



# The Yukon Legislative Assembly

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Number 16

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## **HANSARD**

**Monday, April 16, 1984 — 1:30 p.m.**

Speaker: The Honourable Donald Taylor

# Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake

DEPUTY SPEAKER — Bill Brewster, MLA, Kluane

## CABINET MINISTERS

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

## GOVERNMENT MEMBERS

### (Progressive Conservative)

Bill Brewster	Kluane
Al Falle	Hootalinqua
Kathie Nukon	Old Crow

## OPPOSITION MEMBERS

### (New Democratic Party)

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

### (Independent)

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

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

<sup>01</sup> **Whitehorse, Yukon**  
Monday, April 16, 1984 - 1:30 p.m.

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

*Prayers*

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

#### DAILY ROUTINE

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

Petitions?

Introduction of bills?

Notices of motion for the production of papers?

Notices of motion?

Are there any statements by ministers?

This then brings us to the Question Period.

#### QUESTION PERIOD

<sup>02</sup> **Question re: French school program**

**Mr. Byblow:** My question is to the Minister of Education. It is on the subject of a French School or, more properly, a French program. What is the current status of the appeal by the Franco-Yukonais Association to begin a French language education program in Yukon for Grades K to nine this fall?

**Hon. Mrs. Firth:** The government is going to be reviewing a paper that will be presented by the Department of Education to make a decision regarding French language education in Yukon.

**Mr. Byblow:** The minister advised the Franco-Yukonais Association a year ago to go through proper channels in developing its interests. Has the association complied with this direction to the satisfaction of the minister?

**Hon. Mrs. Firth:** Yes.

**Mr. Byblow:** Is it the minister's understanding and her perception that any costs attributable to the development of the French language education program will clearly be borne by the Federal Government through the Secretary of State?

**Hon. Mrs. Firth:** No.

**Question re: Highway signs**

**Mr. Kimmerly:** This is an unusual question for me about sign policy beside highways. Is the government considering installing a directional sign to provide information about the Porter Creek Shopping Centre to travellers on the Alaska Highway?

<sup>03</sup> **Hon. Mr. Tracey:** No.

**Mr. Kimmerly:** Since the policy yesterday speaks about a sign free area in the central part of the community, can the responsible minister now say if the immediate area of the Porter Creek shopping mall is in that sign free area?

**Hon. Mr. Tracey:** I cannot say. I am not aware of whether the department and the City of Whitehorse have agreed yet on an area for signs. If they have, they have not brought it to me for signature. I would say that it is very likely that the area in Porter Creek, Clyde Wann Road, would be in the sign free area. However, that does not preclude the shopping centre from putting a sign in the area that signing will be allowed in.

**Mr. Kimmerly:** If that intersection is in the sign free area, will the minister consider a special application for a tasteful directional sign to the Porter Creek shopping mall?

**Mr. Speaker:** The question would appear to be hypothetical, however, if the minister wishes to answer it, I will allow the answer.

**Hon. Mr. Tracey:** No, I would not entertain that suggestion. If I was to entertain that suggestion I would be entertaining that suggestion from every business on every highway access in the city and everywhere else in the territory.

<sup>04</sup>

**Question re: Racial prejudice**

**Mrs. Joe:** I have a question for the Minister of Health and Human Resources.

During a recent conference for YTG social workers, a member of the RCMP conducting a workshop made statements about Indian families, which some workers found to amount to racial prejudice. Can I ask the minister if he has received any complaints, with regard to cross-cultural workshops, in his department?

**Hon. Mr. Philipson:** Not to the best of my knowledge.

**Mrs. Joe:** Could the minister tell us if it is the policy of his government to use resource people from Ottawa to conduct cross-cultural workshops, rather than local, knowledgeable Indian people?

**Hon. Mr. Philipson:** We have been using Yukon native people to do cross-cultural training within this government.

**Mrs. Joe:** Will the minister ensure that any future YTG cross-cultural workshops, regarding Indian people, be endorsed by CYI prior to its use by this government and its departments?

**Mr. Speaker:** It would almost be a representation; however, I will permit an answer. Once again, perhaps members ought to make representations by motion, rather than in the Question Period.

**Hon. Mr. Philipson:** No.

**Question re: Gambling**

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

There have been suggestions in Whitehorse, recently, that gambling be permitted in the city in order to provide an added boom to Yukon's tourism industry. Has the government studied the proposal, recently, beyond that which was done by the Economic Research and Planning Unit in 1977?

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

<sup>05</sup> **Mr. McDonald:** Can the minister state what the government's policy is regarding the expression of legalized gambling to other communities in Yukon? Does it vary to any extent from the summary position of the government's position paper in 1976?

**Hon. Mrs. Firth:** We have not established a policy yet regarding gambling.

**Mr. McDonald:** My second supplementary has been deemed relevant as a result of that rather surprising answer. Can the minister state when they would be planning to submit or to report any policy that they are considering at the present time?

**Hon. Mrs. Firth:** Sometime in the future.

**Question re: French language program**

**Mr. Byblow:** I will try again. The minister said earlier that she was currently reviewing the issue of the french language education program. When is the minister anticipating a decision on the matter?

**Hon. Mrs. Firth:** Very soon.

**Mr. Byblow:** Will it be soon enough to have the program in place this fall?

**Hon. Mrs. Firth:** Yes, it will. I have reassured the association that it would be.

**Mr. Byblow:** The minister indicated in a previous answer that it was not her understanding that any costs attributable to any such program would be borne by the federal government or the Secretary of State. Since there is, to my understanding, information to the contrary, on what basis does the minister make that assertion?

**Hon. Mrs. Firth:** The information to the contrary has been extended to the Franco-Yukonais Association, however, it has not been extended to us, as a government.

<sup>06</sup>

**Question re: Women's Bureau**

**Mr. Kimmerly:** To the Minister of Justice, the minister also responsible for the Women's Bureau: is the Women's Bureau monitoring the effect of the new RCMP policy concerning charges in the case of spousal battering?

**Hon. Mr. Ashley:** The Women's Bureau is not, but it is the responsibility of the Department of Justice. The Crown prosecutors are monitoring it; the RCMP are monitoring it and the department is monitoring it.

**Mr. Kimmerly:** Has the Minister of Justice considered the possibility of applying for federal funding, which is available in this

area, to study the effects of the new RCMP policy?

**Hon. Mr. Ashley:** We always look for different sources of funding if it is available to us.

**Mr. Kimmerly:** The RCMP policy, of course, is a matter for consultation with the minister. Has this government a policy concerning charges in the case of spousal battering and, if so, what is it?

**Hon. Mr. Ashley:** There has been a policy on the spousal battering issue to be dealt with in-house, from the Solicitor General of Canada to all RCMP, but there is also one just for both of the northern territories. I would have to take that under advisement and come back with a written answer. It should have been a written question.

#### Question re: Women's Bureau

**Mrs. Joe:** I have a question for the minister responsible for the Women's Bureau. As I understand it, the YTG's \$10,000 research project on battered women was to review and gather information and report back to this government's health and justice departments so they could go through the recommendations.

Since this report will be tabled at a Ministerial Conference on the Status of Women in May, can the minister tell us if the Yukon Status of Women's Council was consulted in regard to the recommendations?

**Hon. Mr. Ashley:** A consultant did the report for both the justice department and the health and human resources department, and the federal government. They are the ones who actually funded it. The report itself may not be tabled at the conference of the ministers responsible for women's issues in May, but a brief on it and our responses, will be.

**Mrs. Joe:** Since this study was funded by the taxpayers through federal government funds, why can the minister not table it and make it available to the public?

**Hon. Mr. Ashley:** I have never said that I would not. At the moment, I will not; that is all.

**Mr. Speaker:** I believe the hon. member has used her supplementaries; however, if the hon. member has an important question, I will permit it.

**Mrs. Joe:** With great respect, this is my second supplementary.

**Mr. Speaker:** Well, perhaps I have missed it; The hon. member for Whitehorse North Centre, on her final, final supplementary.

**Mrs. Joe:** Will the minister be representing the women of Yukon at the federal conference or will the Women's Bureau of Yukon have other representation?

**Hon. Mr. Ashley:** Someone from this government will be representing this government at the conference.

#### Question re: Elsa Recreation Association

**Mr. McDonald:** I have a question for the Minister of Municipal and Community Affairs.

The minister is aware of a letter sent to him, dated March 9th, from the Elsa Recreation Association, pertaining to the provision of some government assistance to the Elsa community. Has the minister or his department responded to the letter?

**Hon. Mr. Lang:** Not yet.

**Mr. McDonald:** I will fully admit that I am aware of that, as well.

The recreation association has asked for a standardized pool information kit, if such a thing exists, and a copy of pool plans and a listing of anticipated costs. When can the minister make this available to the community?

**Hon. Mr. Lang:** As soon as possible.

**Mr. McDonald:** This is good exercise.

Last year, in October, the minister offered technical expertise to the community. Can he state what he means by "technical expertise"? Can he just elaborate as to what he intends by that offer?

**Hon. Mr. Lang:** I think I have made that point in the last question and there is no point in taking up *Hansard*, again, on it.

#### Question re: Busing

**Mr. Byblow:** Our questions must be very precise today.

I have another question for the Minister of Education. Is the minister, or her department, reviewing current busing policy and can we anticipate any changes to, specifically, the regulations surrounding the two mile limit and minimum numbers required for bus runs?

**Hon. Mrs. Firth:** We are not reviewing that.

**Mr. Byblow:** Is it the intention of the minister's government to consider the breaking down of busing contracts, in order that some expansion to the service can be provided in rural communities?

**Hon. Mrs. Firth:** We are considering that. However, we have not made a decision regarding breaking down the busing contract.

**Mr. Byblow:** That is a positive step.

The government leader looks very lonely. My final supplementary is to him. Given that school buses are still required to stop at all railway crossings in Yukon, is it the anticipation of this government that White Pass rail will be running soon?

**Hon. Mr. Pearson:** A great supplementary, I must say.

We anticipate getting a report from the CTC about the 15th of May and, certainly, that report will be very instrumental for us to make the determination as to whether or not the railway might or might not be running again.

#### Question re: Senior citizens

**Mr. Kimmerly:** I have a question about services to senior citizens. There is a consultant's report that was originally due April 1st. When is the target date for completion of the consultant's report now?

**Hon. Mr. Philipsen:** Hopefully, sometime within the next month.

**Mr. Kimmerly:** The minister has previously announced he would not table the report. What is the government's reason to keep the report secret?

**Hon. Mr. Philipsen:** It is an internal document.

**Mr. Kimmerly:** This is a report prepared at public expense about an important issue: that is, services for senior citizens. Why will the government not make it public?

**Hon. Mr. Philipsen:** I believe all reports that are paid for at public expense are government documents. They are not all tabled.

#### Question re: Statements by Minister of Education

**Mr. Byblow:** I have another question for the Minister of Education. The Minister of Education reproached the teachers of the territory at their convention last Saturday for their general lack of professionalism and specifically for their negative image and, I believe, for their lack of respect. Since these are, for the most part, pretty serious allegations, I would like to ask the minister on what she has based those assertions?

**Hon. Mrs. Firth:** Parental input.

**Mr. Byblow:** The minister spoke to 2,000 parents, I gather. Given that the departmental policies respecting pupil-teacher ratio, respecting teacher aids — as well as its own fiasco a year ago over the 6 and 5 legislation — will the minister concede that in part her department is contributing to some hostility from teachers and, therefore, contributing to her alleged image problems?

**Mr. Speaker:** I think the question would almost be argumentative and certainly makes it very difficult for the Chair to rule that one in order. However, if the minister wishes to answer it I will permit the minister to do so. In fact, it is also out of order in the respect that the hon. member is asking an opinion of the minister.

**Mr. Byblow:** I simply asked if the minister supported the position that her department is contributing to the image problem. However, if she does not wish to answer, I will ask this, respecting a solution to the image problem. Given that we have legislation in place, supported by this government respecting lawyers, doctors and dentists, will her department give any consideration to legislation governing the teaching profession?

#### Speaker's Ruling

**Mr. Speaker:** Again, I would have to say that the hon. member is now making a representation by asking a question. If the hon. member was to re-phrase his question, so that it became a question,

then I would permit. Otherwise I will have to rule the question out of order.

**Mr. Byblow:** My question to the minister, simply put, is: is her department giving any consideration to legislation governing teachers?

**Hon. Mrs. Firth:** I believe I answered that same question at the YTA annual general meeting Saturday when I addressed them about the image that they do have with the public and with parents. We had an extremely interesting discussion. That question was asked and I said that I had been in discussion with other ministers from other provinces regarding that kind of legislation, and that we certainly were aware of it and had not done any excessive work on it in the department, but that we were certainly aware of the teachers' desires. Incidentally, the Yukon Teachers Association annual general meeting has extended a thank you to me, this morning, for a most courageous presentation and also for my dedication.

**Mr. Speaker:** Order please.

**Mr. Byblow:** I have no more supplementaries. I have a new question.

#### Question re: House business

**Mr. Byblow:** My question is on House business and I will direct it to the government House leader. It was my understanding last week that we were to expect a budget this week, on Thursday, and I have reason to believe that there may be a change. Could the House leader clarify the situation?

**Hon. Mr. Lang:** As far as House business is concerned, we intend to continue with *The Children's Act*. It is our intention to table the budget during the course of the week.

**Mr. Byblow:** Can the government House Leader indicate more specifically when the budget is intended to be tabled?

**Hon. Mr. Lang:** Right now, projections indicate that it will be, in all likelihood, Wednesday evening.

**Mr. Byblow:** Can the House leader advise this side whether or not we can anticipate the *Employment Standards Act* to enter into debate this week?

**Hon. Mr. Lang:** It would be strongly predicated on the other side. In view of the advancements we have made in respect to *The Children's Act*, I suspect we will still be in that particular document by the time the budget comes down.

**Mr. Speaker:** That concludes Question Period.

We will now proceed to the Order Paper under 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 Minister of Municipal and Community Affairs that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

*Motion agreed to*

*Mr. Speaker leaves the Chair*

#### COMMITTEE OF THE WHOLE

**Mr. Chairman:** I will call Committee of the Whole to order. We will take a short recess after which time we will continue considering *The Children's Act*.

*Recess*

**Mr. Chairman:** I will call Committee of the Whole to order. We are now on Bill No. 19, *The Children's Act*. It is open for general debate.

#### <sup>10</sup> Bill No. 19: *The Children's Act* — continued

**Mr. Byblow:** I want to get into the debate before this bill passes out of Committee. I want to clear up a couple of things that have come to my mind over the bill. I want to say that, having

listened to the debates that have taken place, last week, and having reviewed *Hansard* on it, I am somewhat overwhelmed by the magnitude of the legislation before us.

I want to say, also, that I found the debates most informative, most education and, certainly, very valuable as a reference point, for the record. By no means have I been bored by the debates that have taken place.

Something that has become quite obvious to me, in listening to the debates and reviewing the pattern of events, is an interesting development that, in my opinion, should be addressed. I say this to the minister, as one layman to another — and I do not profess to have the expertise or knowledge of my colleague for Whitehorse South Centre, in legal matters or in child welfare matters — but, certainly, there has been a particular development that I want to address to the minister.

<sup>11</sup> The bill that was first introduced was Bill No. 8, a year ago. That bill was withdrawn following considerable objection and opposition to it. Subsequently the minister undertook a new round of discussion, and input, as he has stated repeatedly, and we came up with Bill No. 19.

We have on Bill No. 19, again, considerable opposition to aspects on the principles in the bill. We have petitions, respecting the bill. I know that some members opposite discount some of the petitions, but nevertheless they exist and they are there. Late last week, the minister advised that he intended two major changes; one respecting hearsay evidence, and one respecting the requirement to report child abuse. We continue to hear objection to the bill.

In that pattern of development, it appears to me that we have something that must be quite seriously wrong with the bill. This is what I put to the minister. Having gone through the process for well over a year, and finding the kind of objection that we have to the bill, does the minister not recognize that something substantially is flawed here? Something is wrong. I have a number of follow-up questions to that, but I would like to hear from the minister, as I said earlier, as one layman to another, how he address this pattern of development resulting in what we have here still being objected to — still being opposed — after the long alleged consultatory process that has taken place.

<sup>12</sup> I leave that as a general question to the minister in a spirit of response for harmonious debate.

**Hon. Mr. Philipson:** The first thing I would like to say is that I have absolute confidence in this piece of legislation; it is a good piece of legislation. I am firmly behind this piece of legislation.

The opposition that my friend for Whitehorse South Centre speaks of, is an elusive opposition to this piece of legislation. There have been about two phone calls to me, in my office, there has been one phone call at home, and there have been two individuals in to see me. Out of those numbers of people on the petitions, the headings on the petitions do not lead me to believe that they are after a specific thing that they have a problem with.

The two areas that have been mentioned here have both been addressed, not late last week, as the member opposite has mentioned, but the very first thing last week. The input that we got from the community meetings is all reflected in this legislation. The member for Whitehorse South Centre keeps raising issues that I have said repeatedly can be dealt with, and that we are open for further amendments if they are shown to be good amendments.

I cannot understand, for the life of me, why we do not get off general debate on this issue and on to clause-by-clause debate, at which point we will find out whether there is opposition to this piece of legislation, which I sincerely doubt. It is a good piece of legislation. I am happy to stand before you and put this legislation forward. I will speak to any area of this legislation, at any point in time.

As I have said before, your opposition to this piece of legislation with the thousands of petitions on it is known. It has been out for a week. Look in the Gallery, member for Faro, please, look in the Gallery. Show me this tremendous opposition. On the petition of which you speak — as we have already stated — people went around and said things that were unbelievable to get people to sign them. They do not address the issue. They do not address any specific area in this piece of legislation. I am sorry —

**Some hon. member:** They do not address the principle in the bill.

**Hon. Mr. Philippsen:** That is exactly true: they do not address the principle in the bill. There are things in this piece of legislation that are miles ahead of what is in legislation in other areas of Canada. There are exciting things in this legislation. We are too concerned with a couple of areas. We are not dealing with the areas in this legislation that are good legislation for children in Yukon. The sooner this legislation is passed and the sooner this legislation is law, the better off the people and children in Yukon and everyone concerned with this legislation are going to be, including my friends from Faro and the member for Whitehorse South Centre, who are going to be better off with this piece of legislation on the books.

**Mr. Byblow:** I thank the minister for his response and I do not propose to review the concern I expressed, but it certainly is one that has to be addressed with the process that has taken place. The minister says, "Show me the opposition; look at the empty gallery".

In response to that, I have to ask the minister about those specific aspects of the bill that bother me. Having listened to two days of debate, I am not sure if I am more clear on aspects of the bill, in terms of its principles, or whether I am more confused.

One of the areas that I have difficulty understanding completely is the issue of jurisdiction. The minister went to great lengths last week to explain that there is no increased jurisdiction on the part of the director of child welfare over the courts. The question was raised as to whether or not this bill takes away from the power of courts. I believe that the minister insisted that it did not, yet, as I reviewed the legislation this weekend, there distinctly are sections that permit the director of child welfare to apprehend a child and have complete care and custody of that child for periods — depending on which clause — of 48 hours, periods of seven days or periods of 10 days. I have to reconcile that with what I hear: that the director of child welfare does not have increased powers or precedence of powers — to use my layman's understanding of it — to have any precedence of powers over the court. Certainly during that time he does, so how would the minister respond to that concern of mine, which I find confusing.

**Hon. Mr. Philippsen:** I am glad that we now have this debate on a level and in an area that I can speak to in a progressive manner, instead of wandering around discussing for hours things that I really cannot understand.

In the area of jurisdiction, we are discussing the increase or decrease of director's powers. If a child is found in need of protection, and an investigation has been made, and the investigation is done with a warrant; and the child is picked up, with a warrant, there are specified time limits in order for that child to be brought before a court. One of the exciting areas of this bill that we have spoke about, and I continue to speak about, is Section 120, which would then allow the director, or the person working under the power of the director, the ability to leave a child with the family, and there would be a notice of hearing to bring, so, the child could stay in the family until such a time as the court could have the matter brought before it. At the present time, under present legislation, the child would have to be removed he it was in need of protection and kept under the director's supervision until a court appearance was made.

What I have stated over and over again in this legislation, and I will state it once more — is that the matter goes before a judge; the judge makes a decision. The judge's decision, once being made, is followed. If the judge makes a decision that the care and custody of the child should be with the director, or a parent, or whomever, the judge's job at that point in time is done. The care and custody of that child are a matter exactly the same as if the child had not gone before a court. There is no judge telling you how to look after your children at the present time. After the decision has been made by the judge, what is in best interest of the child, then the judge should not be involved in the issue at that point either.

We have capped the time limits, and we have reduced the time limits, in order to get children before a court. The seven-day time limit was brought down, and the courts found that they would have difficulty with that time limit because they feel they needed a

10-day limit in order to be able to comply, because of the number of cases that there are. We have reduced it to seven days. That does not mean that it will take seven days before one goes to court. If it is possible to get there in 12 hours that is what will be done. The reason that there is a time limit on this is simply that if the person is not available when his child is going to go before a court, you need that time to be able to find him order to tell him what is happening. It is protection to give time to be informed of what is happening.

The other area you just discussed was an area where you state that the director is able to take a child into his care, keep a child in his care and then return the child without going before a judge. I explained this the other day, but I will try, briefly, again.

If you happen to go on a holiday to Prince George, and leave your child with a babysitter and that babysitter did something that put the child in need of protection, maybe from neglect, and the department was informed of it, and the department went in and took the child out of that situation and into the care of the director, into a safe place, the director could then get in touch with you in Prince George and tell you, "We have your child in care. The person with whom you left your child left your child in a position where he was being neglected". You said, "I will be back in two days; I will be back in three days", you would be able to leave the child in the care of the director for that amount of time until you returned. When you returned, your child would be returned to you and the matter would not have to go before the court.

It is a distinct effort to try to prevent parents and children, through no fault of their own, being placed in a position where, if the director is protecting the child, from going to court if it is not necessary. We are trying to keep family units together; we are trying to keep families out of court wherever necessary. We are trying to keep families together before they go to court if we possibly can. This piece of legislation is a good solid step forward.

I thank you for your questions and I hope we can continue with the general debate in the same light as we are now, because I think it is a good source of information. I am sure that when we are finished this kind of debate, you will understand the need for this good piece of legislation that is before us.

**Mr. Byblow:** I hope so too. The minister was describing an instance where the director would have the exclusive right to the care and custody of a child. Is there distinctly a cap on the length of time relating to that? I think that that is, in part, the reason for the debate about the jurisdiction of the director having some supremacy over the courts; where it never gets to a court. In other words, matters pertaining to the welfare of children are left in the hands of a person as opposed to any judgment from the courts about the welfare of that child.

**Hon. Mr. Philippsen:** We were going to put a cap on that of 24, 48 hours, or whatever. Through discussions with one of the interest groups on this matter, this particular matter, it was brought up and said would it not be better to leave that to the discretion of the parent or the concerned person for whom you were looking after the child. So, if the person was not able to return from Prince George in 24 hours and wished 48 or 72, they would be able to do it that way.

We left it at that, so that the person who has been notified that their child is in protection has the ability to say, "Can we leave him there for two days, three days, whatever". It was left that way for that specific reason, so that somebody would not be put in a position where they could not get back within 24 hours and the matter would have to go to court. It was left open-ended for that reason, but only at their request.

**Mr. Byblow:** So, given that there was no request by the concerned person, or the parent who happened to be unavailable to look after the child at that time, in the instance that the minister describes, and given that there is no specific request by the parent, is there a cap? I cite this in terms of the principle: suppose that the parent or concerned person is not locatable? In other words, it falls on the director, then, for the care and custody of that child for what length of time? We are talking about the director having these powerful rights over children, without any immediate root to the courts.

**Hon. Mr. Philippsen:** I take a little bit of offense with this "powerful rights over children". The statement is better placed this

way: the director of child welfare is placed in a position where society has demanded of him that he be the person, and this be the department, that looks after children who are placed in a position of need through either neglect or abuse, and not the other way around.

The Department of Health and Human Resources is not making a job out of going around looking for people they can grab up and put in institutions. We are here as a direct result of society saying, "You must look after children who are in need of protection from either neglect or abuse". So, the director's function is that.

It is simple and it is obvious that, if the concerned person left on a holiday or whatever, he would leave, somewhere, somehow, some way, a way for a person to get in touch with them, if he left the child with a babysitter or in like circumstances. If that person was contacted, then I am absolutely sure that a person would ask, "How long shall we keep your child in care?" and the answer would be given.

I cannot think of a circumstance where, after contacting the parent, the parent would say, "Well, I do not really care", because that would then be a child in need of protection from neglect, if the person was not interested in the wellbeing of the child who he had left.

<sup>17</sup> **Mr. Byblow:** With respect to this period during which the director assumes the care and custody of a child in extraordinary circumstances, we really do not have a cap on the length of time and we do not have, in fact, a set procedure to fall upon or resort to the courts for a judgment on the matter. I suppose that is part of the reason for the debate over this jurisdiction of the courts versus jurisdiction of the director of child welfare. There is distinctly here an occasion, an interim period of time, if you will, where the director has the full rights of the parent for the care and custody of that child.

I recall the debates surrounding the clause that made reference to the director having a superintendency over all children in matters of child welfare. I have some problem reconciling that clause or that principle. I have some problem reconciling the principle of the director having superintendency over all matters pertaining to child welfare with the statements that there is the procedure through the courts and the inherent jurisdiction of the court prevails. There is a contradiction there, and I am not sure I understand it.

**Hon. Mr. Philippen:** I know that no one seems to understand it and I am going to try to clear this up a little bit, at this point in time.

On Thursday, April 12, 1984 during the debate on *The Children's Act* the member for Whitehorse South Centre spoke at considerable length about his concern over the wording of clause 110(6). He stressed that the section, as now worded, enhances the authority of the director of family and children's services, while eroding the inherent jurisdiction of the court when taken in conjunction with Section 3(2); which you will recall rules the rules of equity.

I have taken time to reflect on this issue over the weekend and to discuss it with a number of people whose advice I value. I remain unconvinced that these two sections, taken together, undermine the inherent jurisdiction of the courts as the member for Whitehorse South Centre keeps insisting. As I indicated on Thursday, the section does limit the action of the director of family and children's services to that that would be in accordance with this act. The member for Whitehorse South Centre obviously has difficulty understanding the intention of this particular section.

Since I have clearly stated on a number of occasions that, in drafting *The Children's Act*, we have attempted to make it as clear and as easily understandable as possible, I would like to inform this House that I am prepared to, at the appropriate time, in the clause-by-clause debate, bring forward an amendment to this section which causes the member opposite much concern.

I am contemplating rewording this section in a manner similar to that suggested on Thursday: that being that the director shall, in accordance with this act, have general superintendency over all matters pertaining to the welfare of children who are made wards under this act.

<sup>18</sup> The exact wording, of course, will be presented to the House at the appropriate time. My recollection of the general debate thus far, in my review of *Hansard*, indicates to me that the member for

Whitehorse South Centre, and the member for Faro, should now be satisfied that the inherent jurisdiction of the court, which he so enthusiastically professes to be defending, will not now — not that I was ever convinced that it was — be impaired by this legislation, once the change that I have alluded to is made.

As I, and other members of this side, have frequently reiterated, the authority of the court is broadened under this act as opposed to under the existing act. It may be too much to ask, but it would please me greatly if the member for Whitehorse South Centre, and others, were to cease looking for problems where there are none and move along so that we could carry on with clause-by-clause debate of this act.

**Mr. Kimmerly:** This is a most welcome announcement and I wish to say that if the rancor expressed in the last couple of days and if the nastiness, at times, of the debate contributed at least in part to this change, then I support it as being justified.

The minister is not acknowledging that there was a problem, but he is stating that there will be a change. If the change occurs on that general superintendency question, it is certainly my judgment that the problem is substantially met and the bill is improved and the principle of the bill is improved. In my judgment, it is a major shift in the principle of the bill, and a shift in the scope of the powers and duties of the director.

I would ask another question. This is a clarification question that needs to be asked in general debate because it is a related issue. The minister stated on either Wednesday or Thursday — I believe it was Thursday — that it was trite law where everybody knows that when a statute is passed, the statute takes precedence over the laws of equity, or the other rules established by case law. Of course, he is absolutely right about that and he would not find a lawyer to disagree with that statement.

In view of that statement that the minister introduces and recognizes — and understands, of course — what is the purpose of stating in the bill what clause 3(2) states?

<sup>19</sup> To put it another way, if that is the law, anyway, why not simply delete Clause 3(2) or the whole of Clause 3?

**Hon. Mr. Philippen:** No, I am not going to start deleting sections because they do not seem to be something that the member for Whitehorse South Centre does not think is necessary in this legislation. It is the advice that I am given by legal authorities, the people who write law and are legislative draftmen, that this section remain in here. I would not be prepared to remove it, after getting the advice I have from the legal people who drafted this.

**Mr. Kimmerly:** That clause does not exist in the old act; indeed, a different kind of clause exists in the *Judicature Act*, I believe, in section 10(k).

If it does not exist in the old act and if it is unnecessary, would the minister explain why it is put in the new act or what is the legal advice to the effect that it is necessary and why is it necessary?

**Hon. Mr. Philippen:** Before I answer that, the first thing that I would like to clear up is the misconception the member for Whitehorse South Centre is leaving in everyone's mind, and in *Hansard*, that the section that I was speaking to previously had to be changed. I said the change was made to clarify what, in some minds, was felt to be something that could not be understood. I do not see a change in the policy of this legislation by changing the wording. The wording just make it clearer in everyone's mind to understand.

The section that we are talking about now, apparently, is section 3. I will have to try and impart the small amount of knowledge that I have gained on the rules of equity, at this point in time, I see. My understanding of law, in this area, is that the rules of equity evolved in the Chancery courts, while the rules of common law were developed in the court of common law.

In the late 19th century, there was some amalgamation of the Chancery court and the court of common law. Equity prevailed over common law, wherever the two covered the same matter. Rules of equity applied to matters such as state inheritance, marriage and the custody of children, and various real property matters. Rules of equity prevailed over the rules of common law in matters related to custody and guardianship of minors.

Section 3(1) states this fact and it is existing law in Yukon and is

in paragraph 10(1)(k) of the *Judicature Act*. Section 3(2) states that where the act or any other act has a specific provision, it shall prevail over any relevant rule of equity.

20 It is fundamental principle of our *Constitution* that where a statute speaks, it prevails over common law and equity. Section 3(2) is simply stating the results of various appeal court, and Supreme Court of Canada's decisions and, therefore, it has a perfectly legitimate place in this piece of legislation and a specific reason for being there.

**Mr. Kimmerly:** I did not fully understand the answer. There was a statement that that section would overrule various cases. Did I understand correctly that that is the statement? If so, what is being overruled in Section 3(2)?

**Hon. Mr. Philipsen:** In summary, I would say the first level of authority would be statutes, the second level of authority the rules of equity, the third level of authority would be common law. Where they deal with a matter such as child custody, I will give you an example.

In common law an illegitimate child has no father and is not recognized in law. In equity, the courts of jurisdiction do allow the father of an illegitimate child to have custody and access to a child.

**Mr. Kimmerly:** I understood the statement about common law, but I do not understand its relevance to this section as is recently stated. Is it the government policy that the inherent jurisdiction of the superior court in child welfare matters, indeed in all children's matters, is unaffected by this legislation? Is that the policy of this bill?

**Hon. Mr. Philipsen:** What we are doing here is to emphasize that the welfare of the child is paramount and that the existing rules of equity, which protect children and which are set out in the *Judicature Act*, are re-enacted in this section, Section 3, insofar as they are not specifically displaced in this or other legislation.

**Mr. Kimmerly:** All the present law is analogous to Section 3(1). If you add Section 3(2), what is the principle that the government wishes to embody in the law by adding that subsection?

21 **Hon. Mr. Philipsen:** I suppose we are getting down to a point where things can be stated very simply, are we not? We are stating that in questions relating to the custody and education of minors, rules of equity shall prevail. We are also stating that the rules of equity shall not prevail under any provision that is specifically laid out in this piece of legislation. That is a fairly simple statement of policy and fact.

**Mr. Kimmerly:** I understand that, but why is it necessary to put in 3(2), if that is the law anyway? What is the purpose or the principle of putting in that section at all, if it is the position that it is already law?

**Hon. Mr. Philipsen:** Obviously the member opposite does not want me to draw on my great legal background and training, so I would suggest that when we get into clause-by-clause debate, I will be able to answer that question as I will have discussed it with the legal people who have helped draft this piece of legislation.

**Mr. Byblow:** When I left off with the minister, we were talking about the conflict or the contradiction I perceived about the jurisdiction of the courts versus the jurisdiction of the director of child welfare. The minister then proceeded, shortly after, to state that it was his intention to reword or rework the perceived contradiction in the bill. I suppose I would only note that that is commendable and, at the same time, it raises the same question I raised in my opening remarks to the minister, that given the process, we are now making another change, which is a substantial change. I am just wondering if there is some major re-write that is necessary, but I do not propose that at this point because I have to more fully understand the implications of the amendment when it comes.

**Hon. Mr. Philipsen:** I would like to draw the member for Faro's attention to the current piece of legislation we are now functioning under, *The Child Welfare Act*, section 5(2). The wording is identical to the wording in this piece of legislation. There are some areas of this legislation where some pieces obviously have been felt to be working and have been brought forward. We have never, since the inception of this legislation, said that we are not open to make this legislation clearer and easier to

understand in the best interests of all people of Yukon.

Given the type of question and the way it was put by the member opposite, it places us in a position where someone is saying that because you are open to these changes, we have to re-write the whole act. That puts me in the position of thinking, "At what point in time do I have to say that there can be no more changes to this perfectly good piece of legislation", because if I do any further, he is going say, "There, I told you, you are making changes", so we have to re-write the whole act.

I would suggest that the members on the side opposite view this in a positive manner and we will work together towards making this piece of legislation the piece of legislation that we will all be happy and comfortable with. If I am put in another position, I suppose I will have to deal with it in another manner and I do not think any of us are going to gain, nor the children of Yukon, nor the people of Yukon, by that kind of process. I hope that you will all bear that in mind when we discuss this legislation.

22 **Mr. Byblow:** I appreciate the minister's constructive comments and say to him that it would appear to me, from his comments now and moments ago, that he has introduced a major shift to a principle that was perceived on this side, by our experts, as one that required some change.

The comments of the minister lead me to my next area that I wanted cleared up in my mind and that is the subject of the family unit. It is my understanding that the prevailing policy intention of the government is to maintain the family unit, to preserve and protect the family unit, insofar as practically possible. There is a principle, as stated by the minister, that the child's right to remain in his natural home and with his natural parents is primary in the bill.

Now, when I read through the bill, again and again, I did not find that clearly in the words of the bill. For example — and I beg the chairman to permit the reference — when I looked at section 2, for example, it is clear that the act is applied, in matters arising under it, in the interests of the child and, where there is conflict with the parent, the child shall prevail.

I am having some difficulty understanding how that promotes the family unit principle. Perhaps the minister can share his expertise with me?

**Hon. Mr. Philipsen:** What I am having trouble with is understanding how people can take a case of obvious abuse or neglect, where it has been decided by a family court that there has been abuse or neglect, and then get down into where the person who did the abusing or neglecting has specific rights over the person he has been abusing or neglecting. That gives me a great deal of difficulty.

Now, what we have said here and stated over and over again, is that once a child is brought into this system, where he is in need of protection from either abuse or neglect, this government will do its utmost to try and keep the child either in his family, through help to the family or through counselling of the family to try to set the family up in such a way that maybe the person who has been doing the offense is removed from the family and the child stay with the family, through any effort that can be made to keep a family together.

23 The courts make the ultimate decision as to the disposition of a child, once the matter goes before a court. We are even going so far in Section 120 as to try to let the family stay together before it goes to the court. At what point are we going to get down to understanding that before this piece of legislation is going to have a bearing on anybody a child needs to be abused or neglected. At what point are we going to start thinking about the child?

**Some hon. member:** Good question.

**Hon. Mr. Philipsen:** I cannot, for the life of me, understand how people feel, and continue to feel, that members on this side of the House in particular, are not trying to continue to keep the family unit together. I would ask you to take a look at the people on this side of the House and their families and the number of children they have; at the deputy minister, at the director, at the people who work in this department. We have children. We are not building institutes here where we are going to put children in. You do not see construction of institutions. We do not have buses and we do not



have people going around taking children off the street and out of people's families. We have re-addressed this piece of legislation. We have put investigation into this piece of legislation. We have put warrants in for investigation. It is time we stopped talking about the family unit. We are doing everything in our power to preserve the family unit. We have addressed it in this piece of legislation to the very best of our ability. We will continue to promote the family unit.

Now, it would be my distinct hope that the people who are in the family units will stop putting children in the position where this government needs to protect them. That is what this piece of legislation is about. Let us get on to the piece of legislation and what we are dealing with here.

I am going to sit down before I get excited.

**Mr. Kimmerly:** Both sides of the House say that they wish to promote families. There should be room for accommodation here. I want to put forward a proposal. It relates primarily to Section 2 but also to 107, 108, and 109. That is why it is most appropriately presented in general debate. Section 2 really contains two principles, and it is written so that it may be that the drafters were trying to explain only one principle but proper legal interpretation will clarify that it contains two.

<sup>24</sup> The wording of the section is as follows: "This act shall be construed and applied so that in matters arising under it, the interests of the child affected by the proceedings, shall be the paramount consideration. Where the rights or wishes of a parent or other person and the child conflict, the best interests of the child shall prevail".

I understand that, and it is the present law in case law, the principle where the rights or wishes of a parent and the rights or wishes of a child conflict, the best interests of the child shall prevail. That is very, very generally stated, but as a general proposition, it is the law now, and probably, if it were explained in detail to laypeople, it would not get a universal exception, but a general acceptance in the community.

The first part of the section is: "This act shall be construed and applied so that in matters arising under it, the interests of the child shall be the paramount consideration...". The minister just made an impassioned speech about the interests of families. If it is the position of both sides of the House, as it obviously is by our statements, why can it not be stated that this act shall be construed and applied so that in matters arising under it, the interests of the family unit affected by the proceeding shall be the paramount consideration?

The principle is clearly stated in the act that the paramount consideration is the family unit. The best interests of the child can, on occasion, supercede the interests of the family staying together. There are children abused by other family members and everybody recognizes that, but the principle of the "best interests of the family unit" could be simply and clearly stated and I ask the minister: why does he not separate the two principles in clause 2 and change the statement in the first one to read "the best interests of the family unit"?

<sup>25</sup> **Hon. Mr. Philipson:** Am I to understand that we are now in clause-by-clause debate?

**Mr. Chairman:** Perhaps it is the fault of the chair that I was very lenient. I am going to suggest that we get back on general debate and remain there.

**Mr. Kimmerly:** I will explain why it is necessary to ask the questions in general debate. It is impossible to consider clause 2 in isolation because, first of all, it refers to all the rest of the bill and it talks about the way the act will be construed and applied and sets out a governing principle.

If you look at sections 107, 108 and 109, it is very important to determine what is the real principle or the paramount principle expressed in the bill. It would only be possible to interpret the real effect of section 2 if you consider the other sections. It is a similar argument about section 110 and section 3, and also 2.

The section is a statement of general principle and it is most appropriate that we speak about the general principles now. I would also say that if we resolve the problem now, the other sections will be affected and the debate on the clauses, specifically, will be

shortened immeasurably.

It is most useful to discuss the principle, or the two principles, in clause 2, as it affects the rest of the bill and the statements of general principle that both sides of the debate are making.

<sup>26</sup> **Hon. Mr. Philipson:** I think the statement of general principle is that this is a children's act, dealing with children, and we will help any family unit stay together as a direct result of this piece of legislation when it comes under the legislation. The statement of principle is that this piece of legislation was brought forward to bring all matters and areas that are dealing with children, that are under different pieces of legislation presently, into one piece of legislation and that is what we have done. This is *The Children's Act*, simply put.

**Mr. Kimmerly:** The minister states that it is the paramount consideration that the family unit be supported and kept together. I would ask this question in general debate: why can that statement not be made in the bill? I am specifically asking for a statement in probably clause 2, but a general statement that this act shall be construed and applied so that the interests of the family unit are paramount. Why can that simple statement not be placed in the bill?

**Mr. Byblow:** I thought the minister was going to respond. The last time the minister addressed a concern that I raised he got excited and I want to say sincerely to him that I do not wish to cause him any problems. I have to go back to the minister on the same subject because there is still a shred of confusion.

If the minister is saying that a principle of the bill is, in fact, retention of the family unit — and I say that in a general way, regardless of the terminology used, whether it is protecting the child-parent bond or protecting families or the right of a child to live in his natural home — how does the minister reconcile that principle with the statement of the bill that simply says that the interests of the child is paramount? If he can just clear that up, probably the case is closed for the moment.

**Hon. Mr. Philipson:** It is not the family that is being abused, all at one time, it is the child. The statements are being made for the protection of the child. This is a children's act for the protection of children who are either abused or neglected or come under other sections of this piece of legislation. There has never been a statement that once the child who is in need of protection is taken into the protection of the director, or placed in this position, that this government will not do everything in its power to ensure that the family unit will be protected.

<sup>27</sup> We have stated in section 107, 108 and 109 the lengths that the government will go to to ensure that the family will be able to get education, will be able to get funding, will be able to get all manner of things in order to keep the family unit together, if it is possible to do that. The bill before you is for the protection of children. That is what the bill is about. This is not a piece of legislation where we are stating a broad principle of what we feel about children and whether they are in need of protection within the family unit. We have said that once a child is in need of protection, the best interests of the child will prevail. That is a straight policy statement and I do not know how much more specific it could be.

If the child is in need of protection, it is the child whose best interests we are looking after at that point. If it is in the best interests of the child to keep the family unit together and work with the family unit, that will be done, but if it is in the best interests of the child to be taken away from a family, where the family is doing something to the child that is not in the best interests of the child then, obviously, if we cannot work with the family and nothing can be done with the family, it would be in the best interests of the child to be protected in another manner. The child's best interests will be paramount.

The family unit will be protected in any way we can possibly do it, but the child's interests are paramount. This is children's legislation.

**Mr. Byblow:** I think I can accept most of what the minister said. I suppose the problem lies in trying to deal with the principle in theory as opposed to using a specific case. We certainly could well have an instance where the interests of the child are to the detriment of the family unit. I suppose the reconciliation of that contradiction is where I am having the problem understanding how

the principle is embodied in the wording.

I have another question for the minister. In reading through the bill, there was one — and only one that I came across — reference to the rights of the fetus. What were the policy considerations that went into the section that deals with protection of the fetus insofar as the fetal alcohol syndrome goes? Why were no further rights of the fetus embodied in the bill? Why just that one aspect?

**Hon. Mr. Philipsen:** The way that this is placed in this piece of legislation, we believe, is as close as we can possibly get to protecting the right of the fetus without infringing on the right of the individual who is carrying the fetus. We felt that we were as close as we possibly get to a balance on those two issues.

There is no statement, in this legislation, beyond the statement that we will try, by every means possible, to educate and keep a person who may be causing damage to a fetus, by alcohol abuse, away from alcohol and show her what could possibly happen, if she continued to abuse alcohol.

It may be of interest to the member for Faro that one of the initiatives taken in alcohol and drug services was a program — I believe it is called "Love on the Rocks" — and it is very specific and a very good piece of information on the cause and the problems and the effects of alcohol on the fetus. We use that information wherever possible.

The other clear statement in this piece of legislation now states that we will abide by the *Criminal Code of Canada* in all other areas. That puts the other question that I think you are about to raise into its proper perspective. It just states the general fact that, where the *Criminal Code of Canada* states certain things, we will abide by it.

**Mr. Byblow:** I do not think I have any problem with the minister's justification for the inclusion of the section that deals with protection of the fetus, in instances of potential fetal alcohol syndrome.

I guess the minister anticipated my question by saying it is in the *Criminal Code*, because I would have put it to the minister that if the minister or if the department or government felt that it had a right to protect the fetus, in the instance of fetal alcohol syndrome, why did it not feel that it had a right to protect the fetus in the instance of abortion, and that raises the question the minister anticipated. I gather, from what he said, that the minister feels that this is outside the parameters of this bill, or that was a conscious decision, because I recollect that Bill 8 had reference to abortion; this bill does not. To put the question bluntly: why was that issue not addressed in *The Children's Act*?

**Hon. Mr. Philipsen:** The issue that was raised in Bill No. 8 and Bill No. 19 basically states the same thing, other than without saying the Government of Canada, through the *Criminal Code*, allows therapeutic abortion. We just now have said that we will abide by the *Criminal Code of Canada*.

When we are dealing with an issue of this nature, we are not discussing abortion when we are discussing the rights of the fetus in the fetal alcohol syndrome. What we are trying to discuss there is the damage that a person, who may not have any intention of aborting, may be doing to a fetus, an unborn child, and trying to address that child and do whatever we can to protect that child before it is born. The other area of abortion is specifically spelled out in the *Criminal Code of Canada* and we are not addressing that issue in this piece of legislation.

**Mr. Byblow:** Just for a matter of record, let me put the question this way: since the government felt it had a right to intercede in the rights of the fetus, where it pertains to a potential fetal alcohol syndrome, why did it not feel that in the same act it could not intercede in the question of abortion?

**Hon. Mr. Philipsen:** That is fairly easy to answer. On the one hand you are dealing with a matter of federal law, which is abortion. On the other hand, we are dealing with a matter of a child who is unborn, not in a matter of abortion. We are dealing with a matter of a child whose interests we are trying to protect and we feel we have every right in the world to try to bring forward information and educate people who may be injuring a person who is yet not born. In the area of abortion, we have absolutely no mandate. The Government of Canada, through the *Criminal Code*,

makes those distinctions.

**Mr. Kimmerly:** Just on that issue, I would take issue with the minister's statement about the effect of the *Criminal Code of Canada*. It is absolutely clear that the *Criminal Code* speaks about abortion and it is also clear that as long as the courts interpret abortion as a criminal act the jurisdiction about the criminality of the act is a federal jurisdiction. But the jurisdiction about the other incidence to abortion is clearly provincial.

As an example, let me ask these questions. The act speaks about counselling in the case of potential danger for fetal alcohol syndrome. There is a protection of a child or an unborn child who is in potentially some danger. The law could say — and it is the same principle, and the principle is raised by the bill — that a mother who is contemplating abortion could be counselled in the same way as the counselling is done to affect alcohol abuse.

Certainly, that is a greater threat to the child. That is one expression of the problem and that principle must be dealt with fairly in the bill if it is raised at all. It has obviously raised another issue that is a very difficult one: the right of a father, or the right of a child to a father's protection.

**Hon. Mr. Philipsen:** On a point of order.

Am I to understand that we are dealing with general debate of *The Children's Act*? If we are dealing with *The Children's Act*, then we have made a statement that we will try to protect an unborn who will be born by keeping a person from doing damage to that unborn fetus through education. We have not said anything in this piece of legislation about a person who will not be born, and is not a child. This is *The Children's Act*, and that is dealing with legislation that comes under the *Criminal Code of Canada* for therapeutic abortions. I believe that when we discuss what the member for Whitehorse South Centre is discussing at the present time, we are not dealing with the content of the legislation before us, which should be dealt with in the general debate.

May I have a ruling?

**Mr. Chairman:** Mr. Philipsen, I would have to ask you a question. When is the fetus not a child?

**Hon. Mr. Tracey:** It is not a child before it is born.

**Hon. Mr. Philipsen:** If you are asking me, then the fetus will not be a child until the child is born, because you can only protect the child after he is born, except for educating the people in order to ensure that the child is born in as fine and healthy a state as the child can be born in.

**Mr. Kimmerly:** What I was saying is that it is certainly a principle that is raised by the bill; the protection of a fetus. It is interesting that there is no definition of a child in the bill and I was going to raise that later on, because the bill certainly does talk about the protection of the fetus in some cases and some incidentals of the rights of a fetus, so it is accepted in the bill in principle that a fetus is deserving of some protection.

Another important issue would be the interest of the entire family and perhaps, specifically, a father. There are cases about this. In the case of a married woman who wishes an abortion and who obtains permission by a therapeutic abortion committee, the criminal law is no longer relevant because it is not a criminal activity any more, but is there a right or an interest of the father of the child, or is there an interest of the child to be born?

A significant segment of the population believes very, very strongly that there is an interest of the child to be born. It is, by implication, necessary to —

**Hon. Mr. Ashley:** On a point of order. I thought Mr. Chairman was asked for a ruling on this point of order, and the member opposite should be talking to that, and he certainly is not.

**Mr. Chairman:** The point of ruling is that no one can actually tell me when a fetus is not a child and I am not an expert, and I will allow it to continue the way it is.

**Mr. Kimmerly:** The issue here is that there is a principle addressed in the act, and it is a very sensitive principle. Everybody knows it is politically very, very sensitive. The interest of the child to be protected and, at some stage in its life as a fetus, is clearly within the jurisdiction of this House. The principle is raised by at least two sections of the act. It is responsible, indeed, as an opposition party, regardless of our personal views, because of the debate in the public, to raise the issue of

when is a child a child. What is the definition of a child and what is the policy or the principle in this act concerning the protection of the fetus?

**Hon. Mr. Philippen:** For a moment, I thought Mr. Lang was going to speak. I thank the member opposite for his views. I am very happy to see that he has something else to go on about other than other areas, and I am sure that we will be discussing them at length later. Shall we carry on with general debate.

**Mr. Kimmerly:** There is a significant segment of the population who would be horrified to that answer. It is a most serious issue. It is raised by this legislation. When considering the protection of a fetus in the two clear sections here — one about the right to sue and the other about the protection from fetal alcohol syndrome — there is a legislative recognition of the rights of a fetus and clearly the legislative drafters will tell you that that is why the particularly offensive section in Bill No. 8 was originally inserted.

<sup>32</sup> **Mr. Chairman:** Order, please.

**Mr. Kimmerly:** The question will simply not go away; that this bill raises the issue of when is a child a child, and when is there a right of the child to be protected? If we pass the bill exactly as it is, it would be brought in a court, at some point in the future, that the legislature has recognized rights of a fetus. I think almost everybody will agree that that is fitting and proper; there are some rights of a fetus. However, it is our duty to express the policy clearly so that the courts are properly guided.

The government has spoken about families. Now, is there an interest, recognized by law, in the father of a fetus? Is there any interest at all? That is clearly a question of extreme importance and it is not answered and I am asking for the government's policy. More importantly, the government recognizes the right of a fetus to protection: does it recognize the right to life or not?

**Hon. Mr. Philippen:** The policy of the government is very clear in this piece of legislation. Obviously, the member opposite has a specific policy of his own, so I will be looking forward to his amendment with great interest, at the particular point in this legislation where we deal with it.

**Mr. Chairman:** Order. We will recess until 3:55 p.m.

#### Recess

<sup>33</sup> **Mr. Chairman:** I will call Committee of the Whole to order.

**Hon. Mr. Philippen:** If we are going to continue to deal with the issue that is before us, I would like to make one statement that I think we should be thinking about while we are dealing with this. When we are talking about abortion in this manner, we are talking about a therapeutic abortion. We are not talking about abortions on demand. When a lady goes in and asks for a therapeutic abortion, that abortion then is something that is determined by a committee that is struck to view all of these instances.

At the point when the committee makes its decision, the decision is made without the husband or the man, or anyone else, being involved. It is a decision for a therapeutic abortion by a committee.

I think the direction we were going in this debate seemed, to me, to be one of where they were discussing an abortion on demand. The clear statement by our piece of legislation is a protection of a child where an abortion is being considered. For the member for Whitehorse South Centre who asked, "When is a child a child?" and says a child is not defined in this piece of legislation, a child is defined in section 106(1). A child is a person not yet attaining the age of 18 and we are, naturally, dealing with a child who has been born.

The statement that we made in the earlier sections on fetal alcohol is to try to protect a child that we have no reason to believe would be aborted. We are trying to protect a child who would be born.

<sup>34</sup> **Mrs. Joe:** I would just like to ask the minister if, in fact, he knows whether there is a difference between abortion on demand in the territory, or a therapeutic abortion? There are many reasons why women get therapeutic abortions and they include many criteria. Some of those criteria may include abortion on demand. I just wondered if the minister would be able to explain the difference to us so that we can understand what it he is telling us?

**Hon. Mr. Philippen:** Mr. Chairman, I think sooner or later you

are going to have to make a ruling and I think it is going to have to be a learned ruling, no doubt. Your rulings always are. When we are discussing *The Children's Act*, I have defined the areas that we cover in *The Children's Act*, the things we are trying to cover. I have defined therapeutic abortion as it is defined by law in the Canadian *Criminal Code*, and I have defined child. There is no way in the world that I can sit here, being a layman, as I am, and get into a discussion on the values of a therapeutic abortion or abortion on demand.

The only area that I said was covered in here was a woman who went in for a therapeutic abortion and went before a board. That board then made the decision. That decision being made by the board precluded the thing that the member from Whitehorse South Centre was talking about, about the rights of the father, because the board was making a decision; not the woman after she had gone in and asked for the therapeutic abortion, not a family, not the father, not any of those people. The board made that decision, and that is a therapeutic abortion, and that is covered by the *Criminal Code of Canada*. That is covered in this legislation; that we will abide by the *Criminal Code of Canada*. The other area is for a child who we suppose will be born and we are trying to protect that child so that he can be born with as little chance of having something the matter with him as possible. That is the area we are trying to cover. We are not making a statement about abortions on demand.

<sup>35</sup> **Mrs. Joe:** Since this issue of therapeutic or abortion by demand is not well known to the laymen of this House, I am just wondering how we can deal with it. As far as I am concerned, it is a very important issue in this legislation and I would like to know a little bit more about it. I am a layperson, too.

**Mr. Chairman:** Order, please. I am just wondering if we should not try to stay a little more on *The Children's Act*. I certainly agree with you that this is a situation that we do not know a great deal about and I just really have not seen a great deal of connection between it and *The Children's Act*.

**Mr. Byblow:** Responding to that, I feel compelled to address it, because, in the first instance, I brought the subject up earlier.

I had a problem with the bill, respecting this question, and that is the rights of the fetus. I inquired of the minister to explain to me why he felt that the bill had to address an instance where the fetus was endangered through the potential harm as could be brought in a fetal alcohol syndrome. Why does the minister not feel compelled, in this bill, to address other forms of danger to that fetus, simply because you have addressed it, where it is threatened, in instances of alcohol abuse?

In the instance of abortion, it is being threatened again and, clearly, the fetus is endangered and, clearly, it is a potentially born person and, clearly, it can be born alive in an abortion. So, we are talking about something that is within the realm of *The Children's Act*. I had a problem with it; I raised it with the minister and I am still not satisfied.

<sup>36</sup> **Hon. Mr. Philippen:** What we are dealing with, I have just addressed a number of times. I will try once more. If a woman wants a therapeutic abortion, she appears before a board; the board makes a decision as to whether it will grant the therapeutic abortion or not. The moment she goes before the board she puts herself in the hands of a board that is struck to make that decision. It is not a decision that will be altered by the father, or whomever wishes to get into that.

That is a therapeutic abortion. This act does not cover therapeutic abortions; therapeutic abortions are covered under the *Criminal Code of Canada*. What we are covering in this piece of legislation and are attempting to look after is a person who will be born. We have no reason to suspect that the person who may be born with a fetal alcohol syndrome will not be born; or aborted. What we are trying to do with this legislation is protect an individual who will be born, but could be born with a deformity or a problem due to an abuse of alcohol. We are trying to protect that person from that abuse.

Now, it should seem to me that it is relatively clear that we are trying to protect an individual; a fetus who will be a child. We are not addressing an area that we cannot address because it is an area that comes under the *Criminal Code of Canada*.

Tha is a very, very simply put statement and I cannot see, for the life of me, why the member for Faro, after all the debate that has gone on here, cannot glean the information from what is happening here.

<sup>37</sup> **Mr. Byblow:** If I am interpreting what the minister is saying correctly, he is saying that this bill chooses to be silent on the issue of abortion. It is being suggested from the front bench opposite that they do not have the jurisdiction.

I put my question to the minister in a relevant fashion to address why the bill does not address the issue of the fetus when it is endangered through abortion, simply because if the obligation is felt to intervene or to intercede in the instance of fetal alcohol syndrome, why is there not the same kind of concern for intervention in other forms of danger? That was the question; not whether it was outside the jurisdiction or not — a parallel situation to what is assumed in here — as a right to intercede.

**Hon. Mr. Philipson:** As I said before, we have a statement of policy here. We have no problem with the policy contained in this legislation. I am very sure that we will be interested in seeing the amendment that you are going to bring forward, obviously, from your side. I am sure you are going to bring forward something, after this amount of debate, on what your feelings on this matter are.

I have made my statement. We believe, in this legislation, that we are looking after a child from the time he is born until he is 18 years of age. We are trying to protect a child who is unborn who will be or should be born. We are not discussing the issue of abortion, but a child who naturally would be born but would be born with a defect caused by alcohol. We are trying to address that issue. We are trying to address it by educating people and getting them away from alcohol to protect a child who will be born — no question about it. They are not coming to us and asking whether there will be an abortion or not; they not coming before us to discuss abortion. A child is a child. We have no reason to expect it will be aborted. It is a child who will be born and that child will be born, or could be born, with a birth defect because of alcohol and we are trying to address that problem because we know it is a problem. We are working on that problem.

We have discussed the issue of therapeutic abortions a number of times over, and those issues are dealt with in the *Criminal Code of Canada*. If you have something that you wish to bring forward in the form of an amendment, we would be very happy to see it. I think all has been said about abortion that can be said at the present time and I think we should get on with general debate on this bill and, if anybody is interested, clause-by-clause, where we could get into specifics on any of the problems that the members opposite seem to be dealing with.

**Mr. Byblow:** The minister insists that it is this government's choice to be silent on the issue and pass it over to another jurisdiction. The minister, earlier, made the point that in the previous bill, the wording is identical to the one here. I call to his attention that in Bill No. 8, he did have a section...

**Mr. Chairman:** Order, please. Order.

**Mr. Byblow:** The minister said earlier that Bill No. 8 and Bill No. 19 were identical. I just want to —

**Hon. Mr. Philipson:** Point of order. I said that in *The Children's Act*, which is the children's act we are working under now, the only section I was talking about being identical was 5(2) and that is about the general superintendence of children. I said that the area under abortion that was in the first draft is not before us — which we are not dealing with — is different in that we have now changed it and we have placed in there that we will abide by the *Criminal Code of Canada*, and it does not deal with therapeutic abortion. The *Child Welfare Act* we were talking about is a previous bill.

What I was talking about being identical had nothing to do with the area of abortion; nothing.

<sup>38</sup> **Mr. Byblow:** We have a difference of opinion as to fact of what was said, and I will clearly concede to the minister that he may have said what he just repeated now. My understanding of what the minister said was that this bill was identical in addressing the issue of fetal alcohol syndrome and abortion as the previous bill. He has clarified the matter and I simply leave it there.

I have still some confusion in understanding why the bill addresses the endangered fetus in one instance and not others. What is the definition of a child?

**Hon. Mr. Philipson:** If the member opposite turns to page 62, Section 106(1), the definition of a child is a person up to the age of 18 years, and it would be a person who was born. That is what we are dealing with in this piece of legislation.

We could not write in there every instance that we would like to protect a child from; who may be unborn. What about a child in a car accident, or something like that? What we have before us is an issue that we know exists: fetal alcohol syndrome. We know it exists. We deal with it daily. We have specific programs for it in the alcohol and drugs service.

It is an interesting question. I would be interested in whether the members opposite want us to take it out, in the area of the fetal alcohol syndrome. I do not know what is going on. I do not know what your problem is.

**Mr. Byblow:** The minister cited reference to Section 106 as the definition of a child. The definition states clearly that a child is a person up to the age of majority, or 18, I believe. It clearly does not say that that excludes or includes an unborn fetus.

**Hon. Mr. Philipson:** If I could define that, everybody in Canada would be extremely happy, because it is a question before the Canadian courts all the time. What we are dealing with in this legislation are born children. Children who we can deal with who are between the ages of —

I can see that you are finished with it. I believe you are satisfied; are you? I cannot define when is a child a child. You know that. Everybody in this legislature knows that I cannot define that. We are dealing with children who are born, and we are trying to define a problem with a child who will be born, as a fetus. We are trying to say that we will try to protect a child who will be born. We are not trying to define what a child is.

**Mr. Kimmerly:** Just on that point: the minister made a statement that the definition of a child on page 62 would include a born person.

<sup>39</sup> With respect, I do not agree. The question is the legal definition of a person and, certainly, in the Oxford Dictionary, there are a number of definitions. One of them is "the living body of a human being".

Now, that could include a fetus; many say it does.

**Some hon. member:** (Inaudible)

**Mr. Kimmerly:** It is not accurate that it is not. It is a matter of judicial interpretation and this act is very unclear. It would be an improvement and a service to everyone in the territory if the bill was clear.

We are asking for a statement of government policy on this issue. It would be a service to everyone in the territory to clearly say what the act speaks about and what it does not speak about.

**Mrs. Joe:** I think that the members across the House would be very, very happy if we were to go right into this bill, clause-by-clause. However, it is a controversial bill. It has been an issue for a long, long time and this side of the House has to be very sure in its minds before we go into the bill clause-by-clause and that is the reason why we are asking questions throughout general debate. I think it is very important that these questions are asked and I think it is very important that we get the answers.

We are not here to oppose the whole bill. The members on the other side of the House have said it is a good bill; the members across the House have said it is a children's act. We agree that it is a children's act, but we also agree that there are some good sections in the act and those are not the sections that we are dealing with. We are dealing with sections that we want answered and we are dealing with the concerns that have been raised to us by members of this community, whether they are members of our party or another party.

I would like to speak a bit on the Indian recommendations by the Council for Yukon Indians; by the Mayo Band and by the Indian Women's Association. I think that, throughout the community meetings that the minister went to, there was a lot of input in those communities with regard to Indian involvement in this act. The reason why there was a lot of that involvement is because the Indian

families were very affected by the old act and are going to be very affected by this act.

I had a very, very short career in the courts, so I was able to see, first hand, some of the things that occurred there with regard to how little a lot of parents knew about what was going to happen when they went to court. Over the years, I have been aware of complaints by parents who had had children taken away from them by JPs without any training under the old act, not Bill 8; the act that we are living by right now.

<sup>40</sup> I am trying to make some kind of sense of this bill, which is the reason why I am talking about some of the other things that have taken place.

The reason why the Indian people of the territory are very concerned about what is in this new act is that there were many children taken away from their families because JPs, at that time, were not trained, and still are not. The children were taken right out of their homes; not only out of their homes, but right out of the territory. I have seen families and children come back as adults not even knowing who their families were. We have every reason to believe that the Indian people of the Yukon have to be concerned about what is in this act.

The minister has met with a lot of these people. He travelled around the Yukon with one of the vice-chairmen of the Council for Yukon Indians. I imagine that they got to know each other quite well. He has informed us that the CYI have endorsed this new bill, Bill No. 19, and that may be so. Maybe there was a press release that said that CYI endorsed this bill. I can assure the minister that it is going to be a pretty big issue in the coming CYI election, as the majority of Indian people in the Yukon are not very pleased with what is not in the bill.

The Yukon Indian Women's Association, who have been working, who have been lobbying and who have been concerned about the Indian children of the Yukon and the children across Canada have opposed CYI's endorsement, and with very good reason.

I would like to just read briefly a small section of the presentation by CYI, and it says, "as Indians we have always in the past been judged by values different from our own. Your often-repeated promise to make this new law reflect our values will be difficult promise to keep. It might have been easier to have added a separate section to *The Children's Act* making separate treatment for Indian children the law."

**Some hon. Member:** Can I have the date on that?

**Mrs. Joe:** I will give him a date on it. It was on the 23rd of February, this year.

It goes on, "Maybe there should be established parallel systems of child welfare until our works and your policies can reflect our awareness of a respect for cultural differences. Such a system would be needed until our Indian child welfare system is strong enough not to be bulldozed by the dominant society."

That is a presentation that was made to *The Children's Act* hearings and I believe that the concerns and the recommendations made by the Indian people reflect exactly what was said in that statement that was made. Before we go through this whole act, I would like to know from the minister where a lot of the recommendations from the Council for Yukon Indians are included in the act.

<sup>41</sup> There have been statements from the other side of the House that they are enclosed in such and such a section. I do not want to go over it section-by-section right now, but I would like to know where a lot of these recommendations are included in this new act before we can sit down and freely go through it, clause-by-clause.

**Hon. Mr. Philipsen:** It is a real pity that the member opposite is discussing this in this manner. The Council for Yukon Indians and I met, with two other individuals. We met at length, over a couple of months' time. The persons with whom I met with, naturally, was Mr. Jackson, who is an elected officer of the Council for Yukon Indians, and two others.

We did not, as the member indicated, travel around together in a car; he travelled ahead and went to his own meetings; he attended his own meetings; he sat in the meetings. He was a responsible individual who was doing his job in a responsible manner and I

commend him highly for the way he conducted himself in all those meetings.

The issues that were raised were native issues and we addressed those native issues. There is one issue left that the Council for Yukon Indians seems to have a problem with. I discussed that issue as recently as two days ago. I would not try to put words in the vice-chairman's mouth and I would not want to do anything that would endanger him in the election coming up. He did his job admirably; he did it well; he did it with the best interests of the Indian people of the Yukon Territory in mind.

We have addressed those issues and they are reflected in this legislation. There are 30-some odd changes. I did not put out the press releases, he did. I have only mentioned, I believe, once that he supported this piece of legislation, after he said he did.

I am not riding on the coattails of the Council for Yukon Indians. I have no intention or wish to ride on its coattails. I have put forward a piece of legislation that I feel is good legislation. It addresses the issue and it addresses the issues that members of the Indian bands wished addressed and all the Indian bands, from what I understand at the present time, are happy with the legislation, in its present form.

I believe a red herring is being raised here and I believe the member from across the floor is aware of the fact that it is happening. I am sorry, I am very sorry that she is doing it, because the issues were addressed one at a time; we went through the entire critique over a long period of time.

I feel it is a pretty poor thing to do, to sit in here and belittle a man who has gone to the lengths he has gone to to ensure that his people are represented in this piece of legislation and to belittle the effort that he has put into the social portfolio that he holds. He made an extreme effort to be everywhere in the Yukon Territory. To sit over there and say that this piece of legislation does not reflect the views of the Indian people, after we have had the comments from them that we have had, is an extremely unfortunate thing.

I wish the member for Whitehorse North Centre would address the problem areas when we get to them in the legislation and be specific about it in those problem areas and tell me what the problems are, rather than throwing innuendo against a man who has put in that much effort and served his people as well as he has.

<sup>42</sup> **Mrs. Joe:** I do not really take offense at what the member across the House has said. I know exactly what I am doing here. I know exactly whom I have spoken to, and I have listened to people, as the member across the floor has. We are talking about an act that is going to affect maybe 70 percent of the Indian children in Yukon. I am concerned about that. I am concerned about that as are the mothers and the fathers of the Yukon are.

If I disagree with an Indian leader who has endorsed this bill, then I am doing it because I have talked to other members of this territory who are concerned about Indian children. They have seen what governments have done in the past, and if I have to stand here all day, as my colleague from Whitehorse South Centre has done, to speak about this bill, I will do it. I am willing to do it.

**Hon. Mr. Philipsen:** Then say something.

**Mrs. Joe:** I am trying to say something. We, on this side of the House, have honoured the rules of this House by not heckling and giggling while the members on the other side of the House are speaking. I would like to let you know that we would like to have that in return. If I am about to say something here, I would like to be heard, Mr. Chairman, by yourself, if not by the members across the House, who do not seem to care.

I have before me the recommendations that were made by the Council for Yukon Indians. These recommendations were by the Council for Yukon Indians, not only from the people who work within their social department, but from bands across the territory. The member has assured me, and assured other members of the Indian community, that he has met their concerns in this act. I would like to know, before we sit down and go through this bill clause-by-clause, where those recommendations are included. For instance, where is number one included: that the Indian band social administrators be automatically notified upon apprehension or the intent to apprehend? Where is that included?

**Hon. Mr. Philipson:** It is very easy to answer that question. The member just has to go to the Council for Yukon Indians and to the people who were involved in the discussions, sit down with them and go through their critique in the same way I did, and she will get answers to every question on every section of that critique, page-by-page, clause-by-clause, the same as I did.

**Mrs. Joe:** I am asking the minister who is responsible for this bill to give me some information. I am not asking the Council for Yukon Indians where it is.

**Hon. Mr. Philipson:** I am a reasonable man and I will discuss any issue in Bill No. 19. If the member for Whitehorse North Centre is a reasonable woman, she will discuss the problems she has with the critique that came from the CYI with the CYI. I did, and she should.

**Mrs. Joe:** It is obvious that the minister is not going to answer any of my questions. Before we can go into this bill, clause-by-clause, people are asking for some kind of guarantee that those recommendations are included in this bill, and I would like to know where they are included in this bill.

**Hon. Mr. Philipson:** I spent two months talking with the Council for Yukon Indians on that critique — that critique is about two inches thick — and I am not going to stand here and discuss that critique clause-by-clause. This is the bill we are dealing with here; it is Bill No. 19. I will discuss this bill, at length, in any open forum, at any meeting that the member opposite wants. I will not discuss the critique of the CYI with her. If she wishes to ask where the recommendations that were made in that critique are, she should go to the CYI and discuss it with the CYI.

I have done that; I have spent two months doing it. I have talked with three people from the CYI and I have not got the recommendations filed in my head, locked away in my memory, and I cannot stand here and debate all the recommendations, as I did when we went through it with the CYI.

I am sorry, that is the best answer I can give her, but I am sure that if she went to the CYI and discussed it with the three individuals with whom I discussed it — who were the representatives for the CYI, who were the people elected by the CYI to deal with this matter and who agreed to everything that is now done through that critique and what would be dropped and what would not be dropped — then I think she would get her answers.

**Mrs. Joe:** I have, among my information here, the critique from CYI. The question that I was asking the minister was where in this bill are these recommendations covered? I am very serious about that question, because I want to know. I am not the only one who wants to know —

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

**Mrs. Joe:** The member for Tatchun says to ask CYI. I thought he once said that he is a legislator and that we make laws in this House and I am trying to find out from the minister where he can tell me, in this act, that this; just one recommendation — I mean there are 32 of them — where this one is included in the act?

I think it is very important that we know where these recommendations are included in the act, before we sit down and go through it clause-by-clause, so we will know what to expect and where it is going to be.

**Hon. Mr. Philipson:** We can go around this all day long, I do not mind. We can stay here for a year, if you want to stay here for a year.

I did not say that all recommendations were followed. I believe there were somewhere between 30 and 40 recommendations by the CYI for changes in this legislation made. I believe that it was the vice-chairman for the CYI, in the social department, who went to the press and told them of those changes — it certainly was not I — and told them the number of the changes.

I can tell the member for Whitehorse South Centre of one specific area, which the people continue to want to cover, which was the area of custom adoption, which is now custom custody.

I know a question that the member for Whitehorse South Centre — North Centre, I am sorry, I am very sorry, I am so used to South Centre that it is not even funny — has raised is the area of children being placed out of Yukon. This is something that does not happen; it has not happened for a long time, but it is allowed to happen in

this legislation for a very specific reason.

“ If a member of an Indian family does not live in Yukon — and lives in British Columbia, in Fort Nelson — and if we put in here that a child cannot be adopted out of the Yukon, that child cannot be adopted into its family, which could be anywhere in British Columbia or Alberta. Also if we put in there that a child cannot be adopted out of Yukon, if there is a family with three children, and one of those three children has a learning disability that we cannot handle in Yukon, and the child is going to be adopted into an area in Alberta where the child could go to school in order to keep the family together, the children could be adopted into a family in that area where one of the children is going to get his education.

Another area that helps in that instance is the ability now for us to be able to help fund a family who was going to adopt a family either out of the Yukon or in an area like that. It is our specific intention, through 107, 108, and 109 in this piece of legislation, that children will be kept in their own cultural lifestyle and in their own areas wherever possible.

I am not prepared to go through the CYI critique from the front to the back. That has been done already with elected members of the CYI who left happy with the way we had gone through the legislation. I am sure that, if the member for Whitehorse North Centre would ask any of those three members, she would be told the same thing. There were many, many changes made as a result of those meetings, and there is no way in the world that I will stand here and say that every recommendation was followed. The recommendations that we have adopted are in here; they are delineated. We will have to go through it clause-by-clause and those issues be raised when we get to them.

**Mrs. Joe:** The minister is very familiar with custom adoption as described by the Council for Yukon Indians and other Indian groups across the territory. He has assured me that Indian custom adoptions are - he has not assured me, he has told me — included in this bill somewhere. I looked through the bill and I could not find it.

**Hon. Mr. Philipson:** I guess this just points out what I am saying. I am not going to go through the entire critique and the entire bill to point out each section. If the member for Whitehorse North Centre will turn to Section 33, she will find it spelled out there right under custody.

**Mrs. Joe:** I checked through Section 33 when somebody said it was there and I did not see it. There was something in there about adoption. It did not say Indian custom adoption. There was all sorts of other things there, but the Indian people of the Yukon in their statement, if I can read it, said “The most important issue you have heard about in the communities is what is referred to a custom adoption. In the Indian way, giving a child to someone else is a token of honour and respect. The child is given in trust. Indian people often practice multiple parenting; grandparents often parent. A child may be unplanned, but not unwanted. Indian children sometimes choose where or with whom they will live. If parents choose to give up a child, they should choose the home to whom that child will be going. The Indian family is much more complicated than most non-Indians realize. Indian kinship traditions further confuse non-Indians. In fact, an Indian child is born into an extended family which includes most members of a community. Where there are two clans with the father belonging to one and the mother belonging to another, then the child is related to everyone.”

“ It was well described at a meeting in Old Crow, as the minister will remember, when one person said, “My wife and I are responsible for all the kids in Old Crow, and all of the people in Old Crow are responsible for my kids”. That part of the Indian custom adoption is very, very important among the Indian people, not only in Yukon, but all across Canada. If the minister can stand there and tell me that part of Indian custom adoption is included in this bill, then I really fail to see it.

**Hon. Mr. Philipson:** The member for Whitehorse North Centre obviously is going to have to read this legislation again. The member for Whitehorse North Centre is going to have to read section 33 again. I am not going to read it, because we are not in clause-by-clause debate; we are in general debate, but it is dealt with specifically. It is dealt with in a manner that even between what we had suggested and what we finally drafted, the Council for

Yukon Indians is ecstatic about this because it addresses the area of custom adoption as if it was custody.

Obviously, the member for Whitehorse North Centre has not read this. It does not say "adoption" in there, as she said, but if she reads it, and talks to the Council for Yukon Indians, the people who can deal with it and understand it, she will see that not only is it good, it is excellent, and the matter is dealt with to everyone's satisfaction.

I was at the meeting in Old Crow, also, and I understand the desire of the native people to have this in legislation and to have it as simple as possible, without going through courts and without going through procedures. It is here; it is reflected in this legislation. It could not be more specific; or easy, I might add.

**Mrs. Joe:** I would be very concerned about what recommendations are included in here. Among some of the meetings the minister attended, there was the question about once you have a bill with all of the amendments, are we going to be able to see that bill? The answer that was given to some of those groups was, "No, you cannot see it until it is tabled in the House".

The people who were asking for those recommendations from the different bands and different groups across the territory were very concerned that those recommendations be included in this act. We are wanting to know if they would be included and how they would be included but were told that before they could see it, it had to be tabled in the House.

That is probably what has been done. There have been changes made and it was tabled in the House and, for the first time, a lot of us saw what was in the new act. I am just wondering how many of those communities were really made aware of what exactly was in this bill after they had asked for changes to it.

**Hon. Mr. Philipson:** I guess we get back to the point of how many people have asked for copies since. There have been about 12 picked up out here.

The member for Whitehorse South Centre is obviously aware of the fact that I could not say what would be in a soon to be tabled piece of legislation. That would be clearly disregarding the rights of the members of this Assembly.

The statements that were made by the Council for Yukon Indians were made after reading the new tabled piece of legislation that is before us. The changes are reflected in this piece of legislation; there has been lots of time for people to read it. There have been no people come forward — as the member for Whitehorse North Centre is alluding — running into my office, saying that this is not what we said, this is not what we wanted, this does not reflect what we want.

The reverse is true; the reverse is true. The Council for Yukon Indians has come out publicly, after reading it, after examining it, looking at the piece of legislation after going through it and having their points of view put in here. Their points of view are in here; they have stated, after the fact, that there were 32 changes made; after this was tabled, not before.

The point that is being made is a ridiculous point, it is moot point. It is as much as to say there are thousands of people out on the street who have read this piece of legislation and do not agree with it. There have been a dozen pieces of this legislation picked up. The only information that is being given out on this would be either false information or information people want other people to have without reading it.

People do not have an opportunity to discuss the changes that have been made, because they have not read it, unless 12 copies have been passed around the territory, which I doubt very much.

**Mrs. Joe:** The concern that I brought up, with regard to different bands and other groups wanting to find out what was in legislation, goes back to this feeling of non-trust and confusion. If I could very strongly just mention a little incident that adds to this feeling of non-trust, from a lady in my riding whose daughter had a child and wanted to give it to her mother to raise — and her mother was a very upstanding woman. She did not have a fancy home with all the modern conveniences, they ate a lot of fish and dried meat, stuff like that, things that did not really look that great in a middle income home. The mother wanted to look after that child because her daughter said, "I want you to look after my child".

Now, that grandmother was not allowed to do that. That child was taken away from the mother and she never saw the child again. This is one of the reasons why. And, this is only one story, I could go on, but I am not going to. I could go on and I could give you countless numbers of stories, similar to that, that have happened in the past and that is the reason why the Indian people of Yukon — and I am not talking specifically about the vice-chairman and three or four other people, I am talking about the individual persons in the bands, the individual Indian persons who are familiar, or who, in the past, have seen this type of thing happen.

<sup>47</sup> That is the reason why the Indian people want to have some kind of guaranteed legislation to protect the rights of their children.

**Hon. Mr. Philipson:** That is a direct result of why the word "comforts" was taken out of this piece of legislation. This legislation is very specific; this piece of legislation would not allow a grandmother to have it. This is one of the terrible stories that is being used around the Indian community; that a grandmother would not be allowed to look after a child. It is a terrible story. It is an awful thing to be putting forward, saying that this legislation would not allow that. That is a direct, an absolute contradiction of what is in this legislation, and I direct you, and I beg you, and I implore you: read section 33.

The member for Whitehorse North Centre will not read section 33. Do it. If you read section 33, you will get your answers to these questions.

There is an example of the problem before us. There is an example of what is going on around this community. People are going into a community and saying, "You are a grandparent and you will not be allowed to raise a grandchild". It is a terrible thing to be saying to a family unit. This piece of legislation addresses that issue. This piece of legislation took out the words "necessities and comforts" and left the word "necessities". "Necessities" is easy to define. "Comforts" could have meant an indoor washroom or one bed for each child or a coloured television set in each room. We took the word out, after discussions with the Council for Yukon Indians, because we realized that this was a problem area.

**Mrs. Joe:** The point that I was trying to get at that time was to try to get the minister to show me, in this legislation, where these recommendations were included. That is what I am trying to get at. I am not saying that this act is all bad. What I am trying to find out is where those recommendations are guaranteed in this legislation. I do not want to go through it clause-by-clause and find out that "Gee, that is where it was supposed to be, but it is not there". I would like to know where those recommendations and those needs and concerns have been met in this legislation. I really want to know, and so do a lot of other Indian people in this territory.

**Hon. Mr. Philipson:** I would suggest that, at this moment, you allow us about 10 minutes for the member for Whitehorse North Centre to read section 33.

**Mrs. Joe:** Thank you, Mr. Chairman. I do not know whether you are going to give me 10 minutes or not, but I have already read section 33. I am not only talking about custom adoption. I am talking about 32 other recommendations. That is what they were asking for. They had 32 recommendations and they went to the minister and asked that these recommendations be included in the new act.

The minister from Tatchun says, "Go and ask them about it".

**Hon. Mr. Tracey:** Point of order. I did not say that.

**Mrs. Joe:** I am not only concerned about custom adoption. I can go over the whole presentation and read it as they read it to the minister and I could ask him, maybe because he can tell me that custom adoption is included in Section 33, maybe he can tell me where some of the other ones are included. That would be good because if he could do that then I would know. I am trying to find out where those recommendations are guaranteed in this act. Maybe not all of them were met, but there must have been some of them, other than custom adoption.

**Hon. Mr. Philipson:** All the recommendations that could be met were met. The recommendations that were met, met with the approval of the Council for Yukon Indians, in the personages of the people who brought the proposals forward. On the proposals that were not met and the recommendations that were not met, the

Council for Yukon Indians understood the reasons and left happy in the knowledge that they had been heard and that their views were reflected in this legislation. The recommendations are addressed in the best possible way they can be in the legislation that is before us.

**Mrs. Joe:** I would like to ask the minister if he is going to give me any indication as to where is recommendation number 1, that Indian band social administrator's be automatically notified upon apprehension or the intend to apprehend, is in this piece of legislation?

**Hon. Mr. Philipson:** The reason that it is not addressed is that it would be an unconstitutional matter.

**Mr. Joe:** I would like to ask the minister to explain to me why it is unconstitutional.

**Hon. Mr. Philipson:** Because it is a family matter and before the family is involved in it, you cannot go to another group of individuals who profess an interest without the family being aware of it first.

**Mrs. Joe:** I would like to ask the minister that if in special cases and application could be made to the director of child welfare, by any party, to waive automatic notification of the band is included in the legislation?

**Hon. Mr. Philipson:** If a person who was coming under this area made a specific recommendation to have the band involved at the time that the recommendation was made - after the recommendation, after the asking of the question - then I am sure that it would be allowed.

**Mrs. Joe:** The bands have asked that they be notified and the minister has stated that the information was confidential until that time. I would like to know at what point in time the department allows the band to know what is happening to a member of its band?

**Hon. Mr. Philipson:** Any child welfare matter is a confidential matter and kept in the strictest confidence. I am sure that the member for Whitehorse North Centre would not be a very happy person if she was to come under this portion of this act and I decided that it was my right as a member of society in Whitehorse that I know about her personal problems, or her confidential issues. If the member for Whitehorse North Centre came to me, specifically, and asked me to get involved in her particular instance, then I would think that that would be the appropriate time for me to get involved. I should not be involved before the time that the immediate family has had an opportunity to decide on its own whether it wanted someone else involved. This is a highly confidential matter and a lot of people — most people — would not like groups and individuals knowing what is going on in their personal lives.

**Mrs. Joe:** So, recommendation number one, from the Council for Yukon Indians, has not been met and is not in the new act?

**Hon. Mr. Philipson:** Am I to understand that we are going to go through the 32 recommendations from the Council for Yukon Indians, or whomever they came from?

**Mrs. Joe:** I am trying to determine where and what recommendations are included in the act, from the Council for Yukon Indians. I am prepared to ask the minister where those are included because I cannot go through this act, clause-by-clause, unless I know where those are, or even if they are included. Maybe they are and maybe they are not, but I do not know where.

**Hon. Mr. Philipson:** I would be very interested in knowing if the member for Whitehorse North Centre is now acting as a representative for the Council for Yukon Indians. As I have stated here, the Council for Yukon Indians has gone through these recommendations and are happy with the recommendations and the discussions we have had in this matter. I would suggest that the member for Whitehorse North Centre go to the Council for Yukon Indians and ask them to tell her which ones they were not happy with or the discussion that went on, and we can carry on from that point.

**Mrs. Joe:** I am an Indian person and I am concerned about 70 percent of those Indian kids who are apprehended by his department. The Council for Yukon Indians does not tell me how I have to care about my children, nor does it tell every other Indian in this territory. Not only do I represent the Whitehorse North riding, but I

speak on behalf of 70 percent of those children who are apprehended.

I do not have to go to the Council for Yukon Indians to do that. These people in here make the rules. I am getting tired of this kind of response that I am getting from him.

**Some hon. Member:** Good.

**Hon. Mr. Philipson:** Now, we are getting somewhere. I would guess that I have been in this territory longer than the member for Whitehorse North Centre, and I would not take that as a "I am representing a specific group of individuals". I also represent a specific group of individuals, Yukoners, that is who I represent. We have recommendations from a group of individuals in that larger group of individuals, the Council for Yukon Indians. We discussed the recommendations with those people and we have reached a happy, amicable solution to what they brought before us.

The member for Whitehorse South Centre does not represent 70 percent of the people. If she sits in this House; she represents 100 percent of the children. I would suggest that we all remember that as we go through our deliberations on *The Children's Act*. I would also suggest, if she wishes to discuss the recommendations from the Council for Yukon Indians, that that is from whom she seeks her input. I have done so.

**Mrs. Joe:** I do not really think it matters how long a person has lived in this territory to know how much you care about children. I do not think it really matters. You could live here a day and care just as much for children as the member who has been here 20 years or forever. That is not the question here. The question is that we have some Indian concerns that were made, not only by the Council for Yukon Indians, but by many groups across the territory.

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

**Mrs. Joe:** The Minister of Justice is mumbling to himself. I guess he does not respect the rules of this House.

I would like to go into this a little bit further. I would like to ask the minister to tell me, as briefly as he can, where those Indian recommendations are guaranteed in this act.

**Hon. Mr. Philipson:** The recommendations are guaranteed for all children in the Yukon Territory from page one to the end of the bill. We continue to go on discussing this in circles. The member for Whitehorse North Centre stands over there and tells me that she represents all native people in Yukon. I am happy to hear that. The recommendations she is speaking of are recommendations that come from the Council for Yukon Indians. Those recommendations have been met in discussions with the Council for Yukon Indians.

Now, am I led to believe that the member is talking as a person representing the Council for Yukon Indians a second time, or am I led to believe that the member has some questions, other than the questions and the recommendations that have already been addressed with the elected representatives of the Council for Yukon Indians whose recommendations she is speaking from now?

**Mrs. Joe:** I am not representing the Council for Yukon Indians, but I am concerned about the recommendations that were asked for by the Council for Yukon Indians and other bands, including the band that I represent. I am asking questions about them.

I do not pretend to be here representing the Council for Yukon Indians. I am here representing my members from Whitehorse North Centre. They are the people who elected me. I am also speaking on behalf of a party; I am speaking on behalf of a lot of interested people who are not even members of this party. Those are the people I am asking about and for, and I am not asking for smart-aleck answers from the minister, but I am asking for good, reliable answers.

**Hon. Mr. Philipson:** The minute that I start getting questions that are answerable without being questions coming in the manner they have been coming, the answers will change.

The member for Whitehorse North Centre knows that if she addresses any problem with me on a reasonable, straightforward, up-front area, that is how she gets her answers. If she wants to play games with me, I will play games with her.

**Mrs. Joe:** This *Children's Act* is not a game, nor do I pretend to be standing here playing a game. I am very serious about what I am doing, and I am very serious about my answers.

I am not playing a game; I am asking questions about an act that



is so controversial that it had to be taken out of this House once. It has come back with a lot of —

**Mr. Chairman:** Order please.

**Hon. Mr. Pearson:** On a point of order. We have not taken this act out of the House. We have tabled this act and it is here. That is a fact. We have not taken it out of the House.

**Mrs. Joe:** It was so controversial that it had to be taken back and amended before it was brought back to the House. If we want to find out exactly what is in this act and what it represents, then we have to ask questions. It would be very well if the other side of the House did not have an opposition; then, we would have a bill that would not have any opposition whatsoever. It would just be law. We are the opposition and we do have concerns and we have people we have to answer to.

<sup>51</sup> **Hon. Mr. Philipson:** We have taken this piece of legislation to every band. I have met with every native community that I can meet with. I have been to Old Crow twice. I have discussed all the areas of concern that have been brought forward to me. I have met with the Council for Yukon Indians, who were one of the greatest groups of dissatisfaction earlier on. That group is now satisfied that this legislation meets their needs and their desires. There is one section left that the Council for Yukon Indians has a problem with. On that section, I have been in discussion with the Council for Yukon Indians in the last couple of days. We have done everything in our power to meet any area that was brought forward and raised as a controversial area last spring.

Now, the member for Whitehorse North Centre is not asking specific questions about concerns other than the recommendations that come from the Council for Yukon Indians. Those recommendations and those concerns have been addressed between myself, my department, and the Council for Yukon Indians in long, lengthy consultations. They have come out after this bill was tabled. They have come out publicly in support of this piece of legislation with one problem and that problem we are working on at the present time.

That does not show a lack of regard for the native community in Yukon, nor to their problems, nor to the length that we will go to to ensure that we can address the problem areas that they have.

**Mr. Kimmerly:** I have been listening with increasing alarm to the debate about this information. It is totally unacceptable to tell us to go to the Council for Yukon Indians about these things. I want to explain several reasons why it is totally unacceptable.

This, first of all, is a public process. Occasionally, when we ask questions here it is simply to put the question and the answer on the public record. That is a legitimate reason in and of itself to ask and answer the questions. The negotiations between the minister and the CYI were not always public. We do not know if the CYI is going to tell us everything. We are here representing the opposition function in a legislature, if nothing else. It is our duty to bring these questions of public concern before this body and deal with them.

<sup>52</sup> Even if it has all been gone over with CYI, even if it is not, in any way, controversial, it is still perfectly appropriate to deal with it here in this forum. Indeed, this is the most appropriate place to deal with those issues. If there had been a select committee, or a committee of this House, as opposed to the minister, who had negotiated with CYI, this would all be unnecessary. It would all have taken place in a more efficient manner, but it did not.

This is our first opportunity to address these very major issues. We choose, here, what questions we will ask. The CYI does not choose that. If we choose to emphasize these recommendations, that is our choice. If we ask about the principles in the recommendations and ignore the fact that anybody else has previously made them, that is a legitimate exercise, if we choose to do that.

Now, there are responsible recommendations made about general principles. It is in general debate that they are most appropriately brought up and, even if the member for Whitehorse North Centre does not persist in asking about the principles in the recommendations, I will. I interpret it as my duty to deal with those general issues. If she does, I do not have to, but those principles are all going to be dealt with before we are finished. They have to be.

Let me get at the principle, or the propositions from another

angle. The minister and the vice-chairman for social development for the CYI have obviously come to an accommodation. We do not know what that accommodation is. We should know. It is my understanding, because he has told me, and it was not confidential at the time, that there is an accommodation partly about changes in the act, partly about promised regulations and partly about other arrangements to do with contracts for delivery of child welfare services, by primarily Indian bands.

<sup>53</sup> I raised the issue, at some length, when considering the *Legal Profession Act*, about these kinds of arrangements that are not made in public. It is perfectly appropriate and it is commendable that the minister has spoken with representatives of the CYI. We are not criticizing that process at all, but we need to know now what is the government policy about those issues?

More than asking about the 32 recommendations, there are also other questions about the native issue, or collection of issues, which are the cultural sensitivity of the bill and the effect of the bill, possibly, on aboriginal rights. There is obviously, at some point, a constitutional implication.

Will the minister table the letter, from the government to the Council for Yukon Indians, expressing the plans of the government concerning the regulations under this bill?

**Hon. Mr. Lang:** Before we get back into specifics, which I would say probably has much to do with the clause-by-clause reading, I do not know about the side opposite, but as a member here — and I think I can speak for at least a portion of the general public — I think, to some extent, we are getting a little tired, with respect to the generalities being discussed almost repetitiously, as opposed to going into clause-by-clause of the act.

I should point out — and I want to lean on my experience in this House — that, with respect to the clause-by-clause examination of a bill, if the reason for a clause in that particular act being brought forward is because of representation, at most times, if not totally all times, the minister sponsoring the bill will indicate the reason for the clause and the principle of the clause and why it is being incorporated within the legislation that is before you.

I submit to you that I find it difficult to understand, in deference to the Minister of Health and Human Resources, to sit here and discuss these 32 recommendations, in a specific sense. We all know it to be true that he has had active discussions with the organization in question, to the point that, at least in some people's eyes, it was very successful, to the point that there was a press release sent out supporting the minister.

I think what has been lost in the conversation that has taken place in the last hour and a half was the fact that the minister indicated that, when he got to specific sections, he would point out how this rectified the situation, as far as one segment of our population was concerned.

<sup>54</sup> I think it is safe to say that that would be the logical manner of going through the bill in question. Otherwise, we are going to do an examination of the bill about three times over. As a member of the House listening to the members opposite, I think it would be a very good compromise if all members listened to the Minister of Health and Human Resources who indicated that he would point out those particular sections that pertained to the recommendations that the member opposite spoke of. I think that the member opposite should be satisfied with that, because she could then determine whether it meets what she perceives to be the need or perhaps oppose the section of the bill.

From where I sit, I think it would be a strategy to utilize, for the purposes of dealing with the legislation at hand; as opposed to asking the Minister of Health and Human Resources to recite answers to 32 recommendations off the top of his head. I am sure the member for Whitehorse North Centre, and even the member for Whitehorse South Centre, could not recite from memory the recommendations that were put forward here a couple of months ago to the minister responsible. In fairness to him, he has committed himself to pointing out to all members those sections that pertain to the recommendations put forward by the organization that took an interest in the bill.

I just want to lean back on my experience that I spoke of earlier. There have been many cases where I have brought legislation into

this House. I have not had to go through recommendation by recommendation of any organization. All members accepted the principle that once we got into the bill that I would take the responsibility to point out and solve this particular question, brought forward by an organization through this particular clause in the act.

That seems logical to me, or are we going to sit here and Fillibuster for the next three days? If we are, please tell me because I have other things to do with my time. There are two flights of stairs up there, and I will go to my office and do my work and the minister can have the rapport with whomever wants to stay here and listen to each other speak. I would like to get on to the business of the House.

**Mr. Kimmerly:** I asked a question. I wonder if the minister would answer it?

**Hon. Mr. Philippen:** I would not ask him to restate his question; not a chance in the world. In answer to the member opposite, I will take what he said under advisement, whatever it was.

I would like to report progress. No, it is Monday, I cannot even do that. I will read *Hansard* a little later.

**Mrs. Joe:** I would just like to respond to the member for Porter Creek East in regard to this bill and the subject at hand, which is the recommendations by the Council for Yukon Indians. I would like to assure him that there is no Fillibuster on this bill. We are very, very concerned about it and we are trying to find out as much information as we can before we get into it.

If he has other things to do, maybe he had better go and do them, but I am trying to find out, as I said before, where the recommendations are guaranteed. If the minister needs time to tell me where they might be included, I would be prepared to sit down and give someone else a chance to find out things about another section of the act.

**Mr. Kimmerly:** I had asked a question about the promise that the minister made to the vice-chairman of the Council for Yukon Indians. I was asking for the letter, or letters, to be tabled. The minister has obviously reassured the CYI that it is going to get certain things. I am interested in the principles that have been promised concerning the regulations and the policies that they talked about.

**Hon. Mr. Philippen:** I am going to have to look at those letters before I make that determination, but I can guarantee you that some of the areas of concern of the Council for Yukon Indians will be embodied in legislation once this is passed. We are already deep in discussion on recommendations from different bands in communities that have come forward for things that they would like to do after this legislation is passed and we are actively working towards it now. Until the legislation is passed, obviously, that cannot happen.

**Mr. Kimmerly:** That is exactly the issue that I wish to get at. Obviously, the CYI is promised something, if and when the bill is passed. I want to know what it is. That is a very responsible question.

**Hon. Mr. Philippen:** If the member for Whitehorse South Centre reads the bill, the areas of responsibility are delineated there and, when we get to that clause, the answer will be obvious on how the clause can operate; we will have no problem discussing it at that time.

**Mr. Kimmerly:** There are lots of clauses, of course, but I am perfectly aware that the subject matter is about contracts to deliver child welfare services. Is there a specific agreement about those contracts, or potential contracts?

**Hon. Mr. Philippen:** We have signed no specific agreements, to date, because we do not have a piece of legislation that would empower us to do that, yet.

**Mr. Kimmerly:** The sections or the series of sections governing the possibility of delivery of service contracts are obviously the relevant ones. What is the government policy concerning those series of sections and is the government policy that, where an Indian band asks to deliver services in the band, there will be a contract signed in that area?

**Hon. Mr. Philippen:** Obviously, the director of child welfare

has the responsibility of looking after children in Yukon and all matters pertaining to the welfare of children in Yukon. If a group of individuals or a community group or an individual can show the director of child welfare that they are, indeed, capable of responsibly handling an area in their community, the director has the ability, through this piece of legislation, to turn over any of the powers that he has to a community group or individuals to allow them to look after that area that has been brought forward by the community group, if the community group can show that they can handle it in a responsible manner.

**Mr. Kimmerly:** Is there a general agreement, or an agreement in principle as to what criteria an Indian band would need to meet in order to prove their ability to the director in this area?

**Hon. Mr. Philippen:** That would certainly depend on the specific nature of what the band or community group wished to take over as a function. We are now engaged, I believe, in discussions with three or four Indian bands and groups that have brought forward specific recommendations on what they would like to contract, and we are actively engaged in the discussions with these groups of individuals.

As I said, we will have to wait until the legislation is enacted before we would have the ability to turn over the director's powers to a community group or individuals, as specified by this legislation, as we have no legislation to allow us to do it at the present time.

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

#### *Recess*

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

**Mrs. Joe:** Since we left here at 5:30, I have had time to think about some of the debate that we had had during this afternoon. I feel as if I still have not received the information I was asking for. I have talked to a number of people, as the member for Porter Creek West has probably done, and I am not sure that we really can accept that the recommendations have been met in here. Whether or not they were given to the minister by the CYI, they do concern all Indian people in Yukon.

I was asking, this afternoon during Question Period, the minister questions with regard to a cross-cultural training workshop that some of his social workers attended. Because of the information I heard was given to the social workers, it really makes me wonder what kind of training the social workers do get with regard to Indian people. I am prepared to give that information to this House when I receive it — it is coming — but when you have people coming into the Yukon from Ottawa to give a workshop on cross-cultural training regarding Indian people, and information is being passed on to social workers with regard to Indian children and child abuse, you have to wonder about the training those social workers get with regard to that area.

If we do not have any guarantee of those recommendations in this act, then I think that the Indian families in Yukon have reason to worry.

**Hon. Mr. Philippen:** I think we are dealing with a little more misinformation here. The cross-cultural program that the Yukon territorial government engaged in had, I believe, four Yukon members of the native community involved. We went on the recommendation of the CYI on the person who we hired as a cross-cultural training representative to work with our social workers.

The person, whom I believe the member for Whitehorse North Centre is talking about, is an individual whom the RCMP brought in to discuss this matter with the members of the RCMP. If I am not mistaken, other people then asked to be briefed by the person from the RCMP.

This is not one and the same as our cross-cultural training, where we went to great lengths to get a Yukon individual, and the person we hired was hired on the recommendation of the Council for Yukon Indians. I believe that we dealt with our area of the cross-cultural training in a highly responsible manner.

**Mrs. Joe:** I have no doubt in my mind that the workshop in question was carried out in a reasonable manner. The concern that I have is the type of information that is being given out by these experts from outside with regard to Indian children and the kind of information that they give out to social workers who, more than likely, have been hired from outside to come up here and help administer the child

welfare department. That is the type of thing that I am concerned about. Until I have the information written down in front of me, I am not prepared to elaborate too much more, although the remarks that were made were very degrading and very disgusting towards Indian families, and that kind of information was the kind of information that was being given out by this person from the RCMP, who came from Ottawa to do this.

This is one of the reasons why I have to be concerned about the lack of recommendations in this act from the Council for Yukon Indians, because if that is the kind of information they are getting within the department, how are the social workers going to think and how are they going to deal with the legislation as it is?

**Hon. Mr. Philipsen:** It is very difficult to deal with an issue in this manner because I have stated, and I will state again, that we have dealt very responsibly within the territorial government with regard to cross-cultural training. If an individual comes from Ottawa, on a federal basis, sent by a federal department to talk to the RCMP, I really do not see where that has any bearing on how the territorial government deals with our programs. Our programs are dealt with in a responsible manner. We hired a native individual who was recommended to us by the CYI, and I have no doubt in my mind that the social workers who live here and have dealt with the cross-cultural training officer hired through the CYI have been well briefed. If they are getting misinformation from the federal government, they might as well be getting misinformation from Botswana, because I have no control over it.

**Mrs. Joe:** I think the minister does have control over who comes in to conduct workshops within his department. The workshop that I am talking about was for Yukon government social workers. A member of the RCMP came into the conference to hold a workshop on cross-cultural training for Indian families. I would think that the minister, or someone in his department, would have control over whether or not that individual from Ottawa conducted a workshop.

I am not trying to get away from the act. I am talking in terms of the kind of information that that individual is giving to social workers with regard to how it would affect Yukon legislation in terms of how these social workers feel about children and Indian families because of this information that is coming from somewhere else.

**Hon. Mr. Philipsen:** We are dealing with an area that is completely outside this piece of legislation. This piece of legislation was drafted by a Yukoner, written with the help of an individual who knows child law; nevertheless, the drafting was done by a Yukoner. The input has been gathered throughout the communities, from all walks of life in Yukon. It has taken two years to do it and, if an individual came in from the Ottawa RCMP, I am sure that that I would not be able to go to him and say, "You can say this, but you cannot say this". If the individual came in and said something that was irresponsible or repugnant to the member for Whitehorse North Centre, I think she should address her remarks to the superiors who the individual works for, and that would be the federal government and the RCMP, certainly not the Department of Health and Human Resources that already has a piece of legislation tabled and already has gone through the effort of seeking the input from the Council for Yukon Indians, from interest groups all over the Yukon Territory.

There is no way in the world that you can sit over there and say that we have not had the input. It is reflected in this bill. It is reflected in what is before you. We are still standing here saying that we are open for amendment, if a good amendment can be shown. I have stood here, in my opening speech, and said that we will change different areas in it. I do not know, for the life of me, what more you could ask for.

**You are asking me to remember 32 recommendations that we dealt with two months ago off the top of my head. I am just truly unable to do that.**

Deal with the legislation, clause-by-clause. Let us get at any area that we have dealt with that has anything to do with the recommendations you will be made aware of. Now, let us get on with the piece of legislation before us. We can talk around this for seven months; you are not going to get anywhere until we start

talking about the legislation.

**Mrs. Joe:** I would dearly love to get on with the legislation. I would love to do that, but I find it very difficult to do unless I have some answers to some of the questions I have been asking.

The minister has said that he has had input, and surely he has. He has had input from all around the territory. Probably the majority of the input has been from Indian groups in the communities and individuals who are concerned about this act.

I asked him this afternoon if he could identify in Bill 19 where those recommendations are included. Now, he has not been able to do that and I would like to ask him one other question. With regard to the guarantee, that he may or may not have given to the CYI, that the recommendations would be included in government policy or regulations that that is how they would take care of these recommendations, I would like to know if that, in fact, is the case. Is the minister telling the Council for Yukon Indians "Oh, you may not see it in Bill 19, but we will include it in our policy and our regulations"?

**Well, if that is what he has said to them, I think that we have to make sure that it also says the same thing in Bill No. 19.**

**Hon. Mr. Philipsen:** I ask once again if the member for Whitehorse North Centre is speaking for the Council for Yukon Indians, or whether she is speaking as a member of the Legislative Assembly. It is very obvious to me that ... I am speaking, and I have said it.

**Mr. Penikett:** *(Inaudible)*

**Mr. Chairman:** Order please. Order.

**Hon. Mr. Philipsen:** Do you want me to sit down, or should I continue?

**Mr. Chairman:** No, continue.

**Hon. Mr. Philipsen:** I would direct the leader of the opposition to remarks made this afternoon and he should be involved in the debate from the total, and from the onset, before he gets involved in insulting remarks to me in this House.

I previously stated that I was speaking for all children in the Yukon, - 100 percent of the children in Yukon. If we are going to continue in this manner, and if we are going to continue going round and round the circle like this, I think that we are going to have to start addressing the areas of concern. On the areas that the member for Whitehorse North Centre is talking about, she says she has asked me questions and got no answers. She has had answers to every question she has asked. There has not been one thing I have not answered for her. If she stands up and continues to say "I keep asking questions about recommendations", I must say that I do not know the 32 recommendations off the top of my head. I have said that I have dealt with the 32 recommendations with the Council for Yukon Indians whose recommendations they were. This seems to me to be going absolutely nowhere. I would suggest that maybe the member for Porter Creek East is right when he suggested that this is nothing but a filibuster.

**Mr. Kimmerly:** This afternoon the minister asked the member for Whitehorse North Centre who she was representing, twice. We answered that, she answered it, and I spoke to it again after that. He asks the same thing again. That is a most insulting remark.

We do not, here, speak for the CYI. Occasionally, we agree with the recommendations or the statements that the CYI makes. If we are questioning in this House concerning the CYI recommendations, it is because we choose to do that, representing the people of the territory. These recommendations that the CYI made all speak about general principles. It is responsible to raise those principles in general debate. When we do it here, that is not the CYI raising those principles, it is we, the members of the opposition.

**We are raising those principles and those questions. We will continue to raise those principles; we do not speak for the CYI. The minister well knows that, and he may allege, as other members have, that certain members here who are of native ancestry are speaking for the CYI. That is an insulting representation. They are speaking for their constituents and our party.**

**Hon. Mr. Philipsen:** If we are going to talk about insulting, I think I can get right into this, but I will not. I am above that.

The member for Whitehorse South Centre says that he is talking about some of the recommendations that just happen to be exactly

the same 32 that the CYI brought forward. I am sorry I cannot accept that his coincidence is quite that great. The recommendations that the members are talking about are the 32 recommendations that the CYI brought forward, and there is no way you can talk around it; you can talk about it all day long. Those 32 recommendations they are talking about are the CYI's recommendations. They have been dealt with with the CYI and the people responsible from the CYI.

I have never said I would not talk about the general principle but, upon reading *Hansard*, you will find that the members opposite have not talked about the general principle. If they wish to ask the general principle of any issue, I have already spoken to them. Any one that they have raised a question on, I have addressed, and it is a red herring, indeed, that they are raising at the present time. It is really nice to see the leader of the opposition had such a wonderful weekend and came back in such a fine frame of mind.

**Mr. Kimmerly:** I will talk about a general principle. The general principle I want to talk about is the recognition of cultural influences and cultural values in this act. I could specifically mention section 132 on page 83, but it is appropriate here, under general debate, to speak about cultural influences generally. I am going to ask a general question about the principle of the bill and ask for specific information, as the minister has promised he would be willing to give it.

<sup>108</sup> In other jurisdictions, and in years past, it has been very common to recognize the religion of the parents. It is, in most child welfare acts, today, that, in a wardship matter, the religion of the child is the religion of the parents and is to be identified as either Catholic or Protestant, and not any other religion but those two.

That has been very common in this kind of bill. Indeed, in the existing law, there is a requirement on a wardship that the judge determine the religion of the parents. That is a clear recognition of the importance of a religious category or a religious denomination. That, as far as religion goes, is absent in this bill, but I ask about the general principle of the culture of a child and, specifically, if there is a recognition of the aboriginal cultures of the Yukon Territory?

Very little is said in the bill about aboriginal rights or aboriginal cultures and it is obviously assiduously avoided by the drafters. There is an argument about the constitutionality of any identification or discrimination on the basis of racial lines, but it is clearly an important question; it is a double-edged sword in that it could be argued, on the other side, that the failure to identify and properly deal with the existing cultural differences in the community is, in itself, a racial discrimination and that could be argued politically and legally in some court or other.

The government policy appears to be to refuse to put into the legislation any distinction between native children and non-native children; to refuse to identify or consider cultural issues.

<sup>109</sup> In determining whether or not a child is in need of protection, and this is primarily identified on page 83, cultural issues should be a part of the consideration. I would ask the minister an informational question: what is the government policy about identifying cultural issues in child welfare matters under this act?

**Hon. Mr. Philipsen:** That whole long tirade, or whatever you would call it, of a question, was simply put in the last statement. It is a shame that we cannot address the legislation in that manner.

The previous remarks that said this was a racial piece of legislation — or innuendo to that end by not really saying it, but talking about racial issues, talking about cultural issues and trying to put it all together and saying that the government is not addressing this properly and it is racial legislation because it is not specifically talking about certain cultures — is an indication of the poor level of debate on this at the present time.

The government has a policy statement, and it is stated in this piece of legislation — it is written down — that wherever practicable, a child should be placed with a family of his own cultural background and lifestyle, preferably in his own home community. That, in itself, is a policy statement that is irrefutable. It is written in legislation; it is there for everyone to see.

The assumption, even an off-hand assumption, that the department would not attempt to place a child with a culture that was as

close to the same as theirs as possible is not a very nice assumption for the member opposite to be making. I think he knows better than that.

The culture is not limited to native and non-native. We have other cultures in our communities as well. We have a Chinese culture; we have Vietnamese culture; we have Danish culture; we have all types of cultures. For these reasons, when we address this on a general basis, that is how it is addressed. Culture is foremost in the minds of the people when they are placing children.

**Mr. Kimmerly:** The minister was referring to section 109, which does talk about a cultural background, but that is not the whole issue. I would identify two areas where a similar principle should be included in the bill. One is in the area of coming to a decision concerning whether or not a child is in need of protection. There are — not there may be; there are — cultural differences in that respect. Indian people would answer that question differently for other Indian people than would non-Indian people.

<sup>110</sup> That is one issue. Another issue is about the kinds of facilities that wards are going to be kept in. The minister is well aware, or he should be, about the policy and the direction of the land claims agreement-in-principle. It is clear that there is an agreement, the spirit of which is clearly stated; that there be policy-forming boards and supervisory types of boards with native representation in this area.

If there were a procedure whereby child caring facilities were supervised by a citizen board with native representation, the tragedy of the residential schools would not have occurred. That kind of history can repeat itself if we do not learn from it and protect ourselves from those kinds of abuses.

There are two areas, one being the determination of the test of "in need of protection"; another, the supervision of child caring facilities where the cultural interests of Yukon's native people are clearly very important. They are not addressed by Section 109. What is the government's policy about those two principles?

**Hon. Mr. Lang:** I am just going to speak to the last principle and I just want to begin by saying that the member opposite does not know of what he speaks.

You have to go back approximately 25 to 30 years ago with the initiation of the residential schools. The reason and the purpose for the residential schools was the fact that there were no education facilities in the rural communities. That is where it started and that is where it ended. It is fine for us to stand up in this House and malign the people who were involved at that time, but I think that if you speak to any of the people who went through the residential schools, a lot of the people who were involved had very good intentions. The realities of the situation in Yukon, and for that matter, other places in Canada, dictated that if those children were going to get an education, they had to come to a centralized area for the purpose of education.

The member for Whitehorse South Centre smirks. That is fact. That will never happen again, with Yukon being structured the way it is, with the way the public infrastructure is being put in place, vis a vis, educational facilities from Old Crow to Watson Lake. The fact remains that the smaller communities are becoming, in many instances, more advantageous to live in than the larger centre, which happens to be Whitehorse. I am sure the rural members will argue that strenuously; that it is much more advantageous to raise a family in those communities.

When you take a look at the advancements we have made in education as far as the services we are offering in the communities, and continuing to extend, then I say that the member opposite does not know what he speaks of with respect to the actual practicalities of Yukon and where Yukon is today, and where it will be not only tomorrow, but in years to come. I do not buy the argument that we would go back to what happened 30 years ago. Physically, it would be impossible and I would say politically it would be impossible as well.

<sup>111</sup> **Mrs. Joe:** I can speak very seriously and honestly about residential schools. I can speak very honestly about them and I can tell you what happened — but I will not — because I spent a number of years in a residential school. There were many problems — we may never go back to them — but when you have attended

one of those schools and you see new legislation like this being introduced in this House, then you have to be very careful that those concerns and those things will never happen again. That is why I keep going back to recommendations from Indian people — not only the CYI, but other individuals — who have made presentations to the minister that those recommendations should be guaranteed in this act.

I would like to ask the minister, again: Ray Jackson has said that he is not worried about this act because the minister has told him that the recommendations would be included in government policy and regulations. I would like to know if that, in fact, is what the minister did say?

**Hon. Mr. Tracey:** I do not want to address the last question, but I want to address the principle of residential schools and the arguments that are coming across the floor from the other side.

On the one hand, the argument is that residential schools were no good because the Indian people were separated and given a different level of education or a different type of education than the rest of the population. They are arguing against that and then, on the other hand, they are saying that native people should be singled out in this act for special treatment, which amounts to exactly the same thing, in the long run.

This act has been designed to affect everybody in the same way; to address all of the problems of all the cultures in the territory.

**Mr. Kimmerly:** Let me address that, because it is very important about the general principles of this act. The residential schools were designed as an assimilative tool. They made a very clear and conscious policy to "educate" Indian children to become assimilated white people, who may be of native ancestry. That principle of assimilation could be and can be under this act, because there is no guarantee against it. That policy could be government policy, again.

Native people have told me that they will settle for nothing less than a guarantee in the legislation that that cannot happen again. Alternatively, native people must practically be guaranteed a say in the formulation of the policy. That is the spirit of the land claims in the social programs area; that if there were a board of citizens to supervise, or to license, or whatever, child-caring facilities with native representation on it, that would not occur again. I am asking the minister why is it not government policy that that be included in this act?

**Hon. Mr. Philipson:** Our social workers involve band social welfare administrators and other band resources in determining whether a native child should be considered in need of protection and in determining the best placement for a child. This is written in the policy of the department at the present time.

**Mr. Kimmerly:** Why is the policy of the department not expressed in the words of the act in those areas that I have already identified?

**Mrs. Joe:** I can see from some of the responses from the other side that policy is made for only one side of this House. I asked the minister once already about what Ray Jackson said and Ray Jackson said that they are not really worried about this piece of legislation because the minister has told him that the recommendations from the CYI would be included in government policy and regulations. I want to know from the minister if that is in fact what he did tell Mr. Jackson?

**Hon. Mr. Philipson:** There were areas talked about that would be covered under regulation and policy; there is no doubt that that was said. Mr. Jackson was definitely not trying to mislead anybody by saying that that was not so in statements we had.

The piece of legislation we have before us speaks of cultural issues, speaks of lifestyles, speaks of necessities and not comforts, addresses the areas that the CYI was interested in and, for those reasons, and the reason that there are other culturalists besides native and non-native in Yukon, the act is not specific for one particular culture.

**Mrs. Joe:** I would like to ask the minister if his policies and regulations in existence right now do include anything. He says that there are parts of the policies and regulations that include things that may or may not be in this act. I am just wondering why the minister has not included them in this act? What we are looking at

is not legislation, regulation or policy that hardly anyone ever sees or something that anyone can go and look at any day of the week, but we are looking at new legislation that is being put forward right now. We would like to be assured that a lot of those concerns are met in this act.

**Hon. Mr. Philipson:** I thank the member opposite for her thoughts.

**Mr. Kimmerly:** I have specific questions. Two of the recommendations that the CYI made — and these are recommendations 15 and 16 — are as follows: 15 is "in cases of orders regarding Indian children, evidence of cultures and traditions shall be considered"; and 16 is: "elders in the community shall be recognized as expert witnesses".

I have read the bill. I have read it several times, and I do not find those recommendations covered in this bill, either in the old Bill 8 or this one. Indeed, when considering a wardship order, there is a specific requirement that the judge consider various principles, and this is in section 132, at page 83. It does not say the judge shall consider the cultural background of a child. Now, why does it not? Why is that not a principle that is put into this bill?

**Hon. Mr. Philipson:** I will take that question under advisement.

**Mr. Kimmerly:** I thank the minister for that.

On number 16, it says that elders in the community shall be recognized as expert witnesses. There is a section about opinion evidence, in the bill, and we are promised an amendment about that. Will the minister also take under advisement the principle of specific recommendation, that elders recognized in the community should be recognized as expert witnesses concerning native cultural heritage?

**Hon. Mr. Philipson:** I do not think that I would be specific about that, in this piece of legislation, as we are dealing with general concerns and general areas. However, I would imagine that if a judge felt that an elder, in any given community, had evidence that he would like to have presented, I am sure that he would ask for it.

**Mr. Kimmerly:** That is an acceptable answer for the time being, but when we go to clause-by-clause debate, that question will be debated at some length. I can assure the minister that I will have further to say about it.

I spoke about opinion evidence. Is it the policy, or is it the principle that opinion evidence should always be admissible, or the opinion evidence of experts should always be admissible? What is the policy that will be reflected in the new amendments that are coming?

**Hon. Mr. Philipson:** It was my understanding — and we are not in the clause-by-clause debate and I am not really prepared to debate this particular section — in most instances, opinion evidence generally was expert opinion that was being asked for.

**Mr. Kimmerly:** There is a recommendation from the CYI that is not really culturally specific — and it is number 22 — that in any placement situation, brothers and sisters shall not be separated.

Has the government considered putting a direction to the director or the courts about that principle and why is not in the bill?

**Hon. Mr. Philipson:** That is an untrue statement. The policy is in this bill and we will come to it in the clause-by-clause debate. I have spoken to this issue on a number of occasions, saying that we will do everything in our power to ensure that families will stay within their own cultural lifestyle, in their own cultural area, in their own communities if possible and preferably be placed in lifestyles that are similar to the ones they are presently in.

We have also gone to great lengths to ensure that money will be made available to allow people who are adopting maybe one child to adopt the rest of the family if they are not able to, financially. Areas that we have not covered that were specific recommendations, such as children being kept within Yukon, were left out for that specific reason; that if there was a place where we could send more than one, maybe two or three children of the same family, to a member of the family in British Columbia or Alberta or somewhere, funds would be made available and the door would be open to enable families to stay together. I reiterate, it is the policy of this government to keep families together.

**Mr. Penikett:** I wanted to get in with a couple of very general questions, which arise out of the minister's expressed concerns, from the other side, that members of my side may be only representing the interests of one culture. I want to emphasize, as I start, that even though I confess to being a Celt, I am not going to represent the interests of Celts, here, tonight, at all.

**Hon. Mr. Lang:** Are you ashamed?

**Mr. Penikett:** Oh, I am certainly not ashamed. I just want to say that I am not going to represent their interests here, tonight.

I want to ask the minister, as a purely practical matter, since he is concerned that the welfare of all cultures and since religion is a dimension of culture, be respected, that the cultural attributes or a cultural character of their natural parents be respected and the children's identity, if possible, could be preserved? Even though that is not embedded in legislation, the minister does, I think, indicate some support for that.

Since he mentioned the Chinese a couple of times — I do not know how many Chinese kids come into care in Yukon and I would be curious if the minister knows that, at all — I would also like to know, since accusations have been made about an unusual interest in native children, if he is aware of how many native children, or how many of the children who become party to this process in Yukon, are native? Is it not the case, in Yukon, that a majority of children who suffer these kinds of experiences have been native and, in fact, still are?

I seem to recall seeing some figures out of a national government document, if not a local government document, which talked about an extraordinarily high percentage of kids in the native community. In fact, there was an extraordinary number of families having kids taken away from them. I ask the minister if he is not concerned about that, not in terms of only the welfare of the children, but the sensitivity to another ethnic community — particularly since the agencies and the institutions that are removing those kids, in many cases, do not have many people from that culture participating in the process, and so, at the very least, the possibility for racial misunderstandings, which I am sure the minister would want to avoid, as I judge from his remarks — can only be achieved if the culture from which those kids are being removed, is represented, somehow, in the process and the interests of those people are represented in the process?

Would the minister not, if he were a member of that culture, feel more secure about it if their right of participation in the process was secured in law?

**Hon. Mr. Philipson:** I am sorry I did not write the questions down in order, but I will try and remember them.

Naturally, the highest number is in the native community; I cannot give you the exact percentage, but it is the largest number. I probably should not say this, but as I was part of a native community, I checked out to see whether I could be involved in land claims but my people come from the south and I cannot, so I do not like to be really looked at as an individual who is completely and absolutely aside from a native heritage. There is some there.

On the issue of having it in law: it is in law. The general principles for all children are imbedded in this piece of legislation, by stating that the cultural background, the lifestyle and everything, as pointed out in here, we will go to great ends to ensure is maintained.

Let me ask you: if a child was to be placed, and if there was no person of that cultural background or of that specific religion, and because it was stated in legislation that either of those criteria had to be met, the child could not be placed, would that be in the best interest of that child? My answer to you would be, "I do not believe so".

We have stated here that we will do everything in our power to ensure that that is the fact, but we have also stated that our first interest is the wellbeing of the child, and to that end, we would be hard put to put in here that the person would have to go into a particular home of a particular style or culture or religion and limit the child's chances, perhaps, of being placed. I think that that would be unfair to an individual child and I think you would have to agree with me. We are doing everything in our power to ensure that that happens, otherwise.

**Mr. Penikett:** The minister, in some sense, has thrown out a challenge to me and I suspect that, were I not tired, I might proclaim on that subject for some time.

I admit that it is a difficult proposition that the minister puts and it is especially difficult, because, as I understand it, the children who are hardest to find homes for are not Indian children, but non-status Indian children.

Having been through the process of being a prospective adoptive parent myself. I know something about the kind of searches that go on, and I know the kids who have the toughest time finding a home — if they have lost their parents or have been taken away — are those kids who have that kind of racial background and also, worse, have serious health problems. If they have serious health problems, or have mental health problems or physical health problems, it is still very difficult for them to find homes. Other kids who are bright, attractive and active and healthy usually, I understand, can find adoptive parents fairly readily, even in current hard times.

I do not doubt that there are going to be some very difficult cases. If you had a Hindu or Sikh family here, and even if those parents were perhaps killed in a car accident, and you wanted to place them in a family of the same religion, you may not be able to find one here. That might be difficult. I think religion is a somewhat easier matter, because you can still, it seems to me, obtain an undertaking from the family. Even if it is not Catholics, for example, they could bring up the child as a Catholic. The family may be Methodist or Baptist or vice versa.

The point I was making to the minister is not a more subtle one, but it is a very particular one. I think it is fine for us to be egalitarian and even on a bill like this, if you use the expression "liberal", because the views the minister was expressing are essentially one of the best ideas of 19th Century liberalism; that human beings should be treated equally, whatever their racial or ethnic or cultural background.

The trouble is, if you have a system right now where you have some distortion in those numbers, if the numbers of kids from one culture coming into care are out of proportion to the numbers in the culture, that suggests some particular problems for that group in society, either — depending on how you analyze it — the result of poverty or whether from other social conditions. It seems to me probably to ignore reality or to pretend to ignore what is the reality or the truth about this society is that there is, in terms of numbers, one very significant racial and ethnic minority in this community. I suspect it is still the majority of kids coming into care who are from that minority. It seems to me that that at least is an argument for, at least from that minority's point of view, for wanting to make sure there is some expression in law. You could make it a general principle, in respect to cultural rights. It seems to me that if I were a member of that minority, I would probably want something a little more explicit than it seems to me is presently embodied in the commendable principle that the minister has addressed.

**Hon. Mr. Philipson:** I would direct the leader of the opposition to Sections 107, 108, and 109 where, I believe, we have addressed that general principle, and stated that we would attempt, wherever it is possible and practicable, to help any family that finds itself in difficulty and are not making a go of it as a family. We will put people in homes to try to help straighten the homes out. We will give counselling. We will give guidance. We will do everything in our power to ensure that a family stays together.

It is not the desire of this government, nor is it the wish of this government to take children out of the family unit. It is the desire and the wish of this government to have children remain within their families, and if they cannot remain in their families, within the family unit directly; that is, brothers, sisters, aunts, uncles, grandmothers, grandfathers, if not in that particular structure, within the community they come from, and if not within their area, within the Yukon Territory.

I might put some minds to rest on the side opposite by telling them that we have applications almost daily to adopt from the United States and from the south, which we answer daily that we do not do. We keep our own children within our own boundaries and the only reasons that children would leave this specific area are reasons that I have delineated in an earlier dissertation, which

would be in the best interests of the children, or the best interests of keeping a family together, or the best interests of keeping children with related family, who may be in a province that borders on us, or an area like that. I think that if we read this bill in its proper light and context, as we go through the legislation on a clause-by-clause debate, and as I have stated previously on a number of occasions, this is not a closed debate and amendments would be brought forward of a nature that would enhance this piece of legislation would be favourably looked at and discussed at that time. I see no problem in this area.

<sup>18</sup> **Mr. Chairman:** I think we should recess. We will now recess for 15 minutes.

#### *Recess*

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

**Mr. Kimmerly:** A discussion occurred about the policies concerning cultural background and cultural differences and a reference was made to figures. I have what I believe are the most recent published figures and they tell an interesting story. I am going to quote a few of them, because they illustrate a very important point that it is necessary to make.

These figures are from a book called "Native Children in the Child Welfare System", published by the Canadian Council on Social Development. It is written by Patrick Johnston. I phoned Mr. Johnston and discussed the figures with him and he had interesting comments about them.

It is interesting that there was a policy change in 1976-77 and status Indian children were in the direct care of Indian Affairs, on occasion, before that, but not after. The figures of status Indian children, as a percent of all children in care in Yukon, are as follows: 1976-77, 61.3 percent; 1977-78, 54.5 percent; 1978-79, 56.2 percent; 1979-80, 65.8 percent; and 1980-81, 61.2 percent.

<sup>19</sup> Of course, if you add non-status children, the figures are substantially higher. There may be disagreement as to who is a non-status child and who is not. It is generally conceded that in Yukon the figure is approximately 80 percent Indian children, if you include status and non-status.

It is interesting if you compare other figures to that because in Yukon the percentage of status Indian children as a percent of all children, ages 0 to 19, is 16.4 percent. So, if the situation were equal, among the two cultures there should be 16.4 percent of children in care and in fact there is 61.2 percent, a remarkable difference. But even more remarkable is the figure that is status Indian children in care as a percent of all status children, from birth to 19 years.

<sup>20</sup> The Yukon figure is the worst regional figure in the country, and it is 7.7 percent. That is absolutely remarkable. If you take a culture in the territory of all status children, of all the children, 7.7 percent are in care. It is interesting that in the Northwest Territories, the figure is 1.8 percent. In Alberta, it is high, and in the eastern and Atlantic regions, it is very low; two to four percent.

To bring the figures to a particular relevance to the policy in this bill, there are figures about the adoption of status Indian children by Indian and non-Indian families. These figures are national figures and I am not aware of Yukon figures but, in 1981, which is the last year, the figure is 77.2 percent. It is consistent over the last 10 years, ranging from a low of 71.5 percent and a high of 84.9 percent.

<sup>21</sup> So, it is clear that, in the last years, although it has been a policy that Indian children who are made wards or who are adoptable are, in fact, adopted into non-Indian families — or 77 percent of them are — that is a very startling figure because the policy, in section 109, is the current departmental policy, which is clearly published.

The purpose of raising these figures is to make a clear statement that the policy is not being implemented very well, at all. I am not intending to criticize individuals, but the facts in the empirical evidence speaks for itself; that it is necessary to have more than a departmental policy, because 77 percent of the children are going the other way, or are placed in culturally different homes, against the policy. That is simply too large a number to ignore.

I would also say that if the child welfare system is identifying and

taking into care, in Yukon, 61.2 percent of status children, when the percentage of children is 16.4 percent, clearly something is wrong.

<sup>22</sup> That is clear and empirical evidence that something has to change. Nobody will accept that status Indian parents are worse parents than any other kind of parents. That is not a proposition being put forward by anybody at all, and I make absolutely no innuendo that anybody is trying to say that. Nobody is. It is simply an untenable proposition. Therefore, we must look at why this is happening. What are the reasons for this happening? These statistics are from years in which the policy of the department is as stated in the bill, in 108 and 109, et cetera. I raise those figures to state that there is clear evidence of a discrimination in the system, not alleging that the social workers, or the director, is discriminating racially, as individuals, but there is a discrimination in the system.

A responsible legislature must take notice of those figures and must address the question of how we can make it equitable. How has the minister done that?

<sup>23</sup> **Hon. Mr. Philipsen:** I have said it before, and I will say it again: we address the area of the cultural lifestyle wherever possible and wherever it is practicable and we have stated over and over again that we will place the child within a family unit within the area where the child comes from, within the community, within the territory and so on.

The member for Whitehorse South Centre has made some rather, I would say, serious remarks, taken in context. You have to take them as very serious statements of, as he says, fact. Obviously, the figures he is quoting come from a source. I am very sure that the department probably has very like or similar figures, if it is not using the same figures.

He says there is something the matter and he says the parents are not at fault. He does not want to say that the parents are at fault, but does not say what the fault is, and then says there is a discrimination in the system.

What this piece of legislation is addressing are children who come into the system as either abused or neglected children. Once they enter the system, whatever cultural background they come from, we are doing everything in our power to ensure that the child remains within his own cultural background. I think the member opposite will have to realize that we are making that attempt.

There are problems, naturally, if there are more children coming into care from a cultural background than there are people of that cultural background who are able to take in the children who are coming into care. It puts society in a difficult position, in that we recognize the need of the child; we recognize the cultural background of the child and we recognize the need to put the child in his own cultural background. We also are realists, as I would hope the member for Whitehorse South Centre is. If there comes a time when a child cannot be placed in his own cultural background, and an attempt is made to place the child in a good home, with a good background in a culture as close as possible to his own culture, with a religion as close as possible to his own religion, I would suggest that it is in the best interests of the child to be placed in a family unit rather than to be held in limbo waiting for an opportunity to be placed with a family of his own cultural background if there are none available.

<sup>24</sup> There are times when we cannot deal entirely with theory, and what would be nice. There are times when we have to deal with practicalities and necessities. To that end, I believe that this legislation, in its present form, is dealing with the cultural problems and the lifestyle problems that are faced in Yukon. They are addressed in this piece of legislation and we will discuss them, at length, when we are on clause-by-clause debate, no doubt.

**Mr. Kimmerly:** I recognize that answer as a serious attempt to grapple with the problem and I do not wish to be critical. The problem I have is that, practically, sections 107 through 109 do not change the existing policy. I ask myself how things are going to be different in those areas after the passage of this act? I cannot find a supportable answer. The statement of policy, on page 64, in the various areas, is acceptable as a practice, in that the direction as to policy to the director about these important areas should come from the legislature, and we support the principle of including that, in the

general sense. In clause-by-clause debate, we will have a suggestion as to an improvement in the wording.

If the director does not follow the policy or if somebody disagrees as to the nature of the efforts taken, for example, considering the phrase "where practicable", what occurs? How can somebody enforce or guarantee that these policies are followed? What course of action is open to somebody who feels that greater efforts should be made about those particular generally stated policies?

**Hon. Mr. Philipson:** The director is directly responsible to the deputy minister, and the deputy minister is directly responsible to the executive council member, and the executive council member is the person who appoints the director as the person who will be charged with the responsibility of carrying out his mandate under this piece of legislation. If the director abrogates his powers in any particular way, on this legislation, it is brought to the attention of the executive council member. If it were deemed to be a violation of powers entrusted to him through this legislation, then I would suggest that the director would be in a very poor position for continued employment with this government.

**Mr. Kimmerly:** That is one general mechanism, for sure. The Council for Yukon Indians recommended various procedures to address these issues and it is scattered among their 32 recommendations, but the same theme occurs in several of them. One of them, No. 5, is as follows: "That the bands be involved in the final decision, or determination of any protection involving an Indian child." And No. 6., "That the band has the right to present evidence in court on the placement of the child." Now I am interested in that principle. I suspect that if the bands were specifically involved in the decisions about the placement of the child, that those figures I read a moment ago, would reverse themselves.

I recognize that the director must have a controlling or a supervising interest for wards, as the director stands in place of the parent for wards, but the Indian people are making a suggestion, which is a practical suggestion, as to how cultural input might occur in these decisions. It is a very workable suggestion that the band social administrators be notified, and that the band have a standing in the court and the right to present evidence and be involved in the determination.

Those appear to me to be very responsible answers to the general problem of the systematic discrimination against Indian children, as is proven by the figures. I have looked in the bill for inclusion of those principles and I cannot find them. By what means is the current government policy including those principles — that is, of band involvement — in these decisions?

**Hon. Mr. Philipson:** As I stated before, our social workers involve the band social welfare administrators and other band resource workers in determining whether a native child should be considered in need of protection and in determining the best possible placement of that child. This is a written policy of the department at the present time.

**Mr. Kimmerly:** I am aware that it is a policy at the present time, but the present figures are not an improvement over the figures of a year or two ago. It is clear to me that responsible legislators must canvass any responsible suggestion which would meet this problem.

I would ask if that is the government policy? Perhaps a better way to express it is: because that is the government policy, why cannot that policy — that is, notification of the band social administrators — and the policy concerning input of band social administrators or bands be stated in the legislation, similar to clauses 107 and 109?

**Hon. Mr. Philipson:** The member opposite speaks of the figures that he is reading from. I would ask him to table those figures so that I could also read the figures. I would like to read the figures that I have, of my own, which are available to me, and compare the figures. Perhaps they are the same, and perhaps they are not, so, I will not take it as a statement of fact that those are the figures, as stated.

Further to that, the legislation, I have stated over and over again, is for all children in Yukon, for all children who come into the area of a need for protection through either abuse or neglect, whomever they are. That statement does not need to be made in such a manner

that it covers every ethnic group or culture that is now in Yukon. The general, broad statement is enough to cover all ethnic groups and cultures and it is just not necessary to go beyond that.

The statement of policy is written policy and I can bring that written policy in, if it is necessary, but to have to state it in legislation, when we have a general, broad principle that speaks to the necessity and the desire to address cultural backgrounds, when it is stated plainly in the legislation, I do not think we need to go beyond that.

**Mr. Kimmerly:** I was going to mention, for the record, that the source of the figures I quoted is quoted as the minister's department. I will not table the book: it is published and available widely. I know, from personal knowledge that there are numerous copies in the minister's department and the administrators can easily get him a copy. I only have one; I will loan it to him if he cannot find a copy in the department. I believe it is in the public library, as well.

The comment was made about the written policy of the department. I am quite aware of the written policy and I am not asking the minister to table it. In fact, I obtained a copy some time ago and I am aware of its existence. The serious question is that, given the existence of the policy now, which is written departmental policy, the systematic discrimination is still occurring.

It is obvious that some changes are necessary and every responsible suggestion, and I would say especially suggestions coming from Indian people, should be experimented with. It is certainly not an answer to the question to say that a contrary policy exists and it is in writing. It would be very simple, given those figures, to establish a case in a court of law, for systematic discrimination, by a system. Given that something must change, the written policy alone is not a sufficient guarantee to enable change.

That point is made. I will come back to other points about systematic discrimination tomorrow, after the minister gets the figures from the department and any more up-to-date figures which may exist.

I would recommend that recommendations 5 and 6, especially, of the CYI are very responsible recommendations, and appear to me, in any event, to be very practical. It certainly appears to me that they could be established in the legislation. There may be a contrary argument that it is contrary to the Charter to discriminate in the legislation on the basis of race, but that argument should be met very easily by the counter-argument, firstly, that aboriginal rights, as they exist, are clearly protected in the *Constitution*.

Given the hard evidence of systematic discrimination that exists now, the argument could be made that the existing law discriminates on the basis of race. Certainly, as a matter of practical fact, it has in the past. Given that a change in the law to identify a real situation, that is, cultural heritage and cultural background, could correct a discrimination, it could therefore be constitutional.

A third argument to meet that is, to be absolutely safe, the government could include a section, as has already occurred under the land planning legislation, that the *Charter of Rights and Freedoms* does not apply, in order to specifically recognize a valid cultural interest.

**Hon. Mr. Philipson:** I thank the member opposite for his thoughts. I think, because of the lateness of the hour, Mr. Chairman, I would ask you to move progress on Bill 19.

*Motion agreed to*

**Hon. Mr. Lang:** I 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 the House do now adjourn.

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

*Motion agreed to.*

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

*The House adjourned at 9:28 p.m.*

