



The Yukon Legislative Assembly

Number 20

2nd Session

25th Legislature

HANSARD

Monday, December 6, 1982 — 1:30 p.m.

Speaker: The Honourable Donald Taylor

Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake

DEPUTY SPEAKER — Andy Philipsen, MLA, Whitehorse Porter Creek West

CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
Hon. Chris Pearson	Whitehorse Riverdale North	Government Leader — responsible for Executive Council Office, Finance, Public Service Commission, and Economic Development and Intergovernmental Relations.
Hon. Dan Lang	Whitehorse Porter Creek East	Minister responsible for Municipal and Community Affairs, Highways, Yukon Housing Corporation, and Yukon Liquor Corporation.
Hon. Howard Tracey	Tatchun	Minister responsible for Health and Human Resources, Renewable Resources, Government Services.
Hon. Clarke Ashley	Klondike	Minister responsible for Justice, Consumer and Corporate Affairs, and Workers' Compensation.
Hon. Bea Firth	Whitehorse Riverdale South	Minister responsible for Education, Tourism, and Heritage and Cultural Resources.

GOVERNMENT MEMBERS

(Progressive Conservative)

Bill Brewster	Kluane
Al Falle	Hootalinqua
Kathie Nukon	Old Crow
Andy Philipsen	Whitehorse Porter Creek West

OPPOSITION MEMBERS

(New Democratic Party)

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

(Independent)

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

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

⁰¹ **Whitehorse, Yukon**
Monday, December 6, 1982

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

Prayers

Mr. Speaker: We will proceed at this time to the order paper.

DAILY ROUTINE

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

RETURNS OR DOCUMENTS FOR TABLING

Hon. Mr. Pearson: I am pleased, today, to table the Annual Report of the Yukon Government for the Fiscal Year 1981-82. In commemoration of the 40th anniversary of the building of the Alaska Highway, the theme chosen for this annual report is "Yukon Highways".

Members may also wish to note that this year's annual report reflects a new design, which has enabled us to keep production costs to a minimum while still maintaining the integrity and required content in this publication.

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

Reading or receiving of petitions?

Are there any introduction of bills?

INTRODUCTION OF BILLS

Hon. Mr. Pearson: I move, seconded by the Minister of Education, that Bill Number 17, *Public Sector Compensation Restraint (Yukon) Act*, be now introduced and read a first time.

Mr. Speaker: It has been moved by the hon. Government Leader, seconded by the hon. Minister of Education, that a bill, entitled *Public Sector Compensation Restraint (Yukon) Act*, be now introduced and read a first time.

Motion agreed to

Hon. Mr. Ashley: I move, seconded by the hon. Minister of Education, that Bill Number 20, *An Act to Amend the Companies Act*, be now introduced and read a first time.

⁰² **Mr. Speaker:** It has been moved by the hon. Minister of Justice, seconded by the hon. Minister of Education, that a bill entitled, *An Act to Amend the Companies Act*, be now introduced and read a first time.

Motion Agreed to

Mr. Speaker: Are there any further bills?
Are there any notices of motion for the production of papers?
Notices of motion?

NOTICES OF MOTION

Mr. Brewster: It is moved by the member for Kluane, seconded by the member for Hootalinqua, that it is the opinion of this House that the Department of Indian Affairs and Northern Development in consultation with the Yukon government Department of Finance correct an inequity that exists in the Government of Canada's power rate relief program to small non-governmental commercial enterprises by designating small business which service Yukon highways and produce their own electricity to be eligible for the benefits of the program.

Mr. Speaker: Are there any further notices of motion?
Statements by ministers?
This then brings us to the question period.

QUESTION PERIOD

Question re: Land claims

Mr. Penikett: I have a question for the government leader. The Government of Yukon's negotiator has been quoted as saying that he will not be "suckered" into signing a land claims agreement without a clause for the transfer of the rest of Yukon land. Is it the position of this government, and I am looking for a clear statement of policy here, that it is opposed in principle to the settlement of Indian land claims unless and until its own land demands are met?

⁰³ **Hon. Mr. Pearson:** It is not our position that we are opposed to a land claims settlement in any way, shape or form. We have never taken such a position and we do not want to imply that. It has been our contention, all the way down the line that, if there is going to be a land claims settlement that this government can be a signatory to, it must be deemed to be fair and just. It is our contention, at this point, that unless there is some provision for the orderly transfer of lands to this government, on behalf of all of the people of the territory, after a land claims settlement, I do not think that it will be considered to be fair and just by anyone in the territory.

Mr. Penikett: I thank the government leader for his answer. Given the distinctly negative sound of the attitude espoused by the Yukon government's negotiator, I am forced to ask this government its clear position on the following question. Does this government, in fact, recognize the legitimacy of the Yukon Indian land claim?

Hon. Mr. Pearson: I would submit, respectfully, that that is a facetious question from the leader of the opposition. He knows the commitment of myself, our negotiator and every member of this government to a land claims settlement.

Mr. Penikett: With respect, it was not a facetious question at all and I want to get the government clear on the following question: is it or is it not the position of the Government of Yukon that Indians here have no more claim to the land here than non-natives?

⁰⁴ **Hon. Mr. Pearson:** No, not at all, exactly the opposite. It is our position, and always has been, that the Indian people in this territory have a definite claim to land in this territory. The land that we are talking about that is to be transferred to this government after a settlement is just as much the Indians' as it is ours because it is for all Yukoners, and when I talk about all Yukoners, I do mean all Yukoners.

Question re: Cyprus Anvil Mine

Mr. Penikett: This is a new question. On a new subject, this government has not hesitated to co-operate with Dome Petroleum through winter maintenance of the Dempster highway and by supporting harbour proposals for developments on the north coast. Therefore, I would ask the government leader if this government is prepared to demand the reopening of the Cyprus Anvil mine as the *quid pro quo* for its continued support and co-operation in respect to its other developments?

Hon. Mr. Pearson: I explained once to the House that we made what I thought was a very good effort to try and tie Cyprus Anvil Mine to Dome Petroleum Limited. We suggested to the federal government that that was possibly the way that this government and the people of the territory could benefit from whatever was going to be done in respect to Dome. We were told in no uncertain terms by the federal government that we could not do that, nor would we be allowed to do that in the future.

⁰⁵ **Mr. Penikett:** My two supplementaries support both parts of the government leader's answer.

I would like to ask the government leader: has this government communicated directly with Dome about the reopening of Cyprus Anvil mine; and, given the current impasse, apparently caused by the company, will the government leader now communicate to Dome our desire to have this mine reopened as soon as possible?

Hon. Mr. Pearson: Yes, we have had communications directly with Dome and with Cyprus Anvil. As I am sure the leader of the opposition realizes, the president of Cyprus Anvil is a vice-president and director of Dome; he is one and the same person.

We will, as a government, be making sure that both Dome and Cyprus Anvil are very cognizant of our concerns in respect to what is or is not happening at the present time.

Mr. Penikett: Notwithstanding the federal government's previous refusal to tie the reopening of Faro with the aid package to

Dome, could I ask the government leader if he is now prepared to request of the federal government that it use its considerable financial leverage with Dome, in order to affect the reopening of Cyprus Anvil and the return to work on that property as soon as possible?

Hon. Mr. Pearson: That will be one of the major requests that we will be making; I have absolutely no problem at all in making an undertaking to do that and I would hope, at the same time, that the leader of the opposition will use his good offices in Ottawa to support such a request.

Question re: Cyprus Anvil Mine

Mr. Byblow: I am sure the leader of the opposition will. I have a couple of questions on the same subject to the government leader. As a signatory to the co-operative agreement to get the Cyprus mine open and in light of the known fact that the two stumbling blocks — that of the term and housing — are no longer issues towards the settlement of the collective agreement, can the government leader explain what is holding up contract settlement now?

Hon. Mr. Pearson: No, I cannot.

Mr. Byblow: Is the government leader aware that all information points towards a deliberate stalling effort by Dome on the contract settlement; and is the government leader prepared to respond to the allegation and possible threat by immediate discussions with Dome on the urgency of the matter?

Hon. Mr. Pearson: I believe that is an observation on the part of the member. It may or not be fact. I am in absolutely no position to say one way or the other. I have answered the second part of his question. There is no doubt about it that we will be in consultation with Dome and Cyprus Anvil.

Mr. Byblow: Can the government leader report today on any developments respecting the aid package proposed by the federal minister? In other words, has it been approved by Cabinet? At what stage is it?

Hon. Mr. Pearson: One of the last things that the minister said to me when he left last Saturday was that he would be contacting me as soon as he had some information. I have not yet been contacted.

Question re: Liquor Corporation

Mr. Kimmerly: A question to the minister responsible for the liquor board. I am informed that a cut rate, or sale, liquor price list was circulated to deputy ministers. Was the list circulated to any other government officials aside from deputy ministers?

Hon. Mr. Lang: It was brought to my attention. As far as the sale is concerned, I am sure there is going to be enough advance warning to the general public at large, letting them know that certain commodities will be sold below the present price that they are being offered.

Mr. Kimmerly: Will the minister give me a copy of the list previously circulated?

Hon. Mr. Lang: I cannot see the reason why I should. I indicated to the member that there will be due publication in respect to the total public at large that such a sale will be taking place and the commodities we are putting on sale will also be published and, subsequently, everybody will have the same type of information.

Mr. Kimmerly: Is there a government policy, or liquor board policy, about advance notice of liquor sales?

Hon. Mr. Lang: Not to my knowledge. The major policy, as far as I am concerned, is that the public is fully apprised of any sale prior to it taking place and that is exactly what will happen.

Question re: Dead animals

Mr. Porter: My question is for the Minister of Renewable Resources. Two weeks ago there were reports that three dead animals were found on the shores of the Klwane lake region and the minister assured us that an investigation would be carried out. I would like to ask the minister: has the investigation been carried out to date? Has he any reports from his department and, if not, would he agree to undertake to table the findings of such investigation to this House?

Hon. Mr. Tracey: When the member asked me the same

question previously, I said no, and that answer has not changed yet. I have not heard from my department. I also, at that time, said that I would make it public here in the House. I do not think that it is necessary for me to table it in the House. When I do get the report I will make it public.

Mr. Porter: My first supplementary deals with the difference of opinion between the federal Department of Agriculture and the department with respect to Renewable Resources of the territorial government. On the question of poison, it is understood that the Minister of the Department of Renewable Resources stated that it was felt that, should they not get the go-ahead to use 10-80, which is a poison, that the department would simply go ahead and use the strychnine poison. Is that the clear position of the government?

Hon. Mr. Tracey: Yes, as I have said previously, it is the legal opinion of this government that a licence from the federal government is not required and we will proceed to use poison. However, we have not proceeded to use poison as of this date, and we are presently trying to reach some agreement with the federal government because we do not feel it is in anyone's interest to be at loggerheads with one another. However, if and when we decided to go ahead with our poison program, we will be doing so.

Mr. Porter: There have been reports that suggests that members of the Renewable Resources department have been given reasons to fear for their jobs as a result of differences that they may have with policy initiatives of this government. Can the minister tell the House whether this situation exists in his department?

Hon. Mr. Tracey: Absolutely not; at least, not to the best of my knowledge.

Question re: Child Welfare Act

Mrs. Joe: I have a question for the Minister of Health and Human Resources. November 15th, the minister indicated that his department would probably contact the Yukon Indian Women's Association with respect to the drafting of the *Child Welfare Act*. Will the minister tell us if that contact has been made?

Hon. Mr. Tracey: No, not to the best of my knowledge. However, I would assure the member across the floor that a new *Child Welfare Act* is going to be a substantial length of time; enough time for us to contact the Indian women.

Mrs. Joe: Since the act will affect the lives of many people in the Yukon, can the minister inform us if it is the intention of his department to consult with other concerned groups such as the Status of Women?

Hon. Mr. Tracey: If my department feels that it is necessary to get that information from the various groups, yes.

Mrs. Joe: Can the minister inform the House if it is the intention of his department to conduct public hearings so that these groups and other concerned citizens can have input into the drafting of the *Child Welfare Act*?

Hon. Mr. Tracey: It is not my intention at this time, but if it is felt necessary we will be doing so in the future.

Question re: Charter aircraft

Mr. McDonald: I have a question for the minister responsible for Government Services. Did the government charter a plane last week to take two ministers, one deputy minister, two political aides and three government back-benchers to Old Crow and if so, how does the minister justify this expense in this time of restraint?

Hon. Mr. Tracey: Yes, we did charter an airplane to go to Old Crow. We went to Old Crow to open the new community centre that was built by this government's department of resource corps.

Mr. McDonald: To the same minister. Since I understand there was a scheduled DC flight on the same day and since this large group, I understand, had no formal meetings with the band council can the minister now explain what benefits the taxpayers derived from this trip?

Hon. Mr. Tracey: We did not have a meeting with the band council, but it was not at our instigation. We had a meeting set up for the afternoon of Friday at 1:30. The band council, in their good judgement, did not meet with us so there was very little that we could do after we had made arrangements to have a public meeting with them. I should also tell the member that it is almost impossible

to get back out of Old Crow so we had to have a flight. The federal government also chartered a flight there and so did the CYI.

Mr. McDonald: Can the minister explain what can obviously be determined as a double standard by which government backbenchers take such political trips at the taxpayers' expense while members on this side of the House have to pay for trips around the territory on their own expense allowance?

Speaker's Ruling

Mr. Speaker: I think I will rule that question out of order as begging representation and also being argumentative. I would like at this time to say, listening to questions this afternoon, I would draw the attention of members to annotation 359(3), where questions cannot make representations. I have heard many questions this morning doing, in fact, just that. Perhaps hon. members in phrasing their questions would consider as being an abuse of the rules.

Question re: Carcross school drinking water

Mr. Byblow: I have an information seeking question for the Minister of Education. The minister previously advised me that the arsenic water supply situation in the Carcross school was resolved in that a holding tank was installed and that water consumption at the school was safe. Since I have been advised that this is not the case, can the minister advise me why the holding tank is not yet installed?

Hon. Mrs. Firth: I was not aware that the holding tank was not installed. I was under the impression that the holding tank was being installed.

Mr. Byblow: It would appear then that it is being installed for an undue length of time because I am advised that the present holding tank capacity consists of half-gallon jugs procured by students by crossing the street to a private residence for their consumption.

Mr. Speaker: The hon. member is now making a speech. Could he kindly get to his question.

Mr. Byblow: I certainly will Mr. Speaker. Can the minister say whether this water that is now being used by the students from across the street has been tested and whether it is completely safe for human consumption?

Hon. Mrs. Firth: I do not know what the member is asking, where the water across the street is coming from: if he could be more specific as to exactly what water the children are using, maybe I could answer the question.

Mr. Byblow: The minister can be assured that it would have to be from a private residence across the street and not from an open pit, I am sure.

To complete the questioning, I would like the minister to reassure me that she will have the matter of water supply to the students at that school looked into immediately by specifically assuring me that proper facilities will be installed for safe water consumption.

Hon. Mrs. Firth: That is already being done.

Question re: Child Welfare Act

Mr. Kimmerly: I have a question for the minister responsible for the *Child Welfare Act*, again.

The department recently advertised for public input concerning the new act. Will the responses be made public?

Hon. Mr. Tracey: I could not give a definite answer to that. I am not sure whether it is necessary to make them public or not; it depends on what the responses are. I have never seen any of them and I could not comment on it.

Mr. Kimmerly: Will the minister, at least, assure us that the issues raised in the responses will be made public at some point?

Hon. Mr. Tracey: Not necessarily. I do not see any necessity for us making all these responses public. The reason the department asked for public input was to find out what the public thought; it was not to gather information to redistribute to the rest of the community, it was for the department's benefit in drafting new legislation.

Mr. Kimmerly: If the minister will give us no general guarantees, will the minister at least say if the persons responding to the notice will be given a copy of the draft position before it

becomes a bill and is introduced in the House?

Hon. Mr. Tracey: No, I will not make that commitment, either. What we are trying to do, as I said in the previous answer, is to get the information from the public in order to draft legislation that conforms to what would be best for the people of the territory. I am sure that draft legislation will be out around the community long enough in advance — especially for the opposition members — to gather all their criticism, which we will deal with in Committee of the Whole.

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Question re: Association of Yukon Communities

Mr. Porter: My question is to the minister responsible for municipal affairs. Since the value of the Association of Yukon Communities is now presently debated in public, I would like to ask the minister if the present policy of this government is in agreement with the statement made in 1981 by the previous Minister of Municipal and Community Affairs and, I quote, "The AYC is able to most effectively represent the concerns of local government."?

Hon. Mr. Lang: I do not think that there is any question that there is a value to the organization. The way I understand it, public debate in some quarters is just exactly how much money it should take to run such an organization. As far as I am concerned, it is up to the communities to decide that, not the member for Campbell, nor the member for Porter Creek East, who happens to be the Minister of Municipal Affairs.

Mr. Porter: Is in the policy of this government that an independent self-help organization like the AYC is needed, or should communities look to the Yukon government for all of their advice?

Hon. Mr. Lang: That is a decision that the communities themselves have to make. I do believe that the taxpayers of the territory do provide monies for salaries so that people with certain expertise can be made available to the communities so that, whether it be the local improvement district from Watson Lake or the municipality of Dawson City, they can get the necessary legal advice as well as, perhaps, some understanding of what options could be considered for any decision-making.

Mr. Porter: In light of the fact that the executive director of the AYC is paid less than the local government advisor in this government, has the minister compared the cost of the AYC with the additional cost to this government or providing the same services?

Hon. Mr. Lang: I do not know about the question of pay range and I will not accept the member's word for it. I will take notice in respect to that particular part of his question. I do know this: if the member opposite wants me to carry out my responsibilities, as the Minister of Municipal Affairs, I do need some assistance in respect to people within the public service to assure that certain things or laws that are passed by this House, or budgetary items, are carried out in a manner that is appropriate, and acceptable, to both sides of the House. I am sure that the member opposite is not recommending to me that all departments in the government become independent bodies and then the legislature has no say over them. I hope that is not the idea of his question.

Question re: Shipyard area road

Mrs. Joe: A question for the Minister of Municipal and Community Affairs. Since the definition of a highway under the *Highways Act* clearly applies to the shipyard area road, will the minister inform this House if he will, once again, investigate the barrier on that road?

Hon. Mr. Lang: I am not prepared to comment on the legal opinion that she has obviously obtained from some quarters. I have indicated, if some new development were to come up, that I would be prepared to look at it. In most cases, it is the City of Whitehorse's responsibility.

Mrs. Joe: Section 85 of the *Municipal Act* also applies to the shipyard area road. Will the minister also consider this section if there is a further investigation?

Hon. Mr. Lang: I am always prepared to look at various options to see whether or not a problem can be solved. As I indicated to the member some time ago, the property that is in

question is held privately by various individuals or companies. It is very difficult for any government to walk onto somebody's private property and tell them how they are going to utilize it. I am sure that is not what the member is intimating.

Mrs. Joe: The definition in the *Highways Act*, I would suggest that the minister read. Since the people in the shipyard area cannot afford legal fees, will the minister investigate ways to assist these people, should they require any legal advice?

Hon. Mr. Lang: The member used to be a JP; she knows full well in respect to the financing of the court system where one applies if civil legal assistance is necessary and if they are eligible. I could not make that commitment on behalf of the taxpayer of the territory because she knows that the taxpayers of the territory could be subsidizing directly or indirectly various court cases that are really a civil matter.

Question re: Land use planning

Mr. McDonald: A question for the Minister of Renewable Resources in his capacity as minister responsible for land use planning. Can the minister explain whether land use planning committees will have the authority to dispose of or distribute lands under territorial control?

Hon. Mr. Tracey: No, the committee is set up to plan land and so is the board. The distribution of land is not a function of land use planning.

Mr. McDonald: On a related matter to the same minister. Will the Agricultural Development Council continue to have the sole authority to dispose of lands for agricultural purposes, and, if so, what allowances will be made for public scrutiny?

Hon. Mr. Tracey: The set-up as it is today has the Agricultural Development Council reviewing all applications for agricultural land. If and when we implement land use planning, the agricultural aspects of the lands will be taken into consideration.

The applicant for agricultural land would still at that time go through the Agricultural Development Council, because the council deals with much more than just whether the land is arable. It deals with the financial capabilities and all the rest of matters dealing with agriculture. It would still be referred to the Agricultural Development Council for implementation.

Mr. McDonald: I thank the minister for his reassurance. The one question was regarding public scrutiny, however. When land is transferred from federal authorities for various purposes, will the government set up a formal system for the distribution of lands under territorial control?

¹² **Hon. Mr. Tracey:** I wonder if the member would rephrase his question?

Mr. McDonald: I will repeat the question, certainly. When land is transferred from federal authorities for various purposes, will the government develop a formal system for land distribution which is equitable and fair to all perspective applicants?

Mr. Speaker: The question would appear to be making a representation; however, if the minister wishes to answer the question, proceed.

Hon. Mr. Tracey: I think we can assure the member that whatever we do in regards to the distribution of land, it will be equitable and fair.

Question re: Pre-apprenticeship training

Mr. Byblow: We shall remember that last statement. I have a question for the Minister of Education: the B.C. curriculum provides for a certain amount of pre-apprenticeship training in high school, whereby students taking senior courses in a field are given advanced credit towards an apprenticeship. Has the minister investigated the possibilities of implementing such a continuity in the Yukon school system?

Hon. Mrs. Firth: No, I have not investigated it, but, from what I have learned about the courses offered in high school, I believe, because we follow the B.C. curriculum, we have a similar qualification.

Mr. Byblow: However, it does not appear that we have ironed out the bugs, because I received a number of complaints from vocational school students who complain that they receive no

advance credit for relevant courses taken in high school.

In the interest of creating a more streamlined and efficient system, will the minister investigate the situation and determine whether advanced credit in apprenticeship programs is possible from courses taken in high school?

Hon. Mrs. Firth: I believe we are already in a process of investigating it.

Mr. Byblow: Perhaps I could offer to the minister that pre-apprenticeship courses, for example, are offered in...

Mr. Speaker: Order, please. The hon. member is now making a speech; perhaps the hon. member has a question.

Mr. Byblow: Yes, I do have a question. Will the minister undertake to look into the possibility of allowing courses in high school to be broken into blocks, like units, which would be more flexible for advanced credit to be given?

Hon. Mrs. Firth: We are examining these different ways every day and, as soon as we have ironed out the wrinkles, I will let the member opposite know.

Question re: Land transfer issue

Mr. Kimmerly: In the absence of the government leader, a question to the acting government leader: the YTG land claims negotiator and various Cabinet members, including the government leader, have recently made public statements about the land transfer issue. Previous government policy was to not comment publicly about the negotiations: is the government position about publicity now changed?

¹³ **Hon. Mr. Lang:** I think I would like to refresh the member's memory. I am kind of surprised at the question because it was not that long ago. We were not the ones who raised the issue: the Minister of Indian Affairs did on his trip to Whitehorse approximately one week ago. All members of this House, and the previous government, supported a motion that there be more public access to information with respect to the land claims negotiations as the government leader has indicated on many occasions. There are two other parties involved and that happens to be the Government of Canada and the Council for Yukon Indians and there has to be agreement, by all parties, prior to a dissemination of any documentation. All I can assure the member opposite is that we are doing everything we possibly can when it is deemed appropriate to try to get information to the public.

Mr. Kimmerly: On the issue of publicity and public knowledge, now that the land transfer issue is a matter of public concern and is debated publicly, will the government's position at the negotiation be that all facts around this issue now be made public?

Hon. Mr. Lang: There is obviously a misunderstanding, at least we deem it to be one, between the Government of Canada and ourselves in respect to the issue of land and the transfer of lands. I want to correct the member initially that it always has been an issue, at least to some degree, to all Yukoners that land would be made available to the people of the territory upon the culmination and agreement of a land claims settlement. In respect to the further dissemination of information, we are trying to seek clarification in respect to the Government of Canada's position, specifically, as far as our position on the transfer of land is concerned. I find it kind of amusing that the members opposite do not agree that there should be a transfer of land, or at least an agreement, in order that we can have a land claims settlement that is fair and just to all people of the territory.

Mr. Kimmerly: The last statement was inaccurate. The member has previously said that the federal position suddenly changed in approximately the last two weeks. Does the minister now have any documentation of this claim?

¹⁴ **Hon. Mr. Lang:** The government leader made it very clear in the House a number of days ago that in any of our discussions with the Government of Canada it was implicit that there would be also some agreement as far as the transfer of Yukon land to Yukoners in respect to the land claims, as far as they affected the territory. Obviously there has been a change of heart, at least at the senior bureaucracy level, which hopefully we can overcome, and the will of the people will prevail.

Mr. Speaker: There being no further questions, we will proceed to the order paper under orders of the day, government bills and orders.

ORDERS OF THE DAY

GOVERNMENT BILLS AND ORDERS

Bill No. 9: Second Reading

Mr. Clerk: Second reading: Bill No. 9, standing in the name of the hon. Mr. Ashley.

Hon. Mr. Ashley: I move, seconded by the hon. Minister of ... that Bill No. 9, *An Act to Amend the Workers' Compensation Act*, be now read a second time.

Mr. Speaker: Could I have the seconder again?

Hon. Mr. Ashley: The hon. Minister of Education.

Mr. Speaker: It has been moved by hon. Minister of Justice, seconded by the hon. Minister of Education, that Bill No. 9 be now read a second time.

Hon. Mr. Ashley: I am pleased to bring forward this bill at this time. There are a number of serious concerns about the system of workers' compensation in Yukon which must be addressed. Yukon is not unique in this regard. Other jurisdictions have had to deal with similar problems and have adopted a variety of measures to meet with them. We can benefit from their experience. During these difficult economic times in Yukon and in Canada, we all know the availability of dollars is very restricted; therefore we must get maximum value out of the money that we do have available. We can no longer afford a system of workers' compensation that over-compensates some workers and under-compensates others. We can no longer afford to have a system that, other than through the provision of funds, does little to rehabilitate injured workers so that they can lead more active and productive lives. Injured workers must receive fair compensation commensurate with their disability.

Before describing the changes that we are proposing to the current system, I would like to briefly outline some of the background on workers' compensation.

When workers' compensation was first introduced, the object was the development of a compensation system designed to translate physical disability and loss of earning into loss of earning capacity. Most of the compensation boards in Canada did this by developing the concept of an average worker. When this average worker received a permanent disability because of a work injury, a loss of the body function resulted in some loss of his ability to do his average job and to earn his wage. Since this system was based on the concept of an average worker, the same loss of body function would result and the same percentage loss of earning capacity. Guideline tables were developed, which assigned a percentage of disability to each loss of body function and this percentage was the same for everyone. Whatever merit such an approach may once have had, there have been significant changes which bring such a system under question today.

¹⁵ The first of these changes has been the increasing specialization of the labour force. And these specializations have made it more and more difficult to predict the effect of an accident. Improved medical practices and a strong emphasis on rehabilitation have increased the difficulties of an existing approach. The development of a new definition of disability or a theory of functional disability is now needed.

The new theory depends on the distinction between physical impairment and a disability. The physical impairment may exist, but only when it interferes with an ability to do one's job does it become a disability. On this basis, a person who is considered disabled in one setting, but not disabled in another.

The degree of disability would depend on both the task that is being performed and the type of technological enhancements available. From this perspective, a work injury may often result in physical impairment. However, only when this impairment affects the individual's ability to do the job can it be considered a disability from an occupational stance. The following examples clarify this concept.

Example one: an accountant suffers an injury and loses two

fingers on a non-writing hand. The accountant suffers some discomfort, but ability to perform that job is totally unaffected. The worker is physically impaired, but not occupationally disabled.

An instrument technician loses the same two fingers. This worker's ability to work with tools and earn a living doing so is sharply diminished. This worker is physically impaired and well as being occupationally disabled.

Example two: two individuals injure their backs in similar jobs. One is a summer student who returns to university, the other is a fifty-year old labourer, who, because of the lack of education, is unable to find another job. In both cases, the physical impairment is the same. However, occupational disability is vastly different.

The system used in Yukon allows little room for distinguishing between impairment and disability. It is only fair and equitable that the method of approaching compensation recognizes the distinction between impairment and disability. The primary element of such a system must be income maintenance. It is for protection against loss of income that compensation systems are designed. Temporary compensation benefits do just that. It is equally certain that this must be the goal of permanent compensation benefits.

An example of how the proposed system would work is as follows: one, a lump sum related to the severity of the handicap; two, compensation based on the worker's income loss as a result of the injury as long as there is an income loss to the age of sixty-five; three, an annual review of income loss to adjust for change in the worker's circumstances and inflation; four, an annuity at age sixty-five. If the worker is able to return to employment, but at a lower salary, because of the disability, the worker is eligible for the difference between full income maintenance and a new salary.

¹⁶ If a worker returns to employment at the same or higher salary, they will receive no income maintenance. However, if an injury has a lasting effect, even though the worker may work for years without loss of earnings, the worker may claim for such loss at a later time if that person's income diminishes and the injury is shown to be the cause.

The change between the present system and the proposed one is this: instead of receiving a pension for life based on a medical rating of disability, the worker is guaranteed that, because of the injury, the total income will never fall below the level of full compensation at the time of their injury with some adjustment for inflation. The new system is designed to avoid over-compensating some and under-compensating others. It will achieve a more equitable distribution of dollars.

The rehabilitation process is a vital part of the income maintenance system being proposed and the board plans to provide services which include a work assessment, education upgrading, job placement, vocational training and whatever measures it considers necessary to assist an injured worker to return to work.

It is also this government's desire to provide a fair and equitable contribution of benefits to the dependents of workers killed in the course of employment. Therefore, we have proposed an increase and a monthly pension to a surviving spouse and dependent children.

A change on the claim appeal procedure is also proposed. Under the present system, all permanent disabilities are determined by the board and all appeals are made to the board. The change will allow the same number of appeals to the worker but to three separate internal bodies who will not have made any previous decisions on the question. It will assure more thorough review of all evidence and should assure the worker of impartiality. There are other changes that will provide a more equitable standard of coverage to employers and workers alike.

Independent operators will now to be allowed to make application for personal coverage to come within the scope of the act on a voluntary basis. The amount of coverage will be at the option of the applicant. When the application is made, the independent operator will state the sum for which compensation coverage is desired subject to minimum and maximum limits to be set out annually.

Directors of limited companies will not be covered automatically. Those rendering a service to the corporation who wish to make application for personal coverage, to come within the scope of the act, on a voluntary basis, may do so in the same way as the

independent operator.

At present, the maximum assessable earnings are determined by the average weekly earnings of the Yukon workers as provided by Statistics Canada. These figures are delayed by a minimum of six months and do not truly reflect the average earnings of workers in Yukon because they do not include wages paid by the government or by city. It is proposed that the annual maximum assessable earnings be set by the board, based on the average earnings of workers in receipt of compensation during the previous 12 months. Other major changes in the proposed billing include the decrease of board membership from four to three and the appointment of a full-time chairman. As a result of these changes, the administration of workers' compensation will be clearly seen to be separate from the political process.

¹⁷ While the act is being opened up, we are taking advantage to house clean minor defects and to make changes in the terminology. These include: changing administrative titles, fixing the reporting date, signing authorities and similar matters, and appointing the Auditor-General of Canada as the auditor of the board.

Mr. McDonald: I am pleased to speak to the proposed amendments to the *Workers' Compensation Act* this afternoon, as the majority of changes are reasonably necessary, based on the experience of the board over previous years. While we would have preferred a public, independent review of the proposed changes long in advance of their introduction to the legislature, we feel that, for the most part, the changes are worthwhile.

Of the significant items in the proposed changes, we applaud the extension of coverage to employers, directors of corporations and independent operators. The system should have universal application for all people who are, to varying degrees, subject to accidents and deserving of the general insurance that this act provides.

The new three-stage process of claim review and adjudication is also something we can certainly support. The old system with board decisions being reviewed by the board has long been an irritant amongst claimants. I am sure most people will applaud the new three-stage process as it will likely provide for a more expeditious settlement of the simple claims and will allow for an additional two separate and independent tribunals for the processing of contested claims. What will have to be made explicit, however, is that no tribunal or member of tribunals can sit in on an appeal of their own decisions.

I am little worried about the very brief reference to the claimant's right to review the files which provide the basis for the termination of his claim. That a person should only receive a summary as determined by the board of the reasons for the decision, seems liable to abuse. This has been a significant issue in other jurisdictions and, in fact, the freedom of information and the right to know have been issues in this legislature in the recent past. We would prefer to see the explicit right for a claimant to review all submissions made in the determination of his claim.

The changes to the determination of the maximum wage rate, and special ammuny for persons over 65 are included in the things that we support; however, we have some problem with the determination of the amounts of claims based on the loss of original earning capacity. If members will just bear with me, I will illustrate my concerns.

One of the most difficult tasks the board faces in the administration of a new act is in trying to estimate the future loss of earnings which are attributable to compensable injury. It is the intention of workers' compensation boards in virtually all jurisdictions in Canada to consider that the most important task of a compensation system is the replacement of wage loss.

The hon. Sir William Ralph Meredith, Commissioner to the Ontario Legislature, in his final report on laws relating to the liability of employers, was concerned with the same problem. As far back as 1913, he said that a uniform rate of compensation, which has no relation to the earning power of the workman, except as the *Associations Bill* provides, for the purpose of reducing the rate by 50 percent of his wages is, in my opinion, also inconsistent with the principle upon which a just compensation law is based.

¹⁸ It is unfair and a most undesirable mode of fixing the amount of compensation. (unclear) ... scale of compensation proposed by the

association open to these objections, but the amount of compensation is so small that only the lowest paid workman would be compensated to the extent of 50 percent of the loss of his earning power. It goes on to say that what is more objectionable to him, however, is that payment of lump sums is contrary to the principle upon which compensation acts are based and is calculated to defeat one of the main purposes of such laws — the prevention of the injured workman becoming a burden on his relatives or friends or on the community, and has been generally deprecated by judges in working out the provisions of the *British Act*, and was condemned by the association itself in the memorandum which it submitted, and which appears in the appendix to his first report.

It is contended that it is unfair to require the employer to pay compensation during the lifetime of a workman because in many cases it will mean that the workman will receive compensation for a period during which, if he had not been injured, he would have been unable to earn wages. No doubt that will be the result in some cases, but on the other hand the workman loses an advantage he would have derived had he not been injured from an increase in his wages owing to an improvement in his position or to an increase of his earning power or to a rise in wages from any other cause, because the compensation is based on the wages the workman was earning at the time of his injury.

It would appear that the proposed legislative change to assess disability pensions with actual earning loss resulting from injury, thereby eliminating the loss of function concept, is a serious attempt to improve compensation benefits. However, there is a serious problem with awarding permanent disability pensions solely on the actual loss of earnings with no regard for the functional disability.

While compensation based on the actual loss of average earnings would appear on the surface to be fair compensation for an occupational injury or disease, in actual fact it fails to consider some very important factors. Where a disabled worker is able to return to his pre-accident employment or find other employment which pays an equivalent amount, no actual loss of earnings are apparent. However, there is no consideration on the effect it would have on the opportunity for advancement. This method also falls short in times of economic slumps; where a worker is unable to perform another position with the company is therefore unable to use his seniority to maintain employment. In the case of the injured worker who has found alternative employment of equivalent pay, he or she has no seniority to fall back on in times of economic slumps. In many instances, workers with a physical disability suffer reduced prospects of promotion, employment restrictions, and their capacity to compete in the labour market in the event that their job is terminated is severely reduced.

A worker may very well be reluctant to return to an occupation requiring maximum effort because of the possibility that it would be beyond his or her ability to perform in the future. Relying solely on the individual's ability to earn may in effect curtail maximum rehabilitation. The Workers' Compensation Board of British Columbia has made a determined effort to reach the fairest method possible of compensating for occupation disabilities.

¹⁹ The act of 1942 was quoted, "the average earnings and earning capacity of a worker shall be determined with reference to the average earnings and earning capacity at the time of the accident and may be calculated upon the daily, weekly or monthly wages or other regular remuneration which the workman was receiving at the time of the accident, or upon the average yearly earnings of a workman for one or more years prior to the accident, or upon the probable yearly earning capacity of the workman at the time of the accident, as may appear to the board best to represent the actual loss of earnings suffered by the workman by reason of the injury, but not so as, in any case, to exceed the rate of \$2,000 per year, provided that where, owing to the shortness of the time in which the workman was in the employment of the employer or the casual nature of his employment or the terms of it, it is inequitable compute average earnings in the manner herein before described in this subsection."

The hon. Gordon Sloan, around the same period, commented that the intention of legislatures be expressed in clear language and the

object of the section is to vest in the board a wide discretion. The board is clothed with the unfettered discretion for the single purpose of arriving at the fair and just figure which truly represents the loss of earnings of an injured employee.

The wage earned by a rehabilitated employee is at least some objective measure of his own incapacity. The problem of evaluating incapacity, we tend to leave the realm of speculation to the world of the realistic fact.

In the *Ontario Act* he recommends that, where deemed just, the impairment of earning capacity may be estimated from the nature of the injury, having always in view the workman's fitness to continue the employment of which he was injured or adapt himself to some other suitable occupation.

When workman's compensation attempts to rate the residual degree of permanent disability, they must acknowledge that while rating physical incapacity is difficult, rating occupational incapacity is flatly impossible. It follows that the attempt to reflect occupational incapacity is in permanent disability rating, either in detail percentage ratings or schedules, should be dropped. Instead, the system should adopt permanent disability rating procedures that seek to determine physical incapacity alone. Even this assignment is far from simple. Precise rating must be recognized as impossible because all ratings, at best, are based on imprecise medical judgements and because of the many subjective factors involved.

Nevertheless, there must be special cases in which the occupation of the injured workman is such that it should be given some weight in arriving at an award. This would be seem to be a matter of judgement to be exercised in individual cases.

An example of what I have in mind would be the case of a man at middle age whose whole life had been spent fitting himself and engaging in one career, namely that of being a professional pianist or violinist and who had suffered such an injury to a hand that, though few men would be seriously incapacitated by it, he can no longer continue his career. It does not seem right that no regard should be had to the occupational factor when estimating the percentage of impairment to this man's earning capacity.

²⁰ In 1959, a section of the *Ontario Act* was changed to something which, I think, quite properly should be a guideline for this legislature, as well: "For temporary partial disability which results from the injury, the compensation shall be the same as that proscribed by section 22, but is payable only so long as the disability lasts.

Where temporary partial disability results from injury the minimum compensation awarded shall be calculated in the following manner, as proscribed by section 23(2) for temporary total disability, but to the extent only of the partial disability.

The board may compile a rating schedule of percentages of impairment of earning capacity for the specified injuries or mutilations which may be used as a guide in determining the compensation payable in permanent disability and in temporary partial disability cases."

The position, therefore, is that permanent partial disability cases may be compensated on the basis of either loss of function or loss of earnings and by incorporating such provisions into section 24, temporary partial disability, which may also be compensated on either basis.

As recently as 1973, B.C.'s Workers' Compensation Reporter took these recommendations and stated, "It is doubtful whether this board or any board in Canada or the public at large has ever really accepted the view that if a work injury does not result in some impairment of earning capacity, nothing should be paid. There seems to be a generally accepted feeling that if a man has suffered, say, the loss of an arm at work, he ought to receive compensation whether or not there is any actual impairment of earning capacity. This view seems to have prevailed under most systems, no matter what the working of the particular legislation.

In B.C., this ambivalence appears in the language of the act itself. Thus, under section 24, the board is required to estimate the impairment of earning capacity and it is permitted to do it by reference to the nature and degree of the injury, with or without an inquiry into the actual impact of the injury on earning capacity in that particular case.

Where there is no apparent loss of earning and no apparent or immediate loss of earning capacity resulting from an injury, the payment of compensation might be explained on two grounds. The first is that it has been suggested that a serious injury does result in the impairment of earning capacity, notwithstanding that no loss of earnings is obvious and that no impairment of earning capacity is immediately apparent. It has been suggested that the existence of a physical handicap in such cases may still involve reduced prospects of promotion, restriction in the scope of future employment and the reduced capacity to compete in the open labour market in the event of the present job being terminated.

²¹ Moreover, it has been argued, though not necessarily correctly, that men with physical disabilities tend to become static; that they seek security in low-paying jobs, and lose the opportunities formally open to advance in their own work in other fields. Compensation paid for these reasons might be labelled as being for a presumed loss of earning capacity.

Secondly, it might be suggested that compensation should be paid for other consequences of disablement, apart from the impact on earning capacity, such as the pain, suffering, limitations on family and social activities, inconvenience, and in some cases, a shortened expectation of life. Compensation for these non-monetary consequences has not been part of the feeling or part of the practice. Any compensation paid on this ground might be labelled as being for any non-monetary losses.

A good example of this is a decision, also reported in the Workers' Compensation Reporter, for injuries involving the spinal column. It appears that the current rates of compensation for spinal injuries are in many cases grossly inadequate, as compensation for the impairment of earning capacity. For example, our rates for cases involving laminectomy infusions are in the range of five or ten percent of total disability. A spinal injury of this type might result in an impairment of earning capacity at 50 percent or more in one case, but there may be little or no loss of earning capacity in another.

With this type of injury, one would obviously expect the impairment of earning capacity to be greater for someone who has to withdraw from a skilled manual trade than for someone who is already in a sedentary occupation that he is able to continue. We feel therefore, that a solution ought not to be found simply in raising the percentage rates, but if changes are to be made in the measurement of partial disability, the aim must be fair compensation. That is not the same thing as more for all.

The conclusion, with regard to injuries to the spinal column is to introduce a type of dual system; that is a permanent partial disability awards in cases as well as a pension.

The decision recorded in this Workers' Compensation Reporter, which was dated in March of 1979, contains a further decision of the British Columbia Compensation Board and applies a formula contained in that decision just mentioned to injuries unrelated to the spinal column. That is, in the case of non-spinal injuries, the evidence overwhelmingly supports the conclusion that awards based upon functional impairment method for the use of the disability awards evaluation schedule as a guide adequately represent the likely future loss of earnings of the worker.

From October 1st, 1977 to January 31st, 1979, cash and life, first and subsequent awards for permanent partial disabilities not related to the spinal column were processed. Of these, 13 were referred to the committee by disability awards offices with the reasons and recommendations for an award under sections 24.

²² All of the awards were granted on the basis of functional impairment alone, using the disability awards evaluation schedule as a guide. We are satisfied that the system operates to the advantage of claimants in the vast majority of cases. Nevertheless, the exercise has pointed out those few exceptional cases, in spite of the effectiveness of the percentages set out in the schedule, where some workers will lose earnings in the future in excess of amounts yielded by application of the schedule. I feel that the disability award officers and the disability awards committee should have the power in such exceptional cases to investigate, consider, and where appropriate, implement pension based on the potential loss of earnings for the worker — that is the pension.

Compensation therefore based on actual earning loss has been shown to be somewhat deficient and, in fact, Saskatchewan's experience reveals some disenchantment.

The better system is by far the dual system, as I mentioned, which maintains pensions and allows for the loss of earning capacity.

In summation, I should say that we will support the bill in the second reading, but will have some significant questions for the minister. I have not had much time to prepare as thorough a second reading speech as I would have liked, but I have had time, in association with some colleagues, to delineate some areas which could be considered as prime ground for amendments. Some of the amendments will be proposed at that time.

Mr. Kimmery: I wish to speak in a more general sense than my colleague for Mayo. The minister stated that he was going to give us some background with regard to the workers' compensation legislation and he did that. I wish, at the beginning, to add to the background and attempt to put the proposed changes in a better perspective. Before there was workers' compensation legislation, the matter of injuries at work were generally dealt with by the courts and the established principles whereby compensation was paid were fairly well laid down in the jurisprudence of the various jurisdictions in the world. It was deemed to be in the best interest, especially of workers, that legislation be passed and it was. And, it was generally good legislation. However, what we are doing now is missing some of the advantages that were in the system, the old court system, and we are perpetuating some of the disadvantages.

Obviously, what should occur is that the Workers' Compensation Board be a streamlined, efficient vehicle for paying compensation claims or dealing with the very difficult issues around estimating the monetary compensation to be paid for physical injury.

²³ It is extremely significant that the Workers' Compensation Board replaces the old court system in that: if I am a worker and I am injured, I cannot any longer sue my employer in court, I must go through the Workers' Compensation Board. I am not arguing with that, but if we put it in perspective, it throws a different light on the proposed amendments.

I wish to speak of an example, as the minister did. He spoke of the accountant who lost two fingers. I wish to speak about the pregnant woman who works at a computer terminal and a screen that emits rays, x-rays, or radiation or whatever the various kinds do these days. It could well be, under these proposed amendments, that that woman is made sterile or the baby is damaged physically and, in fact, there is no occupational impairment whatsoever. As a matter of fact, you could even facetiously argue that the occupational ability is enhanced if she is made sterile. There would be, to follow the line of argument in the bill, a serious miscarriage of justice.

The concept, or the prospect, of being compensated for physical disability as well as the concept of being compensated for loss of earnings is an extremely important matter and it is my opinion that insufficient attention was paid to it in the preparation of these amendments. I fully agree that the most important factor to consider is wage loss. What we are dealing with in workers' compensation is primarily wage loss. There are, though, other factors which ought to be more seriously dealt with. It is fairly common that workers are injured at work and it does not affect their ultimate ability to earn a living but justice demands that compensation be paid in some form or other.

²⁴ I wish also to speak about the percentage formula, or the concept that a worker is paid a five percent pension for a five percent disability. This is a very difficult concept; it is an extremely difficult issue to deal with.

I know of at least two people in Whitehorse who are being paid partial disabilities who are not working at all because of the competition situation in the city and the peculiar advantages and disadvantages of a small labour force. It works this way: the number of potential employers in an industry in Yukon is fairly small. The employers know the workers, generally, fairly well, in a good number of industries. If an employer knows a person is partially disabled and is, therefore, possibly going to be slower in his work or there is a liability for a reoccurrence of the injury and a

Workers' Compensation Board claim, the employer will be less likely to employ that person. That occurs fairly frequently. The wage earner, who is paid five or ten percent, however, cannot get a job and his real disability, in terms of wage loss, is more than the disability, in terms of the percentage of the job that he cannot do or cannot do as well. It is an extremely tricky issue and ought to be dealt with a little more carefully.

I wish also to speak about the principle of disclosure. In the past, there was an issue with the Workers' Compensation Board as to the right of the applicants to see their complete files and to see the medical information that is compiled on that person. The present practice of the Workers' Compensation Board is to follow the ruling of the B.C. Supreme Court allowing disclosure.

When the minister mentioned, in the first line of his prepared speech, he said, "There are a number of serious concerns to be addressed". This is a serious concern; it is not addressed in the bill and it should be. There should be a right to see all of the information compiled about a person.

On the same general issue, but far more importantly, and more generally, the question that lawyers call "natural justice" is not adequately dealt with in the act or the amendments. There is a new three-stage process: it looks like a more efficient, more streamlined process. There is no guarantee in the act or the amendments as to the independence of those three stages; there is no guarantee for the worker that the board is going to follow those principles of law and principles of independence that we come to expect in a free society.

²⁵ I wish to give an example. I appeared before the Workers' Compensation Board on a case in the last year, or 18 months, and I went to the board with my client and we presented our case. When I arrived there was another lawyer in the room sitting around the table with the board and it was announced that this lawyer was the lawyer for the board: he was not acting for the worker or the company, he was acting for the board. He cross-examined the applicant and it became apparent that his thrust of the activity was to discredit the credibility of the applicant. The applicant firmly believed that, regardless of his true intent. Later, arguments were made, and the applicant's lawyer, myself, argued that a claim ought to be paid and the board's lawyer argued, in front of the applicant, that a claim should not be paid. It was quite clear. It was an adversary-type of process.

When we left, the board's lawyer stayed in the room and the first thing that that applicant said to me, almost before the door was closed, was what is going on here, that is not fair. Why do you not stay in there and talk informally to them as well? The justice of the case, and the decision, are irrelevant to the purpose of the story. The important point is the applicant did not believe he was being fairly dealt with. I am not making a charge that, in fact, he was not fairly dealt with, however, he did not believe he was. It did not appear to him as though he was fairly dealt with.

These kinds of things ought to be addressed in the legislation. There ought to be, in the legislation, clear principles and clear rules about the independence of the referee and the board and the claims officer. My colleague for Mayo previously said that, of course, the appeal stages must be that people are not sitting on an appeal on their own decision. The principles in the legislation and the sections of the bill, taken collectively, do not afford that guarantee.

²⁶ It is imperative in my opinion that those guarantees are placed in the bill as they are in other jurisdictions. The Yukon bill is particularly bad in this respect.

Hon. Mr. Tracey: I would like to deal first of all with the last part of the member's address; that is, the appeal process. Up until now, we have had an appeal process where all the appeals go back to the same members that make the original decision. It was looked at by the previous government and decided that it was unfair. The people who make the decisions should not be reviewing the appeal. So, we have made the changes in the bill in order that the board, who are an independent tribunal, are the last mode of appeal.

Now, the member also started at the beginning of his address to say that workers' compensation was to get rid of the court system, and yet, it seems at the last part of his address that he is trying to bring it back, that maybe we should have the court system again. I have a little bit of a problem with that. I believe that we have done

probably the best of any compensation board in Canada to address the system of appeal, other than having to go to a court, which the original idea of compensation was set up to overcome.

The member for Mayo went on and on and on reading from a report from British Columbia that dealt with a different mode of compensation than we are introducing here today. We are introducing a new form of compensation that allows for a lump sum payment for the actual physical damage that is done to the person, and compensation thereafter for the actual wage loss, which, incidentally, workers' compensation was originally set up to be. It is supposed to be an insurance fund for the loss of livelihood for someone who is hurt in an accident. The original compensation that takes place is to compensate him for his impairment, and, after that, it is reviewed consistently to see what his actual wage loss is compared to what he could make.

I should also mention that nowadays we have very extensive rehabilitation techniques and re-education techniques that can actually, in some cases, enhance the person's ability to earn money, and very often they earn significantly more money than they earned before the original accident. It is unfair to the balance of the employers that pay the bill that this person should be drawing compensation on an ongoing basis until the day he dies, as the situation is now, when actually he is capable of earning more money than he was previously.

So, it is necessary for us to bring in a more favourable and more equitable form of compensation.

²⁷ We have done that by the introduction of the initial lump sum payment and then the compensation for loss of earning capacity.

We also deal, in this bill, with a new form of board; up until now, we have had a four-man board that dealt with compensation. We have not had a full-time chairman; we have now made changes in the legislation that allows for a full-time chairman and a representative of labour and a representative of industry, which I think is much more equitable than it was in the previous situation.

I believe that this is a very good bill; it is one of the most advanced there is in Canada. There were many, many, many months of work put into drafting this legislation — in fact, I do not know how many times I read the legislation before we had it ready to table in the House last session; we never reached the stage where we could table it because the election was called. There has been a great amount of work put into this legislation. We have information from everywhere that it is possible to get information from, and I think we have the most advanced workers' compensation legislation there is in Canada today.

Hon. Mr. Lang: I just rise to make a couple of comments in respect to the bill before you. I want to give a different dimension to the thrust of the bill from what I have heard, so far, today. In some cases, people are talking dollars and, in some cases, people are speaking of individual cases, perhaps, where their perception is that things were not done fairly.

The dimension I wanted to look at is from the point of view of the injured worker. First of all, I think it is safe to say that the bill is going to provide for adequate compensation for the injury that has befallen the worker, which is, of course, an important aspect of the bill and the reason for the *Workers' Compensation Act* in the first place.

I think one of the most important principles that we have to look at is trying to devise a system or a program that is going to encourage that injured individual's sense of self-worth. In other words, every incentive, every type of help that can possibly be made available must be looked at in order for the worker to become productive in the work-force, in some capacity or another. I just looked back over the past three terms that I have been in office and I have run across a number of cases where individuals have said, "I do not want to go out and find employment because I will then be subjected to, perhaps, losing the compensation that has been awarded me.

²⁸ The bill before you now gives the opportunity for the individual to go out and find employment, and if it is a lower income scale they will be compensated in the difference. If they go out and they find employment at the same rate or above, but over a period of time — after five or eight years — they find that the disability that

had initially put them under workers' compensation have reoccurred, they are eligible to go back under workers' compensation. To me, that is probably one of the most important aspects of the bill, in that it will help the worker in respect to his own self-worth and self-respect.

We talk about different systems and about how money could be allocated. For me, the basic principle has to be for the individual, the one who has been caused the injury and hopefully is going to be rehabilitated and become a part of the work-force, so that he or she can go home to their family and say, "look, I can still be a bread-winner, but I still have under legislation, the necessary guarantees to ensure that if something goes wrong...". For example, if a truck driver injures his back and five years hence he is still driving truck but has reoccurrences of the injury, he still has the right to go back and become compensated once again. So it is not a disincentive for an individual to become a vibrant part of the work-force.

I think the other important principle that has to be stressed is the appeal procedure as far as permanent disability is concerned. I know that I, as a member, have had some criticism or some observations by people saying the appeal procedure is not fair. I think, in the most part, the bill before you corrects that. It gives an appeal procedure where you are heard by different people who have not been involved in the initial decision-making. That was one of the inequities in respect to the present system, the way it is presently written.

I want to point out that a lot of work has gone into this bill, as the Minister of Health and Human Resources has pointed out, but I think a lot of credit has to go to the Workers' Compensation Board themselves, which has a representative from the public, a representative from labour and from industry. They have done a lot of work in analyzing, across the country, the various systems and the various programs that are available. In most part, the bill you have before you is the result of the work that they did to try to come up with a system that they felt was more equitable and to the best advantage of the worker as far as the distribution of the financial limitations that the Workers' Compensation Board has to work within. The member for Mayo raised the question about the pianist who loses two fingers as opposed to say the accountant who suffers the loss of two fingers but can still continue to work. The system that is before you now in this bill would ensure that the pianist who lost his ability to earn a living would be compensated more than the accountant.

²⁹ That would be rightfully so, until he/she was rehabilitated or could find another method of employment, another means of making a living. I think the end result of any act for the purposes of workers' compensation should be to get, if possible, the individual in a position so that he/she can develop another way of making a living.

I think the other aspects of the bill that is important, and I do not think it can be stressed too much, is the fact that we are going to be putting into effect an annual maximum assessable earnings to be set by the board based here in Yukon, as opposed to relying on Statistics Canada. That, in my opinion, is to the benefit of anyone who has to come under workers' compensation. The other point that I think is important to realize, as the Minister of Health and Human Resources has pointed out, is the make-up of the board, which is going to be changed somewhat and, also, with respect to the bill and the proposed change, to increase substantially the amount of monies that would be made available to a family who loses their wage earner. I think that is one of the key amendments, in not only the short term, but the long term, as far as the guarantee to a man or woman and their family.

I appreciate the fact that the members opposite are going to vote for the bill on second reading. I think, in view of the comments made by the minister responsible for the workers' compensation, and the various other comments that have been made, I am sure it clarifies in the member for Mayo's mind the fact that the system that we are bringing in is going to be more equitable and it is going to ensure those who are rendered helpless, if you like, as far as earning a living, as opposed to those who have minor disabilities, the most.

Hon. Mr. Ashley: I would like to tell members opposite that input from the labour force and business was asked for last winter, I believe in February. The Workers' Compensation Board received no briefs or input at this time. I believe they have not received anything to date.

Video display terminals were brought up. As a result of various ergonomic studies, it has been generally found that VDT operators should have rest from their positions approximately every two hours due to eye strain, discomfort from sitting in one place for an extended period of time, et cetera. There is, so far, no information to indicate that these VDTs pose a radiation hazard to the operator. In our system, we have basically used the Saskatchewan program. Workers' compensation changes there were a result of a review committee set up by the Saskatchewan government, in January of 1978, to review the *Workers' Compensation Act* of Saskatchewan. Members of this committee were a judge, personnel superintendent, Potash Company of America, executive secretary of the Saskatchewan Federation of Labour, as well as a representative from the Saskatchewan Department of Labour. The committee members met with all workers — advocate, clients, all Saskatchewan Federation of Labour affiliates and all Chamber of Commerce groups in Saskatchewan. As a result of this review, the program in Saskatchewan was unanimously passed by all party support in 1980.

Again, in June, 1982, another review committee reported on all matters concerning workers' compensation. This, again, specified that there be a chairperson and equal representation of employers and organized employees. The people appointed to that committee, representing labour, was a director of a prairie region for the Canadian Labour Congress in Regina; the secretary to the Saskatchewan Federation of Labour; a member of the Internal Brotherhood of Electrical Workers; and, again, the Saskatchewan Department of Labour. When this committee began public hearings, they were very pleasantly surprised, as most individuals who presented briefs to them and with whom they met informally in the course of their study, supported whole-heartedly the principle of replacement of wage loss: in other words, the maintenance of a worker's pre-accident income, which was in the new system, and recommended in 1978.

Therefore, the members opposite's criticisms, as presented, I feel are unwarranted, especially of the system presently in Saskatchewan and proposed for Yukon.

The members opposite's main concern seems to be basing compensation on actual loss of average earnings. They seem to think that some important factors are missed. I would now like to address these concerns.

We are recommending that when a worker is injured at work, regardless of the impairment, that worker must be compensated for income loss. That is the basis for workers' compensation and has been since the early 1900s.

They seem to understand that the proposed legislation changes to assess disability pensions with actual earning loss resulted from injury, thus eliminating the loss of function concept. We are not eliminating the loss of function concept: loss of function is what we call "physical impairment" and this award is separate and will be in a lump sum. The advantages to this change is that that present system contemplates the clinical judgement of the immediate condition of the worker's body, but then it uses this estimate of the degree of physical impairment to determine the percentage of occupational disability and earnings lost, a percentage which is applied to the worker's previous income to generate the relevant pension benefit. This system dictates that the loss of an arm will produce a pension benefit of 70 percent of the previous earnings; loss of leg, 50 percent; and so on.

The staff lawyer who loses his arm, perhaps in a car accident while driving to court, would receive a lifetime pension of much higher an amount than would a labourer because of the difference in their previous earnings, to which a percentage rating is applied.

This is so, even though the lawyer would suffer no long-term income loss, while the labourer might be capable of theoretically performing a different job, might be unable to find suitable and available work because of his personal characteristics: age, literacy

or skills, or even geographical location or economic conditions. It is obvious that the labourer and his family cannot survive on a pension that is a fraction of his previous income.

This present system is incompatible with the basic principle of workers' compensation, which is to compensate for loss of income. To eliminate this problem, we estimate the earnings which have been lost from work, and at the same time to provide some redress for the serious impact of a permanent physical disability on an injured person's non-working life. The result is that the permanent partial disability award performs neither of these tasks very well. In principle, the solution is simple. We should have two distinct benefits in this situation, each tailored to its own purpose, and this is what is being proposed in the new system.

In the first place, the board would be directed to pay a lump sum award to individuals who have lost a limb at work or suffered some other serious form of permanent, physical impairment. Here is where a revised, clinical rating schedule is valuable in assessing the degree to which impairment due to injury would affect the long-term physical performance. This is being recommended on a scale of lump-sum awards.

The following are some of the virtues of lump-sum awards:

One: it would give the money directly to the worker to do whatever he wants — pay off his mortgage, buy a car or whatever, rather than have his money doled out every month by the board. As well, enacting this change to a lump-sum payment would eliminate the simmering controversy now enveloping the board's discretionary power to mute permanent partial disability pensions into a lump sum.

Two: removing the bulk of these cases from the pension rolls would clear the deck for a rational, principled approach to the problem of adjusting workers' compensation pensions, the critical needs of those people who must rely on their pensions to live.

Three: most important of all, the lump-sum award for pure physical impairment would not be income-related. The currently income-based benefit system can produce results that are strange and inequitable. Suppose, for example, that an administrator and a clerk were involved in a freak accident at work in which each lost a left arm. As a result of the nature of their white-collar occupation, both were permitted to return to work at no loss of earnings. Both would receive a lifetime permanent pension award. The only justification would be for compensation for the impact of their injury on their non-working life. The administrator would get the percentage applied to his previously earnings, perhaps \$20,000, while the clerk would receive only half that amount with some disability applied to previous earnings.

If the compensation is for the physical impairment itself rather than income loss then the same amount would be paid to each. In our view, this is the main virtue of the lump-sum award approach. Problems with the British Columbia approach to permanent partial disability awards was a distinct improvement on the traditional North American model but it evokes this criticism. However sophisticated this scheme may be, ultimately it generates a fixed pension award. This device sacrifices one of the major advantages that workers' compensation has over *tort* litigation in the courts. The Workers' Compensation Board does not have to make a single once-and-for-all judgement which will cover all contingencies; instead the board has both legal authority and the institutional capacity to make periodic payments during the lifetime of the injured claimant.

An occupational disability is a variable condition. More often than not, there are marked changes in the physical condition and/or personal situation of the disabled worker. It is unlikely that the actual wage loss in future years will remain precisely the same throughout the claimant's life as it was at the time the physical impairment stabilized and the board set the original pension.

Under the British Columbia scheme, this average yearly wage loss anticipated for the individual worker is what must be paid religiously throughout the rest of this life, come what may. Everyone who appears before any committee on workers' compensation continuously request not to turn a blind eye to the probably changes in a claimant's physical and vocational condition. Instead, they always advocate the pure actual wage loss system and

this is what most compensation boards and legislatures are attempting to do.

The member opposite also states that he feels where a disabled worker is able to return to his pre-accident employment with pay of an equivalent amount, no actual loss of earnings are apparent; therefore the lump sum would be the only award. I believe he also stated that there is no consideration for the effect it has on the opportunity for advancement. To combat this, the program is going to include a very extensive rehabilitation program where the main function is to ensure the injured worker returns to society in the same position he was in prior to the injury. To be successful in returning to society will require the active involvement of the board, the employer and educational and job placement institutions. Vocational, educational and training programs, apprenticeship programs, pre-employment training programs will all be available to the worker; also, work assessments, technological enhancements and so forth. The importance of the employer's involvement in rehabilitation cannot be underestimated and this will be recognized in educating employers to take part in the program at an early date. Under the proposed new system however the worker's income from compensation is dependent upon success of the rehabilitation program. If he is unable to return to work, he receives income maintenance. If he returns to the same or equivalent employment, he receives no income maintenance from compensation.

³³ We feel these financial incentives will be enough to ensure active employer involvement in rehabilitation. Some employers are a little reluctant to hire the disabled, but our present policy towards pre-existing conditions and enhanced disability fund is a means of ensuring employers will not be charged the costs of any injury occurring as a result of his pre-existing condition or disability. This will give further reassurance to employers that they have no worry in hiring disabled workers.

Another point of argument is that, for younger workers who suffer traumatic injuries, the rehabilitation efforts have largely been successful. However, for all the workers who suffer from debilitating injuries or diseases — for example, back injuries, respiratory diseases, et cetera — these efforts certainly have not been as successful. Of course, we would like to stress that most of the components, and a good vocational rehabilitation program, when fully utilized, will alleviate these problems.

In closing, I would just like to say that the member opposite also referred to the Chief Justice Meredith in his 1913 Royal Commission Report. The ingredients of the Meredith model have been changed quantitatively many times in the past six decades, but quantitatively, hardly at all. To put it mildly, this antiquated structure now fits awkwardly into the drastically-changed social and economic settings of the present day. Directly relevant to the formula for compensation benefits are such later developments as double-digit inflation and an array of other public and private income maintenance programs and the creation of an extensive progressive personal income tax. Equally important to the design of a rational structure of compensation is the emergence of a service-based economy in which slightly over half the jobs are white collar and in which women have become a major component of the labour force.

The increasing pace of scientific and medical discoveries has a contrasting affect on workers' compensation. It has made us more cognizant of the hazardous character of many of our industrial processes but, at the same time, it has radically improved the capacity for physical and vocational rehabilitation for those who are injured. These, and many other trends, make it high time that the structure benefits for workers' compensation be reviewed and revised.

Motion agreed to

Bill No. 18: Second Reading

Mr. Clerk: Second reading, Bill No. 18, standing in the name of the hon. Mr. Pearson.

Hon. Mr. Pearson: I move, seconded by the Minister of Education, that Bill No. 18, *Third Appropriation Act, 1982-83*, be now read a second time.

Mr. Speaker: It has been moved by the hon. government

leader, seconded by the hon. Minister of Education, that Bill No. 18 be now read a second time.

Hon. Mr. Pearson: The *Third Appropriation Act, 1982-83* is the Capital Supplementary Estimates for the year.

³⁴ All members will recall that the last capital budget tabled in this House was last fall for this current year. These supplementaries are to bring us up to date on what has transpired since the first of April.

Mr. Byblow: Just in brief and quick response, I do not believe the government is going to be getting any violent opposition, at this point, on a second reading to a bill which, in fact, confirms money already spent.

I think I would like to note, however, that this supplementary does adjust a calculation we deduced, to some extent, last fall and spring, in that the infamous largest capital budget in this government's history — something in the order of \$37,000,000 — really was not all there. I believe it is confirmed now by the \$5,000,000 we are readjusting.

In that many programs have now been eliminated, I would be curious, during later debate, about the relationship of the capital money readjusted in this bill to the recovery package that the government presented in Edmonton, which I believe now is in limbo. At the same time, I would be curious, as a general principle, to hear from the government what process is used in the rearranging of capital monies and spending priorities, especially in light of the current economic situation.

Failing those points, we certainly shall not raise any objection, at this point, and just advise the government leader that there will be a number of questions in committee on specific line items.

Motion agreed to

Bill Number 15: Third reading

Mr. Clerk: Third reading, Bill Number 15, standing in the name of the hon. Mr. Lang.

Hon. Mr. Lang: I move, seconded by the hon. member for Hootalinqua, that Bill Number 15, *Agriculture Development Act*, be now read a third time.

Mr. Speaker: It has been moved by the hon. Minister of Municipal and Community Affairs, seconded by the hon. member for Hootalinqua, that Bill Number 15 be now read a third time.

Motion agreed to

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

Hon. Mr. Lang: Yes, I move, seconded by the hon. member for Hootalinqua, that Bill Number 15, *Agriculture Development Act*, do now pass and that the title be as on the order paper.

Mr. Speaker: It has been moved by the hon. Minister of Municipal and Community Affairs, seconded by the hon. member for Hootalinqua, that Bill Number 15 do now pass and that the title be as on the order paper.

Motion agreed to

Mr. Speaker: I declare that the motion has carried and that Bill Number 15 has passed this House.

Bill Number 14: Third reading

Mr. Clerk: Third reading, Bill Number 14, standing in the name of the hon. Mr. Tracey.

Hon. Mr. Tracey: I move, seconded by the Minister of Justice, that Bill Number 14, *Land Planning Act*, be now read a third time.

Mr. Speaker: It has been moved by the hon. Minister of Health and Human Resources, seconded by the hon. Minister of Justice, that Bill Number 14 be now read a third time.

Mr. Porter: I would like to take this opportunity to speak once again to the legislation before us. Last week, when we sat in committee and discussed the bill, I made the point that I thought the speed with which the bill was being put through the legislature was much too quick. In terms of the overall contents of the legislation, I believe that this is the largest piece of legislation that we have seen before this House in this session.

³⁵ I believe that the potential impact of the bill is very far-reaching inasmuch as it could possibly affect lands throughout the Yukon and, most importantly, the whole question of the existence of the bill has brought in a political situation where the whole land claims process is now doubtful.

With regard to this legislation, it is unclear whether or not the lands that the act defines as "district" will include any land that falls under federal jurisdiction or whether or not a district is confined only to those lands under territorial jurisdiction. There is further confusion about lands in respect to municipalities.

The next point addresses the power of the chairman of the board. The Chair is a very powerful position under this legislation. The Chairman supervises and directs the work of the board. Those two functions give the Chair virtually all the power over the board. Add the fact that the Chairman is the person who calls the meetings, with the only provision that there be at least one meeting per year. It gives the power, for instance, not to call meetings other than the one annual meeting. It means that the Chair can virtually and completely undermine the potential effectiveness of the board. I think it is too much power to hold for one Chairman.

Firstly, there should be a way in which the members can call meetings and not be dependent upon the Chairman. Secondly, given the power of the Chairman, I think provisions should enable, or at least in part require, that the Chairman be representative of the three groups on a rotating basis.

As well, there exists, within the legislation, provision for the Chairman to have two votes in the eventuality of a tied vote between the board members. Next, Mr. Chairman, there is no provision in the legislation to pay any member for his work on the board except for transportation, accommodation and living expenses incurred while away from home. There is no per diem, there is no salary, there is nothing. How, may I ask, are we going to attract good people to serve on the board? As well, what monies that are to be paid are to be paid at the discretion of the government alone? In other words, the members may be paid or they may not necessarily be paid.

You might have noticed that there is a potential conflict between parts of this legislation. For example, the Commissioner and Executive Council has exactly the same powers as the board. It is not clear whether or not the board has any independent procedure-making powers or whether or not any powers it exercises it does only after regulations have been established by Cabinet.

There is one further example of the extent to which the board is not independent. The board is completely and utterly dependent, in every sense of the word, on the territorial government. It is not clear if recommendations go to both the ministers of the territorial Crown and the federal Crown, or whether or not there is some flip so that a certain recommendation go to an executive member and certain recommendations go to a federal minister.

This, by the way, seems to me consistent with the point I made earlier about the definitions of "districts" and the considerable unclarity of the act about the relationship between the federal and territorial government, both in regard to land and in regard to recommendation-making powers, and, of course, ultimately in regard to implementation.

✧ I do not think the act has at all come to grips with the potential conflict and the split jurisdictions between the two levels of government. The legislation states that the recommendations shall not relate to land use planning in any area within a municipality. Again, until we all know exactly what lands the board has jurisdiction over, we are really tapping in the dark. If it is territorial land outside communities; which land, may I ask? Or if it is federal land outside communities — in which case, one must wonder; why a territorial board, or better, why the Executive Council member together with Canada could ever assume such power with regard to federal lands. There does arise here a clear question as to the very legality of legislation that reports to give to the territorial government so much power over land that may be federal land.

In the legislation you will note that the plan is prepared by the committee. No one should be under any illusion here that the board prepares the plan; it does not. Its powers are only to make recommendations with regard to the establishment of committees. Although we will note, subsequently, that the committees and their establishment are completely within the discretion of the Executive Council member.

And finally, the board may recommend with regard to the adoption, rejection or modification of the plans prepared by the

committees. So the board has no independent powers to either formulate, adopt or implement a plan. It is only there to review plans struck by committees and to pass recommendations on to the Executive Council, or perhaps to the federal government as well. The result of all of this is that the real power to formulate the plan in the first place lies with the committees. Remember now that a eight-member committee need only have one CYI representative and only one federal representative nominee on the committee. This means that the power of both those organizations are substantially reduced, and here is an obvious point of disagreement with the agreement-in-principle struck at the land claims table.

I have read that sub-agreement at the land claims table that concerns itself with land use, and I have also read the legislation before us today in this House. And without question in my mind there is a direct contradiction between those two pieces. This legislation before us today definitely contravenes the agreement-in-principle struck at the land claims table.

If we look closely at the legislation, we see that the board has rather limited powers to take matters into consideration. This legislation sets out certain matters that the board shall consider, but a strict legal interpretation of those powers would prohibit the board from taking into consideration other matters. What in effect has been done is that there is a substantial limitation of the powers of the board to consider certain matters with regard to adoption of a plan.

At this time, I think it is worth our while to focus on some of the problems with public participation in the context of a plan. The situation in the act is that the board may make recommendations to the Executive Council member with regard to public participation.

✧ Once again, the board carries no independent powers to conduct its own independent public participation program. All it can accomplish is to forward recommendations to the territorial government. Presumably, it is then left up to the territorial government to heed those recommendations.

We note the legislation lists a whole variety of factors, some of which I find worrisome, indeed. First of all, in the legislation, urgency is one factor that the board must consider. This suggests to me that the board may dispense with public participation if there is some urgency that the plan be adopted immediately.

I think this is a very dangerous precedent. To start exempting for emergency matters is a bad precedent because emergencies invariably arrive due to the failure to plan on the part of the proponent of a particular proposal. Is it not an emergency when the proponent says, either he gets a favourable government decision or his or her company will take his or her monies elsewhere? Does this situation become an excuse, under the act before us, for dispensing altogether public participation?

Our position is that the type of public participation should be effective and, if it is effective, it at least include a public hearing. I am worried that the invitation of a written submission is really offering to the board, for all intents and purposes, a completely ineffective mechanism for public participation. One has also a sense of cost-benefit analysis being levied against public participation and if the board decides it is too expensive, then that is the end of it.

Let me summarize: these are very, very dangerous provisions, and one can find these provisions no where else in any of the provincial legislation dealing with land use planning. As a matter of interest, the case, in many provincial situations, is that the board actually makes decisions, and the only way in which those decisions can be overturned is by petition or by appeal to Cabinet. In other words, it would be far more effective to bestow onto the board a good deal of independence as to how it conducts hearings because, in that way, public participants would be given a fair opportunity to have their say. As it presently stands, the discretion of the board as to what kind of public participation will take place is amplified by conferring on the Executive Council member a discretion with regard to whether or not to even accept the board's recommendation.

This criticism meets the whole act before us. Provisions for public participation are far too loose. There are just no guarantees for public participation.

We note, also, the manner in which the board adheres to or

considers a plan that had been formulated or proposed by the committee, but nowhere in the act is there any opportunity for the board to rewrite the plan in the context of its own deliberations.

As I mentioned earlier, by far the balance of the planning power rests with the committee, whereas the board remains relatively ineffectual.

³⁸ Under the act, a committee may be established for a purpose or for a fixed term. However, if it is established for a fixed term, the committee ceases to exist at the end of the term whether or not the purpose for which it was established had been fulfilled. This means, by way of putting it, a 30-day term on a committee we will effectively have the committee doing the planning for a given region within 30 days. Again, I find this very worrisome because, in many cases, it is not realistic to impose those kinds of deadlines or, indeed, any deadline other than perhaps a year or two, in a planning process.

Under the legislation before us a committee becomes responsible for the preparation and amendment of land use plans. I have some difficulty understanding how a committee, established for a fixed period of time, can be responsible for amending plans if the time expires, and the committee ceases to exist. This is a rather curious situation because surely the government does not mean that there cannot be plan amendments after the committee ceases to exist. There must be some mechanisms to make amendments and there, obviously, is an oversight on the part of the act.

I am very worried about the territorial government's policies on programs brought to the attention of the committee as well. This is a potentially awkward problem to the extent that if objectives and policies of YTG programs are communicated by private and confidential correspondence to the committee, there is a mechanism, in the legislation, which requires the committee to keep reports confidential. In other words, it is almost impossible to review the committee's plan. The plan, not in any sense, reflects what has taken place publicly because the committee is trying to second-guess or, indeed, respond to confidential direction, which it has received, in effect, from the government.

You will notice, as you move through the legislation, the act does not make mention of anything of particular concern to Indian people, such as trapping, hunting or fishing. The only objective that even comes close to these matters of cultural and historic concerns for Indians, is the wording "preservation, protection and enhancement of land and water areas of special importance" and this is exactly what it means: of scenic or recreational value or for the natural historic or scientific interest. Let me repeat, absolutely nowhere does a section address the particular concern of Yukon Indian people and their culture, which is intimately related to the land. Not only is this another contravention with respect to the agreement-in-principle, but the act for Indian people is simply outrageous.

The very serious problem here is that we have a situation with the potential, at least, for the board to have a plan, but utterly fail to consider in the recommendations for the committee the interests for Indian people in the area. The minister, as he will recall, during debate of Committee of the Whole, refused to increase the membership of the committee to reflect a greater number of Indian people.

³⁹ An important point is that the implementation of a plan does not fall within the purview of the board. The board has no power to implement a plan, even a plan that has been adopted by Cabinet. Again, everything lies within the discretion of the territorial government.

The curious thing is that there is no provision to appeal, with regard to the plan itself. I would suggest a concern with property rights, which may be fair enough but there is not an equal concern with regard to broad concerns of either individuals or communities, as to the thrust of a planning process. Indeed, if you go back to the planning process, it is left completely unclear as to how amendments will take place.

According to one position in the act, amendment to a plan will follow the same format as the initial plan. In another place, the act speaks about the committee being responsible for plans and amendments, and yet we are faced with the spectre of a committee

that has been disbanded, which holds exclusive responsibility, or the only initiating power with regard to land. This problem clearly is a failure on the part of the legislative draft to think through some of the implications of the way in which amendment will take place.

Throughout the general section, another point I must make again and again shows that the decisive powers lie either with the Executive Council member or with Cabinet. Coming to section 41, you will note a real potential that Cabinet will adopt whatever land use plans are deemed appropriate in the intervening year. One actually have a sense, when seeing a section like this, that Cabinet, with a half a dozen plans on the shelf, intends to put into effect any one plan and completely circumvent the board and the public participation and the committee process, as well.

At this point, I would like to bring this section to the attention of the hon. member for Old Crow. I would like to draw to the attention of the hon. member for Old Crow the Beaufort Sea development proposals, all of which may commence in the foreseeable future. In fact, I would like to question the entire act before us and ask: how can this act ever conceivably ensure orderly development in Yukon, especially when facing megaprojects such as the port facilities that are being proposed in northern Yukon? Any of these major developments, under this act, will leave a devastating effect on the people within the region that the hon. member represents.

I would like to ask the member for Old Crow if she clearly understands the implications of this particular section of the act? In other words, should, within the next year, there be a decision to develop the Stokes Point area within the calving grounds of the Porcupine caribou herd, there is no provision within this legislation to have that area come under this particular act so that it can be reviewed by the planning committee.

⁴⁰ Firstly, it is obvious that the act contravenes the agreement-in-principle that was struck at the land claims negotiating table. Secondly, just as important, the act invests enormous discretion in the Executive Council member and Cabinet of the territorial government. As a result, the act gives really no independent life or independent existence to the board. Therefore, the board really becomes a mechanism for rubber-stamping, as well as providing for ineffectual reports and recommendations to Cabinet or to the Executive Council member. Everything else is handled by the government.

Thirdly, even the board's powers to plan are seriously undermined with the existence of the committees that will effectively cease to exist after a certain period of time. Fourth, the act not only may this afternoon be smoked by the people of Yukon but in its amateur draft form paves a rocky road to the future management of Yukon lands.

The political fall-out as a result of the introduction of this legislation has had a damaging effect on the whole land claims process. As a result of statements made by members of this government, there is a black cloud more or less hanging over the negotiators' heads. There is some concern, on their part, as to whether or not the process will be allowed to be concluded in the time frame that the parties had predicted. All three parties have earlier stated that we may all have a Christmas present this year; a land claims settlement in the Yukon. All three parties said that there is a possibility that a land claims settlement could be reached by the end of this year and they have all specifically set Christmas as the date. I am afraid that that will not happen. A lot of the reasons point to the politics that have surrounded this whole issue. In order for the land claims negotiations to proceed expeditiously, the political interference that has gone on must come to a stop.

The federal government has stated that they want a settlement. The CYI has stated that they want a settlement. The people of the Yukon want a settlement. That is the political reality of the Yukon. Any politician or political organization that suggests otherwise will be, I suggest, forced to pay the price. The government leader has suggested, in this House, that there may have been a misunderstanding about the whole issue: that there does exist a misunderstanding. I suggest that if a misunderstanding does exist, then I think it is our responsibility, as legislators, to allow the parties to have the opportunity to effectively work out their differences. We

cannot rush through this House this particular legislation that may have the effect of throwing sand in the gears of the negotiating process; in other words, of bringing the whole process to a grinding halt.

We, as a legislature, cannot afford it, nor can the people of the Yukon. We must have the time for the parties to think through their actions. It has never been said with much greater clarity that cooler heads, at this particular point, must prevail.

As a suggestion, the federal government has invited all the parties, including this government, to sit on what is called an Interim Planning Advisory Planning Committee, yet we have heard no positive response from this government by way in which all three parties can be brought together in one forum to work out their differences on this very important question.

I would like to introduce an amendment to the legislature this afternoon, which would have the effect of delaying this legislation for a period of six months; time, I believe, that can be of great benefit to the negotiating parties. At the present time, this legislation, legally, governs only those lands that the territorial government has control over, and that is less than 400 square miles, and most of those lands fall within the boundaries of the municipalities of the Yukon.

I ask the government: what is the rush? Why do we have to get this legislature immediately onto the books? I think that the reasons that I have given for the whole question of delaying this legislation are very clear and are going to be of great benefit to the people of the Yukon if the time is used wisely.

There is already provision in the legislation for a one-year delay for the legal implementation of the legislation by Cabinet. I would suspect that it is not for the pessimistic motive that they want to ram development through within a year. I would like to think that they have found that this is a very big chunk of responsibility that they have bitten off, and they do indeed need some time to think about it. I urge the government members to support our amendment. If you support our amendment, you will in effect be supporting a co-operative process on land use planning.

Amendment proposed

Mr. Porter: I move, seconded by the member for Mayo, that Bill Number 14, *The Land Planning Act*, be now read a third time, but that it be read a third time this day six months hence.

Mr. Speaker: Did the hon. member say "be now read a third time" or "be not now read a third time"?

Mr. Porter: "Be not now read a third time..."

Mr. Speaker: It has been moved by the hon. member for Campbell, seconded by the hon. member for Mayo, that the motion be amended by deleting all the words after the word "that", and substituting the following therefor, "Bill Number 14, *The Land Planning Act*, be not now read a third time, but that it be read a third time this day six months hence.

Amendment defeated

Mr. Speaker: Are you prepared for question on the motion?

Hon. Mr. Tracey: I listened to the member across the floor with great interest. He talks about amateurs and I am fairly confident about who is the amateur in this House when it comes to talking about this legislation. He makes mention to the member for Old Crow that this legislation would have the effect of totally overruling any decision that would be made on the North Slope and I can assure the member from across the House as well as the member for Old Crow that it would never be considered for that kind of use.

He also makes the statement that it gives this government a tremendous amount of power in the person of a member of the Executive Council. I should inform the member that we already have on the books an act that is just as powerful — in fact, more powerful — than the one we are dealing with today. We have the *Area Development Act*, under which we could declare any area of this territory under the *Area Development Ordinance* and plan it. So, we already have the power to do our land use planning.

I would also like to correct the member who stood up in this House and said that this does not comply with the land claims agreement-in-principle. I can assure every member of this House and every member of the public that it complies 100 percent with

the agreement-in-principle that was signed with the native people.

He makes mention of the ministers accepting recommendations and he says that the board should be making the decisions. As long as I am an elected member and as long as my party holds the majority of the elected members in this territory, we feel that the elected members will make the decisions, not some appointed board. The right to make the decisions and repercussions from those decisions should rest with us, right here in this House. I certainly do not agree with giving any board or any committee the power to give us the laws which we have to enforce.

He also mentions that this does not deal with the traplines and with the outfitting areas. I can assure the member, as I did when we were in Committee of the Whole, that traplines and outfitting areas are commercial ventures which are also addressed in here, as well as the recreational and cultural functions of the territory.

He talks about payment of wages. It is obvious to me that the member does not know how to read legislation. The power to make payment to the board rests with the setting up of the board; anyone who has the ability to set up the board also has the ability to make the regulations to pay the board members.

The member for Campbell talks about reporting to the ministers. It says very distinctly in the legislation that the board will report to the Executive Council member and the Minister of Indian and Northern Affairs. I do not know how much more black and white it could be; it is right there who they will be reporting to.

The member also mentioned the board should be set up with a set time frame and if the recommendations of that committee are not agreed with, there is no more committee there. All I can say is that any person who can set the committee up can also reinstate the committee. It is also a requirement, under the legislation put before you, that any changes that are made in the recommendations, or if a minister disagrees, it will be sent back for more public input. I do not know how much more clear it can be. I would suggest that the member go back and read the legislation again.

Mr. Kimmerly: I wish to put several comments on the record. I am deeply disturbed about this bill and the procedure of putting the bill through the assembly so quickly with little time for reflection and study by the public. The very foundation, the very fundamental principle of a democratic government is that the public are able to form an opinion on these kinds of questions. A vote in a free society is meaningless if there is not...

Mr. Speaker: It has just occurred to the Chair that the hon. minister has already now twice spoken and in fact closed debate. The Chair apologizes to the hon. member for Whitehorse South Centre for allowing him to proceed with debate when, in fact, I ought not to have permitted that. Is the House prepared for the question?

Mr. Kimmerly: On a point of order Mr. Speaker. The minister has spoken only once. He introduced the third reading and did not speak to it. In fact, he has only spoken once and I would ask the Chair permission to continue. I wished to speak to the amendment, but was not recognized, and I wish to speak the main motion as well.

Mr. Speaker: Order please. In respect to the point of order as raised by the hon. member, the hon. minister, in proposing the motion, has been considered to have first spoken, notwithstanding that he did not continue with remarks in debate on the motion that he proposed. He has now twice spoken and therefore has closed debate. As I said, the Chair had not noted that the minister had twice spoken up until the point of time I found it necessary to interrupt the hon. member for Whitehorse South Centre. I therefore must put the question.

Motion agreed to

Mr. Speaker: May I have your further pleasure?

Hon. Mr. Tracey: I move, seconded by the Minister of Justice, that Bill No. 14 do now pass and that the title be as on the order paper.

Mr. Speaker: It has been moved by the hon. Minister of Health and Human Resources, seconded by the hon. Minister of Justice, that Bill No. 14 do now pass and that the title be as on the order paper.

Motion agreed to

Mr. Speaker: I will declare that the motion has carried and that Bill No. 14 has passed this House.

Mr. Speaker: May I have your further pleasure?

Hon. Mr. Lang: I move, seconded by the Minister of Education, 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, seconded by the hon. Minister of Education, that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

COMMITTEE OF THE WHOLE

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

Recess

Mr. Chairman: I will call Committee of the Whole to order. We will go to Bill Number 5, *An Act to Amend the Landlord and Tenant Act*. Is there any general debate on clause 1?

On Clause 1

Mr. Kimmerly: I am not going to take a lot of time. The statements by the various members who spoke at second reading, of course, are well on the record.

I wish to raise, as a possible procedural complication, that I have two amendments that I have previously given the minister; one dealing with section 8(1), at page 5. In order to explain it properly or the reason for the amendment, I need to refer to section 13(1), at page 11; it is an interrelated problem. I propose that we adopt a procedure: either let 8(1) stand and, as we work through, on section 13(1), argue the substantive amendment and then go back to section 8(1); or if the minister would like to propose a better procedural way of dealing with it, I am open to suggestion about that.

Mr. Chairman: Would committee agree to the standing of clause 8 until we get to clause 13?

Mr. Penikett: If I may help the members opposite, what my colleague is raising now at the beginning of general debate is a point of order to signal now his intention to move some connected amendments that, if they were to be dealt with fairly and adequately, would require us to stand final consideration of clause 8 until we have completed consideration of clause 13, because the two matters are connected. Rather than creating a confusion at the time, he is asking committee's consent to do that so that we can have proper discussion of his proposal at the right time.

Hon. Mr. Ashley: Sure, I see no problem with that.

Mr. Kimmerly: I have previously given, last week in fact, a copy of all the amendments I will be moving to the minister, and I have a question or two. They are of a fairly minor nature. As the amendments come up I will speak to them. Aside from that, I have no general debate, unless other members do.

Clause 1 agreed to

On Clause 2

Clause 2 agreed to

On Clause 3

Clause 3 agreed to

On Clause 4

Clause 4 agreed to

On Clause 5

Mr. Kimmerly: In regards to clause 69.1(1), I have just a question. I recognize the intent of the section, and I totally agree with it. It is further elaborated in subsection 2, but would the minister inform us about what kinds of considerations have gone into the drafting of the section and if any further clarifications are contemplated in the regulations or anything of that nature?

Hon. Mr. Ashley: We have received complaints from mobile homeowners and that is why it is in there. The Alberta legislation was looked at, and this is part of it. That is why we have incorporated this in it. In answer to the other part, I do not anticipate any regulations included in this session.

Mr. Kimmerly: The problem in the Northland Park was the display of signs. Has any consideration gone into providing for the display of signs, or the involvement of any real estate agencies into this sort of question?

Hon. Mr. Ashley: I am sorry, can you state that again? I missed half of the question.

Mr. Kimmerly: The problem in the Northland Park is that the landlord will not allow the tenants to display a for sale sign on the lawn and the section leaves that entirely vague. The section says that the landlord shall not unreasonably restrict or interfere and it is left up to the courts to determine if the question of a real estate agency is an unreasonable interference. Is there any consideration given to clarifying that problem?

Hon. Mr. Ashley: I believe it is covered in the legislation now. That is how it is written. Any complaints would come to the rentalsman first, as long as both parties agreed. If not, then it would go to the courts. The way I understand it, it is written in there. It is possible now for them to put signs up.

Hon. Mr. Tracey: I would think that under any legislation, whether it was in Consumer and Corporate Affairs or wherever, it would have to resort to the courts. I think the way we have it in this legislation is beneficial in that if the landlord says that he does not want the for sale sign on the property, it could be referred to the rentalsman who would speak to the landlord about it and if the landlord was still adamant, he could either agree to arbitration or it would go to the courts. I do not think that is unreasonable. It is exactly the same method that would have to transpire under any other registration.

Clause 5 agreed to

On Clause 6

Clause 6 agreed to

On Clause 7

Clause 7 agreed to

Mr. Chairman: We will stand over clause 8.

Clause 8 stood over

On Clause 9

Mr. Kimmerly: Regarding subsection 75.2(1). I would like to make move an amendment. The copies were previously circulated, but I will read it if members want me to.

Amendment proposed

Mr. Kimmerly: I move that Bill No. 5 entitled, *An Act to Amend the Landlord and Tenant Act*, be amended in clause 9(1) at page 6 by deleting subsection 75.2(2) and substituting therefor the following: "(2) After the tenancy agreement is made the landlord shall not increase any fees or charges disclosed under subsection (1) unless:

(a) the landlord is specifically entitled to do so pursuant to the provisions of the tenancy agreement;

(b) the landlord has experienced additional expense in relation to the purpose for which the fees or charges were payable and the increase is no more than that necessary to compensate the landlord for the additional expense;

(c) written notice of the increase is given to the tenant at least three months before the date the increase is to be effective."

In speaking to the amendment, the present section under subsection (2) allows a landlord to impose additional fees and charges as long as the proper notice is given; it is a three-month notice. It is absolutely crucial to remember that the additional charges are outside of the tenancy agreement. It is entirely possible that a tenant enters into an agreement with a landlord to pay a certain monthly rent and a portion of the taxes on the building or, for example, the city garbage and water costs. Under the present section it would allow a landlord to increase the additional fees or charges arbitrarily as long as the notice is given. The intent of the original section is obviously to allow that kind of flexibility for landlords and we, on this side, agree that a kind of flexibility in some cases is in fact justified.

It is not justified, if the landlord experiences an increase in costs of, say, \$10, he increases the charge to the tenant to \$11 or anything above the \$10. If the landlord wishes to increase the rent or the charges, he ought to be able to do it under the tenancy agreement, not within a tenancy agreement that is already entered

into.

Also, there is another issue that makes this more important: even if the tenancy agreement says in the contract that no additional fees or charges will be made, the law supersedes that, of course. It does not say that consenting parties can contract out of this provision. The section is a very powerful one and it allows landlords to arbitrarily increase fees in an existing tenancy, which ought not to be allowed: the amendment corrects the problem.

Hon. Mr. Ashley: This amendment will be to make it more difficult for a landlord to increase the fees and would restrict these increases to no more than the actual increase to the landlord.

I am not altogether clear as to the extent to which his amendment is to control the increases or even if it is intended to possibly restrict rent increases to the actual cost increase of the landlord; rather than whatever the market rents have risen to. It sure looks like rent control to me and, as our bill already requires that a landlord disclose in writing all fees charged and further requires a three-month notice of the increase of any of these fees, I do not feel this amendment is either necessary or advisable and I will be voting against it.

Mr. Kimmerly: In view of the response, I wish to state absolutely clearly and with some force that this is not rent control. We are not talking about the basic rent; we are talking about additional charges.

The concept of rent control is a control on a landlord's ability to raise the rent according to the landlord's wish, and we are not addressing that question at all. The section is not even about rent; it is about additional charges aside from the rent.

⁵⁰ The section would allow a tenant to come to an agreement, for example, for a one-year term at a rent of \$500 a month. It would be rent control if we did not allow an increase in the rent. What the section allows is, say, in the first months of the tenancy the landlord may give a notice that three months from now the charges are increased by an additional \$50 a month for the supply of water or for additional charges. The legal position is that the tenant is still bound by the term of the lease. He cannot move out. He is on that one-year lease and his fees are arbitrarily increased outside of the basic rent. This section allows that and it also does not allow a landlord and a tenant to enter into an agreement that this section shall not apply. You cannot contract out of it. It gives an arbitrary power to increase fees and there is absolutely nothing about the adjustment, the fairness or the justification for those fees. It is a very, very serious loophole.

Mr. Penikett: I do want to join this discussion because it seems to me that what I have heard said over on the other side, misunderstands the clause. The minister is clearly talking nonsense when he talks of rent control. It is not that. What you have here is a loophole by which a landlord could, with three months' notice — and, in fact, I assume he could give successive three months' notice for a series of rent increases without the tenant being able to move out — with the tenant being bound by a tenancy agreement. All he has to do is say: I have new charges — I do not have to justify them, I do not have to document them — which allow me to raise the rent with three months' notice, and every month I can give you another three months' notice for another rent increase to the end of the tenancy agreement, but he does not have to document what the increase is for.

All this proposal does is give some tenant protection by requiring the charges to be substantiated. It seems to me that to talk about it being rent control is pretty silly. That is not even reading the amendment. It is, in fact, a protection against a loophole, which could potentially defeat the whole purpose of the bill.

It seems to me, with respect, all partisanship aside, that there is a serious flaw in the bill as it is now presented, which this amendment attempts to address. I urge members opposite not to make silly responses about rent controls: it is not rent controls. This is an effort to say, that if the landlord is allowed, in the middle of a tenancy agreement, to reopen it — something we accept; there may be charges that come along that justify him raising his rents — but all we are saying is if he has such a thing, if he has a reopener, if you like, in the contract, which allows him to raise the rental fee, he should have to justify it. Under this provision he does not have

to do that. As the law is now written he can continue to do that, without any restraint. I would ask the members opposite not to see this just as a partisan issue, but I would respectfully ask that the clause be stood and have another chance to take a serious look at this section. I do not see it as a lawyer, I see it as someone who has had some experience in dealing with landlord-tenant problems.

⁵¹ This could defeat the purpose of the whole bill.

Hon. Mr. Tracey: With all due respect to the member across the floor, I believe that it is rent control. What he is saying is that the landlord cannot raise the rent without justification. And if that is not rent control, I would like to know what it is. As long as the landlord gives three months' notice, there is three months that the tenant has to move out of the building if he wants to. But if the landlord has to justify all his increases, that is rent control.

Mr. Penikett: I swear to god, the minister says the most bizarre things sometimes. What it says is that if the landlord wants to, he can come up and say "I want a rent increase charge. It costs me more to water the garden right now, so I am going to raise your rent \$50.00 this month". The tenant is still stuck in the tenancy agreement and what the minister proposes to do is have the tenant have to pay that fee. The landlord does not have to justify it.

What we are saying is that if there is a reopener, then if the landlord comes along and says, "Look, I have new costs that in fairness I want to pass on to you", we say in fairness he should have to substantiate that. Otherwise, the tenant has no protection whatsoever. I know the minister opposite speaks exclusively for landlords. I know that is his world view. But try and be fair for a minute and try and see the question from the other side, for once.

Hon. Mr. Lang: As far as the point in respect to fairness is concerned, it is more a question of timetable. What time frame do you give: the landlord or the tenant? There are two parties involved here. Now, it seems to me that if there are three months notice is given, and one is not completely happy, if it is an increase, or, perhaps, in view of the economic situation, a decrease, or whatever the case may be, it would seem to me that that is fair: three months in which to say, "If I am unhappy, then I move", or, "I stay".

Now, if I am hearing correctly what is being said across the floor, the landlord would have to come forward with his books and justify whatever the increase is — if that is, I have understood the conversation so far. It would seem to me, in respect to the market, that you have supply and demand. One would indicate it if they were totally unhappy.

The other point that has to be made in the legislation we are looking at is that we are walking a very fine line. You still want to encourage people to build to provide rental accommodation for people who want to rent. Now, if you get to the point where legislation is so restrictive, then the member for Whitehorse South Centre will be standing up and asking why the general taxpayer, the renter, the few landlords that are left, the homeowner and whoever else that we need to make a further major public expenditure for further government housing, there is no housing available.

⁵² So, it would seem to me that it is a question of the time frame and, unless I can hear arguments to the contrary, I would think that three months' notice is adequate.

Mr. Kimmerly: There is a fundamental misunderstanding about all of this. I want to explain it this way — this is not the best way to explain it, but it is, perhaps, a provocative way. I, in fact, am a landlord and I rent residential tenancies and the fact is I rent them on a one-year lease. As a landlord, this section is going to prejudice me: I am going to suffer because no tenant in their right mind would ever enter into a lease in excess of a three-month term. If you enter into a one-year lease and the landlord can arbitrarily increase the fees on three months' notice and you are stuck with the term, you cannot move out without breaking the lease, you would be absolutely crazy to sign that.

The facts are not as Mr. Lang explained them. If there were a month-to-month tenancy, or, in fact, a three months' tenancy, then the person could move; however, if there is a longer period, a longer term of tenancy, the tenant and the landlord are bound to the longer term. It would be absolutely crazy to sign any lease in excess of three months' duration under this section. In addition, if it goes through and the three-month tenancies are in practical effect, the

longest practical term that you could get, it makes absolute nonsense of the other sections about eviction in the winter-time; it makes absolute nonsense of the other sections, not amended, about the landlord not being allowed to raise the rent in the first year of the tenancy.

The existing law, which is not changed by this bill, is: in the first year of a tenancy the landlord cannot raise the rent. This loophole completely changes that and allows the landlord to increase the fees on only three months' notice, even in the first year, without any justification. It is absolutely ludicrous.

Hon. Mr. Tracey: We are not dealing with tenancy agreements here, but I am fairly confident that any renter who enters into a tenancy agreement with a landlord would look at this legislation and there is absolutely nothing stopping the landlord and the tenant from having the agreement written in the tenancy agreement. What we are dealing with here, in most cases, is just people who pay rent every month.

I agree, to a certain extent, with what the member said, but where does it stop, in this legislation, the tenancy agreement having this protection built into it? I disagree that it changes every one-year tenancy agreement to three months; it does not. All we are saying is that the landlord has to give three months' notice.

There is some justification to what the member across the floor says and I understand what he is saying, but I do not think it is necessary for us to amend our legislation in order to take that into account.

Mr. Penikett: Let me try to say this as unprovocatively as possible. I hope members opposite will understand that this is a serious point. The law in such matters is supreme. You cannot have a landlord/tenant agreement that contracts out of provisions of this law. Let me give you an example. If I contract to Mr. Kimmerly to rent an apartment for \$500 a month for one year, I am bound as the tenant, — he is the landlord — to respect that agreement. I must pay him \$500 a month rent and he is bound to do certain things. The schedule at the back gives our reciprocal rights and responsibilities. That is fine. That is a normal kind of understandable contract except he has a loophole which allows him, with three months' notice, even from the day I move in or one month later, to raise the rent. The raise is based on some justifiable increase that he may have. New charges, it may be taxes, new water charges, it may be some other charge in terms of operating the building. His insurance rates went up; he had to renegotiate the mortgage, whatever it was. However, say his costs went up three months into the tenancy by \$20 a month, but he decided, because of the advantage in this clause, to raise my rent \$100 a month. I have no right of appeal; he does not have to justify it; I am locked into a one year lease. In fact, he could do that every three months if he wanted to. He could do it every month and give three months' notice of another increase. That is clearly an absurd situation, but we could have a housing shortage occur again. I think we probably will, when the economy recovers, that would make such a clause an abomination. I say to members opposite: seriously look at this clause because, I submit, a careful legal analysis will lead you to the conclusion that it defeats the purpose of the whole bill. It does not give any tenant any protection. All the landlord has to do, if he does not have to justify an increase, is say, "Look, I have new charges. The law says I do not have to tell you what they are. I have got new expenses". It could be that he has bought a new car and he is charging off the expenses of the car to the building and he can pass them onto the tenant. He can pass them onto the tenant without justification. I submit there is sufficient enough problem with the bill that it warrants having the clause stood. I ask members to at least take another look at it.

Hon. Mr. Pearson: I think I too understand and hear what is being said from the other side. If I am interpreting what is being said from the other side properly then I have to ask why subsection (c) is still part of this bill? Why, in the amendment, the three months? If, in fact, this is designed to protect both the landlord and the tenant, why should the landlord have to suffer this increase for three months before he can pass it on to the tenant?

If that was the reason for the amendment, I respectfully submit that the "three month" business should not be in there at all.

Mr. Kimmerly: The principle raised by the government leader is an acceptable principle. The principle that I believe that we are both talking about is: if a landlord and a tenant are locked into a tenancy agreement, and additional costs come up, or additional costs are incurred, then the costs ought to be passed on in an equitable and as fair a manner as is possible. Frankly, the government leader has a good point when he raises that "three months' notice". I would certainly agree to let the amendment stand in order to look at it a little further if the whole clause stands and, after a little study, I am sure we can probably even come to an agreement.

Hon. Mr. Tracey: I do not disagree with what they are saying across the floor, but I have a basic problem with it. They are only talking about people who sign a tenancy agreement for one year. Anybody who signs a tenancy agreement for one year also has the ability, in that tenancy agreement, to have in that contract that if there is three months' notice given, that they have to justify it. I do not see any problem with that. Ninety-nine percent of tenants do not have a tenancy agreement. They rent on a month-to-month basis.

Mr. Penikett: Be that as it may, I suspect that we are going to go into a period of increasing tenancy, especially if you have legislation written in ways that can be understood by both sides that, in effect, amounts to one-year tenancies. It would not surprise me at all if the sections of this bill that describe the respective rights and responsibilities do not get substantially incorporated into lease agreements because I think that is one of the good things about the bill.

I would ask again because, I submit, all partisanship aside, there is a serious problem here, and that I am sure we would be quite happy to reconsider the amendment on this side, including the three month section if, in fact, the government would give an undertaking to take another look at what we think is a serious loophole on their side of the bill.

Hon. Mr. Ashley: I will accept this for now and say that we can stand it over.

Mr. Kimmerly: I have two other amendments to clause 9. I suggest, as a procedural point, that I introduce the amendments now and explain them very briefly and the entire clause be stood over.

Mr. Chairman: Is that agreed?

Hon. Mr. Ashley: Yes, Mr. Chairman.

Amendment proposed

Mr. Kimmerly: A second amendment is that Clause 9(1), at page 6, be amended by adding after subsection 75.2(2) the following:

"75.2(2.1) After the tenancy agreement is made, the landlord shall not impose any additional fees or charges unless:

(a) the landlord is specifically entitled to do so, pursuant to the provisions of the tenancy agreement;

(b) the tenant is to receive an additional benefit and the fees or charges are no more than that necessary to compensate the landlord for the expense of providing the additional benefit; and

(c) written notice of the addition is given the tenant at least three months before the date the addition is to be effective."

Speaking to the proposed amendment, it is essentially the same issue as the previous amendment, but it extends it. It, in fact, allows the landlord to provide an additional service and charge for it and it allows for more flexibility. An example is the provision of cable television service or something of that kind. If the landlord provides something in addition, he can also charge for it. It is the same general issue.

Amendment proposed

Also, I would propose an amendment to Clause 9(1), at page 7, in subsection 75.3(4)(a) and (b) by deleting the word "tenant" wherever it occurs and substituting for it the word "occupant".

In brief explanation, this is a proposal designed to make the process easier for landlords. It frequently occurs that the real tenant in a residential premises gives the premise to someone else or sublets without the knowledge of the landlord or, for example, goes away for a week or two and allows a friend to occupy the premises. This section simply widens the notice of provision to allow notice to the occupant of the premises. The reason for it is the kinds of situations contemplated by the section generally occur where the

occupant is damaging the premises, or something like that, and the occupant is the person really at fault and the occupant is not the tenant. It is my opinion that, if notice is given to the person occupying the rented premises, that ought to be deemed as sufficient notice.

36 Clause 9 stood over

On Clause 10

Clause 10 agreed to

On Clause 11

Clause 11 agreed to

On Clause 12

Clause 12 agreed to

On Clause 13

Mr. Kimmerly: I have an amendment for clause 13(1) on page 11: "in sub-section 82(1.2) by deleting the expression "the tenancy shall not terminate in any of the months of December, January or February", and substituting for it the expression, "the tenancy shall not terminate in any of the months of November, December, January, February or March".

Mr. Chairman: We are ahead of ourselves here, in respect to that amendment. We should be at clause 13(1); 82(1).

Amendment proposed

Hon. Mr. Ashley: I have an amendment. I move that bill number 5, entitled *An Act to Amend the Landlord and Tenant Act* be amended in clause 13 of page 11, by substituting "on the last day of the immediately following month of the tenancy" for, "on the last day of the third month of the tenancy immediately following in proposed sub-section 82(1.1)".

37 Hon. Mr. Ashley: This amendment will revise the three month notice to vacate without cause so that it will again become simply one months' notice.

Mr. Kimmerly: It is a good amendment and we agree.

Amendment agreed to

Amendment proposed

Mr. Kimmerly: I have previously read the amendment. It is self-explanatory. The intent of the section is obvious and the minister also spoke about it in his previous statements. The section disallows a termination of a tenancy on a mobile home site in the wintertime. In the Yukon, the winter includes November and March. The reason for the amendment is that a notice in November would be an extremely short time in order to find a new place to put a mobile home. In fact, it could easily be frozen in and moving the water lines and fuel would be extremely difficult as the ground would probably be frozen.

Hon. Mr. Ashley: This amendment, as the member opposite says, is self-explanatory. We do not feel it is necessary to add November and March to the months in which the mobile home owners tenancy may not terminate as the three months already indicated in the draft bill. They should provide for quite sufficient time.

Hon. Mr. Pearson: I think the members opposite should know the real reason for that section being here. We, who have lived in the territory for a long time, and who have tried to move equipment on occasion in the wintertime know that at certain temperatures it becomes critical. Those temperatures normally, for equipment, for metal, are in the areas of -40° and colder.

38 I respectfully submit that it would be grossly unfair for a tenant to be told they are evicted, with their trailer, for instance, during the months of December, January and February in Yukon just because of the possibility of severe temperatures. I submit that the probability of those severe temperatures in either March or November are not very likely. I really believe that it is safe to assume that if a person found it necessary to move their residence in either November or March they could do so without experiencing undue damage.

Mr. Penkett: Having heard what the government leader said, and it being on the record, I guess if we have -40° next March, we will call on the rentalsman to help him move the trailer.

Mr. Chairman: Is there any further discussion to the amendment on Clause 13(1)?

Amendment defeated

Amendment proposed

Mr. Kimmerly: An additional amendment: it is to provide for an extra subsection.

I move that Clause 13(1) at page 11 be amended by adding the following new subsection 82(1.3): "In any case a notice to terminate, without cause, the tenancy in relation to a mobile home site shall be given to the tenant on or before the last day of one month of the tenancy to be effective on the last day of the sixth month of the tenancy immediately following".

In speaking to the amendment, the intent is to recognize that a tenancy of a pad, as it is often called, or a lot on which a tenant can place a mobile home is, in fact, substantially different from a tenancy of an apartment or a house. In order to move a mobile home, an expense in the neighbourhood of \$2,000 or \$3,000 at a minimum is generally incurred and is frequently as much as \$5,000 or \$6,000, and perhaps even more. The occupier of a mobile home on rented land has a requirement for a fairly long notice provision. The technicalities of finding a new place and moving a trailer are very onerous.

39 The intent of the amendment is absolutely obvious: that the occupier of a mobile home ought to have some security of tenure. It is extremely significant that, in the wording of the amendment, the phrase "without cause" is put in there. If there is cause, for example, non-payment of rent or other misbehaviour under the tenancy agreement, the tenancy agreement could be terminated. This would only come into play if a landlord arbitrarily wishes to relocate a tenant and it would probably only come into play if the landlord wished to change the use of the land, for example, to redevelop it into something else.

If there is a termination of a tenancy for cause, I quite agree with the normal notice, but if it is without cause, the additional expense of moving a trailer is onerous and the tenant ought to be provided at least a six month period of grace.

Mr. Chairman: We will continue discussion on this amendment after dinner.

We will recess until 7:30

Recess

Mr. Chairman: I will call Committee of the Whole to order. Is there any further debate on Clause 13?

Hon. Mr. Ashley: As the government leader previously stated, we do not really feel that this is required. He was stating it about the two added months and this is a termination notice, so it is the same thing. I feel that the bill that we have in front of us is sufficient protection for the people.

Mr. Kimmerly: In answer to the amendment, the minister has two arguments, obviously. The first one is that he does not feel that it is required and the second one is that it is the same thing as the "winter months" clause.

When owners of mobile homes are forced to vacate, it is going to be precious little comfort to them to look back and see that the minister, whose job it is to protect them, does not feel that it is required. It is not an argument at all, it is simply a statement of his position. The other argument about it being the same thing as the "winter months" clause: I simply disagree, it is not. The intent of the "winter months" clause clearly gives a security of tenure for three months — and three particular months — in the middle of the winter.

40 This clause is a lot different. It gives the security of tenure to only one class of people, and the class of people who are protected are the class of people evicted without cause; in other words, if the landlord simply says, "I give you no reason, I do not need to, I want you off my property". He is the landlord, he owns that property and he has that right. We fully support the principle that he ought to have that right at some point.

However, if he is renting mobile home lots, he is in the business of providing a service to other citizens, and the service is a regulated service, very clearly, as all tenancies are under this legislation, and quite properly. The expense of moving is so great

that six months is precious little protection. One year would be much better protection. Six months is merely a compromise.

⁰³ The provision allowing for a six months' security tenure, if there is no cause to evict the tenant, is not at all unreasonable because of the expense involved, and I submit that it is not the same thing as the "winter months" clause at all and it is necessary protection for tenants in this jurisdiction.

Hon. Mr. Lang: I can see the point that the member is driving at, but it would be my position that this kind of amendment really is not essential. You are talking without cause; basically saying that if a person goes to invest into the necessary infrastructure for a mobile home park, in this particular case, and if they were to start in June and redevelop that area for a condominium area that would allow for maybe 400 families as opposed to 60 mobile homes, with this particular amendment the investors would not be able to make any move of that kind until six months has passed. I cannot envisage it happening. I am sure that any owner of an area would be giving notice through the necessary rezoning that would be required by a municipality, and that takes time, effort and money. It would also seem to me that with the procedures that one would have to follow, one would probably get three months' notice, or whatever the case may be, to vacate to some other premises. The principle that would worry me in respect to an amendment of this kind is that it could be another minor irritant, if one likes, but let us take it from an investor's point of view, who is investing money for the purposes of providing a service to the general public. If we get our legislation so cluttered up in trying to foresee what perhaps could happen, you may well be putting people in a position where they do not have a place to park their mobile home as it is not advantageous for anybody to invest in that type of an infrastructure.

⁰⁴ I do not think that the member opposite wants to see that happen because then I think we are working at cross-purposes with legislation of this kind, which is basically consumer protection legislation. If we write our legislation in such a manner that it is going to negate, detract or stop any development when development is necessary because of legislative actions in this House, then the consumer is getting a very poor shake. There is not much point in having a mobile home. In fact, I would not be able to invest in a mobile home because I would have no place to park it. If I, as a tenant, am paying my bills, minding my own business and in view of the necessary procedure that one would have to follow in order to get a rezoning of an area, which would be required, notice is going to be given in such a manner that a fair amount of time will pass over and above the month's requirement that we spoke of earlier. All I am saying is that I cannot support it on that principle because I think common sense is going to prevail.

Mr. Kimmerly: It is an interesting argument. I think for the first time in the debate there is a real argument against the amendment. I would like to address the argument this way. It is interesting that the Conservative government in Alberta passed an identical section in April, 1982 in their act, specifically dealing with trailers.

⁰⁵ I will get the section for the member's benefit. Their provision is for 180 days' notice without cause, and there are other sections about a re-development of trailer parks.

It is interesting to talk about the question of trailer parks and sites, or pads, as they are called. The argument is often raised on rent controls — if rent controls are imposed, it is, in the short-term, for the benefit of the tenants, but in the long-term it is to the detriment of the tenant, because the supply of accommodation dries up because landlords are less motivated to get into the business. An interesting argument. That same argument can be applied to this particular section, and this kind of section.

The likelihood of a person going into a tenancy agreement for a mobile home is going to be dependent in part on the kind of protections that he has. The lending institutions are going to look at the whole question of security of tenure and the security of their chattel mortgage on the mobile home. It is my argument, countering the minister's argument, that the law ought to be perfectly clear — business people like that — and the law ought to be framed in such a way as to protect the fundamental rights of both parties; the landlord and the tenant. And, it ought to encourage the develop-

ment as much as possible. The minister would probably agree with those very general statements. I say this: that it is promoting the general business of trailer parks and pad rentals to make it as attractive as possible for tenants to want to live in trailer parks and pay a stall rent.

⁰⁶ It is clear that a policy of ownership could be advocated by the legislation or by the government, or a policy of protecting landlords in the short run could be followed. It is my argument that it is also protection for landlords to protect the tenants so that tenants are motivated to enter into these kinds of tenancies.

If a prospective tenant feels that he has no real security if he buys a mobile home and rents a pad, he is going to be less likely to do that. He would probably stay in an apartment or a rental accommodation of some other kind. The member for Tatchun talks about a free market. It is, obviously, a regulated free market. It is regulated by the act, and it is going to be further regulated by the rentalsman procedure. It ought to be constructed so that the incentives for doing business are maximized, both from the point of view of the landlord and the tenant. It has often been said that for every tenant there is a landlord or for every landlord there is a tenant: either way.

The way to regulate the business, to the maximum satisfaction of both sides, is to realistically describe in law, or to regulate in law, the realistic forces and factors influencing the market. It is clear that the movement of a mobile home is a very expensive proposition. The tenant in a mobile home ought to have security tenure of at least six months: six months, in effect, if he is going to be forced to vacate without cause. I would also return the argument of Mr. Lang when he mentions that it is an unnecessary section because of the zoning clearances and all of those kinds of things. The counter-argument is, if all of those things are necessary in order to change the use, it is obviously a six month proposition, if not longer, and if it is that long anyway, let us require a notice to the tenant.

Hon. Mr. Lang: You have a situation where it could be up to a year in respect to negotiations with city fathers; negotiating with people who are land-owners beside the property, and there could be all sorts of ancillary problems associated with any development. It would seem to me, with that type of an atmosphere created which would bring publicity along with it, and rightfully so, that most, if not all, people would be aware that there was a possibility that the utilization of the land would be changed.

It seems to me that, with the fact that common sense is going to dictate, there is going to be a fairly wide time frame prior to any notice of eviction being necessary; people can plan accordingly. I think the key thing that I am concerned about is that the more things that you put in legislation, how much are we putting in that causes people to say "Well, we are not going to invest in that type of an infrastructure", which, in turn, puts the consumer at a disadvantage. That is the one aspect that I do not think the member opposite addressed.

⁰⁷ It seems to me that we have to be very careful in respect to our legislative actions here to ensure that when the time comes people will be prepared to invest to provide the necessary, in this case, trailer parks for people to park their homes. I maintain that if we get too restrictive in our legislation — perhaps it is a philosophical difference between the member opposite and myself — it would seem to me that we are going to get into a situation where people will not invest and supply that type of a service.

Therefore, the young couple starting out will not, as the member indicated, be prepared to invest in a mobile home because there is no place to park it. If that is the case, then we have defeated our objective. The member opposite still has not convinced me of my initial arguments because he has agreed with me that there is going to be a period of time when rezoning and all these other exercises are going to have to be undergone. I cannot agree that this principle has to be in legislation in view of the fact that with the procedures already in place at the municipal level, and due notice given, because without cause no landlord is going to want to lose their tenants, especially if they are good tenants and they are paying their bills. It would seem to me that this type of legislation is going to be a negative factor as far as future mobile home parks being built.

That is what concerns me more than anything.

Mr. Kimmerly: Two points: the first one is that I gave slightly inaccurate information about the Alberta bill. The section I was talking about is section 14, and it requires, on a mobile home site, that notice for an increase in stall rent be six months, that is an increase in rent be six months and the termination notices are dependent on the kind of tenancy and the term of the tenancy. For any tenant who has been in a trailer park for 12 consecutive months, the notice period for a termination without cause is, in fact, one year; 12 months. This is the act of the Province of Alberta, passed in April, 1982 — a good Tory province. The other argument about the zoning applications is it is probably more realistic in the immediate future in Whitehorse to talk about a trailer park going out of business. If it is a bankruptcy situation, that is one thing. The bankruptcy courts would take over. However, if the landlord decides to go out of business and give everyone notice, those people ought to be protected. The collective investment of the trailer owners is far, far more than the investment of the trailer park owner.

☞ The protection of property principle ought to be applied not only to the landlord but to the tenant. I am quite sure that the lending institutions are going to be more easily disposed to finance trailers and people are going to be more inclined to purchase a trailer if there is a real security of tenure. Six months is not a lot to ask. It is essentially a compromise position in Alberta. The position is much more strongly tenant-oriented.

Mr. Chairman: Is there any further debate on the amendment to 82(1.3)?

Amendment defeated

Clause 13 as amended agreed to

Mr. Chairman: At this point we should return to Clause 8, which was stood over.

Mr. Kimmerly: We could do Clause 14. The amendment actually refers to Clause 14.

On Clause 14

Mr. Kimmerly: I would propose an amendment that, at page 11, clause 14 (1) be deleted and the following substituted:

“14(1) The following are substituted for subsection 83(1) and 83(2):

83(1) Subject to section 81 and 82 a notice to terminate a tenancy for a fixed term shall be given not less than 90 days before the expiration date specified in the tenancy agreement.

83(2) Subject to subsection (3), upon the expiration of a tenancy agreement for a fixed term, the landlord and the tenant shall be deemed to renew the tenancy agreement as a monthly tenancy agreement upon the same terms and conditions as are provided for in the expired tenancy agreement unless a notice to terminate on the expiration date specified in the tenancy agreement has been given.

83(3) Subsection (2) does not apply where the landlord and the tenant enter into a new tenancy agreement before the expiration of the terms specified in the old tenancy agreement”.

☞ In speaking to the amendment, the purpose of the amendment is to clarify the situation where the tenancy expires. It requires that a notice of the expiration of the tenancy agreement be given to the tenant and if no notice is given, the tenancy continues on a month to month tenancy. It is essentially a fairly technical amendment, it is not the subject of partisan politics in any way, shape or form. It is designed to avoid the confusion around the use of the words “expiry of a tenancy” and “termination of a tenancy”, and to make the law absolutely clear on the point. It is not a controversial issue at all and the existing section of the amending bill substituting the ninety day period for a sixty day period is incorporated in the amendment.

Hon. Mr. Pearson: I like to think that I am not easily confused; however, I am afraid the hon. member has confused me this time around. He has said that this is very straightforward, it is not controversial, it is non-partisan. I can agree with him that it is non-partisan, but I do believe that it is controversial.

The existing section 83 is designed specifically for annual or yearly tenancy agreements, and what we are doing is amending it so that if there be a need to terminate such an agreement during the course of that yearly agreement, then ninety days' notice will be

required rather than sixty days' notice. We think that that is fair and just and equitable.

But the amendment does not apply to any fixed term. It does not even allow for a fixed term, or, if it does, I am not too sure exactly what it says because if there is a tenancy agreement for a fixed term, then surely that is notice the day that it is signed.

10 How can there be 90 days' notice for a 60-day tenancy, and it is conceivable that that could happen. I think the hon. member has lost sight of the fact that the section in the present legislation applies to a fixed term tenancy: one year. We assume that tenancies are going to be on either a monthly or yearly basis. If the term is any different, then the notice is automatic: it is in the term.

Mr. Kimmerly: The confusion is in a different place. Section 81 and 82 talk about a weekly tenancy and a monthly tenancy respectively. In my amendment, it starts out, “Subject to sections 81 and 82...”, which clearly talk about the shorter-term tenancies. The existing law talks about a year-to-year tenancy and leaves out other tenancies which are not year-to-year, for example, an 18-month, 6-month or 8-month tenancy. The amendment is a clarification, and it makes it more general because in 83(1) on the amendment, it talks about a fixed term, so it applies to any tenancy of a fixed term, not described in 81 or 82, which are the weekly and the monthly tenancies.

Subsection (3) also gives the ability of any landlord and tenant to contract out of this section in case their desires are different. This is not a novel amendment that I dreamed up; I copied it from the Ontario act and it is a well-used, tried-and-true version of the law. It is far clearer, and a better service to both landlords and tenants if it is adopted in the Yukon because it provides for a simple notification of a termination, which, in fact, prudent landlords do — in fact, insurance companies do upon the termination of an insurance policy — and it avoids problems of over-holding tenants and it is a prudent practice for landlords to follow. It allows the landlord to contract out of it if the landlord does not wish to be bound by that. It is simply a clarification and it applies to all tenancies of a fixed term; not only year-to-year tenancies, as does the existing law.

11 **Hon. Mr. Pearson:** I hear the hon. member well and recognize what he is saying. I am flattered that he is looking to all the good Tory provinces in Canada for this kind of legislation. The fact of the matter is we, on this side of the House, are convinced that this is a redundant amendment, in that we just do not need it. It is just more words saying nothing that we really require. Our legal advice is that the law as it is written is clear. The amendment that we want to put in is going to increase the notice from 60 days to 90 days, and that is fair. We should not adopt this amendment because, although it is taken from legislation from another province, it is not necessary because our law is clear at this point.

Mr. Kimmerly: When the rentalsman gets complaints about the application of terminations of non-year-to-year tenancies, I am sure he will have a pile of the government leader's speech, and he can give them to them and we will see if they are comforted or not.

Amendment defeated

Clause 14 agreed to

On Clause 8

Mr. Kimmerly: Are we on 8(1) or 75(1)?

Mr. Chairman: We are on Clause 8(1); 75(1).

Mr. Kimmerly: I would like to say that this is a good statement of the landlord's responsibilities and we support it.

12 This is a good statement of the tenant's responsibilities, and we support it.

Amendment proposed

Mr. Kimmerly: I would like to propose an amendment that clause 8(1), on page 5, be amended by deleting in sub-section 75(2)(h) the words “expiration or”.

In speaking to the amendment, the government obviously feels that this clarification is unnecessary. I disagree, and I would like to put that on record. There is a minor confusion about the terminology “expiration” and “termination”. The last amendment I proposed was the substantial clarification of the law and this is simply a detail.

*Amendment defeated**Clause 8 agreed to*

Mr. Chairman: We are standing clause 9 over; we will proceed with clause 15

*On Clause 15**Clause 15 agreed to**On Clause 16**Clause 16 agreed to**On Clause 17**Clause 17 agreed to**On Clause 18**Clause 18 agreed to**On Clause 19**Clause 19 agreed to**On Clause 20**Clause 20 agreed to**On Clause 21**Clause 21 agreed to**On Clause 22*

Hon. Mr. Ashley: I move that bill number 5, an *Act to Amend the Landlord and Tenant Act* be amended in clause 22(1) on page 13 by substituting "January 1, 1983" for a day or days to be fixed by the Commissioner in Executive Council", and by deleting "or any part of it".

¹³ **Mr. Kimmerly:** This is a good amendment and we support it.

*Amendment agreed to**Clause 22 agreed to as amended*

Hon. Mr. Ashley: I move that we report progress on Bill No. 5.

Motion agreed to

Mr. Chairman: We will recess for a short while. When we come back we will carry on with Bill No. 16, *An Act to Amend the Municipal Finance Act*.

*Recess*¹⁴ **Bill No. 16**

Mr. Chairman: We will continue with Bill No. 16, *An Act to Amend the Municipal Finance Act*.

Mr. Penikett: It is a nice, simple, uncomplicated bill and I tried to find something to argue about in it. There was really not much there to get your teeth into. The minister will know that there are of course, in the municipalities, some uncertainties about the future of their financial arrangements in the coming years, to the extent that they are beholden to this senior government. However, even by the most creative leaps of my imagination, I would find it hard to find much in this bill that I could dispute.

Hon. Mr. Lang: Similar to the municipalities, the government of the Yukon Territory is to some degree uncertain on an annual basis in respect to their negotiations with the Government of Canada. It does have a tendency to work its way through the system. I appreciate the fact that the member opposite realizes this is an uncomplicated bill like most of my bills that come forward; very straight-forward, common sense. I am sure that the opposition, in most cases, can really not find much fault with any piece of legislation that I bring forward.

Mr. Penikett: I want to make it perfectly clear that I was referring to this one specific bill that, in my mind, might be a singular exception to the normal kinds of legislation that we get from the minister.

*On Clause 1**Clause 1 agreed to**On Clause 2**Clause 2 agreed to**On Clause 3**Clause 3 agreed to**On Title**Title agreed to*

Hon. Mr. Lang: I would move that you report Bill No. 16, *An Act to Amend the Municipal Finance Act* out of Committee without amendment.

Motion agreed to

Mr. Chairman: We will now proceed with Bill No. 9, *An Act to Amend the Workers' Compensation Act*.

Mr. MacDonald: I have a few points to make which will, in effect, give notice of our intentions for amendments to this act. The Minister of Municipal and Community Affairs said in second reading that a lot of work has gone into this bill and I would certainly agree with him. There are a number of solid amendments in the act.

¹⁵ The minister, in response to one of the criticisms that I made about public independent review, suggested that this last spring the executive director of the Workers' Compensation Board sent out a letter to all affected parties in the territory giving them notice, in effect, of the proposed amendments as of October 23 last year and the minister made the point of saying that no one had replied to the executive secretary's letter. I think the point to be made about that is that the persons most interested in providing submissions to the executive secretary were more interested in a public, independent review than a public review.

In-house reviews of that sort generally are not that productive and people feel, rightfully so, that improprieties can, and do, occur on occasion. This, obviously, is a very controversial piece of legislation. If you take the caseloads that local unions and employers have and, as such, probably would elicit a good deal of public reaction should the review process be independently held and publicly held.

The second thing which I would like to briefly mention is that there is certainly a need to explicitly guarantee that no tribunal will sit in appeal of its own decisions. There is definitely a three-tiered process, a three-stage process of claim, review and adjudication. There is a determination by a claims officer, a review committee and the board. However, there is no guarantee listed in the act which suggests that one of those stages would be exclusive of another. I would like to propose an amendment to the amendments to the act, which will reflect our concerns on that matter.

Another aspect of the review process is the right for the worker or the employer to review the complete file pertaining to a particular claimant. I think the right to view a summary is certainly not the same as the right to review the complete file because, after all, one of the contentious points is whether or not a summary is truly reflective of the determination.

The minister referred, in his written, typed rebuttal, that William Meredith's ideas, in 1913, were antiquated and, therefore, of no foundation. I think the point to be made is that the substance of his recommendations are at issue and they are reflected in legislation across this country and, as such, are still valid across the country. In fact, only Saskatchewan has experimented seriously with loss of earning capacity and has, in itself, been experiencing problems.

¹⁶ The problems I think are to a certain extent software problems, so to speak. The problem for the claimant to achieve promotions and his opportunity for advancement in the workforce is a significant problem. His ability to compete for scarce jobs in the severely reduced economic climate and the existence of a physical disability is often a stigma which prevents the employee from proper and expected promotions over a period of time. Thirdly, I think, the pain, suffering and the limitations of family and social contacts, the inconvenience, and in some cases the prospects for a shortened life: all affect the employee's earning capacity over a period of a lifetime. The expected promotions that an employee would anticipate would certainly be jeopardized by a serious injury.

The case to be made for pensions — and I recognize that some members of this House feel that pensions are a hardship on the employers, the people who pay for the plan — I think there is point to be made that this is an insurance program which workers, in an indirect sense, certainly pay for themselves as well. They work for an employer, help do their part to generate profits and therefore are paying, in a sense, for their own insurance plan. That is a principle that ought to be remembered. The case to be made for pensions is that they provide for on-going inconvenience and are not generally large enough to maintain the worker. I think that is a significant point. The Minister for Municipal and Community Affairs sug-

gested that the sense of self-worth that a worker may experience might be jeopardized if he should be considered to be a client of the state or dependent on the public. I think that the size of pension necessarily precludes that. Having said that, I believe that there are a couple of amendments which I would like to introduce when the time comes and they will not alter substantially the intent of the act, but do clean up some minor points which could become serious irritants in the years to come.

On Clause 1

Clause 1 agreed to

On Clause 2

Clause 2 agreed to

¹⁷ *On Clause 3*

Clause 3 agreed to

On Clause 4

Clause 4 agreed to

On Clause 5

Clause 5 agreed to

On Clause 6

Clause 6 agreed to

On Clause 7

Clause 7 agreed to

On Clause 8

Mr. McDonald: Regarding clause 8(1), I would like the minister to be as expansive as he can on this part of the clause as I think it bears some explanation. I would be interested especially in knowing the rationale in altering the numbers of the board, the characters of the board, and I would like to know especially what experience he can report which would substantiate the need for such a change.

Hon. Mr. Ashley: This section is a change in the number of board members from four to three; appointing one member from the public service to be chairman. The chairman is appointed for five years, which is the same across the country.

Mr. McDonald: I can certainly read the bill myself. That is not the problem. I can interpret it properly. I am interested in knowing why the minister felt, in his infinite wisdom, that there should be no more members of the public at large, why there should be a member from the public service acting as chairman, why are there only three members, and what experience has the board had to substantiate the necessity for such a change? I am sure that we do not make these changes frivolously. There must be some reason why we should have this sort of set-up.

Hon. Mr. Ashley: The reason for cutting from four to three is eliminating the one from the public who really has no input into the pay structure or anything else; it is for employers and employees and that is what workers' compensation is for. The chairman is from the government's administrative system and that is why the chairman is a government employee.

Mr. McDonald: I think that I can possibly provide my own explanation as I have not had the kind of experience with the board that obviously the minister has — and the minister to the minister's right has had — with this board, and I would be interested in sharing some of these experiences, if at all possible.

It is not universally accepted across the country that the chairman should be a member of the public service and I am just wondering if it was so in the past, why has it changed now. Perhaps the minister can explain that for starters.

¹⁸ **Hon. Mr. Tracey:** The reason for the change in the board makeup and the reason for the change in the chairman is because, although we are not going to a full workers' compensation board as it would have in the provinces, we are trying to take that intermediate step to get us away from the board being controlled by the government and having the management of the workers' compensation board under the government. The reason why we have done this is, as the minister states, that workers' compensation is totally a contract between the employer and employee. A member of the general public is not required in any of those circumstances because it is actually not a concern of the general public in that regard. The other step is to appoint the chairman for a five-year term, which frees him from government control. He has five years

where he knows that he has a secure job. He acts as the chairman between the other two and listens to both sides and tries to come up with a rational decision, hopefully, that they all agree to.

This is only the first step, it is not really a fully autonomous workers' compensation board at this stage. The next step is the fully autonomous workers' compensation board. We are too small to really justify turning everything loose and having a workers' compensation board that has to raise all of its own funds. A lot of the coverage of the workers' compensation board is still done by the government: we supply computer services and a great many of the costly aspects of running a workers' compensation board. This is just the first step. The next step is to turn it totally loose.

Mr. Kimmerly: I would specifically like to comment on the question of the chairman being a member of the public service. I had previously spoken about the development of workers' compensation legislation in response to the deplorable situation regarding redress of employees' problems in the court system, at the time; approximately 60 or 70 years ago in most provinces. It seems to me that it is important to take the good things out of the court process and leave the bad things.

One of the good things that ought to be kept is the independence of the board. The minister also spoke, in his second reading speech earlier in the day, about the impartiality of the board, and it was important that the board be seen to be, or in the public's eye, independent of the political process. I totally agree with that: that is a true statement that I am sure all members will agree with.

¹⁹ The independence of the board is also important. The chairman of the board is specifically a civil servant and is specifically under the civil service legislation and ultimately under his boss, the minister. It is my opinion, and I wish to state this very forcefully, that the workings of the board and the image of the board in the public mind would be substantially improved if the board members enjoyed a greater degree of independence. I realize that the term of the appointment is one factor which does give independence and it is an extremely important factor. The other areas of what the public feels to be independence ought to be looked at very closely. I mentioned, as an example, one person who went through an appeal and the applicant felt he was unfairly procedurally dealt with and that kind of thing ought to be avoided at all costs.

Hon. Mr. Pearson: Once again, I think I hear quite well what the hon. member is saying. I want to assure him that there is not any other procedure in government. This is the procedure used in the provinces. It is inevitable that the chairman is one who, in order to function properly, has to have a government appointment. These are normally Order-in-Council appointments and protection is what makes them different from other government appointments. It is similar to the Public Service Commissioner who, in fact, is the only deputy minister in this government who has a term employment. He has a job that he is literally guaranteed under legislation for 10 years. Workers' compensation chairmen are normally literally guaranteed their jobs. That is how they get their degree of independence for a term of five years at a time. The other two members — one is nominated by labour and one by industry — become government appointments too. In most of the provinces, all three are fulltime employees of the Workers' Compensation Board.

²⁰ They are appointed under the public service acts of the particular province. I have found it quite interesting to watch the evolution of Workers' Compensation in the territory because my association with it began when there was no Yukon workers' compensation board. We had a piece of legislation that said that the Alberta board were in fact referees for Yukon. Our workers' compensation office was a joint office operated by the federal government in Edmonton. That was how workers' compensation was administered here. So we have made some pretty substantial steps in the last 14 or 15 years. This is a major one, and I think it is good progress, and it is going to be beneficial to both to the workers and employers in the territory to have our own board as independent of this government as we can possibly it.

Mr. Kimmerly: I thank the government leader for those expansive comments. I basically agree with him. I would like to ask a question for clarification about the statements just made: what is the procedure for appointing the labour and industry representa-

tives. Are nominations in fact made by various groups and, specifically, are individuals nominated, or is a list of, say, three individuals put forward and the minister selecting one?

Hon. Mr. Pearson: What normally happens is the Yukon Federation of Labour will be asked to make a nomination of three or four names and the government has to reserve the right to pick one of those three or four names. I would guess it has always been a problem in Yukon but hopefully, with the advent of the organization of a Yukon Chamber of Commerce, it is highly likely that would be the industry organization that this government would be going to for a nomination. We have used in the past the B.C.-Yukon Federation, the various unions in the territory, the Whitehorse Chamber of Commerce; we have sought those nominations from those organizations in the past.

Mr. Kimmerly: One other clarification question: because of the move from four members to three, is there going to be an effort to include at least one, or possibly two, rural people on the board?

Hon. Mr. Pearson: We seek these nominations from the two organizations — industry and labour — and normally they indicate preferences and give us reasons for preferences. Certainly, one of the reasons that we would pick a person is because of area representation in the territory. It is something that we are always cognizant of.

Mr. McDonald: Could the minister explain, in clause 8(5), in the experience of the board, when vacancies occur, the time lag between the vacancy occurring and the appointment? There is an anticipated concern here, which I believe the ministers are already recognizing, that the board could act without the employer or the labour representative for a period of time, and whether or not it is the policy of the board to ensure that all three members are present whenever possible.

Hon. Mr. Pearson: I can speak of my own experience dealing with workers' compensation boards. Mind you, that particular board was rather unique. I think the youngest on the board was something like 23 or 24 years, at that time, and the chairman had been the chairman for 45 years, if you can imagine. Particularly, on these kinds of boards you can be pretty well assured that neither the chairman nor the other member, be it industry or labour, is going to ever be very anxious to move without having the other side represented. It really becomes a group of three acting as one in virtually every instance. They are very, very aware of their responsibilities for everyone concerned.

Clause 8 agreed to

On Clause 9

Clause 9 agreed to

On Clause 10

²¹ *Clause 10 agreed to*

On Clause 11

Mr. Kimmerly: I have a question about the selection of the medical personnel. I know the procedure now; that one or two doctors are generally used by the board more than other doctors. I would ask the minister to clarify the method of selection of the doctors, as it is an area of comment by many applicants and persons who in fact appeal.

Hon. Mr. Ashley: I do not have any kind of figures as to who would be appealing or the numbers who do appeal. There have been a number of complaints received and it was decided that a provision be made that would allow a claims officer and the medical person to prove all permanent disability awards. What I should get into is the appeal system. I will read you what the three appeals are — no?

Mr. Kimmerly: I would like to clarify my question. I will describe it in greater detail. There are doctors, I know, because I have spoken to them, who simply dislike this kind of work and would rather not do it if they could at all avoid it. There are one or two doctors routinely used by the board, and probably for a very good reason. I am asking what are the reasons? It is an important question because applicants and persons who appeal more than two or three times have commented that a particular doctor is in the pocket of the board or frequently gives opinions favourable to the board. In a case of self-interest, where a large amount of money is involved, those kinds of comments are going to come up. It is obvious, but on the issue of the appearance of fairness there ought

to be a clear justification of why some doctors are used, and I am affording the minister an opportunity to publicly give that justification.

Hon. Mr. Tracey: The doctors are approached to find out whether they would be interested in serving as the board doctors. The chairman of the Medical Association here is actually the doctor to the board.

²² In cases where, as the member raised, there are complaints of the doctors being in the pocket of the workers' compensation board I can assure the member that when appeals come up — especially after the first appeal — other doctors are consulted and there are other medical opinions given. It is not just rammed through by one doctor and the board. There are other opinions taken into account, so I think the member across the floor is worrying a little too much about this situation.

There are always going to be these accusations. If a person is not satisfied and feels he has had a raw deal he will say the doctor is in the pockets of the board but you are never going to get away from those kinds of accusations under any circumstances.

Mr. McDonald: Regarding clause 15.1(1), as I suggested in the second reading and the preamble to this evening's discussions, I have essentially two problems with the article as it reads currently and I would like to suggest an amendment to this article. Before I do so, by way of a preamble and an explanation, I think it is important to note that a disabled worker, to a certain extent, often lacks the facility to plead his own case. He often lacks literacy in English, literacy in legalese and cannot be depended upon to interpret the act properly.

To illustrate, I think one good example would be that in my experience with the labour half of the equation, one of the most common misapprehensions is that the worker can sue his employer. After years and years of compensation acts in effect, this would seem to be a grave mistake. So that when it comes to interpreting the act and interpreting one's right to review the various provisions under the act, the illustration obviously proves that workers do not seem to have that ability, generally speaking.

Another aspect is that often the disabled worker, when the case is being initially determined by the board, is often in hospital and incapable of presenting his own case, or presenting the appeal. The point is that quite often the worker does require that a representative does act on his behalf. In many cases, it is union representation. So, that is the first aspect of this proposed amendment: to include the right of a representative to handle the claimant's case.

²³ The second aspect is that the right to review one's records is a fundamental right. I know it has been the subject of discussion in many legislatures and certainly here. The point is that a worker should be able to peruse, and have access to, all his records, and not merely a summary because the point of looking at files in the first place is to determine whether or not the summary is, in fact, relevant and complete.

Amendment proposed

Mr. MacDonald: To that end, I would propose an amendment which reads as follows, deleting 15.1 and substituting the following: "Where the board makes a decision as to the entitlement of a worker or his dependent to compensation, it shall advise the worker or his representative and his employer or his representative as soon as practical of the particulars of its decisions and, upon request, it should provide him and his employer with:

a) a statement of the reasons for its decision, including medical reasons; and

b) access to all records relevant to that particular case".

I believe the amendment is self-explanatory and I think entirely justified.

Hon. Mr. Pearson: It bothers me a little bit. I want to assure the member for Mayo that it would, indeed, be a most extraordinary case where an employee workers' compensation case would be at appeal while that employee was still in the hospital as a result of the case. It is beyond comprehension simply because the procedure is such that that would not happen: he would still be on compensation if he was in the hospital and his case would be a long way from appeal at that point in time.

In respect to notification, I do not think it is good enough that the

board be given the latitude to be able to notify a representative of the person. I just do not believe it is right, or proper. Nor do I think the board should be given the latitude to notify a representative of an employer. I think that they have a responsibility to notify that person and to notify the employer, not representatives. There is nothing prohibiting representatives from being present, participating with people in hearings, or from being heard on behalf of those people at hearings. There is nothing in the legislation that says that that cannot happen.

²⁵ But, the one thing that is very specific that a representative cannot do and the injured workman must do is submit himself for medical re-evaluation. It just cannot be that a representative can do that. I do not think that the problem is one that should be dealt with in legislation; there is, in fact, provision for adequate representation by whomever. Any workers' compensation board is quite prepared to hear representation from whomever the worker wants to hear from.

Mr. Kimmerly: It is interesting, the reasons that are given. In fact, the practice of the workers' compensation board, as the government leader correctly stated, is that representatives are allowed a voice or to be heard at appeals, so I argue this way: if it is in fact the case, why not enshrine in law the right to proceed exactly as we do proceed now with regard to representatives. The motion actually is a very modest motion, enshrining in the law two principles of natural justice, and, by implication, a third; that is, representation by some council, frequently a lawyer — more frequently, a union representative, perhaps. The access provisions in my opinion ought to be clear and uncontroversial and it ought to be accepted by all members that there is a procedure in place now that records are shown to applicants or their representatives. It is in place because of the government policy, and the government leader talks about the *Bill of Rights* or *Charter of Freedoms*. I would totally agree; if an application were made under the *Bill of Rights*, it would probably succeed in a court. As long as that is the case, why not put it in law, as opposed to government policy that there is a right for access to all records including the medical records and a right to reasons for the decision. It is quite uncontroversial. It is not a change of procedure; it only establishes as a right what is now given as a privilege.

²⁶ **Mr. Chairman:** Considering the time, we will have to continue with debate on the amendment on our next sitting date.

Hon. Mr. Ashley: I move progress on Bill No. 9.

Motion agreed to

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

Motion agreed to

Mr. Speaker resumes the Chair

Mr. Speaker: I will now call the House to order. May we have a report from the Chairman of Committees?

Mr. Philipsen: Mr. Speaker, the Committee of the Whole has considered Bill No. 5, *An Act to Amend the Landlord and Tenant Act*, and Bill No. 9, *An Act to Amend the Workers' Compensation Act*, and directed me to report progress on same.

Further, the Committee has considered Bill No. 16, *An Act to Amend the Municipal Finance Act*, and directed me to report the same without amendment.

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

Some Members: Agreed.

Mr. Speaker: May I have your further pleasure?

Hon. Mrs. Firth: Mr. Speaker, I move, seconded by the hon. member for Kluane, that the House do now adjourn.

Mr. Speaker: It has been moved by the Hon. Minister of Education, seconded by the hon. member for Kluane, that the House do now adjourn.

Motion agreed to

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

The House adjourned at 9:29 p.m.

The following Sessional Paper was tabled December 6, 1982

Yukon Annual Report for year ended March 31, 1982 (Pearson)