



The Yukon Legislative Assembly

Number 17

4th Session

25th Legislature

HANSARD

Tuesday, April 17, 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
------------	-------------

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

11 Whitehorse, Yukon
Tuesday, April 17, 1984 - 1:30 p.m.

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

Prayers

DAILY ROUTINE

INTRODUCTION OF VISITORS

Hon. Mr. Pearson: I would like to introduce to all members in the House a very distinguished guest in the Gallery, today. He is the hon. William Hamilton, a former member of the Parliament of Canada. He was first elected in 1952 and served as the Postmaster-General for five years in the Diefenbaker government prior to beginning his business career in Vancouver.

Mr. Hamilton is the recipient of many honours and awards. He is the chairman of Fidelity Life Insurance Company and Century Insurance Company of Canada, as well as director of, among other organizations, the Institute for Research on Public Policy and the Investment Dealers Association of Canada. He is here today as the commissioner of the Royal Commission on the Economic Union and Development Prospects for Canada, more commonly known as the Macdonald Commission

Applause

12 Mr. Speaker: Are there any returns or documents for tabling?

TABLING RETURNS AND DOCUMENTS

Hon. Mrs. Firth: I have for tabling the Yukon Tourism Industry Highlights, 1983. In conjunction with that, I have a follow-up analysis, Advertising Response Conversion study, 1983.

Hon. Mr. Pearson: I have the answers to three questions asked by the hon. member for Mayo with respect to the hiring of permanent part time employees.

Mr. Speaker: Are there any reports of committees?
 Petitions?

Introduction of bills?

Notices of motion for the production of papers?

Notices of motion?

NOTICES OF MOTION

Mr. Brewster: I move THAT this House is of the opinion that every Yukon community must have proper medical services available within the community; and

THAT this House is of the opinion that the community of Beaver Creek does not have proper medical services available; and

THAT this House is of the opinion that the federal minister responsible for health and welfare should take decisive action to ensure that the residents of, and visitors to, Beaver Creek are provided with adequate medical services by stationing a nurse resident in the community; and

THAT the Speaker forward a copy of this resolution to the Minister of Health and Welfare.

Mr. Speaker: This is a notice of motion.

Are there any further notices of motion?

13 Statements by ministers?

MINISTERIAL STATEMENTS

Hon. Mrs. Firth: I rise on this occasion to advise the members that the 13th Annual Tourism Industry Highlights Report for the year 1983 is complete and available for distribution. As the Industry Highlights indicate, 1983 was the best year ever for tourism, indicating the importance of this industry to our economy.

Over 390,000 border crossings were recorded. The majority of our tourists continue to be Americans, as 61 percent of the total

visitors. Canadian visitors increased their share from 26 percent to 30 percent, and overseas visitors increased slightly from 8 percent to 9 percent of the total.

Other surveys indicate that Canadians and overseas visitors stay longer in Yukon than their American counterparts, which, when tied to the increase of these markets, improves our tourism economy significantly. Newer reporting methods and more up-to-date analysis has shown that tourism contributed \$77,000,000 to our economy in 1983, which compares to the \$51,000,000 recorded in 1981 and 1982.

The 1983 tourism year saw major increases in our marketing efforts. This resulted in an increase in the number of inquiries. In 1983, 80,000 inquiries for travel information were processed by the department with each inquiry fulfilled by a copy of our Yukon travel guide. An additional 120,000 guides were distributed through travel agents, tour operators, automobile associations, and Tourism Yukon. As well, 20,000 travel agent manuals were distributed world wide.

The marketing branch participated in an increased number of market places and other trade shows, as well as consumer shows throughout Canada, the United States, and Europe.

14 1983 was the wrap-up year for the \$6 million Canada-Yukon Tourism Agreement and saw the implementation of the Tourism Small Business Incentive Program. Both were highly successful and contributed significantly to our tourism industry.

The report contains many other useful highlights, documents changes within the industry and presents an extensive set of data used to outline trends and performances of Yukon tourism. The highlights report will be distributed to industry officials, government agencies and universities, and is available to the public.

A similar document, our 1983 Conversion Study, is also available. This advertising response conversion study is the second to be completed in-house and examines the effectiveness of tourism through Yukon's promotional activities by determining how many responses for information were actually converted into Yukon visits.

The overall conversion rate achieved by all promotional methods showed that 32 percent of those responding to our survey actually visited Yukon. The highest conversion rate, which is 58 percent, was achieved by US general inquiries, followed by a conversion rate of 37 percent for the Alaska Travel Directory, which shows the effectiveness of our joint marketing program with the State of Alaska. Of magazine advertising, Reader's Digest recorded the highest conversion rate: 29 percent.

The industry highlights and conversion reports are examples of two documents produced by the department and demonstrate the in-house capabilities, as well as our commitment, to undertake research and evaluation projects to support our tourism industry in Yukon.

15 Mr. Byblow: From a historical point of view, all of the information provided by the minister in her statement is generally good news, because it is about last year and no one wishes to quarrel about that. We will be looking quite closely at the conversion study, because it should prove to be an excellent document providing some excellent comparative analysis for the activities that will be taking place this year.

The minister is acutely aware of the controversy surrounding the predator control program and its potentially damaging consequences to the industry this year. Certainly, when the conversion study is done for this year, we ought to be able to determine more clearly just what impact that program may have had, and especially so, in light of the increasing inquiries that the minister announces.

It cannot be de-emphasized that any threat to tourism, currently number one in our economy should, in any way, be threatened.

The minister noted that tourists are staying longer and this is encouraging. I suppose that that would appear to explain why tourism revenue is up by 50 percent when border crossings are up by only eight percent. I would be curious to hear from the minister whether it is determinable whether our marketing program is clearly correlated to the origin of our tourists.

16 On the subject of the tourism development and incentive programs, I would be pleased also to hear from the minister whether

we have any progress on our discussions with the federal government to continue tourism initiatives this year. Certainly, in line with the motion presented by this side last week, we will be pressing the government for a greater promotion of tourism development in areas outside the principle corridor and destination points policy.

In conclusion, I would say to the minister that her department not lose sight, nor ignore, the voice or the views of industry in Yukon. Quite clearly, the usefulness of a relationship with industry is most important and particularly so in light of the precedent of the relationship that has developed over the years between this government and industry. We thank the minister for her statement and look forward to continuing debate.

Hon. Mrs. Firth: I thank the member opposite for his comments and just rise to reassure him that Tourism Yukon will continue along in its very positive approach to marketing Yukon and we will always maintain a positive attitude as to the results for next year's tourism business, which we are anticipating will be excellent. We will also maintain that positive attitude in our relationship with the private sector.

Mr. Speaker: Are there any further statements by ministers? Oral questions?

QUESTION PERIOD

Question re: Bilingualism

Mr. Penikett: I have a question for the government leader, in his capacity as the minister responsible for intergovernmental affairs. I would like to know, since the announcement in Ottawa that we were to be made officially bilingual and the introduction of the bill to give effect to that, whether there has been any substantive communication between that government and this government on that question? Further, does the government leader have any information to give this House about — how can I put it — the speed with which that measure may or may not proceed?

Hon. Mr. Pearson: I received a letter yesterday, from the Minister of Indian Affairs and Northern Development, advising me that, subject to our conversation here in Whitehorse, legislation has been tabled in the House of Commons. He also indicated, in that letter, that it was his intention to give both territories an unspecified amount of time to consider the tabling, or some action, in the territory that would nullify the effect of that legislation proceeding in the House of Commons.

Mr. Penikett: From the communication that he has had with the federal minister, does the government leader have any reason to believe that some initiative from this government — such as improved French language services such as may be requested, from time to time, from the Francophone community here, and giving those services some statutory authority — would be a sufficient response from the federal minister's point of view to deal with the problem that he has identified in this territory?

Hon. Mr. Pearson: I do not believe it would be; however, that has yet to be confirmed. I believe that, given the announcements made by the minister and the intent and the tone of the bill in the House, nothing would suffice short of us passing legislation in this House making us a bilingual territory.

Mr. Penikett: During the public discussion at the time of the introduction of the federal measure, the Secretary of State, Msr. Serge Joyal, was seen to say publicly that, in his view, native languages and French languages should have the same constitutional status in this part of the world. However, the bill that that minister proposed does, rather, the opposite. Has this government had an opportunity or an occasion to explore that contradiction in the federal position with officials of the federal government?

Hon. Mr. Pearson: No, we have not. However, I am aware that the Government of the Northwest Territories is pursuing this very point, at this time.

Question re: Macdonald Commission

Mr. Byblow: We, on this side, would also like to welcome Mr. Hamilton to Yukon and I have a question for the government

leader, on the subject of his commission.

Yesterday, the government leader met with Mr. Hamilton and, today, we have in circulation an interim report, issued by the commission. As well, the commission has announced its intention to further study the unique economic problems of the North. How will this government be participating in the study?

Hon. Mr. Pearson: We have done a considerable amount of work, as a government, with respect to submissions made to the commission. We are planning on doing an awful lot more work; they have asked some, we consider, very pertinent questions and we are cooperating with the committee in every way we can. We are providing research and availing ourselves of their research, as well.

Mr. Byblow: One of the issues addressed by the commission, relative to Yukon, is the question of provincial status. Will this government be advancing its position on this subject to the commission and, if so, in what timeframe is that to be presented?

Hon. Mr. Pearson: I advanced our position on provincial status to the commission when they last sat here in Whitehorse. It is, if I am not mistaken, one of the items that is mentioned in this particular report.

Mr. Byblow: The government leader is correct.

In the view of this government, does it see the commission's work as useful and productive in addressing or assisting with the development of Yukon's economic future?

Hon. Mr. Pearson: I do not know yet. I have a feeling that it certainly will be, in the final analysis. I do not know that it has been, yet. We are very encouraged, though, that the commission did not forget about us, that they took the effort to come here and that they sought input in the territory. They received a lot of input in the territory and I am sure they are very appreciative of that.

I think it is also significant that Mr. Hamilton is here now to indicate to us that they are still very much concerned with what is going to be transpiring in this part of Canada. I believe that they feel that they can be of benefit to us.

Question re: Mental health amendments

Mr. Kimmerly: To the Minister of Health: recently, the Yukon Medical Association criticized the government for its failure to adopt a more open approach concerning the merits and shortcomings of the recently passed mental health amendments. Is the government planning to establish a select committee to consider the new legislation planned for the fall?

Hon. Mr. Philipsen: No, but I think, for the record, the member opposite should also mention that the Yukon Medical Association commended this government for the action and the speed that was taken to resolve a serious problem that was before this House and the territory, and, at the same time, state that in the new legislation, which we hope will be put forward in the fall, all areas of consultation will be exhausted.

Mr. Kimmerly: By what method is the minister proposing to receive public consultation?

Hon. Mr. Philipsen: We will ask for any interested members of the public, interested groups, the Medical Association and others to come forward with their input at the time the legislation is being drafted.

Mr. Kimmerly: Just like *The Children's Act*.

Does the government at least plan to allow the Committee of the Whole here to call expert evidence on the new legislation to be introduced in the fall?

Hon. Mr. Philipsen: I believe that is a question that rests with Committee of the Whole, and I thank the member opposite for his positive comments on *The Children's Act*.

Question re: Predator control

Mr. Porter: I have a question for the Minister of Renewable Resources. I understand from news reports that the Yukon Visitors Association is concerned about the government's predator control program as it relates to possible effects on the future tourism markets in Yukon. Is the minister prepared to make available to the YVA all relevant information on the predator control program, and would the minister undertake to table the information package that would be delivered to the YVA to this legislature as well?

Hon. Mr. Tracey: I am quite prepared, when the YVA asks me for the information, to provide whatever information we have available. As for tabling it in the House, I am not prepared to do that. I think every member of this legislature who wanted the information now has it, including the member who just asked the question.

Mr. Porter: In reply, I have not received all of the information in respect to the predator control program. In a letter addressed to D.M. Lavenier, President of the Wildlife Society of Canada, the minister stated that we have not yet developed species specific management plans, or area management plans. Why does this situation exist in the department and when can Yukoners expect this government to complete the necessary work on needed management plans?

Mr. Speaker: Order, please. I believe the original question had to do with the Yukon Visitors' Association, and is this supplementary to the main question or is this a new question?

Mr. Porter: Clearly, the question relates to the issue that was brought before to the minister in the previous question, the predator control program.

Mr. Speaker: Yes, if it relates to the Yukon Visitors' Association I will permit the answer. I believe that was the original question. All questions must be supplementary to the original question.

Hon. Mr. Tracey: It does not have anything to do with the Yukon Visitors Association. It has to do with the predator control program and management of game in the territory. I would like to state for the record that the reason for the predator control program being set up the way it is, at this time, is to gather information so that we can manage on a species by species basis. To get that information, we have to have projects put in place to give us the information. If the members across the floor would, instead of being counterproductive, be productive and support the government in gathering information, we could go a lot farther a lot faster.

Mr. Porter: In their requests to this government with respect to the predator control program, I am sure the YVA is also concerned with respect to the grizzly program. In the same letter, the minister admits "no specific grizzly report has been written since grizzly work in the area will only commence in May, 1984". Being that this is the first time that the government has openly admitted they have no data on the grizzly population in the bear control area, and in light of this information, is the government still prepared to proceed with the bear removal program as announced?

Hon. Mr. Tracey: Yes, I have said it 100 times already and I will say it again. We are prepared, and we are proceeding with the program as announced.

Question re: Women's Bureau

Mrs. Joe: I have a question for the minister responsible for the Women's Bureau and I would like to ask the minister about the \$10,000 research on battered women. This question I have asked before and have not received an answer. Did his researchers consult with the Yukon Status of Women's Council in regard to the final recommendations in the report?

Hon. Mr. Ashley: The report was done by a consultant. I did not check to see exactly who the consultant conferred with and who they did not. They were looking at all aspects of this government, the involvement in it, and Yukon, for that matter. I imagine they did.

Mrs. Joe: He still did not answer my question. Since the complete report may not be tabled at the ministerial conference on the status of women, can I ask the member what he intends to do with the \$10,000 study?

Hon. Mr. Ashley: The report is being looked at and analyzed by my department, the Department of Justice, health and human resources and other agencies involved. The outcome of that study of the report will be what will probably get tabled at the minister's conference.

Mrs. Joe: Since the minister is not aware of whether or not the report has been given to the Status of Women's Council, with regard to the recommendations, I would like to ask him if he would make available a copy to them before the conference in May?

Speaker's Ruling

Mr. Speaker: The hon. member is making a representation, but, if the minister wishes to respond to it, I will permit it.

Question re: Economic development council

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

As the minister is aware, many members of the public are seized with the desire for government to assist and help coordinate, wherever possible, economic development initiatives in the territory. The mayor of Whitehorse has asked the Government of Yukon to participate in an economic development council, which would, in part, perform such a function, I presume. Can the minister state why he feels that it is not necessary for this government to participate in the proposed council?

Hon. Mr. Lang: I do not know where the member opposite has been in the past, other than the fact that I realize that he reads the newspaper. We had a discussion here, approximately one week ago, on a motion that was unanimously passed by this House, with respect to the formation of an economic council for Yukon. I made it very clear to the mayor and his council that it would be a territorial-wide initiative, not one isolated in Whitehorse. Now, if the members opposite disagree with that, stand up and say so.

Mr. McDonald: The mayor's council seems closer to becoming a reality than the one promised by the minister. Does the minister not accept the proposition that the Yukon government could provide such a council with the necessary territory-wide perspective it needs to be effective?

Hon. Mr. Lang: I made it very clear, in confidence, to the mayor, approximately two weeks and a half weeks ago, that we were working on various models to be presented to Cabinet for the purpose of forming an economic council. Since that time, there were a number of initiatives taken by the mayor to, obviously, form an economic council for the City of Whitehorse, which is his prerogative.

The prerogative of this House, and my responsibility, I believe, is to form an economic council that will be representative throughout the territory, for the purposes of looking at the general economy, present and future. With that in mind, that is the intention that I intend to carry through, under the commitment that I made to this House, approximately one week ago.

Mr. McDonald: In the current environment, which is essentially that of a coordination vacuum, someone has suggested that the concept of a silver smelter be investigated and I understand that the mayor of Whitehorse is quite actively investigating this proposal. What meetings has this government held with silver producers to establish whether there is a sufficient supply to warrant a smelter?

Hon. Mr. Lang: I had a cursory look by the department at the possibility of a silver smelter. At the present time, it should be pointed out that, from the information we have, it would appear that the volume of silver does not warrant the construction of a smelter. We intend to send that information off to industry to find out if that is an accurate assessment. If it is not, we will be listening to what industry has to say, with respect to the proposition, and then carry on from there.

"

Question re: NCPC report

Mr. Penikett: I have a question for the government leader, or another minister if the government leader wishes to refer it.

In October of last year, the National Energy Board reported on the Northern Canada Power Commission, and in that report, it said that any subsidization of electrical power rates should be accomplished outside the regulatory process, and, as a question of public policy, must be decided at the political level. Beyond the *Public Utilities Act* we have considered, what other political response, if any, does this government anticipate in this policy area?

Hon. Mr. Pearson: At the present time, we do have some subsidies in place in respect to electrical power rates in the territory. I would think that once we get this regulatory problem straightened out, because it is a problem and there is going to be change, the National Energy Board will be the regulatory agency

now for NCPC. NCPC is going to have to file its proposed rate increases with the National Energy Board. That is going to be quite a departure. Once we have that work in place, I would suggest, is when we would be able to take a look at the other recommendations in that report.

Mr. Penikett: The NEB report on NCPC also said that, from time to time, companies other than NCPC have built electrical power projects in the north and it was evident to the board that building a plant sufficient to meet the needs of a particular project or company might have the effect of postponing, perhaps indefinitely, facilities that might serve, more effectively, both the project itself and other customers.

What, if any, response has the government leader had to that comment by the National Energy Board, and does it have any bearing at all on this government's decision with respect to Yukon Hydro?

Hon. Mr. Pearson: No, I believe that the comment that was made was directed more to the Northwest Territories than to Yukon, because we do not have anyone, except Yukon Hydro, producing an appreciable amount of power in the territory, and certainly no one else, other than NCPC, who is producing power for use other than for themselves.

I believe that what the report was addressing was a hypothetical situation in this territory; for instance, Cyprus Anvil Mines making application and being allowed to put in its own power supply for its own use. That would have had quite an effect on the capabilities of NCPC to provide power to a large area of the territory.

Mr. Penikett: While the Canada Power Commission also explained to the National Energy Board that the inflexibility of the debt re-payment terms has had too major consequences. First it has hampered construction of the most economic-sized facilities, for the long term, since present customers have to pay for unused capacity. There was another reason why it was concerned, too. Does the NEB's conclusions on this point square with this government's conclusions in that area, and has it had occasion to pursue this subject with the federal government?

Hon. Mr. Pearson: Oh yes, we have been strong proponents of that particular thesis for a number of years. One of the most onerous sections of the *Northern Canada Power Commission Act*, in our estimation, is the one that requires the mandatory payment of debt immediately, no matter how much power is used. It has been, certainly, the most critical cross that we, as users in the territory, have had to bear for these many years. I cannot see us ever being rid of that particular cross until we can negotiate some sort of a better deal with the Government of Canada in respect to the amortization, if you will, of these costs over longer periods of time, and based on the consumption or use rather than based strictly on a 20 year time limit or a 10 year time limit or a five year time limit. It is just an impossible position.

Question re: French language education program

Mr. Byblow: The Minister of Education told me yesterday that this government was not advised by the federal government that it would pay any additional costs associated to the development of a french language education program. Yet, in a letter to the Minister of Education from the Secretary of State Minister, Serge Joyal, dated January 19, 1984, the federal minister makes it clear that if the government were to proceed with the french language initiative, any additional costs to this government would be covered by the federal government. How does the minister explain this contradiction?

Hon. Mrs. Firth: It is very difficult for me to explain why M. Serge Joyale is contradicting himself.

Mr. Byblow: The minister is not providing me an answer. The federal minister provided a letter to this minister saying that the federal government would pick up any costs associated with a french language education initiative. My question to the minister, why does that appear to be a contradiction from what she told me in the House yesterday, that the federal government would not pay for any additional costs?

Hon. Mrs. Firth: We have been in touch with the federal government regarding other matters and they have not given us a

firm commitment regarding french language education and initiatives. The letter that the member is referring to is the monies that we presently get from the federal government, and all he is reassuring us about is that he will continue with that commitment but he has never written and given us a commitment, say, for a french school - to fund a french school; or to fund any additional french immersion programs. He has simply stated to us that they will continue to give to us the \$180,000 or \$190,000 that they give to the YTG presently.

Mr. Byblow: The minister is wrong. The letter states clearly that the federal minister will provide additional funding outside the standard protocol agreements between this government and the federal government. Has the minister taken the federal minister up, in any form of communication or response, on this subject to seek out that additional funding, which is clearly outside the standard funding that she refers to?

Hon. Mrs. Firth: When we make the final decision as to the avenue we are going to pursue in French language education, I believe the expression is, I will be taking the federal minister up.

Question re: Yukon Housing Corporation eviction policy

Mr. Kimmerly: On April 5th, I asked the minister responsible for Yukon Housing about eviction policy and the confusion between the board's mandate and the mandate of local associations, especially in Carmacks. Is the minister now able to answer that question?

Hon. Mr. Ashley: Yes, the board is fully responsible for that, but it does take the advice of the local housing authority. It has to be a Yukon Housing Corporation employee who actually does the leg work and the delivery.

Mr. Kimmerly: The employees' manual is confused and inconsistent regarding the mandate of the local association and the central board. Will the minister look at the employees' manual and make the policy consistent?

Hon. Mr. Ashley: This minister does not look at the policy manual and make policy consistent; that is a function of the housing corporation's board of directors, but I will instruct the general manager to have a look at it to see if it is or is not consistent.

Mr. Kimmerly: Local associations in some places in the territory believe that the power to evict lies with them. Will the minister clarify the situation to them; that is, that it is government policy they do not have that jurisdiction.

Speaker's Ruling

Mr. Speaker: Hon. members are, once again, making representations. It would be appreciated by the Chair if the members could restrict themselves to questions, rather than asking that the government do something or not do something.

Hon. Mr. Ashley: Certainly, if there is a problem, I will bring it to the board's attention.

Question re: Land claims negotiators

Mr. Porter: I have a written question I would like tabled. It is to the government leader.

My question reads as follows: In reference to each of the land claims negotiators who has worked for the Government of Yukon during any of the 1978-79, 1979-80, 1980-81, 1981-82, 1982-83, 1983-84 fiscal years, what was the number of days worked by each of these land claims negotiators each fiscal year; what was the total amount of salaries or fees paid by the Government of Yukon to each of these land claims negotiators in each fiscal year; what was the total amount paid by the Government of Yukon to each of these land claims negotiators in each fiscal year for the purpose of covering expenses incurred?

Question re: Cross-cultural workshop

Mrs. Joe: I have a question for the Minister of Justice. Yesterday, the Minister of Health and Human Resources said that he did not receive any complaints in regard to a cross-cultural workshop where statements were made about Indian families, which some workers found to amount to racial prejudice. Since a member

of the RCMP was the person conducting the workshop in question, can I ask the Minister of Justice if he is aware of any complaints about this workshop?

Hon. Mr. Ashley: Firstly, the member of the RCMP who was here doing the workshop was invited to do that. He was from Ottawa, but in answer to the question, no, I have not received a single complaint.

Mrs. Joe: Is Mr. Bill Holmes, representing the RCMP at that workshop from Ottawa, an expert on Indian culture?

Hon. Mr. Ashley: I have no idea of who the person even is.

Mrs. Joe: I would like to ask the minister if cross-cultural training workshops for the RCMP in Yukon are mandatory?

Hon. Mr. Ashley: I am sorry, I missed the question.

Mrs. Joe: I would like to ask the Minister of Justice if cross-cultural training workshops for the RCMP in Yukon are mandatory?

Hon. Mr. Ashley: There are cross-cultural workshops held by the RCMP and they try to put all our members through them.

Question re: Highway signs

Mr. McDonald: I have a question for the Minister of Highways. The minister said in his statement last week that it is not the intention of the government to permit private signing at highway junctions, but instead, are prepared to permit the erection of information kiosks and/or single billboard signs. Can he say who will pay for the construction costs of these kiosks? Will they be borne by government?

Hon. Mr. Tracey: First of all, I would like to state that I did not say that we would do it. I said that, in conjunction with the Department of Tourism, we were looking at providing that type of facility. If we did, the costs borne would be addressed at that time. I would suspect that probably if we did go with it, the government would be picking up the major costs, other than the private signing.

Mr. McDonald: I am surprised that the decision-making is still so nebulous after such a long time.

The minister may be aware that the costs of the construction of a kiosk for Stewart Crossing has already been subsidized in part by the Department of Tourism. Can the minister state whether he is prepared to permit a section of the highway easement to be set aside this spring for that information kiosk?

Hon. Mr. Tracey: When the Department of Tourism or the Silver Trail Tourists Association or whatever organization is representative of those people come to my department, we will look upon it favourably.

Mr. McDonald: There as been some confusion about whether or not signing for the publicly subsidized museums and historic points of interest constitutes information directional signing falling under the purview of the Department of Highways. Can the minister state, once and for all, whether signing for museums must be accommodated by the kiosks or whether independent signs for the museums may be erected on highway easements?

Hon. Mr. Tracey: Whatever signage erected on the highway would have to be in conjunction with the safety features of the highway. The proposals would have to be made to the Department of Highways for their input before any signs were erected on the highway.

Question re: French language program

Mr. Byblow: I have a question for the Minister of Education and there may not be any supplementaries if the answer is complete.

Can the minister clarify for me her government's understanding of exactly what funding allocations are available to it, under the currently signed three year protocol agreement between this government and the federal government?

Hon. Mrs. Firth: Yes, I can and I have said it in my last answers. We have just signed a letter of understanding, Msr. Serge Joyal and myself, and it is for the money that we have traditionally received for the adult French language program we have in Yukon College and for the French Immersion Program, for the year that is to be established.

The Government of Yukon picks up the cost for the French Immersion Program previous years — kindergarten to grade three, I

believe — and the federal government will be funding grade four. That amounts to some \$180,000 to \$190,000 and was the amount that was in the letter of agreement.

Mr. Byblow: Is it clearly the understanding of this government that no further funding exists under the agreement or outside the agreement for any further French language education program?

Speaker's Ruling

Mr. Speaker: Now the hon. member is asking for an opinion, which is also out of order. However, if the minister wishes to answer, go ahead.

Mr. Byblow: I will ask the question to what I believe was correctly stated in the last supplementary.

Is it the understanding of the minister's government that no further funding exists other than the \$180,000 that she cited in her answer earlier, in any agreement with the federal government or outside the agreement, for French language initiatives?

Hon. Mrs. Firth: We have not had a commitment from the federal government for any other funding regarding French language education.

Question re: Battered women report

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

Is it the intention of the Minister of Justice or his department to give a copy of the \$10,000 report on battered women to the Yukon Status of Women Council before May?

Hon. Mr. Ashley: Once we have gone through it, we very well may give it to them.

Question re: Youth employment program

Mr. Byblow: I have a question of a constituency nature that I must place with the minister responsible for manpower. The inquiries surround the intentions of the government about the youth employment program. Will this government be having a youth employment incentive program this year?

Hon. Mrs. Firth: We will be continuing on with the student employment assistance program, yes, but not a youth employment program. That, I believe, is a federal government program.

Mr. Byblow: Will the continuation of the program that the minister refers to be continued for more than the two months previously announced?

Hon. Mrs. Firth: I am not quite sure what the member is asking. We are going to continue on with the student employment assistance program that was established the year before last. This will be the third year for the program. I have a feeling that the other program the member is talking about, the youth employment program, is strictly a federal program and we have not been invited, as none of the provinces have, to participate in that program with the federal government. It is another direct delivery program.

Mr. Speaker: There being no further questions, we will proceed to orders of the day. May I have your further pleasure?

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

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

Motion agreed to

Mr. Speaker leaves the Chair

COMMITTEE OF THE WHOLE

Mr. Chairman: I will now call the Committee of the Whole to order. At this time we shall recess until 2:30, and return and go on to general debate on Bill No. 19, *The Children's Act*.

17

Recess

Mr. Chairman: I will call Committee back to order. We are now on *The Children's Act*, Bill No. 19. We are on general debate.

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

Mr. Porter: Under the proposed legislation, the director has the ability to contract out services or delegate any power of the director to any community group or persons. At the present time, we are made to understand that discussions are underway between this government and certain bands in Yukon with respect to achieving what you might call a bilateral agreement with respect to child care.

I also understand that under this particular legislation that we are dealing with today, the director has no liability for anything done or omitted by a community group or persons to whom a delegation has been made. I would like to know from the minister, in his discussions with the CYI, if he is taking the position that he is prepared to amend that particular section to allow for the continued liability of the director where the bands do set up child care facilities and where they do take over programs with respect to child care from this government?

Hon. Mr. Philipsen: That is naturally the particular area that is left for members of the CYI and this government to discuss and try to come to a resolution on. One of the reasons that that has been left is the area of third party liability. If the section that the member opposite is discussing were to be removed, it would place the government in a position where, in order to ensure that the government was not sued by a third party, we would then be in a position where we would have to be directly involved in any service that was being offered.

With the section remaining in here, the independence that the community group would want is guaranteed. It would seem to me that by removing this particular section from this legislation you would be going exactly 180 degrees away from the direction that the community groups want, which is independence. Therefore, I have also been in contact with legal authorities and have been checking it out, because it is in the best interests of all people of Yukon to have this piece of legislation operate in a positive, forward and progressive manner, and not be a regressive piece of legislation.

Mr. Porter: You would assume that when the bands and this government sit down to negotiate a bilateral agreement, as it relates to child care, that under those agreements there would be stipulations by the government that the band would have to live up to certain guarantees and that the band would have to live within certain conditions that would be put in place by this legislation.

So, on that basis, I find it difficult for the minister to state that he would not want to change this section because it takes away the independence of the band or the proposed community group that may want to take on contractual services, with respect to child care. I would just like to pursue that even further and ask the minister, specifically, what is achieved by the director of child welfare having no liability when the community group takes on the responsibility for child care?

You would assume that, in the agreement that is achieved between the two parties, the responsibilities of the director of child welfare would be passed on to the individual community group or band and that, in terms of that arrangement, the band would be operating under the authority of this legislation and conducting itself within the spheres of this legislation.

Hon. Mr. Philipsen: What the member opposite is suggesting is that someone would want responsibility without the accountability. I cannot, in my wildest imaginations, conceive that that is actually what the member for Campbell is suggesting.

Mr. Porter: It would be accountability. The minister, the director of child welfare and this government, would have the authority that they would have the ability to ensure that in the services of contract the liability question and the accountability would settle that issue. There is no statement here that what we are saying is that when bands, or groups, or community groups take over the care of children that they assume no accountability. It would be inherent on the responsibility of the minister and his officials to ensure that those groups continue to be accountable to the government, within the ambit of this legislation. Why does the director of child welfare cease to have liability when a community group takes on the responsibility for child care under a negotiated

contractual arrangement with this government?

Hon. Mr. Philipsen: Obviously, I did not make myself clear the first time I spoke. It is a simple fact that this could be a third party contractual arrangement. If the third party were, in fact, abused in some manner, and were to sue the people who were taking the contract from the community, and the community was broke, or the community was disbanded that had taken over the director's powers, the director would be accountable. If the director is, therefore, accountable, then the director, through a contract, would have to maintain a direct supervisory power over the community group or the band who wished to contract out the facilities.

Further to that, the band or community group who wished to contract out these facilities, would probably have to bond themselves or show financial responsibility to a point where it would make it virtually impossible for them to take over these areas that they would like to contract out. What we have done here, as we have said, is, if the band or community group wishes the responsibility, and they do not work for the department and they do not work for the director and are not part of government, you have two choices: you either take the responsibility and you are accountable for it, which is how it is stated in the legislation; or you go take the responsibility out of the legislation and contract out the service. When you contract out the service, the government would then have to be supervisory over the whole area all the time; looking over someone's shoulder all the time, to ensure that the government does not become liable.

²⁰ If that is what the member opposite wants to see, which is a step away from independence and a step in the direction that is presently done in dealings with the federal government, then I wish he would come forward and say that. What we have done here is a positive step forward in independence for a community group or a band who wish to take on a responsibility. With that responsibility, goes their own accountability.

Mr. Porter: In Yukon, there is no recent history of this government, or, more specifically, the Department of Human Resources, contracting out to bands provisions to provide for child care. That question is very different in the southern parts of Canada. Particularly in the Provinces of British Columbia and Alberta, there have been agreements struck between the provinces, the federal government and the bands in those jurisdictions. I would like to ask the minister if, in his review of existing legislation, programs, policies and agreements, he has looked at this specific question of liability as it relates to those agreements that have been struck between provinces, bands and the federal government with respect to child care?

Hon. Mr. Philipsen: The answer to the question is yes. I think that the member opposite realizes that, at the present time, the *Indian Act* limits the powers of an Indian band over people who have people in their care. If you have read the *Indian Act*, you are probably aware of that.

²¹ **Mr. Porter:** Another important concern that has been raised, is the issue of a citizen's board. That board, people have spoken to previously in debate and, essentially, what is looked at is a board set-up that would include citizens, generally, from the public, and which could include native representations. This board could be set up to review, and become involved in, the licencing and supervision of child care facilities.

In the present legislation, those particular powers are vested, largely, in the director of child welfare. This is a very relevant issue, because we, in Yukon, have a long history of institutions that have been created by governments and other agencies to, if you will, educate and take care of children. The missionaries were one of the first groups of people who set up these agencies throughout Yukon; Carcross, Lower Post and Whitehorse were, essentially, those communities that were set up to deal with child care.

Furthermore, as this government expanded into the area that was largely federal responsibility and began to take on responsibility, with respect to child care, they began setting up group homes, receiving homes and also a juvenile delinquent centre for youths. With respect to the concerns, as expressed in debate, yesterday, as it relates to Indian people, Indian culture and Indian children, this is

a very important aspect of the legislation, because almost all of the Indian people between the ages of, say, 25 and 50 years of age, in Yukon, at one time or another spent considerable time in institutions that were run by people other than themselves.

I, myself, went through the residential system, went through the group homes and also went through the foster care home, and I am not an exception. I suspect that, if you look at people from 25 to 50 years of age, nine out of 10 probably went through that system. Some individuals have suffered traumatically, as a result of that experience. I would suggest that the whole culture of aboriginal people in Yukon has suffered tremendously as a result of that experience.

Today, the social agencies that are set up by the Indian people, by this government and by the federal government are largely preoccupied with many of the problems that resulted because of the institutions that were created to look at child welfare and child care in Yukon, in the past. I think that, to look at this legislation right now and to ensure that that does not occur in the future, it is very important and it should be a point of considerable debate here, that this legislation be drafted in such a way to ensure that it does not happen.

I think the greatest possible way to ensure that those kinds of situations do not arise in the future, where we do not create further vehicles of assimilation, is to look at a citizens' board concept. With the concept of a citizens' board, you are not looking at a board that is totally controlled by government; you are looking at a board that would enable people, generally from the public, to be represented on that board to reflect the views of the broader community, in every sense of life.

²² Is the minister prepared, at this point, to look at amending the legislation to permit the establishment of a citizens' board which would be involved in child care in Yukon?

Hon. Mr. Philipson: I have stated countless times that any amendments brought forward on clause-by-clause debate would be discussed at length. If they are reasonable and found to be of value to this House, they will be looked favourably upon.

In the issue of the education of children in Yukon, I think the member opposite would be hard-pressed to tell us that this government is going in the same direction that he experienced as a youth. I think the member opposite will have to admit that this government is doing everything in its power to ensure that education for all people can be met in the communities that they presently live in, and the school system is being enlarged in all areas outside of the local Whitehorse area.

We have no wish or desire to force families or groups of individuals to move into Whitehorse to further their education. We go to great lengths to ensure that they will not have to leave their home communities and they will be able to be educated where they live and have been brought up.

There was also a fairly long and comprehensive statement made in this House yesterday by the Minister of Economic Development, Mr. Dan Lang, on the issue of education in residential schools that I am sure could be perused at great lengths by the member for Campbell.

Mr. Porter: I have read the statement of the Minister of Economic Development on the particular issue, and I have nothing to say with respect to that statement.

As the minister stated, I was not inferring that because of this legislation, and because of policies enunciated by this government, that I thought this government was heading in a direction that had been previous policy in Yukon. I would hope that the contrary would be expected of this government; that they would look toward the past and see a lot of the terrible mistakes that were made and utilize the past to prevent mistakes of that magnitude from happening again.

That is why I raised the question of the citizen board, because I see that board as a process that would act as insurance, so that we do not have a repeat of history as it relates to child care in Yukon. It is a very significant question as it relates to the aboriginal community in Yukon.

Yesterday, there was some discussion brought by the member for Whitehorse South Centre with respect to Patrick Johnson's publica-

tion called *Native Children and the Child Welfare System*. In the debates, he very clearly stipulated the percentage of native children who were in care in Yukon. Over the period of 1976 to 1981, the percentage of only status Indian people reached a high of 65.8 percent of all children.

²³ It was pointed out in debate that that did not take into account the non-status children, which we do not know, because this government does not keep records as it relates to non-status children. We would be able to estimate that with the addition of the non-status factor it would be considerably higher.

I think, to get back to the original point, that because native children constitute the single largest percentage of children in care in Yukon, a citizen's board and its involvement in the supervision, regulation, and licensing of child care facilities could be an instrument that would take into account the particular needs as it relates to aboriginal children in respect of their culture, language and their values. This board can provide for the direct representation of those aboriginal peoples. So, in light of that, I would like to ask the government why is this government not favourably disposed to the idea of a citizen's board? What is wrong with the concept of a citizen's board?

Hon. Mr. Philipson: In light of the comments, I would like to say to the member for Campbell that, as I said yesterday, I would like to take a look at the figures that were read to me. Further to making that statement, officials from my department have been looking at the statistics as they can find them, and the member for Campbell would be happy to hear that they are considerably less than the statistics that you have in front of you at the present time. Those statistics were there previously and you will be happy to hear that they have been reduced significantly in the past year or so. We are going in the right direction. I am sorry that you feel it is necessary to say that we are not going in the right direction — that we are not addressing the issue — or we need another board to get us going in the right direction. We are doing that at the present time.

Mr. Porter: I would like to put the question again to the minister and I would like him to answer it, because I think it is a very relevant question. What is wrong with the concept of a citizen's review board?

Hon. Mr. Philipson: If an amendment is brought forward at the particular point in debate on clause-by-clause debate, we will discuss the review board in its entirety.

Mr. Porter: I would like to note for the record that the minister refuses to answer the question and I find that very strange.

Yesterday, in the debate that went on in respect to this particular legislation, there was a lot of debate as to what this act does to adequately address the needs of the aboriginal people of Yukon. There was considerable discussion yesterday, in the House, in the Committee of the Whole, as it related to the recommendations put forward by the Council for Yukon Indians. Those recommendations are listed and there was no discussion. The debate seemed to flounder and to simply go around in circles and at no time did the minister address himself specifically to the recommendations as they were put forward. He did not indicate whether or not the legislation provided for the affirmative or negative inclusion of the recommendations as enunciated by the CYI. Those recommendations did not just come from the CYI; those recommendations were the result of each of the bands getting together with the Council and sitting down and hammering these recommendations out. They said: these are the areas we are specifically concerned about as a group of aboriginal people.

²⁴ These are the areas that we would like to see clearly enunciated in Bill 19, *The Children's Act*.

I would like, now, because I think these recommendations are totally relevant to the legislation that we are dealing with, and keeping in mind the ruling that you made on April 11th, which states that debate on clause 1, according to *Beauchesne*, if it is not on the short title, is normally wide-ranging, covering all principles and all details of the detail. These recommendations, from a significant part of the population of Yukon, I would suggest, are totally relevant to the general debate, as it relates to legislation.

I would like to begin the process by asking the minister if he can

indicate to me whether or not these recommendations are embodied in the legislation or, if not, how the minister has treated these recommendations and what form of agreement he has reached with the CYI to accommodate the CYI's recommendations and the recommendations of the bands?

The first recommendation that was given to the minister reads that the Indian band's social administrators be automatically notified upon apprehension or the intent to apprehend. I would like to ask the minister if this recommendation is embodied in the legislation that we see before us, or is this recommendation being addressed in a policy statement forthcoming from this government in future, or is this recommendation being taken care of by way of a bilateral agreement between his government and the Council for Yukon Indians?

Hon. Mr. Philipson: It is unfortunate that the member did not read all of *Hansard*, as we addressed this very issue, yesterday. I answered every question that was asked of me, yesterday, when it was asked in a manner that was addressed as a question. Every question that was asked on the issue pertaining to the 32 recommendations, that was asked as a question, I answered.

My statement was a general statement, that the 32 recommendations were dealt with over a two-month period. The Council for Yukon Indians has stated publicly that their recommendations have been dealt with and they are happy with the recommendations and the way they were dealt with. I have stated that not all of the recommendations are embodied in this piece of legislation, but, also, recommendations that are stated from them have been embodied in this piece of legislation.

The particular issue that you are discussing right now was discussed at length, yesterday, and, if you wish to read it in *Hansard*, you can. If you wish me to answer the question, again, and use up more of the legislature's time, I will.

Mr. Porter: That was exactly the problem with the debate, as I have read all the debate that occurred in this House, yesterday, as it relates to this bill. It was a continuous dog-chasing-the-tail kind of debate and not getting down to the substantive issues, as they relate to questions. There was continuous representation made by the side opposite that, if you really wonder about these recommendations, why do you not go over to the CYI and talk to them.

That is not acceptable. It should not be acceptable to anyone in this House, because we are sitting here, as the governing institution of Yukon. We, this House, make the laws for all people of Yukon, in the area of jurisdictional competence of this legislature.

We are elected to sit here to debate legislation, to debate matters that deal with legislation, and I would suggest that it is totally in order that we bring these questions before this legislature to be answered. I think it would be only proper that, in living up to their responsibilities, the ministers who are appointed in this legislature should be courteous and live up to their responsibilities as elected officials and answer questions that are put.

My question is very specific and the answers can be clear cut. We do not have to stray off and go around the issues. I would like to put the question to the minister responsible again: does the legislation provide that Indian band social administrators be automatically notified upon apprehension, or the intent to apprehend?

Hon. Mr. Philipson: I do not have any problem answering these questions. What I do have a problem with is that we spent eight months discussing this legislation with community groups, with interested groups and with individuals; we went around to all the communities, and if I am now going to sit here in this legislature and go over every question and every answer of that whole process, then the process might as well have been eliminated and we may as well have sat here and had the requests of the Council for Yukon Indians dealt with here rather than with the Council for Yukon Indians who asked for representation and two months of input.

Now, if this is, as the member for Whitehorse South Centre seems to indicate, his desire of what he is going to do with this piece of legislation, then I am happy to sit here and answer these questions for the next eight months. It is going to come to the point where he will want to go home, and I am going to keep him here,

because I can deal with this as long as he can. I can sit here just as long as he can.

Somewhere along the line, Mr. Chairman, you are going to have to make a ruling. I believe, on what is relevant to general debate and how much of this is going to carry on. When that ruling comes down, I will start answering and I will answer all the questions from all the communities, all the interest groups, and maybe I will even start reading off the questions and keep everybody here. We can stay all night if you want.

Mr. Chairman: Mr. Porter has never been up and I think he is entitled to ask questions. I might remind you that you do not have to answer them. Where we go from there, I do not know.

Hon. Mr. Philipson: Yesterday, in general debate, I answered the specific question that the member for Campbell has asked. He has asked a question which places an individual's rights at considerable risk by saying that a community group should have information, which is confidential to the family or the individual who has come in contact with the legislation as it is written. I personally do not think that if I have a problem in my community, that the community should know about that problem before I should know about it, or before I should make that desire that the community knows about it known.

That same principle would be in this recommendation. If the people in the community wish the band to be notified and they have said that that is what they wish, then every effort will be made to do it, but there is no way that I would go outside an individual's rights, as an individual, and notify people other than the immediate family on the original issue. I do not think the member opposite would like me notifying the community of Whitehorse when he has a problem, or if he ever did have a problem, before he, himself, suggested that he wanted those people to know about it.

Mr. Porter: That is a very legitimate concern on the part of the minister, and I believe that recommendation no. 2 as put forward by the Indian people of the Yukon takes care of that particular area. Recommendation no. 2 stated that in special cases an application could be made to the director of child welfare by any party to waive automatic notification of the band, so that in the instance where the information was sensitive to the individuals concerned, the bands have clearly recognized that as a problematic area and have taken care of that by saying that there could be a waiver of notification.

On recommendation no. 3, does the legislation provide that a local committee be appointed by the band to work with the YTG human resources in assessing potential protection cases? Does the legislation provide for such a committee to be struck between the band and YTG human resources, and if it is not in the legislation, will it be embodied in a future policy statement of this government?

Hon. Mr. Philipson: Under section 111.

Mr. Porter: The minister has answered that section 111 speaks to that issue.

Section 4 of the recommendations states that the bands have the right to propose options and alternatives for the child in question prior to and after apprehension. Does the legislation provide for the inclusion of this recommendation or will it be embodied in a policy statement?

Mr. Philipson: That is a matter to be decided by the courts.

Mr. Porter: That the bands be involved in the final decision or determination of any protection involving an Indian child? Does the legislation provide for this? The minister obviously has not understood the question and I will read it again.

Recommendation No. 5 states that bands be involved in the final decision or determination of any protection involving an Indian child. Does the legislation provide for this, and if so, what section? If not, is it included in a policy statement?

Hon. Mr. Philipson: I am going to have to ask you again, am I going to have to answer every question that was asked of me in every meeting, and by every board, by every individual who came to see me in the past eight months? Last night, it was specifically stated in this House, in *Hansard*, that that is a policy directive and it is a written policy directive. The member for Whitehorse South Centre said he has it, he has read it, and he knows it. We are going to go on here for the next three months on this, in this manner, if you are going to allow it.

Mr. Penikett: On a point of order. I just suggest to the minister the reason that he is feeling some frustration — and I think it is appropriate that he feels some frustration at this point, as it is frustration that we felt by not having the select committee process — if the legislature had been party to the kind of discussions that the minister had privately, as the legislature is entitled be, we would not have had to have the kind of dialogue he is now having, twice. That is the only point.

Hon. Mr. Philipson: The member opposite is welcome to his opinion on this, but I have seen over 800 people individually and 11 different interest groups, and had all that input, and have sat for a couple of nights with this.

Mr. Penikett: I would just like to point out again, Mr. Chairman, that it would have been nice for the legislature if we heard those people. The minister is not the person who makes laws around here.

Mr. Chairman: Is this on the point of order, Mr. Penikett?

Mr. Penikett: He is responsible only for introducing it; he is not responsible for it passing.

Mr. Chairman: On page 11, of my handbook, number 10, there is a 30-minute time limit for a speech; however, a member may speak as many times as he wishes to to a question.

Mr. Porter: I might point out that I have checked with two of the three bands in my constituency, as early as today, and they are very concerned that all of these recommendations be addressed and answered by the government. It is with that mandate that I am pursuing this.

Does the legislation provide that the bands in Yukon have the right to present evidence in court on the placement of the child?

Hon. Mr. Philipson: I believe that the member opposite is suggesting that the courts would not have the ability to place the child? Is that it? Can the band appear before the court? Is that the question?

Hon. Mr. Tracey: Certainly, if the court wants them to.

Hon. Mr. Philipson: Is the question can the band appear before the court? If the court asks a member of the band to appear before it, then the member of the band can appear before the court.

Mr. Porter: Yes, the question was that band have the right to present evidence in court on the placement of the child.

I would also like to ask the minister if the legislation provides that a special application be made to the court for a proposal for placement of a child outside of the territory? Does the legislation provide that, if a child is going to be placed outside of the territory, that a special application must be made to the court?

Hon. Mr. Philipson: Is the member opposite suggesting that the band would have special standing before the court? The band does not have special standing before any court, to the best to my knowledge.

It has been stated that the policy of this government is to keep children with the Yukon Territory. I think, if the member opposite were to take a walk over to human resources, he would find that there are no status native children who are up for adoption. I do not believe that there are any figures that show that, at the present time.

Mrs. Joe: I would just like to mention here that the minister has stated over and over again that he spent months going around and talking to individuals in communities and, also, that he has had many meetings with members from the Council for Yukon Indians. The recommendations here are very straightforward and I just find it a little bit difficult to understand why the minister does not understand the questions that are being asked, since he met with the Council for Yukon Indians so often, and should be very familiar with each and every recommendation that we have here.

Hon. Mr. Philipson: Is the member opposite questioning my ability to think or my ability to understand or is she questioning whether I have, in fact, had these meetings and whether I have put in the amount of time that I have said I have?

Mrs. Joe: I am merely saying that because of the amount of time that the minister has spent with these groups and with the CYI and going over all of the very important recommendations that were given to the department by the CYI, he should be very familiar with these recommendations and should find it very easy to answer each and every one, as my colleague from Campbell asks them.

Hon. Mr. Philipson: I think that the member for Campbell has been getting his answers rather quickly and without much delay. I think that if the member for Whitehorse North Centre had addressed the questions in the same manner yesterday, she would have got the answers just as quickly.

Mrs. Joe: I just want to go on record as saying that I did ask the questions in the same way.

Mr. Kimmerly: I rise to complement the debate concerning the role of the bands, and it is referred to in recommendation one, which has already been gone over, or addressed, by the member for Campbell, and also recommendations four, five and six.

As a point of information, what the minister said about the recognition in a court of an Indian band, or to phrase it another way, the special status of an Indian band, is an unclear question before the courts now. It is not accurate to say that the courts do not recognize the special status of Indian bands. There is jurisprudence in the different provinces going both ways on the question. It is a very important legal issue now. There is interesting new law in BC.

I can say, from personal experience, that in the last year or so, as a lawyer, I have been hired specifically by Indian bands in order to speak to the cases of particular children. The question of whether the band is a party before the proceedings, or has status in a child welfare proceeding, is an open question. In some places in the country, bands have been officially recognized. In Yukon, bands have spoken to the courts. There is precedent here for that position but, to my knowledge, it has never been challenged and has never been the subject of a judicial decision.

If that issue is not dealt with by this legislation, it leaves the question vague. It would be better if we established the policy on the question, as legislators, and directed the courts. It is fairly clear, or it is an uncontroversial statement among lawyers, that the argument that an Indian band represents a particular aboriginal social structure and the representation or the interest of the band may be included in the *Constitution*, under existing aboriginal rights. That question is an unclear, unanswered question, but there are arguments on both sides. I believe that that statement would be uncontroversial among lawyers.

The recommendations made here clearly call for a statutory recognition of the particular interest of an Indian band concerning a child who is a member of the band. Members of this House, who are members of a band, are better able to explain the real importance and significance of all of that, but legally, it is a very important issue and an unanswered question and it is not accurate to say it would be unconstitutional. It is just as accurate to say it might be unconstitutional to not recognize the interest of a band. It is a very open question.

Hon. Mr. Philipson: The member opposite, obviously, is entitled to his opinion; but my opinion is — and I think the opinion of a lot of individuals — that every individual has the right to privacy, unless he deem that he does not wish that right to privacy. At that point, if he asks for someone else to be involved, that is when someone can get involved; not automatically.

Mr. Porter: On the previous issue of debate between me and the minister, we were talking about applications as it relates to the placement of children outside the community and outside of Yukon. The minister replied in the affirmative that his government will do everything possible to ensure that children are not taken out of Yukon and, as well, are not taken out of the community.

In yesterday's debates, he also stated that he would do everything possible to ensure that children of a certain cultural background — in this instance, as it relates to debate, of an aboriginal background — are placed in a home that reflects the interest of them, in terms of their cultural background.

The eleventh recommendation that was put to the minister read as follows: "That the rights of the Indian family, relatives and community are clearly made known to the band social administrator. The family and the community and the child, from the time of apprehension to the placement of the child, including rights to notice, rights to the intention of the director of child welfare and rights to legal counsel".

In the opinion of the minister, does the legislation do this? Does the legislation give notice, and does it clearly spell out the intention

of the director of child welfare to be made known to the relatives of the community, to the family affected and to the band social administrator?

Does it also provide for rights to legal counsel?

Hon. Mr. Philipsen: These are the same rights that are guaranteed to everyone in this legislation, not just to an Indian band.

Mr. Porter: The 12th recommendation was that the rights of access to see and visit the child while apprehended be made clearer. That was an issue that cropped up in the initial draft of the legislation, as it was called, in Bill No. 8. Does the minister feel that, in his opinion, the legislation that is before us, absolutely makes those rights clear?

Hon. Mr. Philipsen: It does.

Mr. Porter: The 13th recommendation, that the right to legal counsel be provided for both permanent and temporary wardship hearings: are those rights guaranteed under this legislation?

Hon. Mr. Philipsen: An individual's rights to legal counsel are assured in this legislation. Maybe I could save us all a whole bunch of trouble by going through the recommendations. Is that all you are interested in?

The 14th recommendation; yes, I am sure that is guaranteed.

Number 15: it is in this piece of legislation.

Number 16: there is no way that we can direct the courts as to whom an expert witness shall be.

Number 17: we have addressed the issue of translators. We will be using translators wherever a person needs a translator to be understood.

Number 18: I believe most of the recommendations in here are in the legislation currently; aside from parents, by custom adoption, because we do not deal with custom adoption as custom adoption. It is custody, and that is in 18(d).

Number 19: it is not as it is written here, but the way it is written is what we feel is adequate and in the best interests of the people of the Yukon Territory.

Number 20: I do not believe that that is one that we have addressed, but I would have to take notice on that; that reasonable notice be the responsibility of a community committee and that all parties be notified within two days of the case of temporary wardship hearing and 30 days in the case of permanent applications. I am sorry, I do not believe that was a recommendation that was conferred on, but I believe we made an accommodation.

Number 21: we are already in the process of training workers and any native person who comes forward, who has been trained, seeking a position in this government, will be viewed favourably.

Number 22: in the past, that has been the policy of this government and I believe, in the past, it has not only been the policy but it has been adhered to and it is still the policy of this government.

Number 23: it is in this piece of legislation.

Number 24: it is in this legislation.

Those are the 24 recommendations that I have before me, at the present time.

Mr. Kimmerly: The minister went through the recommendations and I want to specifically centre on Number 15, because it is one of the very cruxes of the major general principles that the bill speaks about.

The recommendation is: "In cases of orders regarding Indian children, evidence of cultures and traditions shall be considered". Now, I have already raised that and if you look at the bill, in section 132, I believe it is on page 83, there is a direction to the court concerning what considerations the court shall consider, that is; it identifies the issues to the court.

Clearly, recommendation 15 speaks about the kind of issues spoken about in section 132. I have read through all sub-sections and I do not find a statement that evidence of cultural and traditional backgrounds shall be considered.

Hon. Mr. Tracey: On a point of order. The member across the floor dealt with exactly the same thing yesterday. We are dealing with a clause of the act and we should, before we deal with specific clauses, be on clause-by-clause debate, not on general debate.

Hon. Mr. Philipsen: The member beside speaks exactly the

truth. This is exactly the same debate, exactly the same words being spoken and, yesterday, in *Hansard*, I said we would take it under advisement and he thanked me for it.

I do not know why we are discussing it a second time, let alone a third, fourth, fifth and sixth time, if this is not what has been brought up before. It is a filibuster, and I cannot understand it.

Mr. Chairman: Most of these questions being asked relate to the bill.

We shall recess for 15 minutes.

Recess

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

Before we proceed any further I would like to read out of *Beauchesne 299*: "Relevancy is not easy to define. In borderline cases the member should be given the benefit of the doubt." 299(2): "The rule against repetition is difficult to enforce as the various stages of a bill's progress give ample opportunity and even encouragement for repetition. In practice, wide discretion is used by the Speaker and the rule is not rigidly enforced."

I will also point out to you the handbook: "If a member wishes to call in to question the conduct of the Chairman in execution of his duties he must give notice of a substantive motion to that effect."

Now let us hope that we can get going on this thing, and both sides use a little common sense.

Hon. Mr. Philipsen: I hope that at no time you felt that I was calling into question your authority, or your handling of this debate.

Mr. Chairman: Order please. Just proceed with the debate, we do not have to question my ability here.

Mr. Porter: I have for tabling recommendations for amendments to *The Child Welfare Act* as discussed by bands social administrators' workshop at the CYI, February 8, 9 & 10, 1983. I believe this would be helpful because we have been discussing these recommendations for quite some time. It would be good to have those on the record. The debates, yesterday, also talked at length on the question of custom adoption, as it relates to the concept of custom adoption as the aboriginal people see it.

The minister, throughout the debate, continuously stated that section 33 of the present act before us addresses that question. I would just like to state, for the record, as I read section 33, — and I do not read it as a lawyer but simply like the minister, as a lay person — it, in no way, in my mind, guarantees that custom adoption, as I understand it and as the community people I have talked to throughout the course of debates on this legislation, understand it. The question yesterday came down to a question of the constitutionality of recognition, specifically, of Indian custom adoption.

I would like to point out, for the record, that I agree with the idea that the *Constitution*, as it exists now, affirms and recognizes aboriginal rights, so I would suggest that it would be totally proper for the government to put specific recommendations or specific recognition of aboriginal rights as it relates to matters such as child care, or whatever the case may be, into legislation.

I think it is a critical area, because the central feature to any culture is its family unit, and the aboriginal communities, not only in Yukon, but the world throughout, continue to exist on the extended family concept, as opposed to western civilization, which conducts its affairs on the nuclear family concept. The extended family concept is the involvement of many members of the family: the aunts, uncles, cousins and grandfathers.

I think it would be a mistake at this point to not accommodate what is being practiced, even though the law in the past has not permitted it in Yukon while, in other parts of the world, it has gone on, regardless of what the law has stated. Custom adoption is a way of life in the aboriginal community.

I would suggest that it will continue, as it evolved in the past, to go on.

The minister, clearly, has remained firm on that issue. He shows no movement to consider further amendments; that he is satisfied with that particular section. So, I will not ask the minister to further elaborate on his position, because that is very clear in my mind.

What is not clear is what he and the executive member of the Council for Yukon Indians responsible for social programs are doing, with respect to those of the recommendations put forward by the CYI that are not embodied in this legislation. The minister, throughout the debate yesterday, talked about policy. In response to both Mr. Kimmerly and also Mrs. Joe, he said that a lot of these issues are handled in the policy area, and that there is no need for the legislation to cover these issues if they are policy.

At what stage are the minister's negotiations, with respect to the vice-chairman responsible for social programs and himself at, on the issue of the policy that he continuously refers to? Are they, in fact, talking about an agreement to put in place, in policy, certain concerns that the CYI has and, if that is the case, where are those negotiations? How soon does he expect an agreement between himself and the vice-chairman and when would that agreement translate itself into policy that can allay a lot of the fears that have been forward, with respect to this legislation?

³⁵ **Hon. Mr. Philipsen:** I have been trying to allay the fears all along. The fears, in a good number of instances, are unfounded. The policy that is written is now written and the member for Whitehorse South Centre has any policy that he has asked for. The recommendations are not totally embodied in this legislation and I do not think that a clear thinking individual would believe that every recommendation would be embodied in this piece of legislation.

During the process of going through each recommendation, we discussed the merits of each one and came to an agreement that certain recommendations would be embodied in the legislation. The reasons for not embodying other ones in the legislation was either because it was something that was already happening, something that the courts already did, or an area outside of what we felt was an area we should be involved in, such as personal privacy.

Bearing that in mind, the other areas that the Council for Yukon Indians and I discussed and would be placed in policy will be addressed as we go through this legislation clause by clause. At that time, all the recommendations and how they fit into this legislation will be explained. I will do it at that time.

Mr. Porter: The minister does acknowledge that there is an ongoing process between himself and the CYI to look at areas that the CYI is concerned about and to put those areas into policy. We have the commitment from the minister that when those policy agreements are achieved, they would be tabled before the Legislature and discussed in the context of this legislation. Am I clear on that statement?

³⁶ **Hon. Mr. Philipsen:** Any area that would enhance the area of child protection, child welfare, neglect, abuse; any area that can clearly be shown that would make the problem easier resolved and better for the children involved, because this piece of legislation is in the best interests of the children — and that is all children in Yukon, not just native children — we would be looking at that area, because we want the best legislation we can possibly have for the people of Yukon.

Mr. Chairman: Any more general debate?

Mr. Kimmerly: I wish to get into a new area, or a new principle. The clearest statement of the embodiment of the principle is in section 183, on page 105. It is related to section 110 and related to section 2 and related to section 3, but the clearest statement is in section 183.

It is on the question of the inherent jurisdiction of the Supreme Court. We have talked about the rules of equity and the common law, but not very much about the inherent jurisdiction of the Supreme Court. I did raise the issue, but did not debate it in the context of section 183. I raised it when I read a quotation from the Cavanagh Report; that was the quotation on page 173.

³⁷ The quotation is, "The ordering of a change in status is an inherent jurisdiction of the superior court".

I would ask, firstly, for a statement of the government policy concerning that issue, or that principle: that is, the inherent jurisdiction of the superior court. I can put it in context, for the minister, by putting various statements side by side and asking for an explanation as to what the real policy is.

The minister and the government leader have here, and have in

the media, outside of here, repeatedly stated that it is not the government's intention to remove power from the courts, and they are repeating that comment as often as they can. But, in section 183, it suspends the inherent jurisdiction of the court about specific issues. I can go into the issues, although those are more specific. I will not right away, as it is a general principle area.

In light of the statements in 183, about suspending the jurisdiction of the inherent jurisdiction of the Supreme Court, what is the intention here if it is not to remove powers from the courts?

³⁸ **Hon. Mr. Philipsen:** I will deal with specific clauses on clause-by-clause debate.

Mr. Kimmerly: Let me explain why we find that unacceptable. What I am speaking about is not a specific clause. I am speaking about a principle and I clearly said that that principle is best exemplified under section 183, but if we go into clause by clause debate, some of the concerns I wish to raise now would be properly ruled out of order by the chairman. We are not going to get ourselves into that position.

The inherent jurisdiction of the court is clearly an area of general principle and there are numerous clauses which affect it. If you like, I can make a catalogue of them and rhyme them off, but that is probably unconstructive. The intention here, or the intention of the question, is to carry on a debate about the general principle. We find ourselves, here, very frustrated because — and let me explain this clearly — the public statements coming from the Cabinet members are a clear repetition that the bill does not take power away from the courts.

Okay, we look at the sections of the bill and we see where power is taken away from the courts, and we are trying to debate that principle in its general sense here and now. The debate is going to conclude in one of two ways; we are going to fruitfully and constructively exchange our views and understand each other, or we are going to ask the questions and you will refuse to answer them and then our only possible political message to the territory is that we have raised these questions and they were not answered.

What I am intending to do, and what my party is intending to do, is to raise these questions and to debate them constructively. We will repeat them to the point where it is obvious that either the constructive debate is exhausted or it is clear that there is a refusal to answer them.

I will rephrase the question without specifically referring to section 183: is it government policy that the inherent jurisdiction of the superior court in child welfare matters is unchanged by this bill?

³⁹ **Hon. Mr. Philipsen:** I will have to take that question under advisement, naturally, because I am not a legal mind and the member opposite knows that. A few statements were made by the member for Whitehorse South Centre and one was that he would like to see fruitful discussion on this piece of legislation. I think all people in Yukon would like to see fruitful discussion on this piece of legislation.

I have answered any question that I have been asked directly at any time. The only time that I have objected is when the questions have been asked more than once, and when I have answered them. The answers can all be found in *Hansard*. The moment that the members from the side opposite start to ask questions that can be answered and go on to other matters after they have received their answers, I will be extremely happy, and I think the people of Yukon will be extremely happy.

Mr. Penikett: In the interests of fruitful debate, I think I am going to bring the minister an apple tomorrow.

I want to ask the government leader a question on the subject that we are now on. It is the subject I addressed in my second reading speech on this bill. And it is an important principle.

With respect to what the minister has just said, I want to say that I understand it is a difficult issue because it is one that lawyers may understand more fully than those of us who are not members of the bar, and who do not have a lot of experience with the courts. I know being a lawyer is not the only way you can get experience with the courts, but I have not had that experience, either. Mr. Chairman does not believe me, but it is true.

The points raised in my speech at second reading were serious ones raised by serious people in my constituency. I admit it,

frankly, that at that time, they were not points being raised by large numbers of citizens; I was not having a parade of people coming to my door. These were professional people who had made, at least in their adult life, a life-time study and a life-time understanding of the way the courts worked and what the proper authority and jurisdiction of the legislature is; what the proper authority of the courts is; what the proper authority of certain kinds of bureaucratic entities is. There are some traditional divisions of labour, and traditional divisions of power.

I raised in my second reading speech some concerns about whether, given the powers that I read in the bill being taken away from the courts and being given to departmental officials were appropriately done so. I felt the courts were a particularly clever mechanism that our civilization had developed for resolving disputes where there are competing interests. But, a human resources bureaucracy, even a well-meaning one, was not designed to do that. It might be designed to resolve or defuse a conflict for a moment; it might be, by their training, that social workers are able to take people apart for a time being, to cool off a situation. They might be, as the minister suggested yesterday, if they had the resources, able to lend support to a family, and so forth.

When the rupture comes, and when you are not dividing the human resources of the family, but deciding who is going to keep children, who is going to take them away, and trying to weigh between the interests of the children, the interests of the parents, and perhaps other forces of society, I submit, it is only the courts who can do that.

Therefore, I was quite genuinely and quite seriously concerned, having heard from the people who talked to me about the inherent sovereignty of the supreme court, and about the other issues I raised; the question of equity, the question of solicitor-client relationship and the question of hearsay, which have also been dealt with in this bill.

Following my speech, interestingly enough, I had a number of other people speak to me about this issue and say, "Well, they had not said anything before, but it probably was something that was worth serious debate". They thought, on balance, that it may be a mistake for a government to do this, even though they may have had good reasons, from the government's point of view, for doing it. The reasons, I take it, are as follows: that the officials of the department had experienced some frustration in their dealing with the courts, on a number of matters. As one constituent said to me, the courts may well have been wrong, in a particular case that the constituent who called me was concerned about — and I admit to that possibility, too, that is highly likely — but that the officials in the department who were frustrated with the courts felt that the remedy for that was to take away the power from the courts that had been used to frustrate the officials of the department.

That bothered me because it seemed, to me, the wrong remedy for the problem. It seemed to me to be invading the jurisdictions of the courts, I will not say frivolously, but carelessly.

Sometime after I gave my speech and sometime after, I believe, members opposite listened with seriousness to what I had to say, I heard the government leader on the radio, in the inaugural address of the newly renewed CBC free time political broadcasts, which, for some reason, have not gone on for the last year or so. I seemed to hear the government leader say that the bill did not do what I thought it did. I thought I heard the government leader say that the concerns that I had raised, on which I was really, and I honestly say this, only making representation for certain lawyers, were not correct.

Having heard that, I went back to some of the people I talked to and, in fact, had occasion to talk to more lawyers. They say that the concerns I raised are real ones — genuine, serious ones — that the bold assertion from the ministry that the bill does not do what I said it did, is not correct, that it does — whether intentionally or not — invade the jurisdiction of the courts, or the traditional jurisdiction of the courts.

That is a difficult principle, it is a serious principle and, as my colleague says, it does not exist in one clause, because, as I remember my reading of the bill, there is a clause right at the beginning of the bill about the equity question; the laws of equity

shall not apply. There is also another clause, right at the end of the bill, which says the same thing again, with respect to something else.

So, these are not questions of isolated clauses. There is a theme, if you like, running through the bill, or a consistent pattern, which attempts — I think probably because there are some very tidy minds involved, who wanted to say — and I am trying to imagine the brief that might have been given the officials of the department, which might have gone like this: "look, we have had these problems before and we want to solve these problems. Let us make sure we get our legal draftsmen to correct these problems.". The legal draftsmen would have been asked, "can we solve these problems?", and they may have said, yes, they could probably do this and this and this, and the response may have been, "Let us do it".

I think, technically, because we are debating this, we have to admit that it is possible to take away some powers from the courts and there may be times when it is appropriate to take away powers from the courts. I am a great man for having power in the legislature, here, and I am always in favour of giving power to elected people over appointed people.

But, this is not the case that we have before us. There is a serious question here, I submit to the minister, about who has appropriate jurisdiction and whether we should be invading the authority of the courts. I had expected, from the other side, some argument in favour of doing what the bill clearly seems to be saying to me. "But I hear the government leader say — at least I think I heard him say, and I do not want to misquote him because I cannot quote him — that the bill does not do what I said it would do, and we have a dispute about facts which I would like to have resolved. I think we need to get it resolved now, because if we cannot get that resolved, then we cannot argue about whether it is a good thing or not, to take those powers away from the courts. That is what I would like to have settled, Mr. Chairman.

Hon. Mr. Philipson: Obviously I could stand here and try to discuss all the issues that have been raised. I have made the statement that the powers of the courts have not been reduced in any manner. It would take a great deal of time for me to go through this and show in what areas I am making these statements. What I would ask from the members opposite, and for the total House assembled, that you allow me opportunity to, as delineated by the leader of the official opposition, go through it. I will come back and make a statement as to the areas that you have mentioned. I will make a statement on how I perceive this bill to not reduce the powers in the courts in any way.

There are definitely legal opinions on both sides. I would appreciate the opportunity to contact the legal minds I have access to and come back here with a clear statement of what is being addressed and the powers of the courts and the powers of the director. I will make that statement here, and at that point, I think we could go into a reasonably informed, constructive debate about the area we are discussing at the present time, without going back and forth trying to discuss an issue like this with a mind that is not legally trained. All I can do is state what legal draftsmen and lawyers I have been in contact with have told me. I would like the opportunity to be able to get more comprehensive material on this matter.

Mr. Penikett: I appreciate that undertaking from the minister. If he is suffering under the problem of not having a mind that is legally trained, believe me, I have one that probably defies legal training, so I understand that perfectly.

I am not competent, let me state this right off, to have a legal debate with the minister. What I do not understand, unless the scenario I painted for the minister, — and its conjecture, I admit, is accurate — is why the minister would want to have the principle language that clearly says "the inherent sovereignty of the courts shall not apply" enshrined in legislation if that was not his intention?

I feel it is a political issue. I do not understand why that would have been placed in the legislation if it was not the intention. Could he just briefly explain something about the process because that point puzzles me. It is not a picky, little detail; it is a fairly significant principle.

Hon. Mr. Philipsen: I believe the area we are now into is an area where we are discussing what shall apply and what shall not apply to this piece of legislation. It is my understanding that what shall apply and what the courts shall deal with, specifically, are areas that are covered in this legislation that would be agreed upon by this legislature in total at some point in the future.

⁴² We would be then as a legislature, as elected representatives in the function that you hold dear, stating that as a legislature we feel that certain issues shall be as they are stated in the legislation.

Having said that, we are then directing the courts, or the people who deal with this legislation, that where specific items are dealt with that the courts will deal with those items in a manner specified by the elected representatives in this legislation. In areas that are not covered in this legislation, then the rules of equity will prevail. So what we are saying is quite clearly this: the rules of equity will prevail everywhere except where we have specifically, as a legislature, said that this is how a matter shall be dealt with. In those areas, that is what we are directing the courts to do; to deal with those issues that we, as a Legislature, said should be dealt with in a specific manner.

Mr. Penikett: I thank the minister for that explanation, because I think without having gone through the statement that he has promised us it is probably fairly clear as far as it goes.

What troubles me, and let me be frank about this, is that while I understand that we would want to put in legislation that these are the rules of how you should deal with this, this, and this matter, we want to legislate a procedure by which you should deal with this kind of problem.

There are two things that bother me. It seems to me that there are, at least in my imagination, issues of extraordinary complexity that end up in the courts that may defy the simple formulas that the minister is describing. Now, it may be as he says that there are residual powers to be left for the courts, where the simple formulas that are embodied in this bill do not apply or do not work. There will be a great history or body of experience in the courts that the common law, the statutes and other precedents, the marriage of the commonlaw and the rules of equity, will enable the courts to bring that body of experience to bear on the particular problem. I suspect that there might be an awful lot of cases over time that do not fit neatly into any of the categories specifically provided for in the bill.

There is another issue that bothers me a little bit. I must admit, that I do not have a great deal of understanding of it. It seems to me that the courts do not only get their authority from legislatures like this. There is a constitutional principle of the difference — going back to an old French idea, but also an old British idea — of separate estates in society. An old idea that the British Conservative, Disraeli, stated, that there were separate estates; there were the commons, there were the lords, the courts, the church. The courts had carved out for themselves over the years a certain kind of bailiwick that nobody could invade. If they did invade them, they got their wrists slapped, or there were wars for their turf.

The power of the courts in certain fields is not just described in bills that we pass here, or bills that are passed in the House of Commons, but are somehow embedded in our constitution. Now, I am not a constitutional lawyer and I do not know what happens in our constitution. We accept that a large part of our constitution is unwritten. There are certain kinds of understandings and certain kinds of traditions.

⁴³ I might be a little bit worried about it and I would appreciate it if the minister could respond to this, if not now, in his statement, the notice that, somehow, we might do something like this, with the best of intentions, but then discover that, on appeal from the Supreme Court of Yukon — perhaps to a higher court and, hopefully, there would not be too many cases happen, but there could be — the superior courts of this land or the Supreme Court of this land, or wherever it goes from here, the appeal court in British Columbia, would say, "Uh, uh, that legislature cannot do that, because the court is operating here in an area where it derives at least part of its authority from the *Constitution* or from the Crown".

I am a little concerned that what we may be doing here — if we are doing something — may poison the wells or muddy the water, if I can mix metaphors.

Hon. Mr. Philipsen: It is my understanding, and I guess we have to continue to clarify that we do not completely understand the legal ramifications of this piece of legislation, that the only places that we have said anything about directors' powers, as opposed to courts' powers, in one area, would be an area where the court could make a ruling, or a number of rulings one after the other, that would be rulings that we, as a legislature, would be unable to afford. If the court, in its wisdom, decided that there was a place in Florida, at \$400 a day, that was a wonderful place to be sending children, and started to send all our children or say that is where all the children would go, we would have the ability, because, we as a legislature, may not have the money to afford to send all these people out there, even if it is the best place in the world to send them, would not have do that. We would have the ability to say, "Well, that would be a nice place to send them, but could we look at this place that is maybe some place that is within our realm of being able to afford".

That is, I believe, the only area that I can think of where we are trying to maintain certain control over the expense that may be incurred by decisions made by someone other than someone responsible for the money that we have available to us for services that we need to provide. That is an area that I can understand where we would like to, maybe, stay in a position of control. We are the people who have to try to explain where the money is coming from and going to go.

The other area that has been expressed as getting into the area that should be the courts' area is the area that I addressed yesterday, where a child can come into care, be kept in care, and returned to a family, without going to a court. That is only there to allow a family who, through no fault of its own, has had a child picked up in a matter of protection and, subsequent to being picked up, under current legislation, would end up in the court. Now, if the family was not at fault in any way, and the reason the child was neglected was maybe a babysitter, or whatever, we now have the ability, through this piece of legislation, to return a child to his parents or guardian without going through the court process. I do not see that as anything disruptive to the court system.

In the other areas that are addressed in this piece of legislation, the director's powers are specifically spelled out and at no point does it say that they will interfere with the court process. The director is charged with the responsibility of looking after a child who comes into his care, from any means — from neglect or abuse, or whatever. Once the child is in the director's care, he takes the case before a court. The court makes the decision — the court makes the decision — not the director, on what the disposition of that child will be.

⁴⁴ It is the government's position, which is the director's position, that they present what they feel is a case in the best interests of the child. I think that all members of the Assembly agree that that is our function. Whoever the child is, or, for whatever reason, the child is in need of protection, this government, whom we all represent, will do its level best to ensure that the best interests of the child are protected.

That being said, the court makes the determination of what should be done with the child at that point. If the court makes the decision that the child be placed in the care of the director, or in the care of a parent or in the care of a guardian or whatever, the court then has done its job. Its function is complete. It would be no different, at that point, for the court to be involved in that family, or in that matter, as it would be for the court to be involved in our day to day life at the present time. Once the decision has been made regarding what is in the best interests of the child, the courts function is complete at that point.

That being said, I do not think you will find an area in this legislation that states anywhere that the courts' powers to do its job, as I have delineated here, have been reduced in any manner. Further, we have gone to great lengths to ensure that people will have the opportunity to get before the courts more quickly; that the court cannot spend long amounts of time deliberating; that they will do it more quickly. Everything is done in this legislation to reduce the trauma from delays.

The courts felt that 10 days was an adequate amount of time to

bring a matter before them. We have said seven days, and they have problem with that because they are not sure they can move that quickly, but we have said it must be done.

In every area of this legislation, including the statements we have made in this legislation, we have said that we want to promote family unity. We have said that we want to protect cultural backgrounds and lifestyles, preferably in the home communities of the individuals. I can see no area where the court is losing any power. The only question of relevance that I hear being asked, to me as a layman, is the matter at the beginning, to have a statement of why the equity situation is written the way it is.

Simply stated, as I understand it, all matters pertaining to a child and the welfare of a child, that are specifically outlined in this legislation, the rules of equity shall not prevail; this legislation shall.

In all areas outside this legislation, that deal with the welfare of a child, the rules of equity will prevail. It is a simple statement of policy and I find it a clear statement. I am sorry, I cannot go on at length about the other legal areas, but the legal areas that I cannot talk about at the present time, I will be happy to discuss with the legal people at my disposal and bring that information back to you.

Mr. Penikett: I guess the great unanswered question, in my mind — and one I am not competent to deal with and suspect a lawyer might wonder about it — is whether the provisions in this bill, in some cases, embody more wisdom than the rules of equity do.

45 I would be moderately concerned about that, because I understand the rules of equity evolved as a sort of corrective measure for some of the anomalies that resulted from the exercise of the common law.

I have a couple of very specific questions about this principle, about some principles that he enunciated and then a very general one. The minister talked about the very important principle of financial accountability and that is one that I have a great deal of interest in. I would like to know from the minister, in that principle of financial accountability, the reason why, in the bill, it gives the director or official of the government the power to decide whether or not a child involved in a case shall have a legal aid lawyer or not. Is financial accountability or financial prudence the reason why the bill gives the director the right to decide that he may provide a report to the court that the court directs that he provides? In other words, is the reason the director is given the power, or the officials of the department are given the power, to decide — just to use two examples, whether the child shall have a lawyer or not or whether the director may provide a report to the court or not — simply a matter of financial prudence? In other words, as the minister said, the government does not want to get into costs that it cannot control. Is that the defense for that reason, which I would understand? Is that the case?

Hon. Mr. Philipson: The matter of separate representation is another area that I am grappling with and trying to understand the ramifications of. It seems to me that the area of separate representation is not served to its best interests if the legal representative of the child is not in a position to take representation from the child.

I have notes, obviously, on this separate representation. At no point did anyone say that separate representation is not available. I think what we are discussing here is whether the government should pay for this separate representation, or not.

I know that my learned friend from Whitehorse South Centre has read the Cavanagh Report and I know that, having read the Cavanagh Report, he will be reminded of a chapter — I believe it is chapter 23, of the Cavanagh Report — and you will be interested in what the Cavanagh Report had to say and I have it here and I will read it for you.

46 You will be interested in what the Cavanagh Report has to say about separate representation for children in proceedings of this kind.

For emphasis, we will quote part of it here. Having described the Alberta practice in which lawyers were frequently being appointed to represent children in these proceedings, Cavanagh went on to say the following things about the practice, "It is in an experimental stage and serious questions are being raised about it. In some

instances it has been suggested that the court is abdicating its role as a decision maker in favour of the *amicus curiae*. It is clear that there are just criticisms of the practice in any event. It delays litigation; it is expensive; and it is often of dubious utility. Frequently the courts do not pay attention to the recommendations made by the *amicus curiae* or the expert that he may retain. We do not blame the ombudsman for being attracted to the idea of *amicus curiae*. Certainly there are many who advocate its use and expansion. The doubts about its present use are only now coming into the fore. Besides, there is something attractive about the idea of a knight in shining armour who instinctively knows where to look to search out and expose negligence or wrong doing. This, unfortunately, is not a very practical idea. We are recommending that the court in child care cases decide only questions of fact and then apply the law. It will be the duty of the lawyer or the department to present evidence in support of this case. The lawyer for the department will be endeavouring to protect the child by having the child made a temporary ward. Obviously if he is going to succeed, he will have to present the strongest case available. We see no need for another lawyer to represent the child in such a circumstance. We think we can rely in the court in most circumstances to safeguard the rights of the child." 49 I am only bringing this forward as a statement made by the Cavanagh Report. It, in no way that I can see, has a bearing on this piece of legislation. I am only bring that forward and stating it as an authority on the matter of separate representation for a child. I believe that if the courts feel separate representation for a child is in order here — and I cannot speak for legal aid — I am sure that it would be made available.

Mr. Penikett: Just let me pick up where the minister left off. Clearly this is problematic area, and I think the minister would have to admit that a reasonable person could argue that the two cases I gave on the question of children's representatives and the issue of whether the director may provide a report or not that has been asked for by the court, are serious ones. They are not, as the minister said, things that the courts can decide. It says quite clearly here in the bill that where it is a legal aid matter, the director has the say.

The problem I have with that is this: I assume that most children who are young enough to have to come before the courts do not have the means to hire lawyers. I mean no disrespect when I say that lawyers are not cheap.

47 They are not cheap and I assume, by definition, any child who is going to end up in this kind of situation is not going to have the means to hire a lawyer of his own.

Cavanagh raises serious questions about the need for a lawyer in the courts. That is a proper question; however, the bill that we are talking about makes specific provision for the children themselves to be able to be brought into court and be examined. The minister, in citing Cavanagh again, talked about the importance of facts. I do not have to tell anybody who is a parent here — and I do not mean anything disrespectful in this — that getting facts from a child, particularly a very young child, is a difficult thing. A very young child will not know whether something happened yesterday or last week or last month. I know my own young children talk about last day, and they do not know whether they mean yesterday or two days ago or three days ago. There is a phrase in this bill about a child's sense of time. I do not know what was meant by it, but it may mean something like that.

It is, from some lawyers' points of view, a much more sensible proposition to have a child represented by a lawyer in certain difficult matters than to have the child there himself, because it is a very frightening experience for a child to be in court. It is a very strange experience, and children will not always talk to strangers. They may not give information to strangers very readily. Especially if they have been traumatized by the experience of a family break-up, they may be even more unwilling to open up.

They will not be, in many cases, much of an asset to the court in trying to establish facts. I think that is the argument for saying that children will sometimes need lawyers, it is not only that the child's rights need protecting, but the lawyer may be able to assist the court in finding the facts from having a long briefing or private discussions with the child, where the lawyer, over time, could have

extracted certain information from the child in a less threatening environment than the court. He may have been able to get that information for the court, then make representations on behalf of the child to the court, because the lawyer has not only been able to ascertain what the facts are, or tried to ascertain what the facts are, but then make a presentation to the court on what he has discovered about the facts, or what facts he has discovered, and then make representations to the child in terms of his own interests.

Having made that argument that there may be a case for having lawyers represent children in some cases, and having made the point that most children will not have the financial means to hire a lawyer, the issue of whether or not legal aid should be available to hire such lawyers is a difficult one. The minister has a proper concern for costs, but he has also said that the main principle of this bill is the principle of protecting the interests of the child. It seems to me that these two principles of financial accountability or financial responsibility, and the interests of the child, could be in sharp conflict here.

I am not raising this question purely as an academic matter; I am raising it because it is exactly the issue we are talking about when we talk about whether or not the director is invading the jurisdiction of the courts. If the director is the person who can decide whether a child needs a lawyer or not — and assuming that in most cases the child will need a legal aid lawyer — and the director is the person who can decide that, rather than the court, it seems to me that the director has assumed an important power, which has traditionally been the court's.

48 If a director, for financial reasons — the good financial reasons cited by the minister — may decide whether or not we can provide such a report, or that he may or may not provide such a report, he has assumed a power from the court, because, up until now, I assume, the court could have ordered that such a report be produced.

The only thought I want to leave with the minister — and I do not put this as a question, but it is a question — is that there are, it seems to me, two principles that the minister has stated very well and very clearly: the one of protecting the interests of the child and the one of financial accountability or the financial responsibility. I am a little concerned, when it comes to the powers of the court and the powers of the director, that those two principles may be in conflict. That is all I am saying on it.

Hon. Mr. Philippen: To that end, maybe, then, we can get on with other matters and, before we do, I will try and put the leader of the official opposition's mind at ease. It is an area that we can clear up very quickly, as far as the director is concerned. The director does not appoint a child advocate; it is the official guardian, who would be the public administrator, who does that.

I do not know whether you wish to move on. I now have a little information on inherent jurisdiction and maybe you would like me to impart that now, or would you care for me to carry on?

Mr. Penikett: Please, go on.

Hon. Mr. Philippen: It is my information that it is a fundamental, constitutional principle that when a statute speaks, the statute governs. The inherent jurisdiction of the court operates only in the absence of specific legislation, as I have already indicated. That, I think, is probably as specific as I can get on that issue.

Mr. Kimmery: I am going to address these points. It is in a spirit that I can describe as follows: that the minister has been very frank with us, in the last few moments, and he has explained that he is not an expert and he is grappling with certain issues. He has asked for time to consult with experts and come back to us. We appreciate that frankness.

I wish to put a few comments on the record about the issues that we have discussed in the last half hour or so, because I believe it is important that the experts with whom he consults are aware of these issues I am going to address. If they are not, it will only waste time and I will raise them afterwards, anyway.

This matter is one that I have had some considerable experience with, as everybody knows. It is important, it is crucial, in my mind, that no member here simply listens to the experts and says, "Well, I do not understand it, but the experts tell me this and so we are going along with the experts". That kind of an approach is a

negation of our responsibility as individual legislators.

49 If the experts cannot explain it so that you understand it, maybe they are wrong. You know, maybe they are all caught up in some esoteric language of their own and it does not mean anything, practically.

We have addressed this particular problem before, when we were speaking about the *Mental Health Act* amendments. We had a heated exchange about the utility of calling experts and the advice that the government gets and the relative positions that the opposition and the government is in. The use of experts is, of course, an absolutely necessary step in the procedure of decision-making, because the information that they can give us all is very important information. However, it is not for the experts to decide these policy questions. I fear that, in the past, it has been the experts who have been calling the shots and who have been controlling the process.

I fear that because I know the practical situations that have occurred in the courts, in the last little while. I know what the people, who are now advising this government on these issues, try to argue in the courts. I know that. In some cases, I was the judge who listened to it; in some cases, I was the lawyer who argued against it. I know the position that they are trying to advocate in the courts and I know the response of the courts to it.

I wish to make a few general statements that the minister will, undoubtedly, get expert advice about. Then, I want to make some statements in response to the minister's impassioned speech, which he made yesterday afternoon about two o'clock, because it is particularly relevant to address those issues about the principle that we are talking about right now.

In stating the inherent jurisdiction of the court, which the minister just stated, he used the same kinds of words and the same statement as he explained the laws of equity, and that is wrong. The inherent jurisdiction of the court, or the principle of inherent jurisdiction, is more than the principles of the laws of equity. The leader of the opposition is absolutely correct when he states that courts get their jurisdiction in a constitutional way from various sources.

50 Some of them are legislative, some of them are part of our unwritten constitution, and part are the concept that we loosely and generally call parliamentary democracy, and freedom of the individual in a free country. One of the things that the inherent jurisdiction of a court speaks about is that a court must have control over its own process. I am going to elaborate on that a bit.

The court is not so much a collection of judges, or a building, or support staff; inherently, it is constitutionally a way of solving problems. It is method. There is a scientific method that we speak about in learning about our empirical environment, and scientists theorize and experiment and come up with new discoveries of knowledge. The court process is entirely different from that. The courts only deal with existing knowledge and they always only deal with incomplete facts. I spoke about that, about the principle of the test on the balance of probabilities, a principle in courts. It is partially a political process. It is distinctly different from a political method of solving problems. It is a collection of rules or a collection of traditions that we have discovered over the years that works. It works imperfectly, but it works.

The court cannot operate if it is not in control over its own basic processes. That is part of the concept of inherent jurisdiction. I wish to particularize that and speak about particular points. One of the processes that the court must control is that it must have control over who are the people who are entering into the judicial process and solving a problem in a judicial way. As an example, if the minister's experts look at section 126 on page 80, there is a section there about a child advocate. In (a) and in (b) there is a direction to the court to do certain things and I would quote "regardless of whether some other person who has a right to be present is present and regardless of whether a person who is under this part is entitled to be served with notice of his hearing or application."

51 That is an example of where the legislation states that the court, in these circumstances, as is spoken about in the bill, has no power to determine if a particular party or person is served with notice or is there. That is about the court process, which is part of the inherent jurisdiction of the court to determine its process according

to a judicial method of solving problems.

Another example is the statement about the test that the court will use. There are statements about the test being the balance of probabilities. I am here to tell the minister that the legal test in a child welfare matter is not the balance of probabilities. The legal test is different from that, and if his experts are telling him that it is the balance of probabilities, the experts are wrong.

Some experts who I have known in the past have argued in the courts that the test is the balance of probabilities. The courts have rejected it. I hope those experts have explained that to the minister and made him aware of that information. If they have not, they have not done their proper legal duty.

Another example is about the kind of evidence that the court will receive. This is about hearsay and various other rules. Another example is the question of representation. This is the question of the child advocate. The minister read a long quotation from the Cavanagh Report. He has told us the entire report is not before him. I ask him: have the experts, or have his advisors, given him the complete information on that issue?

The quotation he read is on the bottom of page 182 and the top of page 183. The last sentence he read was, "We think we can rely on the court in most circumstances to safeguard the rights of the child". I wonder if the experts gave the minister the complete picture, because it goes on to say, and I will read the next four or five sentences.

⁵² This is directly after that quote and I am skipping nothing; it is on page 183, "There may be the rare occasion when the court may suspect that the department lawyer is not doing an adequate job of presenting the evidence in support of a temporary wardship order, or, because of the circumstances, is in a conflict of interest position, as between the department and the child. In that case, the court can adjourn and direct that a lawyer be appointed to represent the interests of the child." It goes on and talks about another example on the same principle, and I will not bore everyone with a long quotation.

The point of the Cavanagh Report is that Mr. Justice Cavanagh is clearly of the opinion that child advocates are unnecessary, in most cases; however, it is clear that he believes the law is that the court can adjourn and direct. Now, this is the court directing, not the official guardian or the director. The court can direct that a lawyer be appointed, et cetera.

It is that kind of power that judges and lawyers are referring to when they talk about the inherent jurisdiction of the court. It is the jurisdiction to control their own process and the various procedural incidentals, which are so important to the legal process, in a general sense.

I mention those examples and I wish to state only one thing further, and it is a fairly general statement. Yesterday, the minister gave a louder than normal speech and he put feeling into his words. He said, "Look at us, we all have children, look at our families. Are we out to destroy families or the family unit?"

In the context of this debate, about the particular bill and the principles in the bill, what that really amounts to is the minister saying, "Look at us. We are good people; trust us to do the right thing". The response that we make is, as individuals, let us trust each other, and we have no problem in doing that. However, as legislators, it is not good enough to say trust somebody else because he is a good person or a good family man or woman or whatever.

⁵³ It is our job to look at the words of the bill, to look at the principles of the bill, and to decide according to our own influx and our expert advice what it means and to make a judgment based on our political representation as to whether we support it or oppose it in a political context. And we are doing that.

The minister has clearly stated that he is acting on the advice of his experts. He consults them from time to time. I say to the minister, look at those experts and ask yourself, do you trust the information that they are giving you? That is a very serious statement. I am not suggesting that they are lying to you, or anything like that. These are clearly areas about which there is a substantial controversy.

If you are consulting the same experts who wrote Bill No. 8 and are now consulted about Bill No. 19, is there not somewhere in

your mind a question? How could Bill No. 8 come before us when the language is so admittedly abhorrent. Are the experts independent? Is any one of them a person with substantial experience as a barrister — that is, actually in the courts?

I know, and it is an uncontroversial statement, that those members of the law society here, those lawyers who have read the bill — which I am ashamed to say is a minority of the lawyers, but those who have — have very serious concerns. What we are raising is extremely serious concerns about the effect of the language. It is not good enough for you to say that it does not change the power of the courts because the experts have told you that, and for us to say, oh, yes it does. We should be able to constructively debate the reasons on both sides. When the minister comes back after consulting his various experts, I am looking forward to doing exactly that.

Hon. Mr. Philipson: There are a few areas through that long speech that I think I would like to try and cover.

The first was a suggestion that I do not know if it was an offhand suggestion or did not intend to be that way, or that I do not understand what I am talking about on this piece of legislation. I think I probably understand this legislation fairly well. The reason that I say that I am not a lawyer, when I say I am not a lawyer, is so that at no point when I am trying to discuss anything that deals with the legal side of this legislation anyone should think that I am making the legal decisions when I am not in a position to make a legal decision; nor write legislation as a legal draftsman. I am truly not that. I do understand the legislation before us.

⁵⁴ I believe that I have answered most of the questions asked of me here in the past five days, without having to have somebody sit beside me, or have somebody give me the answers. I believe I know the principle of the bill. I believe I know the intent of the bill and I believe I can speak fairly confidently about every area in this bill, if I am given the question in manner that I can answer.

The question as to whether or not I am satisfied with this piece of legislation that is before us is that obviously I am, or I would not have brought it before this House.

The thought that the member opposite would leave with us that it is just another drafting by some individuals whom he feels are maybe not capable of drafting it, is not a fair statement of fact. I did conduct community meetings; I did go to every band; I did conduct meetings with the CYI; I did attempt to discuss it with the legal profession. I did discuss it with the Ministerial Associations and the input is reflected in this legislation.

The areas of concern that were left, before we brought this legislation to the House, I believe, have been addressed. One area that the member spoke to frequently is the area of reporting. It may interest the member for Whitehorse South Centre that subsequent to the announcement that I will be looking at that section and causing amendment to be brought, the member's professionals have written to me expressing their displeasure that I have done that; professionals — people who deal with children.

The question I think is before this House presently — and the member for Whitehorse South Centre continues to raise it — is the matter of the court. I would ask the member for Whitehorse South Centre whether he feels that the court should make law or, as I think the leader of the opposition believes, and I know I believe, that the legislature should make the law and we should spell out how the courts should operate. The public has no control over the court. The public does have control over the legislature.

I could speak of the area that Mr. Cavanagh, the Supreme Court Judge, has addressed, that, in some areas, and sometimes, there could be a time when the court may wish to appoint a representative for a child.

⁵⁵ At a specific point in time, I do not believe that we, on this side, would have any problem with an amendment that would discuss that area, but it would be an area where the court has decided there is a problem.

There are other things that I do not think are being addressed here. I do not believe that there is anything in law that states that there should be separate representation and our proposals, in this piece of legislation, relate only to areas of public expense. It does not restrict the authority of the Supreme Court to appoint separate

representation of children and it does not, in any way, affect the authority of the territorial court, because the territorial court does not have any authority in the matter now.

The issue that I mentioned before, when I asked the member for Whitehorse South Centre whether he feels the courts should be making the laws or whether the legislature should be making the laws, is one that I think we are going to have to clear up, so that we all know where we are coming from before we continue on with general debate on this legislation.

Mr. Kimmerly: Briefly, it is absolutely clear that the proper place to make laws is here, in this legislature. My position is that, about every substantive measure possible, the legislature should lay down the policy.

As an example of that, there was a discussion yesterday about the definition of a child and a fetus and when is a child a child. Members will remember that it was my position that the legislature should define that, as it is a matter of substantial interest to the public and it is a substantive matter. It is a matter where the courts have been improperly forced to make law where the legislature should have, in the past.

It is not for us, constitutionally, to spell out how courts operate. It is for us to lay down laws to instruct the courts about the policy and the courts will apply it to individual cases. I will go on about that, or I could, but the time is getting short.

I recognize the constructive attitude of the minister in his statements about his willingness to consider amendments about child advocates. That is a very major issue, a major concern, and we recognize the area for debate there. I thank the minister for that.

³⁶ In the moment or two left, I wish to comment on the statement that the minister just made about the territorial court and about how inherent jurisdiction is not taken away from the territorial court because it does not have it now. That is a very contentious issue. I know the departmental lawyers have argued exactly that in the territorial courts until they are blue in the face. I know precisely where the law is coming from, in common language.

The problem here is that the territorial court is given a job to do that requires a court with inherent jurisdiction. The Cavanagh Report speaks about it very nicely.

It could be acceptable to maintain the principle in the clause 183(2) on page 105, and clearly establish that the territorial court has not inherent jurisdiction. If we do that, we should listen to Mr. Justice Cavanagh who states that, in the Alberta context, the procedure of applying for permanent wardship should only occur in the Court of Queen's Bench. It should only occur in a court with inherent jurisdiction.

The principle that I believe is most important to state is, if the court is doing a job of looking at the question of a change in status for an individual; if it is looking at the question of permanent wardship, the court must have powers of inherent jurisdiction, otherwise the procedure does not work. That is the major principle and it is possible to decide that the court should not have inherent jurisdiction, but then permanent wardship should be bumped up into the Supreme Court. If the jurisdiction over permanent wardship is maintained in the territorial court as it now is, it is necessary that the court have inherent jurisdiction.

Hon. Mr. Philipsen: Mr. Chairman, I would request that you report progress on Bill No. 19.

³⁷ *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: Mr. Speaker, Committee of the Whole has considered Bill No. 19, *The Children's Act*, and has directed me to report progress on same.

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

Some hon. members: Agreed.

Mr. Speaker: May I have your further pleasure?

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

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

Motion agreed to

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

The House adjourned at 5:28 p.m.

99

The following Sessional papers were tabled April 17, 1984:

84-4-18

Yukon Tourism Industry Highlights 1983 (Firth)

84-4-19

Advertising Response Conversion Study 1983 (Firth)

The following Legislative Returns were tabled April 17, 1984:

84-4-6

Permanent part-time employee benefits (Pearson)

Oral, *Hansard* p. 222 84-04-10

84-4-7

Permanent part-time employee benefit package supplementary wages (Pearson)

Oral, *Hansard* p. 222 84-04-10

84-4-8

Permanent part-time employees — pro-rated benefits (Pearson)

Oral, *Hansard* p. 222 84-04-10

