



The Yukon Legislative Assembly

Number 62

3rd Session

26th Legislature

HANSARD

Tuesday, January 13, 1987 — 1:30 p.m.

Speaker: The Honourable Sam Johnston

Yukon Legislative Assembly

SPEAKER — Honourable Sam Johnston, MLA, Campbell

DEPUTY SPEAKER — Art Webster, MLA, Klondike

CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
Hon. Tony Penkett	Whitehorse West	Government Leader. Minister responsible for: Executive Council Office; Finance; Economic Development; Mines and Small Business; Public Service Commission
Hon. Dave Porter	Watson Lake	Government House Leader. Minister responsible for: Tourism; Renewable Resources.
Hon. Roger Kimmerly	Whitehorse South Centre	Minister responsible for: Justice; Government Services.
Hon. Piers McDonald	Mayo	Minister responsible for: Education; Community and Transportation Services.
Hon. Margaret Joe	Whitehorse North Centre	Minister responsible for: Health and Human Resources; Women's Directorate.

GOVERNMENT PRIVATE MEMBERS

New Democratic Party

Sam Johnston	Campbell
Norma Kassi	Old Crow
Art Webster	Klondike

OPPOSITION MEMBERS

Progressive Conservative

Willard Phelps	Leader of the Official Opposition Hootalinqua
Bill Brewster	Kluane
Bea Firth	Whitehorse Riverdale South
Dan Lang	Whitehorse Porter Creek East
Alan Nordling	Whitehorse Porter Creek West
Doug Phillips	Whitehorse Riverdale North

Liberal

James McLachlan Faro

LEGISLATIVE STAFF

Clerk of the Assembly	Patrick L. Michael
Clerk Assistant (Legislative)	Missy Follwell
Clerk Assistant (Administrative)	Jane Steele
Sergeant-at-Arms	G.I. Cameron
Hansard Administrator	Dave Robertson

01 **Whitehorse, Yukon**

Tuesday, January 13, 1987 — 1:30 p.m.

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

Prayers

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

DAILY ROUTINE

Speaker: Introduction of Visitors?
Returns or Documents for Tabling?
Reports of Committees?
Petitions?

PETITIONS

Mr. Clerk: I have had the honour to review a petition, being Petition No. 6 of the Third Session of the Twenty-Sixth Legislative Assembly as presented by the hon. Member for Kluane on January 12, 1987.

Pursuant to Standing Order 66(1) of the Yukon Legislative Assembly, it is my responsibility to report whether or not petitions conform to the rules recognized by the House. This petition does not conform in the respect that it is not dated.

02 **Speaker:** This Petition, then, cannot be received.

Are there any other Petitions for presentation?

Introduction of Bills?

Are there any Notices of Motion for Production of Papers?

Are there any Notices of Motion?

Are there any Statements by Ministers?

MINISTERIAL STATEMENTS

Chronic Disease and Disability Program

Hon. Mrs. Joe: It gives me great pleasure to announce today the decision to implement a Comprehensive Chronic Disease and Disability Program effective February 1, 1987. The regulations, which received Cabinet approval recently, establish a new range of insured benefits under the *Health Care Insurance Plan Act* specifically aimed at those Yukoners who have either a chronic disease or a serious functional disability. Chief beneficiaries will be persons with conditions such as Multiple Sclerosis and Diabetes, who previously had either no coverage or only incomplete coverage for drugs, biologicals, medical/surgical appliances and medical appliances.

As many Members know, the chief source of benefits to chronically ill Yukoners has been the federally administered Chronic Disease Drug Program, which provided a narrow range of drug benefits for only twelve arbitrarily selected diseases. With the new Chronic Disease and Disability Benefits Program, two objects are simultaneously achieved: one is the transfer of a federal health program to the Government of the Yukon, and the other is a broadening and rationalization of benefits under health insurance auspices.

Some of the items insured under the new program include prescription drugs, therapeutic diets, medical equipment such as wheelchairs and respiratory equipment, ostomy supplies, medical gases, artificial limbs and prosthetic garments. Those items will be available to persons with congenital conditions such as Cystic Fibrosis and Down's Syndrome, to persons with neurological diseases such as Multiple Sclerosis, Epilepsy and Parkinson's Disease and to those with heart disease, Arthritis, Asthma, Colitis, Diabetes, Cancer, AIDS and Hemophilia.

03 A whole range of partial programs with confusing conditions and duplications in administration will also be eliminated as a consequence of this measure.

The *Cancer Diagnosis Act Repeal* will come into force, as will the end of special children's benefits under medical claims, prosthetic benefits under vocational rehabilitation and drug and

medical/surgical supply benefits under social assistance. All services will be rationalized under the administration of the Health Benefits Unit of Health Services Branch, achieving program and administrative efficiencies. The annual additional cost of this program, exclusive of budget transfers from other areas as a result of rationalization of service delivery, was estimated in the 1986/87 O&M Estimates to be \$120,000.

Mrs. Firth: This very brief Ministerial Statement contains a lot of new information, and it actually contains a lot of announcements in the form of one line sentences. To point that out, the transfer of a portion of the Health Care Program has been announced today under this Ministerial Statement. The extension of the existing services of diseases under the Chronic Disease List is mentioned as well as the addition of new areas that are going to be covered under the Chronic Disease List. It would only be practical that we will have a lot of questions to ask the Minister when we come to do the debates on the O&M Budget of 1987/88.

The area that I have the most concern about is the projected estimate of \$120,000 for the costs of the extension of the program. I would anticipate that that cost will be considerably larger. In view of the direction that the government is taking with abolishment of the medicare programs to the tune of some \$3 million, we will be looking at the projected costs. I really question the Minister regarding the projected \$120,000. As I understand it, the Budget was some \$65,000 for chronic diseases in the 1986/87 O&M Budget. The costs could almost more than double just with the projected increases in dispensing fees and so on.

04 **Mr. McLachlan:** I am pleased to see the government being able to expand the program further. I have always felt that the 12 chronic diseases specified under the federal program were very limited in their scope and did not offer a chance for a number of people who are often borderline cases. I have always felt that it is incumbent upon the Government of the Yukon to take the initiative to expand the coverage for a number of those very grey areas.

Speaker: This then brings us to the Question Period. Are there any questions?

QUESTION PERIOD

Question re: White Pass and Yukon Railroad

Mr. Phelps: With respect to the White Pass Railway, there were some questions and news reports yesterday with respect to Mr. Primi of the Fantasy Railroad Corporation of New York, who was in town last weekend and met with the Government Leader.

My first question has to do with the type of operation that Mr. Primi is looking at. Is it going to be entirely tourist to begin with?

Hon. Mr. Penikett: Mr. Primi has very grand plans that eventually involve the year-round operation of the railroad. I believe at the outset he is looking at a tourism attraction, rather than simply a mode of transportation. As he outlined his plans to me, he contemplated having three trains running a day: one from Skagway to Fraser, another from Skagway to Carcross, and another between Skagway and Whitehorse.

05 The Leader of the Official Opposition will understand that I cannot imagine or explain exactly how he would schedule those runs, but they may involve runs in two directions, to make them complementary.

He contemplates refurbishing the equipment, particularly the passenger cars, and replacing the ones that are there now, changing their configuration in such a way that they would be able to carry more passengers. He also described plans to make the accommodation on the trains "plush". That was his word. He expected to put in dining cars, bar cars and the normal range of services that would be found on luxury passenger rail accommodation such as used to exist in Canada. I believe from my recent experience on Via Rail that it does no longer.

The plans that he has eventually call for the construction of a large tourist destination hotel in Bennett and significant investment in refurbishing some other attractions and properties in that town.

He has also, and this would be of particular interest to the Leader of the Official Opposition, some notion about putting a boat on the lake to carry people between Carcross and Bennett.

Mr. Phelps: I am sure the Government Leader shares the concern that I have, particularly as a resident of Carcross, about the possible negative effects that an operation such as this could have with respect to the tourism dollar for Carcross and Whitehorse businesses.

Has the Government Leader discussed with him a concern that we all share, that if the train is only going to go as far as Fraser, or even Bennett, and return, this could cost hundreds of thousands of dollars in revenue to the operations presently existing in Whitehorse and Carcross?

Hon. Mr. Penikett: While I would hasten to add that I am not the lead Minister on this subject, and am less expert than some of my colleagues, I did emphasize to Mr. Primi that our interest was in an operation that would produce benefits, employment and business opportunities and other economic rewards to this community.

Therefore, I had reason to ask him about the economics of the relative routings that he was contemplating. He explained to me that he contemplated different fare structures for each of the legs that he was talking about. The package with a Carcross destination and Whitehorse destination would include meal options, which he appears to have thought out reasonably well, and which would involve food preparation possibilities for businesses in Whitehorse and Skagway and microwave facilities on board the trains.

Mr. Phelps: Yesterday it was mentioned in an answer you gave to the Member for Faro that you had discussed, in general terms, the types of loans and business assistance grants available from the Department of Economic Development. Did you make it clear that those kinds of loans would be contingent upon starting a business that would be of net benefit to Yukon's economy...

Speaker: Order. All supplementary questions should pertain to the main question.

Mr. Phelps: I will just finish the question. ... net benefit to the economy rather than assistance for businesses that might be in competition and net harmful to the economy?

Hon. Mr. Penikett: Yes, I made that point very clear. We are not interested in assisting, unless we do it accidentally, in creating jobs in Skagway on the American side. Our contributions, if any, in such ventures will be geared to our bottom line, which is job creation and economic benefits.

I also, for that reason, asked whether he was entertaining local investors, whether he was contemplating any kind of equity involvement by either local business interests or whether he was going to try to raise the money himself through financial institutions or otherwise. I was left with the impression, although I cannot be much more specific, that he was going to be meeting with some possible investors here. He did also indicate to me that he was meeting with some local business people. I think I should not name them lest they were simply courtesy calls. I do not want to suggest that these people may be prospective investors because they may not be.

Question re: White Pass and Yukon Railway

Mr. Phelps: As we are all aware, the Chambers of Commerce have struck a committee to investigate the feasibility of reopening the White Pass Railway. I am wondering whether or not, to the Government Leader's knowledge, Mr. Primi met with that committee, or whether there was a joint meeting with Mr. Primi, that committee and government officials while Mr. Primi was here.

Hon. Mr. Penikett: I think these are early days in the proposal. I do not believe he met with the full committee. I am almost certain he did not meet with a joint meeting of committees and government officials.

Following my meeting, I did what I could the same day to have him briefed on the kind of programs and the business assistance and economic development programs we have available. I also undertook to convey the information he provided to me to the responsible ministries in this government, principally Tourism and Community and Transportation Services. This I have done.

He did indicate to me that he was going to meet with one

gentleman who, I am almost certain, is involved with the committee mentioned by the Leader of the Official Opposition.

Mr. Phelps: Can the Government Leader advise whether or not the Chamber Committee has received any other bites or knows of other groups or businesses interested in taking over the railway at this time.

Hon. Mr. Penikett: I cannot speak for the Chamber Committee, but I am aware of one other person, an entrepreneur, formerly a resident of this territory, who advised me some months ago that he was in discussion with a group of potential investors who had it in mind to look at the possibility of purchasing the railroad.

I have received no further information from this group or about this group, which leads me to believe that they are not assuming this possibility, although I concede I may be wrong.

Mr. Phelps: The group from the Chamber of Commerce was publicly fairly critical of certain aspects of the baseline data that was prepared for the Minister of Community and Transportation Services. One of those issues had to be with the cost of seats, the kind of market that there was. Was Mr. Primi, in estimating what he saw as marketable fare from the various destinations, more in line with the Chamber or with the report done?

Hon. Mr. Penikett: The Leader of the Official Opposition may wish to pursue this matter in detail with my colleague. If I may present a layman's perspective, the analysis depends upon whether you are looking at the railroad as a tourist attraction or as a mode of transportation. If you are looking at it as a mode of transportation, one must be aware of the hard reality that there is no passenger rail service in North America that is independently self-sufficient.

If you are looking at it as a tourist attraction and comparing it with similar operations elsewhere in North America, then an entirely different economic analysis comes into play. Mr. Primi would argue that it has greater possibilities as a tourist attraction than it does as it traditionally was, a mode of transportation.

Question re: Justice review

Mr. McLachlan: In the Justice Review Committee Reports, reference is made to circuit courts not spending enough time in communities. Further reference is made to increasing visits from four to six times yearly instead of what we have normally seen.

In light of those two recommendations, has any consideration been given to considering the hiring of another territorial court judge?

Hon. Mr. Kimmerly: No. The territorial court, if it is staffed at its full complement of three, should have no problem at all in accommodating that schedule of circuits. Presently, one of the judges is on a leave of absence, and that vacancy is filled primarily by regular visits of a deputy judge and by using other judges. The short answer is, no, it is not necessary.

Mr. McLachlan: Reference is also made to having defence counsel spend additional time in advance of the court in the community. A number of the defense lawyers, as the Minister is well aware, are often on Legal Aid retainers. If he agrees with that recommendation, how does he then see keeping the Legal Aid costs lower, if it would result in these lawyers spending more time in the communities?

Hon. Mr. Kimmerly: I do agree with that recommendation. It is my understanding that the present Legal Aid budget now bears that cost. The new Act should be proclaimed very soon and a new organization in effect by April 1. The new Legal Services Society will need to assess that recommendation in light of the budget that they have available to them.

Mr. McLachlan: The shortage of JPs is also addressed in that report. In the case of Faro, we have not had one for almost three years. There is one applicant who is being considered. This particular applicant fulfills two of the Minister's basic prerequisites: gender and rural-based.

Can the Minister advise if and when one will be appointed in Faro?

Hon. Mr. Kimmerly: That particular applicant was appointed several months ago.

Question re: Land claims, overlap policy

Mr. Lang: I asked a question over the past few days with respect to a major issue facing Yukon. That has to do with the Declaration filed by the Kaska Dena Indian Band of northern BC in the courts. From this side, we view it as a very major social, economic and political situation that would have effect on all Yukoners.

Yesterday, the Government Leader asked me to ask a direct question. Has he found time in his very busy schedule to read the Declaration that is going to have such a profound effect on Yukon?

Hon. Mr. Penikett: Yes.

Mr. Lang: Now that we have gotten to step one, we are very pleased that the Government Leader has found time in his busy schedule to read what we deem to be a very important document.

When can we expect the government to take a position on this very important issue?

Hon. Mr. Penikett: Shortly. I cannot be more precise. At this moment, we have officials in the Department of Justice and in the Land Claims Secretariat considering the matter, as I advised the House in many questions last week. As soon as we have taken a position as to how we are going to proceed, I will advise the House.

Mr. Lang: Following that, since the Government Leader was not very knowledgeable on the subject last week when the question was put to him whether or not outside legal counsel was being sought for purposes of analyzing this situation, is outside counsel being sought? If so, who?

Hon. Mr. Kimmerly: The actions taken so far are to be absolutely clear that no caveat is filed on any land, which the lawyers opposite will know is the real question here, not the rhetoric that has gone on before. The question of employing outside counsel will be addressed in the future, and no decision as of this instant has been taken.

Question re: Deputy Minister of Education

Mrs. Firth: My question is for the Government Leader regarding the Deputy Minister of Education. Could the Government Leader tell us why we do not have a new Deputy Minister of Education hired yet?

Hon. Mr. Penikett: Because an appointment has not been made.

Mrs. Firth: Could the Government Leader tell us why the decision has not been made and the appointment has not been made yet?

Hon. Mr. Penikett: As I indicated before, I am not going to be discussing personnel matters on the floor of this House. When a decision is made about a new Deputy Minister of Education, I will be announcing it.

Mrs. Firth: This is not a personnel matter. This is the matter of a political appointment, an Order-In-Council appointment, and people want to know why we do not have a new Deputy Minister of Education, why the government has not made the decision yet, why they have not made the appointment yet, and what is the problem with making the appointment. August 29 was the closing date for the competition.

Speaker: Order. Would the Member get to the supplementary question.

Mrs. Firth: Why do we not have a new deputy minister yet, when it has been almost five months?

Hon. Mr. Penikett: I have already answered the question twice, I believe. It is because we have not yet made a decision.

Question re: Office space study

Mr. Lang: I would like to turn to another subject that we will not get full chance to debate for quite some time in view of the fact that we have left the Capital Budget. There is a major concern out there with respect to the growth of government and where government intends to take us over the next couple of years.

I refer now to the strategy plan for office space for 1990/91. There were three options in that plan put forward to the government. One was a lease plan, one was a lease-build plan and one was a build plan. I would like to ask the Minister of Government Services what the position of the government is. Do they accept Plan A for the purposes of housing future civil service, plan B or plan C?

Hon. Mr. Kimmerly: The Member well knows that that is a proper subject for the Estimates debate. The answer cannot be clearly stated at the moment because, as I had indicated previously, the government is looking at the feasibility of the use of the old Yukon College. That particular feasibility study has not been completed. When it is, the government will be in a position to know the projected square footage or square meters that are necessary to house the public service.

Mr. Lang: Once again, I go back with respect to the concern that this side has in the obvious growth in the civil service and the question of how much government 28,000 people actually need. In that particular document, there was what was termed a five-year planning horizon, which called for a total of 76,736 square feet to house the civil service within the next five years. To bring it into proper context, it is actually a larger building than the one we are presently sitting in here.

Does the Minister and the government, in principle, accept those projections in principle, allowing for five or 10 percent to change either way?

Hon. Mr. Kimmerly: Not specifically. In his preamble, the Member spoke about the growth of the government, which is an incorrect insinuation, if you will. The situation was that due to the neglect of the government over the last five or six years, and the refusal to recognize the legitimate growth, we had a substantial space problem, which we have resolved.

Mr. Lang: The Minister says we have solved it, yet, at the same time, they are doing a major study on the Yukon Vocational School across the river. Obviously, it has not been solved, according to what he has said.

During the course of debate, the Minister indicated that they were under negotiations for further office space in the downtown area or, at least, somewhere in town. Has the government made any other decisions since we met in December with respect to future office space? If they have, where, and for how much?

Hon. Mr. Kimmerly: Technically, no. Those possibilities have not received Management Board approval. The Member has stated that we are studying the feasibility of the use of the Yukon College. Let me say very firmly on the record that the previous government made a decision to build a new Yukon College, without consideration of a use for the old building, at all. We have taken up, albeit too late, that particular mismanagement.

I apologize for taking so long, but I have been informed that the lease of space has been approved by Management Board, and I apologize if I accidentally made a misrepresentation. I had either forgotten, or I was not present. I will advise the Member at the time of the Estimates.

12

Question re: Office space study

Mr. Lang: His ability to recollect is amazing. It is amazing how his memory performs when he wants to respond to a question. That is not a response to a question. You have just told me that Management Board has made a decision with respect to space. I do not think I have to wait for the Estimates, which are in April. I would like to know now and the public would like to know now what decision has been made by Management Board, where space is being leased and for how much?

Hon. Mr. Penikett: I can advise the Member that Management Board has recently approved relocation according to the Touche Ross Plan of the Department of Economic Development, including the One-Stop Shop, to the new building that is presently being constructed on Main Street.

Mr. Lang: This is a revelation. This was the government that had all the problems solved and now we have new space for another department to move to. I should add that it is very confusing to the public because they do not know where to go for the purpose of government service any longer. I would ask the Minister of Government Services, or perhaps some other Minister who has a better recollection, at what cost are we renting what would obviously be very premium floor space?

Hon. Mr. Kimmerly: I will supply that information. I take the question as notice.

Mr. Lang: What is going to happen with the space that

Economic Development presently occupies? Are we going to be increasing the size of the civil service or are we going to have a further moving of government departments? What is the projected move by the government?

Hon. Mr. Kimmerly: It is part of the solution as is outlined in the Touche Ross Report. If the Member looks at it he will see the answers there.

Question re: Office space study

Mr. Lang: That is an inappropriate answer. People have a right to know what government services are being moved, and where. Who will take over the One Stop Shop space across from the Sheffield? Is it being relinquished to the owner or is another department to occupy it?

Hon. Mr. Kimmerly: This truly is a debate, as the Member opposite said, and not a Question Period. It is suitable for the Estimates.

The answer is that the public servants involved in the Young Offenders, or what would be called probation officers for Young Offenders, will be housed in the Tutshi Building, across from the Justice Building. Systems and Computing Services are taking over most of the space vacated by Economic Development.

Mr. Lang: Then it is safe to say that the space used in this building is going to be used in good part by Systems and Computer Services, as opposed to the people's departments, where people come in and do direct business with the government? Is that the policy decision that has been taken by the government?

Hon. Mr. Kimmerly: No. The Department of Economic Development is now in several locations, as a result of the very popular One-Stop Business Shop, or the Business Development Office. The move of Economic Development to Main Street space will enable that concept of accessibility to be further enhanced and have the entire department all in one place.

Mr. Lang: With this major move that has been made by the government, which is a major decision, then the government is not relinquishing any of the private leases they have in the moves that they have made? They are just moving various departments around. Is that correct?

Hon. Mr. Kimmerly: I believe so.

Question re: Judicial Council

Mr. Phillips: With respect to the Judicial Council, the Minister of Justice indicated some time ago to myself that he was going to make some changes to the Council. Has he done so?

Hon. Mr. Kimmerly: No. I indicated some legislative changes, which are certainly not planned for this sitting.

Mr. Phillips: What changes are contemplated by the Minister with the Judicial Council?

Hon. Mr. Kimmerly: Generally, to change the membership of the Council to include a majority of lay people on that Council.

Mr. Phillips: I am very pleased to see that the Minister is going in that direction. Is the Minister planning to limit the independence of the Council? I noticed yesterday in his statement — he made a statement in the House in response to one of my questions — about the communications the Council sends out, he says what they do is their business. I got the impression that the Minister was not too happy about them having the independence to correspond with people. Is the Minister planning on limiting that type of thing, or limiting the independence of the Commission?

Hon. Mr. Kimmerly: The short answer is no. The Council performs various functions. Some of them require independence; some of them do not. In the past, the problem has been around the recruitment of judges. That has been a problem on the last three judicial appointments. The procedure that I would like to see followed is different from the procedure now employed by the Council. I would explain it, but it would take a minute or two of the Question Period's time. If I am asked, I will explain it.

Question re: Yukon Economic Council

Mr. Brewster: On May 7, 1986, I presented the following motion to the House: THAT this House urges the Minister of Economic Development, Mines and Small Business to ensure that

representatives from the agricultural and forestry sector are appointed to the Yukon Economic Council. Although that motion was defeated, the government subsequently appointed a representative of the forestry sector to the Council. Will the government now consider putting an agriculture person on that Council?

Hon. Mr. Penikett: We have recently considered the matter and decided that while the Agricultural Council has direct access to the government through the Agricultural Advisory Committee and while the Forestry Association did not, we made that appointment at that time. I did undertake to consider the matter again after a period of time. I would hope that we will review the membership of the Economic Council at least once a year to see if the appropriate interests are represented and if all the interests that are represented are able to make a contribution. I will guarantee to the Member that we will be periodically reviewing that matter.

Mr. Brewster: Does the Government Leader not believe that agriculture is a very important industry in the Yukon? Would he not reconsider his decision?

Hon. Mr. Penikett: Yes, I agree it is an important and a growing industry that involves a significant number of people. The Member opposite will concede that there are other industries that employ even more people and that may have an even larger impact on the territory, which are not now represented on the Council. In considering the finite places on the Council and the voices that we do need to be heard there, I obviously have to evaluate the claim of the agricultural industry against those of other industries as well.

Mr. Brewster: Is it not true that agriculture matters have been raised in the Economic Council meetings? Was a briefing on agriculture in the Yukon not given at one of these meetings, but no agriculture representative was allowed to attend the meeting?

Hon. Mr. Penikett: I cannot vouch for those facts. Put in terms the Member makes, that no agricultural representative was allowed to attend the meeting, is maybe misstating the situation. I do not know, because I do not control the agenda, whether or not agriculture, as a discreet item of discussion, was on the Economic Council agenda. I would be surprised, if they were discussing agriculture, if they would not want to hear from all the interests that are involved, and not only the department that is responsible, but industry representatives, consumers and people who are involved in retailing. There are many interests in the matter of agriculture, and all those interests would need to be represented.

Question re: Justice review

Mr. McLachlan: With regard to policing of the Justice Review Report, is the present Native Police Force Agreement with the Kwanlin Dun Band a terminal agreement expiring in 1988 or 1989? Is it then not subject to renewal?

Hon. Mr. Kimmerly: That is accurate, but I believe the date is 1990.

Mr. McLachlan: We spent some time last week in this Assembly discussing the matters of policing in native communities with respect to the Member for Kluane's riding. My question of the Minister is: does he agree with the concept of the native police force or is it his expressed intention that where there is policing involving native people it is his preference it be done with the RCMP in connection with special native constables?

Hon. Mr. Kimmerly: I have a specifically avoided stating a preference on that issue. I will explain exactly why I am taking that position. This whole issue is the subject of debate between the RCMP and some Indian bands currently. It has been discussed at land claims and will be discussed at land claims talks. I am making every effort to facilitate a negotiated position among the various interests and the government, I hope, will advocate the negotiated position, I would expect, in the near future.

Mr. McLachlan: With regard to the Kwanlin Dun Band's policing agreement being a terminal agreement, do I understand from that that the Minister has closed, as it now stands, any further chance of that being renegotiated with that band; that if there is no future agreement, the policing of that area will revert to the RCMP?

Hon. Mr. Kimmerly: That negotiation occurred under the previous government and is some years old now. I would not rule out a renegotiation, however, the situation as it now exists depends

on federal funding. The agreement clearly says that the program will cease at the termination date.

Speaker: Time for Question Period has now lapsed.

Motion re adjournment

Hon. Mr. Porter: I move THAT the House, at its rising, on January 15, 1987, do stand adjourned until January 26, 1987, unless it should appear to the satisfaction of the Speaker, after consultation with the Government Leader, that the public interest requires that the House should meet prior to that time, in which case the Speaker shall give notice that the House will be reconvened at an earlier date;

THAT if the House should meet at an earlier date than January 26, 1987, it shall transact its business as if it had been duly adjourned to that time; and

THAT, if the Speaker is unable to act owing to illness or other causes, the Deputy Speaker shall act in his stead for the purpose of this order.

¹⁶ **Speaker:** It has been moved by the hon. Government House Leader: THAT the House, at its rising, on January 15, 1987, do stand adjourned until January 26, 1987, unless it should appear to the satisfaction of the Speaker, after consultation with the Government Leader, that the public interest requires that the House should meet prior to that time, in which case the Speaker shall give notice that the House will be reconvened at an earlier date;

THAT if the House should meet at an earlier date than January 26, 1987, it shall transact its business as if it had been duly adjourned to that time; and

THAT, if the Speaker is unable to act owing to illness or other causes, the Deputy Speaker shall act in his stead for the purpose of this order.

Mr. Lang: I want to make a couple of comments with respect to the motion that is before us. I think that there should be some comments made. I recognize, at the outset, the agenda of the side opposite. Obviously, there has been a decision to send two Ministers to the conference in Halifax. I have to wonder about the necessity for two Ministers attending, as opposed to one, quite frankly. If only one left, there would be enough Members in this House to conduct business and to ensure that the government would have the necessary votes if we got to the point in any of the business that we were conducting where a vote was required.

I do defend the government's right to call the business with respect to the schedule of events. I want to express to all Members opposite, and to the public we represent, that we are a little concerned with the change of agenda with respect to the procedures in Committee of the Whole.

We felt that we were proceeding very expeditiously through the debate on the financial package provided by the government, knowing full well that the package was going through, in any event, with the support of my colleague to my left, at the same time, recognizing that we were prepared to delay some questions for the Operation and Maintenance debate of the budget that would be coming down some time in April.

With the change of the agenda, we are very concerned that the financial package is halfway done; it has not been completed. At the same time, we have had at least one Minister from the other side stand up and blackmail this side by saying that the Budget must go through or else the dollars cannot be expended.

Now, all of a sudden, we have a change in plans to attempt to put through the controversial *Human Rights Act* by the Minister of Justice as quickly as possible, in order to negate any more public debate outside these Chambers to the best of their ability.

I recognize that the government has control of the agenda. I am not going to argue that point. I want to express to the side opposite that if the agenda were changed to deal with the financial package that is before us, that this side is prepared to carry out the commitment that it gave during the House Leader meetings, so that the financial package could be in place for the purpose of issuing contracts.

Our concern is that we know there is going to be a great amount

of time and deliberation on the *Human Rights Act*. Even the Minister of Justice has expressed a timeframe of a month, if not longer, if I recall correctly from some of the debates that took place last night.

I do not know how long the debate will last. We know it is going to be long; it is going to be arduous. It is going to be sanctimonious at times, but that is the price of democracy and the way our political system works, in order to come up with compromise and decisions that are required for the purposes of bringing forward legislation that will be passed and proclaimed into law that will be in the best interests of the public we represent.

¹⁷ Knowing that, this side has trouble understanding why we would not, in a consensus type manner, make every effort to put the financial package to rest so that the proper planning and decisions can be made within the civil service to get contracts out early.

I harken back to the decision that was made in the late 1970's to have the Capital Budget debated in the fall so that contracts could be tendered early in the year. In that way, the taxpayer can get the best clout for its dollar. When a person tenders in April when they are open, the contractors put their bids together in such a manner that they are not fighting the elements.

The longer the government waits on this area of concern, the more it is going to cost the taxpayers. This does not make any sense in view of the fact that we are over halfway through, and there was a spirit of cooperation generated from both sides regarding those elements of the package that was presented to the House in late November.

There have been allegations and accusations made that the House has been sitting too long. I would like to put this in its proper perspective. This side did not call the House together in late November. Generally, the practice has been — especially if there is a package as broad as this government's — to sit no later than mid-October, to give at least one-and-one-half months or two months for debate prior to Christmas, then leaving the government two or three months to put together their O&M Budget.

Now we have a situation where the lateness of the calling back of the House has put us into a situation where we are sitting in January. We are not going to accept the criticism that we are holding up the procedures of this House. We are prepared to expedite the business that we can find some common ground on. We have said privately and publicly that we are not asking for a week's delay. We will support the adjournment motion, recognizing that the government has its priorities. We want to clearly put on the record that we are prepared to do the business of the House, especially the financial package, as long as we get the proper answers from the side opposite.

Motion agreed to

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

Speaker: It has been moved by the honourable Government House Leader that the Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

¹⁸ *Speaker leaves the Chair*

COMMITTEE OF THE WHOLE

Chairman: Committee of the Whole will now come to order. We will recess for 15 minutes.

Recess

Speaker: I will call Committee of the Whole back to order.

Bill No. 99 — *Human Rights Act* — continued

Mr. Phelps: I would like to carry on with the subject we were dealing with last evening. It pertains to the issue of the sexual orientation sub-clause being included in Clause 6 of the Bill and the interesting issues that spring to mind when one considers the ramifications of that inclusion. Mr. Chairman will recall that we

were having a great deal of difficulty in getting a straight answer from the other side with regard to their position on gays and gay couples adopting children.

Just to go back to explain the reason this came up in such a timely fashion last night was that we heard value words being bandied about by both the Minister of Justice and the Member for Faro. One was speaking about the distastefulness of such adoptions and the other was talking about the danger being avoided because of a whole bunch of things that did not make a lot of sense but are certainly on the record for the world to read.

In attempting to find out what their position is, I found it rather confusing that gentlemen such as these could stand up and talk about all these wonderful principles they hold and yet use value words such as distasteful, dangerous and so on, in the same breath.

I suppose my first question in the circumstances ought to be that I take it that the Minister has absolutely no problem, all things being equal, with homosexual couples adopting young children?

Hon. Mr. Kimmerly: The fact of the matter is that whether this Bill is or is not passed, or whether sexual orientation is or is not included, the possibility of adoption — and I am not going to say gay couples, but — by families of a non-traditional make-up — and that could be anything, it could be a situation of a grandmother and mother and things like that or single parents — exists now.

¹⁹ The relevant law is under *The Children's Act*. This Act is irrelevant to that determination in a court. It would have been considered unthinkable years ago that a single parent would be an adopting parent. That has occurred, although it is in a minority of adoptions. Those kinds of things are dealt with in *The Children's Act*.

The position of the government is that we do not wish to interfere with the situation as it exists with regard to adoptions or marriages. It is the position of the government that the inclusion of sexual orientation means just exactly what is stated in the Act. It refers to discrimination against individuals because of their sexual orientation.

To put it in other words, the government believes that one's sexual orientation is irrelevant to whether or not one can perform a job, or use a service or facility. That is the position of the federal government, and it is the position of the governments of Ontario and Quebec. That is our position.

The question of the other concerns is not addressed by this Act, and I would ask the Member to consider what effect this Act would have on a Supreme Court decision and what the remedy would be. The remedy is obviously to appeal the decision. That situation exists now. The position of the government is that one's sexual orientation is irrelevant to whether or not one can perform a job or use a service or facility.

²⁰ **Mr. Phelps:** I am sure that the Minister has taken the time to read the Bill in its entirety. I draw his attention to Clause 36 of the Bill. Paramountcy is the heading. This Act supersedes every other Act, whether enacted before or after this Act, unless it is expressly declared by the other Act that it shall supersede this Act. That certainly applies to all other Acts in the jurisdiction of this honourable Assembly. *The Children's Act* is one of those other Acts.

The problem that we are having is that the Minister is trying to play politics and have it both ways. Either he feels that sexual orientation ought to be irrelevant to such things as jobs. I take it it is irrelevant with respect to the *Matrimonial Property Act*. I take it that it is irrelevant with respect to *The Children's Act* or not. I am getting confused messages from the other side, because he is so carefully trying to tiptoe around the central issues here.

I find it rather confusing that he can be so holier-than-thou about being a man without bias, as he would have us believe, and yet use a word that there is a terrible danger, on the other hand, about these kinds of adoptions. I am trying to find out what the attitudes are across the way. Are they as sanctimonious as they love to espouse from time to time or not?

I wonder whether the Minister is prepared to tell us that sexual orientation ought not to be a consideration with respect to adoption. That is certainly the effect of the Paramountcy clause in this Bill.

Hon. Mr. Kimmerly: No. In an adoption, the sexual orienta-

tion of the parties is a consideration, and should be. That may not necessarily be a discrimination on the basis of sexual orientation. The point here is that this Act does not deal with adoption or marriage.

Mr. Phelps: Of course it does. This is ridiculous.

Let me try once again. It is frustrating to have a person refuse to answer questions and simply go around and around the mulberry bush. I would like to know why the Minister would state that if the only reason given for not allowing an adoption of a young child is sexual orientation, why that would not be considered discrimination under this Act and be an appealable issue.

²¹ **Hon. Mr. Kimmerly:** Someone objecting would obviously appeal. The question of any constitutional type of law would probably involve the Canadian *Charter of Rights and Freedoms*, not this Act.

Mr. Phelps: The pay equity provisions of this Act supersede the provisions regarding equal pay for similar work now in force under the *Employment Standards Act*. Could the Minister advise me about that?

Hon. Mr. Kimmerly: This Bill is paramount over the *Employment Standards Act*. That paramountcy has no practical effect because this Bill applies to the government and municipalities. The *Employment Standards Act* does not apply to the government. The government is specifically excluded under the *Employment Standards Act*. We will have two tests in the Yukon: pay equity for the public sector and the test of substantially similar work in the private sector. The Acts are not in conflict. There will be two tests on the two different sectors.

Mr. Phelps: Is this Act paramount over *The Children's Act*?

Hon. Mr. Kimmerly: Obviously, this Act is paramount over all other Acts, and it is a question of where they are in conflict. I fail to see any conflict. The question of adoptions is one of considering individual cases and the best interest of a child in a family situation. The test is absolutely clear in *The Children's Act* — agree with it or not — and it is that the interests of the child are paramount. There is nothing in this Act that is inconsistent with that.

Mr. Phelps: It is an interesting point of view, biased though it may be, that the Minister carries into the debate. It is interesting to contrast the different kinds of things and to examine the type of answer that we have been given over the past several hours of debate regarding this issue, which is sensitive. We can tell it is sensitive when the Minister walks all around the issue and never deals with it directly.

I suppose we could contrast his non-answers on the issue of adoption to a very clear yes answer to the issue of employment.

²² If he had chosen, he could have said employment, that when a person decides to hire somebody he takes all kinds of things into consideration and considers the importance to the business of various characteristics that an individual may bring with him, and the competency of the individual making application for the job. It could depend on a whole number of factors. Personality is one of the factors that a person may look at so it could go on and on so an employer could make such a decision. The issue of sexual orientation would probably be relevant as it is now because if you look at any of the law or jurisprudence, that is the way it is.

So having wanted to dodge that issue because he thought it was sensitive, he give me the same kind of gobbledy-gook that he has been dishing out in huge quantities for the past hour of debate in this Committee. We get no closer to where the Minister stands, or the government stands, or where the Liberal Member stands with regard to issues of value. It is only when they slip up and start using emotionally-charged words, such as "distasteful" and "dangerous" that we get any kind of inkling. Then we find out they do not really believe those words, they are simply parroting things to garner votes.

I could have easily been called upon to stand up and give the same kinds of answers to questions regarding discriminatory practices in hiring people and talked forever. It is the same kind of situation. Indeed, when it comes to any kind of discrimination under this Act, where discrimination is only part of the judgmental call by a person in authority — be it a court or judge, or an

employer, or an owner of dwelling houses, or whatever — that kind of answer can be used to dodge the issues. I find it rather sad that the Minister is afraid to tell the truth, that he feels that it is fine and that is one reason that clause is in there, for homosexual couples to adopt young children.

We have been labouring that for some time, and I think we should move on a little bit. We get very interested about the impact of the special needs section which follows Section 6, Section 7(1). Again, because of the broad use of oddly-based language, one wonders exactly what this clause means in conjunction with some of the prohibitive grounds outlined in Section 6.

Let us take sexual orientation, under special needs. May I ask the Minister whether under Section 7 people have a duty to provide extra washrooms that will comply with people of different persuasions of sexual orientation?

Hon. Mr. Kimmerly: No.

Mr. Phelps: I wonder why the Minister could possibly give me an answer such as that. Is he already making a judgment call on how the Commission would judge? It would be for the Commission to decide under sections 7(2), would it not?

Hon. Mr. Kimmerly: There is already ample law about the question of providing one washroom or two, in relation to such things as accommodation onboard ships, mining camps and the like. The concern here is so ridiculous and so hypothetical that it does not even require a serious rebuttal.

The phraseology of section 7 is the same concept as exists in provincial legislation; however, it is worded in lay language to be as clear as possible. It sets up the spectre, if you will, of a substantial discretion. The Member will recognize that that discretion is guided in the legislation, which is not characteristic of provincial legislation, but is a concern that was raised by Yukoners in the debate on Bill No. 58.

What we have done to address this issue of undue hardship is in the lawyers' phrase for the concept or the problem in law. We have, through the legislation, provided guidance to the Commission in their determination of what is reasonable and what is not reasonable. The Member will notice that the section here refers to several things that are imminently reasonable, be it disruption or the potential disruption to the public effect on contractual obligations. We have listed both financial cost and business efficiency.

It is absolutely clear that, in determinations of this concept of undue hardship, the Commission is directed to look specifically at business efficiency and financial costs.

That does not appear in provincial legislation. It does not appear specifically in the case law. In effect, this will be a weak test, from the point of view of the advocate for human rights. Considering especially the rural Yukon and the nature of small business here, this was particularly put in to accommodate the situation in Yukon.

Mr. Phelps: The Minister does prattle on about things that are irrelevant. I guess a person has to start somewhere, having heard all of that. First of all, he talks very blithely about the case law and how there is nothing in there that would indicate the need for special washrooms for people of various sexual orientations. He also indicates that there is nothing in the case law about this and that.

The fact is that section 7 is unique in Canada. There is no such broad and dangerously worded clause as 7(1) in any of the Acts that I have researched. The reason there are no cases about the effects that section 7(1) would have on the issue of sexual orientation is because it does not exist anywhere. It is new. This is what makes this law so forward-looking. I think that is the phrase that the Minister loves to pat himself on the back with.

Section 7(1) is extremely, broadly worded. Section 7(1) sets up a special duty. The previous Bill that was put forward by the Minister was an absolute horror story. It was a sloppy Bill that was broad, overlapping and inconcise. The public reaction was predictable and frightened the Minister enough so that he finally got some competent people to work it, work it and work it to reduce it from 36 pages to 12.

That kind of intellectual discipline has not been utilized enough, because there are still a great number of problems with the loose wording, in my opinion. There still are a whole series of questions

that remain unanswered, because the Minister wants to be the one who breaks new ground without having a clue as to what kind of problems he may be posing on the small business man, the neighbour down the street who might have someone point the finger at him, the cost to a family in a rural area to hire legal assistance to defend themselves and their names, and the kind of reputation bashing that is going to be the result of this legislation if it is not cleaned up.

I do take a great deal of convincing when I listen to remarks emanating from the other side. It is so misleading to say that there is nothing in case law. Of course there is not if there is no Act in existence in Canada that has anything similar to the legislation we are examining now, or at least certain very important aspects of the legislation.

Mr. Phelps: My quarrel, so I can make this in as simple and plain language as I can, was not with Section 7(2). I do not think I mentioned it in my question, but if I did I want to make it clear now that I did not intend to, because I was talking about Section 7(1) in conjunction with all the grounds of Clause 6, including sexual orientation.

We will be getting into this in some detail during the debate. It seems to me that Section 7(1) really ought to be the kind of thing, if it is going to be tried for the first time in Canada, phrased in this way, that it ought to be restricted to Clause 6(h), but that argument can really be carried on at a later date. Certainly far more wisely and carefully worded legislation on the books has raised certain issues in the so-called legal precedents. They are not truly legal precedents because they are not binding, unlike common law precedents.

The existing statutes regarding human rights on the books in other parts of Canada have left questions unanswered. To try to use cases arising from them to talk about new legislation, new concepts in this new so-called progressive Bill, is patently silly and absurd. I sincerely wish that the Minister would not try that kind of argument on this side. It is not going to work and it does, at times, spark a little passion in the soul of this particular speaker.

I am asking these questions because of grave concerns I have with the wording of this Statute, as I did with its predecessor, the ill-fated and ill-conceived Bill No. 58. That I do not think anyone in his right mind would now want to defend or to see in law, because it was such a gruesome piece of verbiage.

Now going back to the sexual orientation issue and, I hope, having made myself clear with regard to Section 7, because we will be getting back to this and discussing it with regard to virtually every sub-clause in Section 6 (a),(b),(c) and (d) — and just talk about at least some of them a little bit. Getting back to the issue of the sexual orientation clause and the clause regarding paramountcy, I would like to know whether the matrimonial property law will, in the opinion of the Minister, apply to homosexual couples.

Hon. Mr. Kimmerly: Mr. Phelps spoke for approximately 10 minutes about one issue, and then asked a question about something entirely different, which has already been answered.

The reason why section 7(2) must be mentioned in relation to section 7(1), is that they clearly go together. You cannot fully understand one without the other. The concept of undue hardship and the concept of reasonable accommodation is in all Acts. It is called reasonable accommodation in most Acts. It is not called that here because of the public confusion about that phrase, which was evident over Bill No. 58.

In lay language, this encompasses that concept. It encompasses it extremely well. The real question is, do the Conservatives agree with that concept, or do they disagree with that concept? That is the real question here. That is the point of the Act. We agree with that concept.

The Member spoke about the concept of reasonable accommodation and undue hardship applying only to physical or mental disability. It is true that is not in our law now. It is not in the *Fair Practices Act*; however, it is in every single provincial Act and in the Northwest Territories.

In that light, I would ask what the Conservative position is about including religion, about including race, about including pregnancy. Many of the cases in the case law have been around the issue of religious holidays or religious observance days. They are not

exactly holidays. The argument goes, should a Jewish person be required to work on a Saturday? The answer is, if it is possible for the employer to accommodate a Jewish employee who is requiring to observe the religious day on Saturday, then they should do so.

The larger stores, such as The Bay and Woolworths and Super Valu, could accommodate that kind of a work schedule, but some smaller business establishments may not be able to accommodate that. If a complaint is made, there must be a determination. The way we determine it can only be to set out the guidelines. The guidelines here are set out with particular concern to the Yukon small business person.

I would ask about pregnancy. I would ask about age. All of us get old, or the lucky ones among us, perhaps, get old. There can be, and should be, a duty upon everyone to make some accommodation for older people, or for children, or for young people, or for pregnancy. This is not a concept that Yukoners around the territory have complained about at all. Yukoners are extremely tolerant people about these issues. We understand the necessity to make accommodation and to make some special adjustment for these kinds of issues. We do it now. The concept is a Christian one, and it is included in other religions, as well as Christianity.

²⁷ I submit that it has every place in this law.

Mr. Phelps: We have managed to jump all over the map on that answer. I do not think I will rise to debate these red herring answers. My concern is with the way in which the Minister answers questions. He does not deal with the issues directly, particularly when he perceives them as being sensitive ones.

Perhaps a different way of getting to the nub of the issue would be this: I asked the Minister about section 7(1) in conjunction with sexual orientation. He spoke, first of all, about all the cases that there are on the subject of the duty to provide for special needs people pertaining to the sexual orientation issue, whether it be washrooms on ships or whatever.

In order to facilitate the debate a little, would the Minister first of all, table in this House the pertinent sections in each of the provincial Acts that deal with a duty to provide for special needs for people of different sexual orientation. I would also ask that he table in the House, since he is the expert on these things, the jurisprudence he speaks of so blithely in his replies. I would be very interested in seeing these things. Since he has them at his fingertips, it would certainly save us some research. Otherwise, we will have to take a great deal of time and care to make sure we have discovered all these unique cases.

It surprises me that there is such a huge amount of jurisprudence and case law on these things, because the only provincial jurisdiction, until very recently, that had sexual orientation was Quebec. I have not been able to find all these wonderful cases that the Minister is so familiar with. Would he do that?

Hon. Mr. Kimmerly: When Mr. Phelps was trying to obstruct Bill No. 58, he asked the same question in Committee. All of the provincial legislation was collected and is on record with this House, all in one place. It is not usual to table public documents like statutes, which are available everywhere. In this particular case, they are all collected in one place by the Assembly and are available there.

²⁸ Now the question about sexual orientation and Quebec is interesting because sexual orientation has been included in the Quebec legislation for seven years. In fact, that Commission has an interesting experience with sexual orientation. There is no concern about adoption and marriages and things like that over the last seven years in Quebec under Quebec's Human Rights Legislation.

Their complaints have all been about employment, and they have included where people have been employed and were fired after their sexual orientation was discovered. In the seven years of its operation, all the cases have been decided amicably and have not required an adjudication. It was not in any way a disruption to society there, in any way at all, and has been the law for seven years.

I am expecting the same kind of thing will occur in Ontario, and I am expecting that the test cases, if there are any, will occur in Ontario and Quebec, where the money exists and the people live who may wish to challenge these things.

There is no extensive case law about sexual orientation for exactly the reason I have stated, because the complaints have all been settled and there are no adjudications because the spectre of problems that the Conservatives are trying to hold up is entirely a sham.

Mr. Phelps: Is it not interesting, when one focuses in on the cute answers of the Minister, how things change as the issues are narrowed down. Here we have this Minister saying that the case law shows that such things as the special accommodation for sexual orientation just does not pose a problem in other jurisdictions. Then we find, of course, that there is only one jurisdiction that has a similar clause. Then we find that there really is not any case law that says anything about the issue that I raised because there has not been any complaints according to the Minister and there is no case law.

I just do not know how a person can make those kinds of arguments and really feel good about the ethical kind of debate that ought to go on in these Chambers. Frankly, I find it rather disappointing.

Let us examine this Bill even more closely, because the case law the Minister is so proudly talking about when there is not any does not really show us anything. Let us move on to something else of equal interest and go back to that original meandering answer that was given in these Chambers shortly after we commenced the Committee discussions and examine that for a little while.

²⁹ I am sure we will find that that part of the answer was equally as vacuous and empty as the case law stuff. The Minister states, and I will try to be as accurate as I can in recollection about what he said, that section 7(1) is virtually the same kind of clause as is contained in all the other *Human Rights Acts* in Canada, but the wording is changed because people do not understand what reasonable accommodation means. That is rather interesting. While I do have each and every Human Rights Statute in my personal library, as well, I really feel that, having said that, the Minister does have a duty to table the clauses for each of the jurisdictions. Then, we can sit and compare the wording in section 7(1) with the wording that is in virtually each and every statute in Canada.

Would the Minister please table what he thinks is the same clause for each of the other jurisdictions. I would like this to be clear. I am sure a yes answer would give us a great deal of relief. That is section 7(1) of the Bill.

Hon. Mr. Kimmerly: I have already done so, under the select committee on Bill No. 58. They are all public documents. In any event, it is not a reasonable practice by anybody's standards to table information that is already public information. The research has already been done.

In order to accommodate this debate, I would ask that if the Conservative position is that they would support the wording in other jurisdictions, I can say that I have no serious problem with that. The only problem that I have is that it is less understandable than this language. The language here has been praised, in fact, by all Members who have spoken about it, as being understandable. I would suggest that as long as that language encompasses the same concepts, it should be used as it is an improvement.

However, if there is any particular hangup about the language, I am not absolutely wedded to that language. The concept is extremely important. The concept is in all legislation. It simply means that there are special needs for women who are pregnant, for older people, for children, for people who have handicaps of one kind or another, and the whole list. The observance of religious days was an example.

³⁰ It is that concept that is important. As we are on general debate, I suggest that if we concern ourselves with points of differences and the points of agreement about that concept, we will be advancing.

Mr. Phelps: I certainly hope that the honourable Member is not suffering from a hearing problem. I asked really that the Minister put up or shut up. I challenge him to table or to read out the sections from each and every jurisdiction that he claims provides us with the same duty as provided for in section 7(1).

Given that there is only one Member on the side opposite, I think this debate is rather fruitless. I move that the Chairman report progress and we adjourn.

Motion agreed to

Mrs. Firth: I move that the Speaker do now resume the Chair.
Motion agreed to

Speaker resumes the Chair

Speaker: I will now call the House to order. May the House have the report from the Chairman of the Committee of the Whole.

Mr. Webster: The Committee of the Whole has considered Bill No. 99, the *Human Rights Act*, and directed me to report progress on same.

Speaker: You have heard the report from the Chairman of the Committee of the Whole. Are you agreed?

Some Members: Agreed.

Speaker: I declare the report carried.

Mr. Lang: I move that we do now adjourn.

Speaker: It has been moved by the honourable Member for Whitehorse Porter Creek East that the House do now adjourn.

Some hon. Member: Division.

Speaker: Division has been called.

³¹ **Mr. Clerk,** would you kindly poll the House.

Hon. Mr. Penikett: Disagree.

Hon. Mr. McDonald: Disagree.

Hon. Mr. Porter: Disagree.

Hon. Mrs. Joe: Disagree.

Hon. Mr. Kimmerly: Disagree.

Mr. Webster: Disagree.

Ms. Kassi: Disagree.

Mr. Phelps: Agree.

Mr. Brewster: Agree.

Mr. Lang: Agree.

Mr. Nordling: Agree.

Mrs. Firth: Agree.

Mr. Phillips: Agree.

Clerk: Mr. Speaker, the results are 6 yea, 7 nay.

Motion negatived

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

Speaker: It has been moved by the hon. Government House Leader that the Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

COMMITTEE OF THE WHOLE

³² **Chairman:** Committee of the Whole will come to order. We will now recess for 20 minutes.

Recess

Chairman: Committee of the Whole will now come to order.

Mr. Lang: I would like to make some overall comments. I appreciate the fact that we have almost all the Members from the other side present in the House. I also see that the MLA for Faro is here.

Over the past number of days there have been quite a number of times that this side has been in a position to put a motion on the floor and if a vote had been called, we would have had the majority on this side. We chose not to do it recognizing that at times some Members have responsibilities outside the House. I know that Members on this side have some responsibilities outside the House as well that may conflict with the timing here and may require them to be out 10 or 15 minutes in order to attend to some other duties, matters for constituents or other things that come up.

With that in mind, I would like to say that our concern was that all of a sudden there were six Conservative Members in the House and one NDP. All other Members chose not to participate in the

debate. I want to say, as constructively as I can, that I hope it does not reflect an arrogance and a contempt for the proceedings of this House for all Members to effectively leave these Chambers when we are discussing one of the most important controversial issues that the government has brought before the Legislature for debate.

I think it is important that people realize that we were in the process of discussing in detail the question of adoption that had been brought up by the Member for Faro, and the possible implications that would have on the territorial Act that permits adoptions and how it would apply to the question of sexual orientation and the present Bill that is before us.

³³ This side believes that to be a very important question. We believe we have a responsibility to ask the Minister what the implications of the Bill are, how it is going to affect these other statutes which, then, will directly affect the people of the territory, in one manner or another.

We feel very strongly that all Members have a responsibility, if possible, to be in this House for the purposes of debating issues of this magnitude and import, as far as the public interest is concerned.

I said that I was hoping that we could not come to the conclusion that reflected a contempt and an arrogance as far as Members to the proceedings of the House are concerned. The other conclusion one could draw is the question of embarrassment by some Members about certain sections of the Bill. Perhaps that is the case. If it is, maybe there should be a free vote as certain sections of the Bill are proceeded through the Committee stage, clause-by-clause.

I do not believe in hard hearts on the side opposite that a number of the sections of this particular controversial legislation, and the effect it is going to have on the public, is, clause-by-clause, totally supported by Members on the other side. They do have a responsibility, in the end, to their constituents. Hopefully, they will take that into consideration.

The other thing is just an observation. There is a week adjournment coming up that was called by the government and that we debated earlier. That is fine. That is a decision made by the government. Obviously, that decision has been rendered by the House. For the life of me, for the remaining three days, for the purposes of the debate that is going to ensue unless the government sees fit to change to the financial package that I believe is necessary to get through this House so that the government can function as it should in the context of the financing of the government, if they choose to stay on the human rights debate, I believe there is a responsibility to, not just the Members on this side, provide a quorum to the House.

³⁴ **Mr. Phelps:** Before I asked the Chair to report progress, I was attempting to get an undertaking from the Minister of Justice that he would tell us exactly which clauses in the provincial human rights statutes he feels are equivalent to section 7(1) of this Bill. He has made sweeping statements that this section is virtually the same as that contained in all the other jurisdictions. We would certainly like him to show us what sections are virtually the same. Would the Minister do that, because we would find that very interesting indeed?

Hon. Mr. Kimmerly: The answer is in various places in various Bills. In some of the Bills, it is in the regulations rather than in the Bills themselves. The most interesting case in that area is Huck and Odeon cinemas, which rose in the Saskatchewan Court of Appeal. The situation there was that a person in a wheelchair was seeking access to the movie theatre. It was about the issue of reasonable accommodation as it applies in Saskatchewan's Bill.

The decision of the Saskatchewan Court of Appeal was that that concept of reasonable accommodation did apply in the wording of the Saskatchewan Act. It is that concept that is clearly the concept of section 7. That concept of reasonable accommodation, I would say, is the important one. The identification of that concept is different in Bill No. 99 as compared to the concept as it is embodied in the legislation around the country.

³⁵ The concern of the government, obviously, and what is obviously appropriate at general debate is to include that concept. The position of the government is that we stand for that concept that has been identified from other legislation. New legislation should be

written in the light of the experience with the case law in other jurisdictions. This wording makes it absolutely clear what the concept is and expresses that concept in a modern form.

Mr. Phelps: The translation of the answer, I guess, is in order so that we may all understand what is being said. I think what is being said is that Section 7(1), or its equivalent, will not be found in other legislation, that there is a case, the Huck case, which speaks in terms of reasonable accommodation regarding handicapped people. That is not statute law, nor is it wording that is phrased in the positive manner of Section 7(1), but the Minister felt that he ought to put in Section 7(1), because he stands for it, which I hope he does because it is his legislation. We will be returning to Section 7 and dwelling on it at great length when we get to clause-by-clause.

The issue we are really concerned about when we raise these things has little to do with political rhetoric; it has to do with the issue of certainty. My concern in many of these areas, with the sweeping kind of legislation the Minister seems so prone to put forward, is that people have some certainty with regard to what the ramifications of proposals are. I suppose one of the reasons that we really want to compare wording in this statute with wording in other statutes has to do with that very issue. I think that business people, employers and people from every walk of life in the Yukon have a right to anticipate that this Assembly will put forward legislation that is understandable and is not so loose that it is going to require a plethora of complaints and court cases regarding the jurisdiction and meaning of the statute in order for people to really understand its ramifications.

As I said, that is patently a major problem with the amendments passed in Ontario in December. There is going to be all kinds of litigation and complaints if we test the law, and that is not something that we want in Yukon; it is not something that Yukoners can afford. We are a small population. If you have a huge number of court cases because the law is unclear, those court cases and complaints are going to be against the same very small number of employers that we have and owners of apartments and office buildings that we have in the Yukon. It is that kind of burden we are seeking to reduce.

³⁶ We are not happy. We are not pleased by the gamesmanship in the House when it comes to that very serious issue, whatever difference we may have with regard to some of the principles in this legislation. I hope that every Member feels a responsibility to try to introduce certainty into each and every one of the clauses of any Bill that comes before the House. Otherwise, we end up with unnecessary hardship and litigation and mass confusion.

I am sorry it is necessary to doggedly question the Minister about the ramifications of each and every paragraph, sentence and clause in part of this Bill. When we attempted that in the previous Bill, No. 58, we got the same kinds of answers that were evasive. Finally the Bill was cleaned up to a substantial degree, and we feel that that work has to continue so that we, and the public, will know what duties are imposed on them by this Bill. By doing this, we will ensure that costly litigation will be avoided.

I think that time directed towards that goal is worthwhile. Accordingly, we intend to take every step necessary to get a Bill that is clear and one in which we know about the ramifications. If some of our questions appear to be making a mountain out of a molehill, so be it. I do not feel that any person in this room can say with certainty how the Commission is going to adjudicate hypothetical issues. If that were the case, we would not need a Commission. We could dispense with that and just carry on.

That is really what we are about. I hate to have to translate comments made by the side opposite, but I would really like to see clauses from other jurisdictions with case law and rulings by Commissions that the Minister would prefer to adopt if he is going to be good on his word and makes that offer to change section 7 to the wording employed in one of the provinces. We would certainly be prepared to examine an alternate wording that does have experience behind it. Our reason for suggesting that turns on the issue of and the object of as much certainty as possible in the Bill before it is enacted.

Having said that, I would like to move on to another area in

general debate.

³⁷ That has to do with an issue that I think is a serious one. It is raised very clearly in a letter that was sent to the Minister of Justice. It is dated December 15. It is from the Insurance Bureau of Canada, Legal Division. The issues raised have to do with qualifying words such as *bona fide* and reasonable cause existing for discrimination. It would be worthwhile for me to read this letter from the legal division of the insurance bureau into the record. I think it is important that we all avail ourselves of the expertise offered so freely by an industry that does a tremendous amount of business in this jurisdiction. I am sure there is no one in this House who has not cringed when the time has come to pay his or her insurance: car insurance, house insurance or otherwise.

It is dated December 15. It reads:

"Dear Mr. Minister:

"Re: *Human Rights Act*, Bill No. 99

"I have just received a copy of Bill No. 99 which, I understand, was tabled on December 1, 1986.

"I should say that when we reviewed Bill No. 58 some weeks ago, although we had some concerns about it, we decided not to make any formal objections on the basis that section 12 provided that no person shall discriminate in respect to any service, et cetera, available or accessible to the public, unless *bona fide* and reasonable cause exists for the discrimination. The same approach was, of course, taken on section 14, dealing with discrimination in contracts.

"A provision along these lines, in our view, put Yukon in much the same position as most other jurisdictions that have enacted human rights legislation. It seemed to us that the onus would be on us, as an industry, to show in any particular case that we did have reasonable and *bona fide* grounds for the use of the various criteria and, frankly, we felt this was something that we could demonstrate.

"We are very concerned, however, in reviewing Bill 99, to note that the reasonable and *bona fide* exception has been removed and that it is now discrimination to treat any individual or group unfavourably because of age after 19, sex, criminal charges or criminal record and marital or family status.

"It seems to us that your Human Rights Code now goes well beyond the test of the federal *Charter* which, in fact, reading section 1 of the *Charter*, imposes a reasonable and *bona fide* test although, admittedly, in other words.

"As you may very well be aware, the insurance industry, in conjunction with the superintendents of insurance, has been collecting additional statistical information over the past two years, and we will be reviewing that material over the next six months or so to ascertain whether, in fact, it is possible to use other criteria. Obviously, if it is, we will be prepared to do so.

³⁸ "At the moment, however, we are not in a position to use other criteria and it would cause a great number of problems to the industry if we were to do so. For your information I am enclosing copies of an All-Industry Special Committee Report on Classification and Rating Criteria for Automobile Insurance, and an independent report prepared by professors Ray and Treblecock on Rate Determination in the Automobile Insurance Industry, along with a recent submission that was made to the Minister of Justice in New Brunswick. I hope these various submissions will let you see our concerns on this whole age, sex and marital status issue. We would very much like to express our concerns on the subject and we hope the changes will be made to bring your legislation more in line with other jurisdictions.

"As explained above, we feel the reasonable and *bona fide* exemption does put a notice on the industry for the individual company concerned to prove its case and we would hope that that would be an acceptable test.

"Incidentally, you may be interested to know the age, sex and marital status issue, which was raised under the Human Rights Code in Ontario, has just recently been argued before the Divisional Court following a hearing in which the Human Rights Board held that the Zurich Insurance Company had, in fact, discriminated on the basis of age, sex and marital status. The court indicated that they hoped to deal with the matter fairly quickly, and I will be glad to let you have a copy of the reasons in due course. I would be glad

to have your comments. Yours very truly, Alex Kennedy, Vice President and General Counsel."

That letter, I think, is an important one. The submission is a well thought-out submission. The court case referred to is just one small example of the concern that I have expressed earlier in my comments, that of legal certainty. What puzzles me is why this government is so hell bent on breaking new ground at the cost of legal certainty. They are trying to perform their social experiments here, which are going to prove to be a burden, setting principles aside, because nobody is going to understand what the laws mean if they are not carefully worded, without the judicial system being burdened by all kinds of court cases, the hearing process under the proposed Bill being burdened by all kinds of complaints, or the test case method for trying to find out what in the devil the law means.

I would be very interested in knowing whether or not the Minister views this letter with the same kind of concern that I view it. I would be interested, too, in knowing whether or not the Minister has responded to the author, Mr. Kennedy, and whether or not he has received any further information pertaining to the case regarding the Zurich Insurance Company?

Hon. Mr. Kimmerly: I have received no further communication about that Ontario case, and I have not responded as yet. The reason why the phrase "reasonable and *bona fide* cause" does not appear in Bill No. 99 is that that is a Latin phrase, and it means a lot to lawyers, but it is now generally understood by the lay public. It is not understood in the sense that lawyers understand it.

It is interesting that the writer of the letter, who is a lawyer, was satisfied with Bill No. 58. That is because Bill No. 58 was put together by looking at the laws in the provinces and the case law and making a modern statement of the law as it existed then. It is novel that the general public reads legislation in its entirety. I think it is an entirely healthy development, particularly appropriate in a small jurisdiction like Yukon.

When we drafted the Bill, we paid particular attention to its understandability and its readability. We took out the Latin phrases, and we found other ways to express the same concept. That approach has been praised by many segments of the population including the Conservatives across the way.

The concern is a real one. The concern of the insurance industry will be much more with the wording in Ontario, as it is here. It is really difficult to make a decision either way as to what the wording should be without the benefit of that Ontario case. That decision may come in the course of this debate, but I somehow doubt that. It is an unanswered question in Ontario. The insurance industry may have nothing to fear if they can show — which they can show, because insurance rates are built rationally and on clear information — that their rates are a result of legitimate risks. The letter clearly acknowledges that. That is an entirely appropriate test to put the insurance industry to. They can show a rationality for their rates.

In any event, the Leader of the Official Opposition has raised that question. The government is continuing to study that question. It is my own opinion that the insurance industry has nothing to fear, but I fully recognize that certainty ought to be as certain as possible. I am continuing to consider the possible alternatives of stating even more clearly the intention of the government in this area.

³⁹ It is not our intention to change the structure of insurance rates. In fact, even if that were our intention, it would be impractical here because of the small market. That is unnecessary, because that is not our intention at all. We will solve those concerns, I am absolutely sure.

Mr. Phelps: Again, we are playing politics when there is a very straightforward concern expressed by an industry that has a very huge impact on the lives of most Yukoners. As we all know, the concern that most people in Yukon have about the cost of insurance, whether it be automobile insurance or homeowners insurance, which was discussed at some length in this letter, or whether it be the kinds of insurance that has gone up so rapidly with respect to liability, whether it be of municipality or government, or of an airline company, the huge rate increases that have gone on over the past two or three years have resulted from a certain degree of this very kind of thing, a certain degree of uncertainty regarding what courts are going to be doing with respect to the liability of

property owners, municipalities and so on, when young children in particular are injured on property belonging to a private corporation or a municipality.

I find it difficult to carry on a meaningful debate when the Minister states that the insurance company was really happy with Bill No. 58. That is not what they said. They were saying they were satisfied with respect to the phrase, "unless *bona fide* and reasonable cause exists for the discrimination". They felt that that clause made it possible for them to carry on business in Yukon, using the objective standards employed by statisticians, so that they could provide coverage for people.

The problem for Yukoners, given a Bill such as the one we are discussing, could very well be that insurance companies find it impossible to provide coverage in Yukon. That is just how serious this is. Yet, the Minister stands up and says there is no problem there. This is, as politicians say, less than purely straightforward, trying to garner, I gather, some sympathy from the voter. These are just legal words, just Latin words, and nobody can understand them. The phrase is pretty simple: "unless *bona fide* and reasonable cause exists for discrimination".

If the Minister feels that *bona fide* is so confusing, why does he not use another word or words and replace *bona fide* with those words?

⁴⁰ That just will not float. I am rather sorry that we got that response because it certainly does not do much to gain confidence from this side that the Minister has any true concerns about the issue of certainty.

It does not certainly do much for confidence on that score when it appears that the Minister has not even bothered to respond to the Legal Division of the Insurance Bureau of Canada on this very important letter. It does even less for our confidence with regard to the sincerity of this government giving the appropriate weight to the issue of certainty in all aspects of this Bill. It does even less when we hear from the side opposite that they are not really too worried about it, it could go either way, they are going to wait for the court case but are going to slam the bill through in the meantime.

It seems to me that I thought the letter I read into the record was an extremely reasonable letter. It dealt with an extremely serious issue and area of concern. It was not an antagonistic letter. It dealt with a real problem that, given the expertise and the materials supplied to the Minister and the citation of the case in Ontario on the point, the very least the author of the letter deserved was a forthright and timely response. So, because of the fact that the Minister would rather play politics than deal with valid concerns, I think, I must say that leaves me feeling very uncomfortable about many of the answers we have been getting, even moreso than I felt when I first received those replies to such issues as the ramifications, for example, of Section 7 and questions about sexual orientation and the impact on things like adoption, and the *Matrimonial Property Act* and so on.

I really feel that, until we have some kind of valid answer to the issue raised in the letter read in, perhaps the government should change its order of business and get into something that they have some competency in, and that is discussing, of course, spending money. We could deal with the Capital Budget and the Supplementary Budget because I feel extremely uncomfortable with proceeding with, and being considered a party to, this exercise in being the newest and most progressive jurisdiction in Canada, but who cares about uncertainty, we want to carve a little niche for ourselves in the human rights movement.

⁴² Perhaps the Minister could advise when he intends to respond to this letter, and whether he would consider going on to other business in the meantime, until that response can be tabled.

Hon. Mr. Kimmerly: I will definitely respond to that letter. It will be in the near future. I would suggest that the concern ought to be raised again and dealt with during the clause-by-clause debate of clause 6 of this debate.

The concern is relevant only to clause 6. I fully intended to deal with precisely that issue in consideration of clause 6.

Mr. Nordling: The Minister has just said that it is only relevant to clause 6. I would ask him to look at clause 8. That is where I would be in favour of adding words such as "unless *bona fide* and

reasonable cause exists for the discrimination". Or, if the Minister prefers other words than *bona fide*, words like "good and honest and reasonable cause exists". I think it applies to clause 8. I would like to hear the Minister's comments on that section.

Hon. Mr. Kimmerly: It is more properly in clause 6 in defining that discrimination, generally. That is where it is in other provincial statutes. There are, essentially, two approaches to take about insurance. One is to leave the definition of discrimination and the concept of reasonable and *bona fide* cause general, which is the intent here — I would suggest that it is relevant in clause 6 — or to put in a specific exemption for the insurance industry, which exists in some provinces, I believe.

It is not necessary to put in a specific exemption of the insurance industry. That implies that the insurance industry does discriminate in the sense of improper discrimination. It is clear, and the letter indicates it, that the insurance industry is generally content and considers that provisions in the provincial Act are certain.

⁴³ All the provinces have Acts, of course, and the insurance industry has continued to exist as it would under this Act. The specific provision to guarantee certainty is possible. I would suggest that it is also most appropriate under clause 6. That concept should be there rather than the concept of where the Act applies, which is in clause 8.

Mr. Nordling: I know the Minister has said that he has no intention to change the insurance laws, but I am not clear on how this Bill, if it is left exactly the way it is, will not have an effect on the insurance laws and discrimination on the basis of age, sex and marital status. Is the Minister saying that if this Bill is passed as it is written, that the insurance companies have nothing to fear?

Hon. Mr. Kimmerly: Essentially, yes. They are concerned with certainty, as was the Leader of the Official Opposition. That is precisely what he said. He was dealing with the issue of certainty. It may be possible to avoid any uncertainty by making it clearer either to more clearly identify the phrase "*bona fide* cause" or to specifically refer to the insurance industry. I prefer the former approach, but the other approach could be used. I suggest that when considering clause 6, this concern can be identified in its clearest way. I am prepared to answer these concerns when we are dealing with clause 6.

Mr. Lang: I want to go back to the principle of the "saving" clause for the question of discrimination. My colleague, the Leader of the Official Opposition, spoke of one regarding insurance. I think that is a very important issue, especially if we go back to section 36 of the Bill. It ensures that this Act is paramount over all over territorial Acts that are presently in place.

⁴⁴ The Member for Porter Creek West cited a case as well as the implications thereto that this legislation would have. I have a case that I think warrants some scrutiny of what the implications of the legislation would have and that is the question of age, the requirement of senior citizens at the age, I believe, of 70 or 75, where they are required to take a medical to be eligible for a driver's license.

I would say that it is reasonable that the legislature request that kind of requirement because it is in the public interest. If we are going to deal in the context of the ramifications and implications of impaired driving, I think it follows that a question about whether or not someone is physically capable of driving should perhaps be questioned at a certain age. I personally think those are reasons to have some method for a body to have some discretion on the question of the public interest and the reasonableness of why there should be grounds for a requirement for a certain sector of our population as opposed to others.

That goes back to the question of insurance raised by the Member for Hootalinqua. Quite frankly, I am not prepared to support legislation that I believe will indirectly result in the people whom I represent paying more for the cost of insurance because we are not now able to categorize people with respect to being eligible for insurance.

⁴⁵ I think it would be totally irresponsible on our part if we did, if we were to *carte blanche* pass a piece of legislation knowing that we have a party that is very well respected, the Insurance Bureau of Canada, that represents all the insurance companies, going to the

point where they have corresponded directly with the Minister, with copies to all Members of the House, in order to ensure that we realize the very probable implications of the legislation before us.

In the context of the Bill, I hope the Minister would be prepared to consider amendments of these kinds to ensure that there is catch-all or "saving" clause where his beloved Commission or, if necessary, the Board of Adjudication or, where appropriate, the court, can fall back on the question of the public interest. It is not stated anywhere in the Bill.

I think that has been a mistake in the drafting of the Bill, because there is a time and place where choices have to be made and decisions have to be made. This is the forum where the decisions have to be made to give direction to the body that the Minister wants to set up about what room they have to move in with respect to the decision-making process that this Legislature is being asked to provide for them.

Knowing full well the implications that we are dealing with, it would follow that those kinds of clauses for the overall purposes of the passage of the Bill should be seriously considered. The Member for Hootalinqua has raised a very legitimate concern. The same for the Member for Porter Creek West. I have just raised another issue. I think there is a plethora of issues out there that can be utilized as examples.

With respect to the legislation that we have before us, this leads me to say that maybe because section 36 is so broad and sweeping and has such a major implication, not only in this area, that this Bill takes precedence over, for example, the *Insurance Act*, why was this particular section put into the Bill? You know, because of the very clear political and legal statement in the law, that this Bill will be paramount over all other territorial legislation. Why was this particular section brought in, knowing that you are going to have to face the difficulties on the question of adoption, in the area of insurance, on the question of age, and all these other factors that come into it?

⁴⁶ So perhaps I am going in a different tack from previous questions in general debate here. Perhaps he could tell us what thought and principles were behind it. Were the implications of this section seriously considered to the point that perhaps legal opinions were asked for regarding future implications of this particular section on all territorial legislation?

Hon. Mr. Kimmerly: Absolutely. The answer is yes, legal opinions were considered constantly about all sorts of alternate wordings in the drafting of the Bill. The example mentioned is a good one: what of the requirement for a medical test for a driver's licence for an older individual? I have no problem with that, and I believe that that is contemplated by this Bill. Another example, which is even clearer, is life insurance premiums for individuals. If you are 25, you are going to pay a different life insurance premium than if you are 75. I think that is obvious and self-evident. It is contemplated by this Act.

Now the wording that is mentioned in the letter from the Insurance Bureau is this *bona fide* cause. We have considered extremely seriously alternate wordings, and I would suggest that this is a proper debate for clause 6 in the clause-by-clause debate. The concern here is identified, and I am prepared to answer those concerns. It is clear and obvious that people "discriminate" for legitimate purposes on every single ground here. In considering the wording at the top of clause 6, or the particular exclusions, we can discuss that at length at that time.

⁴⁷ **Mr. Phelps:** I am a little puzzled by the answer because, in reading, I do not see where there is wording that provides the kind of protection that the phrase asked for by the insurance bureau would provide, "unless *bona fide* and reasonable cause exists for the discrimination". I am curious as to how the Minister can make a statement that the concern is already looked after in the Human Rights Bill.

I have read section 15.1 over and over again, and I do not see anything there that would sooth the ulcers of any executive in the insurance industry who was concerned about granting coverage to the Yukon. Perhaps the Minister could point out and identify exactly what wording he feels meets the concerns of the insurance bureau.

Hon. Mr. Kimmerly: It is in the wording of clause 6 in the definition of discrimination. For example, if someone is charging an insurance premium for life insurance against a 25-year-old and a 75-year-old, that is not discrimination or treating persons unfavourably on that concern. The concept is used in another context in sections 7, 9 and 10 about exemptions. The possibility of alternate wordings can be considered in clause-by-clause debate on section 6.

⁴⁸ **Mr. Phelps:** I know the Minister does hate to lose face in these things. Sometimes his answers make mockery of the whole process. Let us face it. I did not, and I am sure Mr. Brewster did not, and I am sure that very few people in this Legislature came down the Yukon River on a bicycle; this is absurd.

Section 6 says it is discrimination to treat any individual or group unfavourably "on any of the following grounds". There is a list. I fail to see how that incorporates one iota of the thought expressed by the phrase "unless *bona fide* and reasonable cause exists for the discrimination". I would be very pleased if the rules were changed for a minute and we could just have a vote on that and see who agrees in this House — perhaps a free vote with the Minister. It is absolutely astonishing to me that he would insist on the contention that clause 6 includes anything of this sort.

It is amazing that he would make that kind of a case with respect to sections 8 and 9. Those are very partially excluded and do not meet the concern at all. Insurance is not "qualification for employment". Insurance does not deal with criminal record or criminal charges relevant to the employment. I do not think that insurance deals with "sex so as to respect the privacy of the people to whom accommodations or a service or facility is offered".

There may be some kind of insurance I do not know about that is being offered in the Yukon that deals with these sorts of things. If so, I would be very interested in speaking to the insurance agent who is responsible for granting coverage that comes within the qualifiers in section 9. Section 8 does not deal with the topic at all, nor does 7.

⁴⁹ However, I will have to assume, in the face of the time, that the Minister is simply trying to save face. I suppose that is okay, but it certainly once again gives all the more grounds for the kind of anxiety that surrounds me when, given assurances that all this new-fangled legislation is not going to cause a lot of problems, is not going to give rise to a whole bunch of lawsuits so people can really understand what it means. An assurance that the concern is already contained in the face of the very clear wording of section 6 really leaves me in a greater state of anxiety over the certainty surrounding all kinds of clauses in this legislation.

We will certainly be looking at bringing forward some wording that undoubtedly would be found to be satisfactory by the Insurance Bureau of Canada. If the exact thought is already contained within the present wording of the legislation, we will have to assume that that particular amendment will enjoy the full support of the Members, because how could they possibly object if it simply states something that is already there. Perhaps they could accept our amendments and new words and remove whatever words the Minister feels gives the same kind of assurance to the insurance industry, so we cannot be accused of putting the same thought into words twice in the same Bill.

In view of the time and because we, I think, would like to move onto another area, I would move that we report progress.

⁵⁰ *Motion agreed to*

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

Motion agreed to

Speaker resumes the Chair

Speaker: I now call the House to order. May the House have a report from the Chairman of the Committee of the Whole.

Mr. Webster: The Committee of the Whole has considered Bill No. 99, the *Human Rights Act*, and directs me to report progress on same.

Speaker: You have heard the report of the Chairman of Committee of the Whole. Are you agreed?

Some hon. Members: Agreed.

Speaker: I declare the report carried.

Mr. Lang: I move that we do now adjourn.

Speaker: It has been moved by the honourable Member for Porter Creek East that the House do now adjourn.

Motion agreed to

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

The House adjourned at 5:26 p.m.

