wide ranging an covering all principles and details of the bill. The question that arises is: in the discussion that Committee was undertaking at the time, was the person or member speaking relevant to the bill. It is very difficult for the Chair to determine whether this is the case or is not the case because this House is another place. What takes place in Committee of the Whole can only be known in Committee of the Whole and what takes place

here in the House can only be known by report to the House, which has just been given.

In considering the section of *Beauchesne*, according to relevancy, I think the Chair would have to put a great deal of faith in the ability of the Chairman of Committee in this regard, who has heard and determined, himself, that a member or a number of members, may have been not relevant in their discussion of items under clause 1 of the bill under discussion.

It would be the suggestion of the Chair that in further debate, and if this seems to be a difficulty, that all members on both sides of the House consider what is relevant and what is not relevant to the topic that you are discussing. It would make matters much easier for your Chairman, in Committee of the Whole, and certainly the Chair, here, in trying to arbitrate and resolve disputes. I would, I think in this case, have to, from what I have heard, and the comments I have heard from both sides of the House, agree and support the Chairman of Committees in his decision.

However, having said that, I would think that it behooves all members to very, very carefully consider what is relevant to what they are discussing and what is not relevant and make every effort — every possible effort — to stay within the bounds of relevancy of matters under discussion.

41 May I have your further pleasure?

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

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

Motion agreed to

Mr. Speaker leaves the Chair

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

Mr. Kimmerly: I am going to go on to other points, but I want to say that I am going to consider very, very carefully the principle that I was speaking of.

When Mr. Speaker was in the Chair, the minister, Mr. Philipsen, spoke about the specific example that we cannot speak about, because it is your ruling, Mr. Chairman, that that is not relevant.

I am going to get at the same principles by using a similar kind of example. I will consider, for the next, the particular relevance. The minister, Mr. Philipsen, obviously considers that the issue is relevant and he has been briefed on the particular incident, so, obviously, somebody thought it was relevant. In any event, I will get back to it, in other ways, probably at some length.

We were talking about a general principle about the tension between the jurisdiction of the court and the jurisdiction of the director of child welfare. Perhaps I will ask the minister to respond to the question implicit in my quotation from page 208 of the *Cavanagh Report*, concerning the desirability of allowing the performer to judge the quality of his own performance.

44 I would ask the minister: in the case of supervision of government facilities that actually house children, in that case, who is to supervise those facilities if the performer and the judge of the performer are the same in the person of the director of child welfare?

Hon. Mr. Philipsen: Obviously, I do not have the *Cavanagh Report* in front of me and I do not have section 208, but I think we have already described, at length, that the director is accountable to the deputy minister and to the minister. He is not someone unto himself, above and beyond the control of anyone in government. We are all accountable and I am not sure of the relevance of the question.

Mr. Chairman: We will recess for 15 minutes for coffee.

Recess

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

We shall now proceed with *The Children's Act*, Bill No. 19, on general debate.

Mr. Kimmerly: There is half an hour left and it is probably useful to try to deal with a particular principle, or a general

principle, in that time; it may fit into half an hour.

I spoke at some length on the principle of a family court, in my second reading speech and, in the initial presentation I made to the department, I spoke about a family court and that principle has been in the media. Clearly, this bill does not embody the family court: it does not establish, in any way, a family court. It is interesting, because that is different from the direction taken in the provinces.

I can give a long speech about a family court — indeed, I could take up the rest of the time — but it would be more fruitful if the minister responded to the comments that were already made about the principle of a family court.

46 I would ask the specific question: why was the principle of a family court rejected?

Hon. Mr. Philipsen: The courts are certainly not in the jurisdiction of the Department of Human Resources.

While I am on my feet, there are a couple of items I think I should respond to. One of the items previously stated by the member for Whitehorse South Centre was: were we going to go out and get someone to study our needs and give us a report in order to write a bill? I would say, what we have done is to realize the need for new legislation. We had someone come up and study and go through the processes of asking for public input and have drafted a new bill.

The report that Cavanagh came out with, most of the principles are already embodied in this piece of legislation that we have before us — which came afterwards, as the member opposite has said — have now resulted in Alberta doing what we have already done, and that is, drafting a new bill. I believe that bill is No. 105, if I am not mistaken.

47 **Mr. Kimmerly:** Yes, Alberta drafted a new bill, but the principles in the Alberta bill are virtually diametrically opposed to the principles in this bill for the most part. I have a copy of Bill No. 105. I personally know that. Leaving aside that issue, I promise the minister I will get back to it, even if he does not, on Monday. I promise I will get back to the other issues raised yesterday, because we are only canvassing the general topics here.

I am specifically interested in family court. I realize it is not within the exclusive jurisdiction of this minister, and the Minister of Justice would clearly be involved in something like that. Perhaps I will ask the Minister of Justice, while he is here, if there is any reason pertaining to this bill, or the child welfare system, why the government rejects the principle of family court? Is it the policy of the government that eventually there should be a unified family court, as appears to be the general direction and the policy of most of the provinces?

48 **Hon. Mr. Ashley:** I do not mind answering the question. We toured some of the provinces in regard to this situation and we found that they were not all too pleased with the situation that they had. I talked to a number of judges and the chief provincial court judge, particularly in Saskatchewan, if I remember correctly — I could verify that later — and it was plain to me that the system was not working. I would not want something like that in Yukon. The costs and expenses of it were just horrendous, compared to a normal court system. The judgments coming out of that system were no better than decisions coming out of the courts that were not dealing just specifically with the family issues.

I, personally, would reject it. It would have to go through me before it would ever come out. It is not a direction that our justice system is going in. It is not one that I would allow to happen unless I happen to see a lot more proof of it. When I took those tours, it was at the time that this bill was being drafted, and when I was asked the questions as to whether we should go in that direction, I said no.

Mr. Kimmerly: That is a clear answer. The problem in the other jurisdictions have basically been because of the jurisdictional problem between the federal level and the territorial or provincial level.

The minister is disagreeing and I will ask him to explain that.

The federal-provincial conferences of a couple of years ago talked about making the divorce jurisdiction a territorial court or a provincial court jurisdiction in order to get at the issue. Is the minister in favour or opposed or neutral about the question of

making the divorce jurisdiction, which is now federal, a territorial jurisdiction?

Hon. Mr. Ashley: In this case, I would not be opposed to it. It would depend on how it was set up and that sort of thing, but I would not be opposed to that. However, it is off the subject of this bill and we will have to discuss that in the budget debate, which, I believe, would be a proper place for it.

Mr. Kimmerly: I will get away from the divorce jurisdiction, but it is not off the subject. I will come back to it, because the sections concerning custody are extremely relevant to those issues. Indeed, some lawyers may argue that the sections here about the effect of custody orders are on shaky constitutional grounds, as the orders may be pursuant to federal legislation; for the most part, the federal divorce acts. So, it is clearly relevant, not to child welfare, per se, but at least sections 31 through 35 or 36 of the bill are directly on point about those issues. I will ask about the concept, then, of a family division of the provincial court or what we would call the territorial court.

⁵⁰ Is the minister of justice saying that the concept of a family division of the provincial court, as opposed to a unified family court - as the experiment is known across the country - is supported or opposed by the minister?

Hon. Mr. Ashley: I am not against us having some of the jurisdiction, but as far as the unified family court, as I said, I am opposed to it until I see a lot better results than what I have seen happening in the provinces.

Mr. Kimmerly: I understand that, ignoring for the time being the concept of the unified family court, the minister will be aware that in the provincial court in most provinces — if not all provinces, certainly most provinces — there is a criminal division and a family division. Is that concept of the family division of the provincial court supported or opposed by Yukon's Minister of Justice?

Hon. Mr. Ashley: That really has no relevance to this bill. I have already stated my opinion as to how I feel about family courts and unified family courts in particular. I would suggest that we stay on debate of the actual bill.

Mr. Kimmerly: Perhaps I will make a case for the relevance of that question, because it is certainly is not very difficult to do that.

If one looks at page 11 of the bill — and on page 12, 13, 14, and 15 — that is, part 2, division 1, called Custody Acts and Guardianship, there are many sections concerning the custody of children and access and guardianship and it relates to what will be originally a divorce jurisdiction or a jurisdiction under the divorce act. This particular bill has, solely in this division, five or six sections dealing with those kinds of issues, concerning custody and the meaning of certain orders and the effect of extra provincial orders and that sort of thing.

⁵¹ Those kinds of questions are generally dealt with in either the Supreme Court of the provinces, or the Court of the Queen's Bench, or provincial courts family division. In the Cavanagh Report, it talks fairly extensively of the family division of the provincial court.

In Yukon, there is no family division, per se. There has been media attention concerning the effect of children's matters or child welfare matters or custody matters going to the courts that are the same as the criminal courts. It has been said, in the past, that it is most inappropriate for these family matters to be conducted in the same court as the criminal matters are and, indeed, many of the people going to court are treated in the same manner as the people going to criminal courts.

I would ask, because this is a bill dealing with almost every aspect of child welfare and, very specifically, all aspects of the court jurisdiction considering child welfare: what is the position concerning a family division of the territorial court, which would deal with matters, under this act and under the *Young Offenders Act* and, possibly, matters under the *Criminal Code*, which relate solely to family disputes? What is the underlying policy of this government concerning that issue?

Hon. Mr. Tracey: I think the Minister of Justice made it quite plain. We are not dealing with an act to deal with the makeup of a family court. We are dealing with an act that deals with children; it has nothing to do with the makeup of any court.

Now, the member across the floor continues to say that it deals with family court; it does not. It refers to the court only that you have to take the case to court.

⁵² How the member can say that we are talking about the makeup of a court here is beyond me. We are not talking about the makeup of a superior court, a family court or any other court.

I move that you report progress on Bill No. 19.

Motion agreed to

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

Motion agreed to

Mr. Speaker resumes the Chair

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

May we have a report from the Chairman of Committees?

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

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

Some Members: Agreed.

Mr. Speaker: May I have your further pleasure?

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

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

Motion agreed to

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

The House adjourned at 5:22 p.m.