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HANSARD

Tuesday, February 10, 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 Kassl	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

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Clerk Assistant (Legislative)	Missy Follwell
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01 Whitehorse, Yukon
Tuesday, February 10, 1987 — 1:30 p.m.

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

Prayers

DAILY ROUTINE

Speaker: We will now proceed with the Order Paper.
 Are there any Introduction of Visitors?
 Returns or Documents for Tabling?

TABLING RETURNS AND DOCUMENTS

Hon. Mr. McDonald: I have for tabling legislative returns from the Department of Education relating to the monitoring of the Del Van Gorder gym for safety reasons, the Rural and Whitehorse Facility Studies, an update of school capital projects. I also have for tabling a response to questions from the hon. Member for Hootalinqua with respect to the Whitehorse West Sub-Regional Plan and the Klondike Valley Sub-Regional Plan.

Speaker: Are there any Reports of Committees?
 Petitions?

Introduction of Bills?

02 Are there any Notices of Motion for the Production of Papers?
 Are there any Notices of Motion?
 Are there any Statements by Ministers?

MINISTERIAL STATEMENT

Proclamation of Maintenance and Custody Enforcement Act

Hon. Mr. Kimmery: I am pleased to announce that the *Maintenance and Custody Orders Enforcement Act* has now been proclaimed.

Children are the primary financial beneficiaries of the *Maintenance and Custody Enforcement Act*. This legislation provides an avenue which parents can utilize for the enforcement of maintenance and custody Court Orders. Court Orders, when registered with the program, will be automatically enforced, unless the claimant chooses not to have the order enforced.

This service will be available through the Court Services Branch of the Department of Justice.

This program will do all it can to see that Yukon children who are entitled to court-ordered maintenance receive their payments and receive them regularly.

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

QUESTION PERIOD

Question re: Land claims, overlap policy

Mr. Phelps: I have a few questions. Last night on the program *Focus North* there was a picture of a map showing the Dene claim in the Northwest Territories, and it appeared to cover a huge area of the Yukon. Back on December 9, 1986, I asked a question of the Government Leader about that claim. At that time, I was wondering whether or not we could be advised as to how much of an area the Dene's have been claiming in the Yukon. That is on page 212 of *Hansard*. The response was, "I will have to take that question as notice. I do not have any information on that at my fingertips."

In view of the fact that two months have gone by, I am wondering whether the Government can answer the question now as to how large an area is being claimed.

Hon. Mr. Penikett: I apologize that I have not been able to get back to the Member with the information. I am sure that your request has been conveyed to the proper people. I have not yet received in my office any such information as the Member has requested. I will be happy to reiterate the call for information and

convey it.

Mr. Phelps: Again on Tuesday, December 16, I asked a series of questions in Question Period about overlapping claims and, in particular, claims from the Dene in the Northwest Territories and the Kaska Dena. I asked the Government Leader if he would table maps of the disputed claimed areas in the House. Will the Government Leader now table the maps showing the claim of the Dene of NWT in the House?

04 Hon. Mr. Penikett: As I indicated a moment ago, I will bring the information to the House as soon as I have it. I will, as well, as I am sure it will be interesting to try and indicate to the House at the same time, claims that Yukon groups may have in the Northwest Territories.

Mr. Phelps: Will the Government Leader also table in the House details of the other aspects of the claims made on Yukon by Northwest Territories groups?

Hon. Mr. Penikett: When I can, I will.

Question re: Land claims, overlap policy

Mr. Phelps: I understand that there are meetings going on between negotiators from the Government of Yukon and their counterparts from the Northwest Territories representing the Dene of the NWT. I want to know whether or not those discussions are about a process for the Dene of the Northwest Territories to select land in Yukon?

Hon. Mr. Penikett: When I answer the Member's earlier questions about overlapping claims, I indicated to him that we prefer the process of negotiation to litigation. I think I indicated to him yesterday that we were meeting with the Dene Metis for the purpose of trying to come to some common understanding about a negotiating process.

Mr. Phelps: What that means to me is that this government is prepared to enter into a process for land selection by outside native groups within Yukon, a fundamental policy change. Is that what the answer is intended to convey?

05 Hon. Mr. Penikett: No. Let me be perfectly clear: our Cabinet has not given a mandate to anyone to negotiate land beyond that included in the settlements we are now negotiating to any outside group in the territory.

Mr. Phelps: Has this government finally conveyed its position on overlapping claims in detail to the federal government?

Hon. Mr. Penikett: I previously answered the question about our policy on overlapping claims, the principle components of which I will repeat again. One, the burden of responsibility for developing such a policy rests with the federal government. Two, our preference is for aboriginal groups to seek settlements in that home territory, and where that is not possible that there should be federal compensation in lieu. As a third point, we prefer a method of negotiation rather than litigation as a method of solving these matters. Four, every initiative we will take in this regard will be designed to expedite the settlement of Yukon claims.

Question re: Faro social worker

Mr. McLachlan: I have a question for the Minister of Health and Human Resources.

In the second week of January, the Public Service Commission conducted a series of interviews for the social worker position in Faro and Ross River. Can she advise if that selection is completed? Is that vacancy filled?

Hon. Mrs. Joe: I do not have that information, but I will be happy to bring that information back.

Mr. McLachlan: I would appreciate the information.

When the position is filled, do I understand correctly that the department has now changed its policy and that a social worker will be based in Faro and not Ross River?

Hon. Mrs. Joe: That is the information I gave the Member for Faro in a letter, I believe.

06 Mr. McLachlan: Will there be a social development worker hired as an assistant to the social worker, and where will the social development worker be placed?

Hon. Mrs. Joe: My information is that that person will be based in Faro.

Question re: Surplus furnishings

Mrs. Firth: With respect to the disposal of public goods, on the CHON-FM radio station this morning, I heard a report saying that the Minister of Education had made some comments, and that the comments were as follows: "He also says it is sometimes more economical to get rid of the stuff, because the government would have to spend more money than they would make if they had to rent storage space to keep the chairs for auction." Can the Minister tell us if he made this public statement?

Hon. Mr. McDonald: I do not know whether or not the Member was reading that verbatim. I do not remember what I said to the press verbatim. I did indicate to the press that, as a matter of general policy, not with respect to these chairs that the Member for Riverdale South brought up in Question Period yesterday, I am sure that the Board of Survey takes into account the storage costs as to whether or not they are going to keep materials for the government or whether they are going to auction them off. That is a recommendation that is ultimately made by Asset Control to the Management Board of the government. The Management Board makes the ultimate decision.

Mrs. Firth: The Minister should check into the comments that he did make to the media. The radio station is broadcasting to Yukoners all over the Yukon. If the information is not accurate, it should be clarified. The Minister should be more diligent in listening to what is said on the radio.

Is the Minister saying that that could be the policy of the government, if storage space were not available that they would throw away the goods?

Hon. Mr. McDonald: That is not what I said at all, and the Member is perfectly willing, I presume, to take comments that I may or may not have made to the press out of context. I am sure that she takes great delight in that.

With respect to the general policy on disposal of assets, there are procedures for the disposal of goods in this government and that disposal policy is managed by the Department of Government Services. As I indicated already, there are a number of things taken into account as to whether or not the government is going to retain certain assets. I am sure that, in some cases, the cost

Speaker: Order, please. Would the hon. Member please conclude his answer.

Hon. Mr. McDonald: Sure, I will keep it short: I am finished.

Mrs. Firth: I do not take delight in anything in my job. I try to do my job responsibly and see that the information that is given to the public is accurate. I would like the Minister to check into the situation. Is he then saying that because there is some inaccuracy in the works that the media is wrong in their report?

Hon. Mr. McDonald: No, I am saying that the Member has taken any comments I may have made out of context, and I am sure she does take delight in doing that. I have responded to it in the best way I can. I have also indicated that a review of the matter that she brought forward to the Legislature yesterday would be undertaken.

Question re: Joint Commission on Indian Education and Training

Mrs. Firth: I look forward to that review and hope that it is handled better than the last two incidences have been handled.

My new question is about the Joint Commission on Indian Education and Training. I would like to ask the Minister if a resolution or an agreement has been reached regarding the severance pay that the former support staff were claiming since their contracts were broken?

Hon. Mr. McDonald: The issue that the Member has brought forward has not changed with respect to the severance requests by the ex-staff of the Commission. It is my understanding that they are requesting a severance of a certain amount, and I believe it is in the neighbourhood of \$20,000 plus. I would have to review that specific figure to state it conclusively. Their position is that they are entitled to that severance. The Department of Justice has now been informed that it is our view that they are not entitled to severance, and we will be reviewing the matter, I would presume, either in court or at least between the lawyers involved.

Mrs. Firth: The Joint Commission on Indian Education and Training is trying all its efforts to give a positive tone to the Commission with a new name and so on. I would like to make an appeal to the Minister on their behalf and on behalf of the people this Commission is to serve that they settle this as expeditiously as possible because we cannot have this kind of thing hanging over the positive steps that the Commission is supposed to make.

Hon. Mr. McDonald: I did not quite detect a question there, but the representation is something that we wholeheartedly support. We are doing our very best to insulate the new Commissioners from any residue, I guess, from the actions that are a result of a past situation. It is our view, both the CYI and this government's, that the Commission should be allowed to do its job to the best of its ability, and we believe that we have given them all the tools so they can do it.

Mrs. Firth: I would like to ask the Minister if he is prepared to table the contracts for the Commission? He had given a commitment to do so and has taken some considerable time to table the one I asked for. When I asked for the other Commission's contracts, they were tabled the next day. I would like to ask him if he is going to table them, or what is the hold up?

Hon. Mr. McDonald: I indicated privately to the Member last week that I would get the information on all of the contracts, the interim contract that was signed, and the ultimate contract. I will get the contracts and the background documentation to the Member, but the information must be collated. I realize it is Tuesday, but I still intend to get the information to Members this week.

Question re: Furniture manufacturing

Mr. Nordling: I have a question for the Minister of Education.

In identifying potential markets for furniture the Yukon Based Furniture Manufacturing Study done by HLA Consultants of Edmonton outlines the scenario of potential government projects over the next five years. Included in those government projects are a new school in Dawson City in 1987; 1988 — Watson Lake a new school; 1989 — Whitehorse two new schools and addition to existing school; 1991 — Whitehorse two new schools and addition to existing school. Is that the plan of the government at this time?

Hon. Mr. McDonald: If the Member is asking whether or not the Department of Education would like to purchase furniture and materials locally, I would presume, as a general proposition, the answer is yes. In the construction of those schools, not only do we want the construction itself to be taken over as much as possible by Yukoners, but also things such as furniture and shelving and that sort of thing to be built as much as possible by local people, depending on the economies of scale.

The Member will remember yesterday that the Government Leader mentioned that the procurement of some types of furniture is perhaps less cost effective than others, and we would have to take that into consideration when we were deciding where to purchase furniture and like goods, whether it be locally or external to the Yukon.

Mr. Nordling: The study makes it clear that these projects are crucial to local manufacturers. For the new school in Dawson for 200 students, the estimate is 200 desks and 200 chairs, Watson Lake for 200 students, 200 desks. The indication in this report is that all the furniture would be replaced. Is that what the government has in mind?

Hon. Mr. McDonald: The policy would be that when furniture becomes obsolete it is because it has been destroyed or it is no longer usable. The policy is to replace the furniture. That replacement furniture, I would expect, would be candidates for new purchase and perhaps built locally.

Mr. Nordling: Perhaps I am asking for assurance rather than a question, but the viability of this local manufacture is based on total replacement, and I would ask the Minister to assure me that he does not plan to dispose of all of the desks in Dawson, Watson Lake and Whitehorse the same way as the chairs were disposed of from the Porter Creek Junior High School?

Hon. Mr. McDonald: The Member is making the assumption, before the investigation has even begun, that the chairs in Porter Creek were usable and could have been maintained in the system.

The situation will be reported on soon. Furniture that is usable will be used by the department in the system.

Question re: Skagway-Fraser Highway

Mr. Lang: With respect to the accident that took place last Friday on the Klondike Highway this side of Fraser Camp, the Minister of Community and Transportation Services is quoted as saying the accident could have been driver error. What has been the result of the report the department was to provide to him, as well as to the House?

Hon. Mr. McDonald: Yesterday, the press asked what the possible causes could be and asked for a full range. I provided a full range. It would be inaccurate to suggest that I had indicated to the press what the results of the investigation would be. The results have not been made known to me. I have asked for them as soon as possible. I do not know what the cause of the accident was, other than the media reports about the accident in the beginning. Whether it was a slick road, whether it was driver error, whether it was the configuration of the road, whether it was pure fluke or accident has not been made known to me. I cannot comment on the specifics of this case until such time as the accident report is made known to me.

Mr. Lang: As the Minister knows, I reported to this House that the required sanding had just gone as far as Venus Mine and had not gone further. The accident took place where it had not been sanded, which could well have been a contributing factor. Perhaps there were a couple of other variables.

In view of the seriousness of the situation, when can we expect that report to be done?

Hon. Mr. McDonald: I expect the report to be done very soon, within the next day or so, if not today. I am fully aware of the importance of the situation. I have brought the matter up with officials on a number of occasions. I expect them to provide me with not only a timely report, but a thorough report.

Question re: Rural teachers

Mr. Brewster: What is the government policy with respect to the provision of teachers to the rural schools where there are multiple grades?

Hon. Mr. McDonald: A number of things that are taken into account. If the Member is referring to the massive influx of students at Destruction Bay and the introduction of two families of employees of MOT, there are a number of things that are taken into account: firstly, the number of grades, the number of students in each grade to determine whether or not it is good practice to provide extra teachers.

Normally speaking, as the Member will know and appreciate, the student/teacher ratio in rural schools is much better than it is in urban schools because of the multiple grade aspect for those particular schools. With respect to Destruction Bay, we are doing everything in our power now, given the influx of students, to seek extra support for the school, given that they currently only have one teacher on staff.

Mr. Brewster: Will Destruction Bay receive another teacher before this school term is out?

Hon. Mr. McDonald: We will do our best to locate a teacher for Destruction Bay.

Question re: Justice Review Committee

Mr. Phillips: I have a question for the Minister of Justice. In the Report on the Justice Review, the panel recommended that individuals who have the capacity to repay legal aid should do so, and that they be advised of their responsibility for repayment and that a program of repayment be established. Has the Minister accepted that recommendation?

Hon. Mr. Kimmerly: Yes, we have. I should caution the Member only in this way. The *Legal Services Society Act* is now proclaimed, in fact, and that is the duty of the Society, but their position is the same as the government's.

Mr. Phillips: The report recommended that a detailed criteria regarding eligibility for legal aid be developed. I would like to know if the Minister has acted on this or is this Act going to do that

same thing?

Hon. Mr. Kimmerly: I am anticipating that the regulations under the Act will do precisely that. The regulations are not proclaimed, but they are in the very final stages of preparation. I am expecting that criteria to be established, certainly this month.

Mr. Phillips: The report also recommended that appropriate human resources be assigned to the task of recovering the legal aid. When may we expect it to be in place, and, in fact, we will then be starting to recover some of our legal aid costs?

Hon. Mr. Kimmerly: As I understand the timetable of the Legal Services Society, they will be employing an Executive Director. Their target date is April 1, and that will be part of the duty of that person.

Question re: Chief Justice

Mr. McLachlan: I have a question for the Justice Minister. When will the Government be in a position to have a replacement named, at least officially, for the Chief Justice of the Territorial Court?

Hon. Mr. Kimmerly: When the Cabinet makes a decision. I am hoping that that occurs this month.

Mr. McLachlan: The Minister has gone on record and indicated his choice publicly; yet Cabinet, apparently, has yet to sit down and make any decision. That may be or may not be a reflection of how much weight the Minister of Justice has in the Cabinet. Why would part of the Cabinet indicate publicly their direction before it is even on the agenda for discussion by Cabinet?

Hon. Mr. Kimmerly: I understand well the mischief the Member is trying to get at, but the problem here is entirely in my willingness to try and explain the process to the media. I indicated the necessary qualifications; the person would likely be the senior of the judges. There being two judges, of course there is an extremely limited choice, but in fact I have not publicly indicated my choice but I did perhaps, slightly inappropriately, explain in too much detail the possible appointments for the job, but the matter has not yet been taken to Cabinet.

Mr. McLachlan: It is hardly mischief; it is just seeking information. Could the Minister also indicate to the Legislature how many applications, or at least expressions of interest, have been received from outside the territory, or does the Minister even intend to pursue that avenue?

Hon. Mr. Kimmerly: One.

Question re: Carcross residential lots

Mr. Phelps: I have a number of constituency questions of the Minister of Community and Transportation Services. There is an acute shortage of residential lots available to the public in Carcross and, of course, as the Minister knows the subdivision at Chootla School was developed some time ago. I am wondering whether the Minister could advise whether his department has asked for a block land transfer of that subdivision to Yukon.

Hon. Mr. McDonald: As I have indicated in the House before, we inherited a number of requests for land transfers that we pursued. I understand that the development of the subdivision was undertaken and completed prior to the land being transferred and that is the situation we are faced with today.

We will be approaching the situation through the Land for Immediate Needs process, and I would hope that a resolution could be found so the land could be transferred to the Yukon and the lots made available to the Band and to Carcross and Yukon residents.

Mr. Phelps: Could the Minister give us any idea when the discussion is going to take place so that the public will have some idea when this land will be available?

Hon. Mr. McDonald: I do not have the schedule before me, and I cannot recall the details of when this will be brought forward or whether it has been brought forward to the Carcross area. I will check on that detail and inform him directly.

Question re: Carcross fire alarm system

Mr. Phelps: I would like to ask a new question, again of the same Minister.

It has to do with the fire alarm system in Carcross. That system is

now completely out and not functioning. I understand that repairs are required and am wondering whether or not the Minister can advise when the fire alarm system in Carcross will be remedied?

Hon. Mr. McDonald: I hope the Member will forgive me. I normally have some fairly detailed understanding of what is going on in every community, but this particular item escapes me, and I will have to take notice of the question.

Question re: Porter Creek, disposition of land

Mr. Lang: I have a further constituency question, as well, on the disposition of land. It has to do with the Porter Creek Subdivision in the new Porter Creek area. Could the Minister advise us when those particular lots will be on the market?

Hon. Mr. McDonald: I do not know specifically when, but it is a good question. I will check with the department and get the answer to the Member today or tomorrow.

Mr. Lang: Do I take it that it is the intention of the government to dispose of those lots over the course of this spring?

Hon. Mr. McDonald: I did release information during the Capital Estimates what our land development plans were, and if I am not mistaken lands in Porter Creek were included. I will check on the detail again. I do remember reading out a list of what lands will be developed and released for sale in the Whitehorse area this coming year. I will check on the details and provide them to the Member.

Mr. Lang: Perhaps when he is checking into the question of whether these lots are to be disposed of, could he advise what method will be used, whether it will be the lottery process, which has been used in previous years?

Hon. Mr. McDonald: As the Member knows only too well, there is a *Lands Act* and regulations which detail the way the government can distribute lots, and we will conform to the legislation to the letter.

Question re: Furniture manufacturing

Mr. Nordling: Perhaps this question should be directed to the Government Leader or the Minister of Government Services. Referring to the Study on Yukon Furniture Manufacturing, the report states that it is possible that another territorial government office building might be constructed over the next five years or shortly thereafter. The timing of this project would be critical to local furniture manufacturers as the other projects, the schools I referred to, would be phasing down at that time. Has the government made a commitment to building a new building over the next five years or shortly thereafter?

Hon. Mr. Kimmerly: No, we have not. The concern here is that it is appropriate to make some prediction or to make a statement of expectation about the demand in the long term future. Those things, of course, are possibilities, but no decision has been made presently.

¹³ **Mr. Nordling:** Another prediction or basis for the report is that it is assumed, for study purposes, that 100 employees will be transferred each year during the next five years, except in 1988, when 200 employees will be transferred. This is from the federal government to the Yukon government.

Can the Government Leader tell us which 100 employees and from what departments we can expect them to come from in the next five years?

Hon. Mr. Penikett: Just the statement of the Member sounds like an extremely crude projection. It sounds like the kind of projection that is made in the absence of any hard data. As the Member knows, we are negotiating on a number of fronts with the federal government for the transfer of employees. I can think of two programs that are on the table — the health program and the forestry program, for example — which involve a large number of people. There are others, such as the mineral programs, B and C airports, which involve a moderately large number of employees.

It would be impossible for us to make any more precise predictions about the numbers that are going to come in any year, at this point. That is probably the reason the consultant used such rough estimates.

Mr. Nordling: The reason I ask is that government purchases

are the basis for a successful furniture manufacturing industry in the Yukon. Will more precise estimates be available to people who are starting or would like to start a furniture manufacturing business?

Hon. Mr. Penikett: The Member's question seems to imply that there was no furniture manufacturing going on in the Yukon Territory prior to the initiatives taken by this government. That is not the case.

I believe that, even in this town, there were six separate woodworking shops that were in operation prior to our commissioning the first executive furniture contracts. We have an opportunity, through our purchasing policies, to increase the demand and increase the volumes for those manufacturers. I believe the consultant was talking about the possibility of larger scale operations. The key determinant in there is not just going to be government demand, but the willingness on the part of some private investor to establish such a facility. I would suspect anybody contemplating such a move would want to do a much more detailed feasibility study than could be done in the parameters of this study that has been provided to the House.

¹⁴ **Question re: Joint Commission on Indian Education and Training**

Mrs. Firth: I have a question for the Minister of Education regarding the Joint Commission on Indian Education and Training.

There was an announcement made this morning that the group plans radio call-in shows on CHON-FM. Can the Minister tell us why they are only going to be having the radio call-in shows on CHON-FM?

Hon. Mr. McDonald: First of all I should state that what the Commission does to seek public input is the Commission's business. It is an independent Commission, and I would hope they would do their job to the best of their ability. If the Member wants to know why they may only be speaking on CHON-FM and not through CBC, then I would suggest that the Member call the Commission. If the Member wants me to call the Commission and report back to her, I can certainly do that too.

Mrs. Firth: The Minister goes on about the independence of the Commission, but I believe that was one of the reasons the former support staff left, so let us get it straight. The Commission is maybe not as independent as the Minister would like to think.

I would like the Minister to check and see why the other two radio stations were not offered equal opportunity to have call-in shows so their audience could hear the good things the Commission is doing.

Hon. Mr. McDonald: The Member's analysis about the Commission was completely inappropriate and quite wrong as a matter of fact. The Commission staff have made the claim that their relationship between themselves and the Commissioners was an issue, not between the Commission and the Management Committee. I would think the Member ought to take that into consideration. I will undertake to do what the Member asks, but I will state for the record that I will in no way make it clear to them that I will impinge upon their right of independence when it comes to seeking input from the public.

Question re: Furniture manufacturing

Mr. Nordling: Just to follow up my previous question with the Government Leader who stated there were six independent furniture makers in the Yukon, or six operating at this time, I would say they are not operating on the scale we are talking about here. At quick count we are looking at almost 1,400 desks for schools, 6,000 chairs, and we are looking for furniture requirements for 700 new employees.

Will the government be able to produce a more accurate estimate for a feasibility study for a manufacturer who would like to get into the business? The Government Leader has said that this study is not precise enough. Will the government be able to provide precise figures on which a Yukon-based furniture manufacturer can make considerable capital investment?

¹⁵ **Hon. Mr. Penikett:** I indicated in my Ministerial Statement several days ago that the government was identifying an opportunity, identifying some potential. The Members opposite were

complaining the other day that a number of business assistance programs allow people to do research and feasibility studies for information that is not then to become immediately public knowledge.

We have made, in this study, some information available to the public about an opportunity. The potential to realize that opportunity will have to be assessed further by an investor who is considering it. Unless some investor comes along who is prepared to establish such a plant and prepared to seriously consider such a plant, we are not in a position to make a decision as a government whether we would purchase from that operation.

In any event, I would take it that it would be the principal opportunity of the investor concerned to do a detailed feasibility study and to do the proper consultation and proper examination before he or she made the significant financial commitment that such a plant would require.

Mr. Nordling: Can the Government Leader tell us how much the territorial government paid HLA Consultants for this rough feasibility study?

Hon. Mr. Penikett: Well, I am sorry it is not smooth enough for the Member opposite; it is certainly adequate for everyone else here. I believe the answer is \$16,000, but I will take his question as notice and come back to the Member.

Speaker: Time for Question Period has now elapsed. We will now proceed with Orders of the Day.

ORDERS OF THE DAY

Hon. Mr. Porter: Mr. Speaker, 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

Speaker leaves the Chair

COMMITTEE OF THE WHOLE

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

Recess

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

Bill No. 99 — Human Rights Act — continued

Hon. Mr. Kimmerly: I would propose to return to Clause 3 and to go through clauses 3, 4, and 5 to give the explanation that I promised. I will then deal with the amendment put forward by Mr. Phillips, if that is acceptable to other Members.

Chairman: Is that agreeable to Members?

Some Members: Agreed.

On Clause 3

Hon. Mr. Kimmerly: The concept of "group" is important because there may be, and frequently is, a discrimination against a group, and a particular individual may not suffer from the specific discrimination. Two examples arising from actual cases are as follows: one occurred in England. There was an employer who had a drinking establishment and instructed the bartenders and barmaids to not serve coloured people, so the discrimination is against a group of people, that is coloured people. An employee in this case, because of her personal conscience, disagreed, and because it involved her employment she was terminated. She complained about the termination. She was not the victim of discrimination; it was discrimination against a particular group. This clause gets at that kind of situation.

Another example is an Ontario case where a landlord objected to the tenants inviting a black person to dinner, and the tenant himself was not the victim of discrimination, but someone else was. The

tenant is the person who complained about the discrimination, not against an individual but against a group. I think that explains particular individual causes, and that is the explanation I had promised Mr. Nordling.

18 Clause 3 agreed to

On Clause 4

Clause 4 agreed to

On Clause 5

Mr. Phillips: Yesterday, I made an amendment to clause 5. At this time, I would like to ask for unanimous consent of the House to withdraw that amendment.

Chairman: Do we have unanimous consent to withdraw the amendment?

Some Hon. Members: Agreed.

Amendment withdrawn

Clause 5 agreed to

On Clause 5.1

Mr. Phillips: After discussion in the House yesterday and consequent discussions with the government on this particular issue, we have reached a consensus to put into the new *Human Rights Act* the protection right to enjoyment and disposition of property. At this time, I am pleased to present to the House another amendment with respect to this clause.

Amendment proposed

Mr. Phillips: I move that Bill No. 99, entitled *Human Rights Act*, be amended in clause 5 at page 2 by adding the following heading and clause immediately after clause 5:

"Right to enjoyment and disposition of property

"5.1 Every individual has a right to the peaceful enjoyment and free disposition of his or her property, except to the extent provided by law, and no one shall be deprived of that right except with just compensation."

Chairman: Just before we deal with the amendment, I am just trying to keep the record clear, that clause 5 carries.

Now we are on Clause 5.1, debate on the amendment.

Mr. Phillips: We are very pleased to see that it appears that we have reached unanimous consent on this issue. On this side, we felt that there were some areas in the Bill that were lacking, and that one of those areas was putting into place the right to enjoyment and disposition of property. As the Minister said yesterday, anything that improves the Bill should be included.

We are a little disappointed that this private property amendment is not as strong as we would have wished. I think most Yukoners out there really do believe that the right and ownership of property is a fundamental basic human right, and they should have that right. I ask all Members of this House today to support this motion for the inclusion of property rights in the Yukon *Human Rights Act*.

Hon. Mr. Kimmerly: Let me first of all thank the Member for Whitehorse Riverdale North, Mr. Phillips, for his research into this issue yesterday and his consideration of this issue.

If this is accepted in this Bill, it is a very, very significant move in our law. Property rights, as a general issue, is an emerging issue in our constitutional law and will continue to emerge. There is no guarantee in a Bill of Rights, as of now, about property rights and this measure will achieve that. It is certainly my position and the position of the government that it, in fact, is an improvement and I would say a substantial improvement to this particular Bill. We, on this side, accept this wording and accept this principle.

Amendment agreed to

Clause 5.1 agreed to

On Clause 6

Chairman: Debate to continue on the amendment to clause 6(g).

Mr. Nordling: I just have a couple of questions on this section, and perhaps this should be directed to the Government Leader. Last night during debate the Government Leader said, "It is not so many years ago that employers found it perfectly appropriate to dismiss employees for example for the sin of having long hair." I would like to ask the Government Leader where in this Bill he sees protection for these people who have long hair with respect to their basic rights such as meals in a restaurant and accommodation.

Hon. Mr. Penikett: Well, I do not know what point the Member is trying to make. I think you would have to be considered somewhat frivolous to suggest that hairstyles ought to be a ground of discrimination and no serious Legislature would propose that. I was simply making the point that the basis of various kinds of bigotry and discrimination evolve throughout history, as I made the point in my second reading speech. This society is maturing to a point, and has matured to a point, where different degrees of tolerance are accepted.

²⁰ If the Member wants me to cite a case, I can remember an important case in labour law that involved the same company operating in two different countries who responded to the arrival at work of employees with long hair in two entirely different ways. The context was probably determined culturally and perhaps in the context of different labour laws. The company in North America responded to employees turning up to work with long hair by ordering them to get it cut. The same company operating in Norway responded to employees turning up with long hair by handing out hair nets in cases where they thought that long hair might be a danger or risk to the employees.

Mr. Nordling: It was the Government leader who brought this up as an example. He raised it as a point, and there are many grounds that are not prohibited. What would be the remedy under this Act for an employee who was dismissed or not hired because he had long hair?

Hon. Mr. Kimmerly: Under this Act, there would be no remedy at all. There may be a remedy under general employment law for unjust dismissal, but it has nothing to do with this Act.

Mr. Nordling: Does that apply to the basic human rights that we were talking about — the long haired person that is refused a meal in a restaurant. Would he have no remedy?

Hon. Mr. Kimmerly: Not under this Act, no. This Act is a remedy for people, for example, who are refused a meal in a restaurant only on these listed grounds. Many things are not in the list. A person's height, weight or age, or their dress, their hair, their citizenship, is not in the list. This Bill applies, except for the general Bill of Rights, to discrimination only on these listed grounds.

Mr. Nordling: So, referring to the particular section, we are including sexual orientation as a prohibited ground, and we are not including hair length, citizenship, obesity, left-handedness, or any of these other grounds for which people could be discriminated against. Is that what I am to conclude?

Hon. Mr. Kimmerly: I do not know what the Member is getting at, but the general answer to that question is yes. There is lots of discrimination that goes on, which is discrimination by the dictionary definition of the word, which this Bill does not touch at all. For example, one of them is requirements for the job. If you advertise for a job and you say a requirement is a university education, or an electrician's ticket, or something like that, you are discriminating against those people who do not have those qualifications. All of that is entirely reasonable. The principle of the Bill is obviously to get at only certain kinds of discrimination, and they are listed. That is obviously the public policy of the Bill.

²¹ **Mr. Nordling:** I would like to ask another question that relates to this issue. I am referring to the *Hansard* on January 12, and it was with respect to the discussion on groups. I am quoting Mr. Kimmerly, and he said, "To use a concrete example, if a church congregation is running a church school, a bible school or a christian school and they wish to employ a teacher and to make a restriction that the teacher be a member of the congregation, they are expressing a group right as opposed to an individual right". Do we take it from that example, which Mr. Kimmerly gave, that under this Act a church group could restrict a teacher they hired to being a member of the congregation?

Hon. Mr. Kimmerly: Yes, I think so.

Mr. Nordling: That was not quite a definitive answer. Where does the Minister think that the church group would have that choice and that protection?

Hon. Mr. Kimmerly: This is obviously not a debate under Section 6(g); this is misplaced, but the short answer is in all of Section 9 and the exclusions in Section 10, especially Section

10(1). I would appreciate discussing this under those sections.

Mr. Nordling: We may get back to this discussion under those sections, but it is very relevant under the inclusion of sexual orientation because that is the concern of church groups and many groups: they may be forced to hire a homosexual, and it relates directly to this section. I am glad that the Minister has given us the assurances that there is protection.

One more point. On a phone-in radio show the Minister stated that those people who do not want to include sexual orientation in this Bill would deny homosexuals basic human rights such as a meal in a restaurant or accommodation.

²⁴ The Minister has said that there are many grounds for which people may be discriminated against, such as citizenship and length of hair and obesity. Is the Minister then saying, using his same example, that he and the NDP Members wish to deny an obese person a meal in a restaurant because obesity is not included here?

Hon. Mr. Kimmerly: Absolutely not. That is not our position at all.

Mr. Nordling: By asking that sexual orientation not be included here, I am absolutely not wanting to deny a homosexual a meal in a restaurant, either.

Mr. Phillips: I will have just a few brief remarks with respect to this issue. I have some very serious concerns about including sexual orientation in a Human Rights Bill. The Government Leader, in his statement yesterday, said there were a great many problems out there. I would suggest to you that you are going to create a great many problems by including this in the Bill. You are going to create a great many problems for the people who are homosexuals.

I have a 10-year-old son and a 13-year-old daughter. I have to be honest with every Member in this House. I have a feeling today that I am being asked to condone homosexuality. I do not think it is right. I do not think it is natural. I do not discriminate against those types of people, but I do not know what we are doing here in this Legislature when we are trying to legislate morality. It is wrong, and I will be supporting the amendment put forward by the Leader of the Official Opposition.

Mrs. Firth: I would like to make some general comments about all of the discussions that we have had in the Legislature with respect to the inclusion of sexual orientation in the *Human Rights Act*.

I want to refer to some of the comments that were made by the other Members in the Legislature, some at the persistence of the side opposite in getting Members to express their opinions on behalf of their constituents. I want to talk a bit about the point that the Member for Porter Creek West raised, which the Government Leader seemed to be puzzled by and said he was not quite sure what point the Member was making.

²⁵ I want to sum up by saying what I feel our responsibilities, as legislators, are to the community that we represent and to all Yukoners we represent. In so doing, I believe I want to start with the comments made by the Government Leader in the Legislature yesterday afternoon when we started this debate on this particular amendment brought forward by the Leader of the Official Opposition.

I listened to the Government Leader talk about the balance of power in employees versus employers and who held the balance of power. I see a rapid deterioration in any decision-making powers or any control over their lives that employers did have. I am not prepared to stand up and say that it is totally wrong and the system was totally right before we, as legislators, found our perfect world and thought we should impose this on all the employees and employers of the world. We will have to take a wait-and-see attitude, and, in some respects, I know it is not going to be in the best interest of the employers and, in some respects, it may be better for the employers and for all of society.

I listened to the Government Leader talk about the dozens and dozens of complaints that came forward to him and about all the prejudicial attitudes that were out there about homosexuality and homosexuals. We do not get rid of attitudes by legislation. We do not legislate peoples' attitudes towards anything. We may think we are making society better by doing that as legislators because we are bringing a law in, but you do not legislate prejudicial attitudes not

to be prejudicial attitudes anymore.

The Government Leader spoke about the dozens and dozens of complaints, and I would like to know whether those complaints were there before this government brought forward its very controversial Human Rights Legislation? I had been a member of the government for three years prior to that, and I had worked at the hospital for some 14 years before that as a registered nurse. People in the medical profession are very often those who encounter first incidences when there are overt activities against homosexuals, and I do not recall seeing that or having complaints. So, I wonder if it has something to do with bringing forward this extremely controversial legislation that initiated those complaints.

²⁶ Certainly I have registered that concern previously with the letter writing campaigns that have gone on in the newspapers.

I heard the Minister of Justice, the Member for the constituency of Whitehorse South Centre, and talk about not wanting to legislate morality. Well, that is exactly what we are doing as the lawmakers of the land in our tiny little land here, lawmakers in the Yukon Territory: we are legislating morality. I recognize all of the legal points that the Minister of Justice raises, and I am sure that most of the public does to. However, I think there is an extremely large group out there who feel that their morality is not consistent with what we, as legislators, and what this government is trying to make the new law in the Yukon Territory.

I do not care where else this is the law; we are talking about Yukoners and Yukoners' lives that we are affecting, not what happened in California or Ontario. It is good to refer back to see what kinds of mistakes happened in those places and how they went about it, but I do not buy the argument that because it is somewhere else it has to be here. I do not buy the argument that we have to bring Yukon up to the 80's because maybe this is not what the Yukon wants and maybe this is not what the Yukon people want. That takes priority when we make decisions as opposed to whether we feel the Yukon should be up in the 80's.

I listened to the Member for Mayo speak, and previous to that the Member for Faro had stood and made some brief comments. The Member for Faro recognized that these people, and I know he was referring to homosexuals, choose this lifestyle. He said that those people choose this type of life, and he talked a bit about that kind of lifestyle and how he would prefer that someone close to him would not choose that kind of lifestyle. Then the Member for Mayo stood up and he agreed with the Member for Faro, which I do not think any of us in the Legislature really disagreed with them. I think you will find, as I raise the points, that we are all in agreement with a lot of the points. Really there has not been anything definite and positive and strongly presented regarding the inclusion of sexual orientation in this piece of legislation by the Members opposite.

Their comments of concern are not inconsistent with ours, and I cite the example of the comments made by the Member for Mayo regarding what people do in private is their business and it is none of my business. We do not disagree with that.

²⁷ It is none of our business. Here is a government coming along and asking us to make it everybody's business.

The Government Leader goes on about homosexuality, about homosexuals flaunting their behaviour. As we can learn from other areas, we cannot deny, as legislators who have done our homework responsibly, that in other areas, where this clause has been included in human rights legislation, the activities of the gay communities do become more overt and more open. The Government Leader does not want to refer to it as flaunting, although he admitted that there would be a few individuals who would do that. I prefer to take a rational approach to it and recognize that it has happened in other places and it will happen here.

Like the Member for Mayo, I prefer that the business of those individuals be kept in their private place, like I would keep my business in my private place.

I listened to the Member for Whitehorse North Centre. I listened to the stories she told us of her daughter and, obviously, how proud she is of her daughter. I do not think there is one Member in this Legislative Assembly who would disagree with what the Member for Whitehorse North Centre had to say. She talked about her daughter having a friend who had been friend for many years and

how the daughter had one day found out the friend was gay, that it did not matter to her because she was her friend.

That indicates to me that the Member for Whitehorse North Centre was proud of the upbringing she gave her daughter. We agree that that pride in how people raise their children and how they react to each other in a good Christian way, as the Member says, is the responsibility of parents, and that it can be done well by the parents, not by us as lawmakers. We do not have to make a law saying that this is what society accepts, this is normal, this is the way it is going to be. That is how pornography got started.

We agree with the Member for Whitehorse North Centre. It is the responsibility of the family and of the parents. We are pleased that she did the job well. I think, as parents here, that is what we all achieve to do. She is rightfully so. It should be kept in the home, that kind of teaching.

Finally, I listened to the Member for the Campbell riding. He stood up and gave us some comments that I believe were sincere comments.

²⁸ In those comments, he talked about how we as a little group here are not going to clean this up. It made me feel for the Member for Campbell because it indicated to me that there is recognition that maybe this is not the most pleasant thing in the world for society, particularly for Yukon society. I know that the Member for Campbell must have some turmoil within himself because of this.

The Member also mentioned about hurting society. I think we, as legislators, have to take a look at what we are doing to Yukon society. Are we hurting society or making it better? I cannot see for the life of me how we are going to make it better by making this a law before the people of the Yukon are ready to accept it. It has already shown that it has hurt, and it has shown that it has hurt every Member of this Legislative Assembly.

The point that the Member for Porter Creek West raised was a good point, even though the Government Leader did not get it, because what we are talking about here are alternate lifestyle protections. The points the Member raised about long hair and so on may sound trivial, but they are relevant. We are talking about individuals who have chosen an alternate lifestyle, another way of living. Maybe we do not accept it as an alternate lifestyle. I know I do not. The Member for Faro indicated that it was a choice that the individual made. It was a choice. The Member for Mayo agreed with that; the Government Leader did not agree with it. He said these people do not make these choices.

I believe it is a choice that is made. We are not talking about Jewish people; we are not talking about the colour of people's skin, we are not talking about religious beliefs, we are not talking about Indian people, we are talking about a choice that people make as to what they are going to do in private and how they are going to live. I believe that is where it should stay.

If we all, as legislators, have those questions inside of us that do not make us feel that we can stand up here and say that we agree or disagree with this, without questioning ourselves about it, what are we doing making a law?

²⁹ We must be sure before we make a law that other people are going to have to live by. I just want to be brief in my summary; I want to make it very clear that I do not think there has ever been any indication from this side of the Legislature that we are anti-gay, or against homosexuals. That is not the issue here.

We all talk about fair-minded people on this Legislature, and I like to think that we all respect each other as being fair-minded. We all have a responsibility to bring forward our position and our case. We are all friends and neighbours in the Yukon, and if we, as legislators, have any misgivings about what we are doing, then I would recommend to everyone that they support this amendment and not include sexual orientation in a Human Rights Bill until we are all sure within our hearts.

Hon. Mr. Kimmerly: This appears to be approximately the end of the debate. I will just put a few more comments on record. I have not spoken specifically about public opinion in the past, although I have spoken about the perceptions of restoring civil rights to gay people. Public opinions polls are perhaps not the best method of arriving at answers on difficult questions especially on social policy, but more especially on moral questions. However, there is

growing evidence in Canada about the acceptability of this kind of measure. Indeed, it is interesting that the federal Minister of Justice has recently given an interview, which was in the public domain, where he says that the amendments to the federal Human Rights Code, which were announced in the last Throne Speech, are going to include sexual orientation.

³⁰ That, of course, is a statement by a Conservative Minister of Justice following the statements made officially by the previous Minister, John Crosbie.

It is interesting that, in 1977, a Gallup Poll in Canada found that 52 percent of Canadians supported the protection of homosexuals from discrimination in employment and access to public services under the *Canadian Human Rights Act*. Thirty percent were opposed and 18 percent expressed no opinion. In 1979, a poll conducted for the Canadian Human Rights Commission found that 68 percent of respondents agreed that a self-acknowledged homosexual who possessed better qualifications of other candidates should be hired by the RCMP as a national security agent. Twenty-five percent disagreed and seven percent had no opinion.

Perhaps the most interesting of all is the poll on religious practices and attitudes conducted by a University of Lethbridge sociology professor in 1980, which found that two-thirds of the respondents disapproved of homosexual relations, but two-thirds believed that homosexuals should have the same rights as heterosexual Canadians. In other words, Canadian's may be willing to tolerate equal rights for homosexuals even though they think homosexuals are morally misguided. This is an interesting distinction that I have emphasized before.

This point is reinforced if one looks at positions of the various Canadian churches. In the House of Bishops of the Anglican Church of Canada they said in 1978, I quote, "The gospel of Jesus Christ compels Christians to guard against all forms of human injustice and to affirm that all persons are brothers and sisters for whom Christ died. We affirm that homosexual persons are entitled to equal protection under the law with all other Canadian citizens." The United Church has taken a similar stand.

³¹ One can also quote from the protections in various municipal governments starting in Toronto in 1973, followed by Ottawa in 1976, Windsor in 1977 and Kitchener in 1982. Trade unions have, in the last 10 years, in large numbers, afforded this same protection for our fellow citizens. It is time we, as Yukoners, joined in this movement towards tolerance.

Mrs. Firth: I cannot believe what the Minister is doing. I guess I can believe it because he is standing up and doing it right before our eyes. I just talked about the Yukon Territory and the people in the Yukon. That is who we are making this law for, and look what the Minister has done. He stood up and talked about statistics and polls in Lethbridge, in Ottawa, in Toronto, in Windsor, in Kitchener. I would like to welcome the Minister back to the Yukon Territory. He travelled all over this territory. He stood up in this House and said that the feeling from the people of the Yukon was that they were against this being included in the *Human Rights Act*. He did not have to take a fancy poll to do that.

He then stands up and quotes from polls that were done in these cities everywhere else. Come back here. We are making laws that Yukon people, as neighbours and friends have to live under. Let us make them applicable to the Yukon.

Mr. Phillips: I would like to add to the comments of the Member for Riverdale South. I also get very angry when I see the Minister use all these quotes and polls for his own convenience when he got a very clear message from the outlying communities that they did not want this included in the Bill. Then he denied the people of Whitehorse a meeting on the issue.

If he was so damned concerned about polls, why did he not poll the people of the Yukon, and why does he not poll them now? He will find out that the people of the Yukon do not want this now. We are elected supposedly to represent the people of the Yukon, not the people from Windsor, not the people from Ottawa, not the people from Toronto. If the Minister is so interested in opinions of the people from Toronto, or the people from outside, why does he not move outside?

³² **Mr. Brewster:** I would like to ask the Minister one question.

He apparently believes in polls, or so he said, or maybe it is just when it is convenient. I presume, if he believes in polls, then he accepts capital punishment because the majority of people across Canada voted for capital punishment. I would like the Minister to answer that one.

Hon. Mr. Kimmerly: That is obviously out of order. The point I was making is that attitudes about homosexuality itself can be, and should be, different from positions about tolerance of persons' basic human rights. That was the only point I was making.

Mr. Lang: With respect to the religious community, there has been an overwhelming response from this community in Yukon with respect to this section. Over all, one would have to say that it has not been positive. That in itself speaks for itself. I notice in the statement made by the Minister that he did not refer to the Catholic faith because it does not support his argument with respect to supporting his and his government's position as far as this section is concerned.

I want to conclude with the point that we have obviously gotten to the point, and it has come out that not only socially but morally the government sees this as acceptable practice. I think that is the point that has to be said as far as the public is concerned. Being upfront, toward the end of the debate, he finally said it.

Chairman: Are you ready for the question on the amendment? Are you agreed?

Some Hon. Members: Agreed.

Some Hon. Members: Disagreed.

Chairman: I think the nays have it.

Amendment negated

Amendment proposed

Mr. Phelps: On section 6(i), I gave notice yesterday and tabled my amendment to this section. I am prepared to start discussing that now.

Chairman: Is it necessary to read the amendment?

³³ **Hon. Mr. Kimmerly:** We certainly accept the amendment, as filed, as being read and moved. I understand that is the intention here. The process I would suggest should be that the case for the amendment ought to be made by the mover.

As sponsoring Minister, I can speak to the amendment as follows. The amendment leaves out the question of criminal charges. I am surprised that the mover of the motion, being a lawyer, leaves out that element. That stands for the proposition, of course, that is expressed in criminal law that a person is innocent until proven guilty. If one has a criminal charge against one, one should not suffer consequences unless there is a conviction. There may be a case for a person who is employed and who is charged with something that relates to that employment and the employment should be suspended until those charges are dealt with. That is dealt with adequately in Section 9(b), but generally, the general case should be that a person who has a criminal charge against them should suffer no discrimination until the court has dealt with the matter and a disposition is made. I would suggest that it is very important to leave in the concept of criminal charges.

On the question of criminal record, the essential element here, or the difference between the wording as proposed and the amendment, is that under the federal *Criminal Records Act* a person who has a record for a summary conviction offence may apply for a pardon after three years has lapsed from the last date upon which the punishment, if any, is ended. For an indictable offence a person may apply for a pardon after five years from the date when any punishment, if any, has finished.

³⁴ The problem is that many, many people, I would suggest most people, do not in fact apply for that pardon and, of course, the pardon is not granted as a matter of right, but I am sure that the mover of the motion can explain why it is put forward as it is.

The concern I have here is that if a person is dealt with by the court, the court considers what punishment or what restitution or what sanction should occur. The court determines all of that, and why should it be that there be other discrimination or a potential of discrimination after that court ordered treatment is considered.

There are many in the Yukon who have a criminal record. I think it is clear and obvious that when considering, for example, insurance premiums one

may wish to consider convictions for impaired driving. I could put that statement much more forcefully: of course one would consider that. There is the obvious case about one does not want a convicted pedophile working in a daycare centre. I would suggest that even is there was a pardon one would not, but that is not really the essence of the amendment. That is the case under the original wording or of the amendment and the case, obviously, of the bank teller convicted of fraud.

Now, clearly there is a social stigma in obtaining a criminal conviction, especially for such offences as perjury and the like or lying. We all know that stigma exists to a greater or lesser degree depending on the person and the person's other reputation in that community.

³⁵ I would simply state that it is up to the mover of this motion to make a case to not include criminal records.

Chairman: I would ask for the record, before the Member makes this case, to read the motion into the record. I was remiss in not reminding you to do that.

Mr. Phelps: I was awaiting your instruction on that.

The motion is that Bill No. 99, entitled *Human Rights Act*, be amended in Clause 6 at page 3 by deleting the words "criminal charges or criminal record" in paragraph (i) and by substituting therefor the following words: "criminal convictions for which a pardon has been granted".

In speaking in support of this amendment, I would like to make a few points. There are really two main reasons behind the motion, but the first one can be fairly simply stated: in the area of criminal law, the Government with the jurisdiction regarding criminal matters is, of course, the Government of Canada — Parliament. It is interesting, of course, as the Minister has already said, that a pardon for a record is granted under federal jurisdiction; the *Criminal Code* is under federal jurisdiction. Under the Canadian *Human Rights Act*, the protection that is granted there under section 3 is only that which we are suggesting here: Conviction for which a pardon has been granted.

The first argument that we would make is that surely our *Human Rights Act* ought to be consistent with the Act that emanates from the government in charge of all the laws that apply to criminal convictions. When the Minister makes an argument about a judge assessing the crime and passing the appropriate sentence, and so on, indeed, when that happens in any area in Canada, what the judges look to are the appropriate federal Acts. We feel that it is almost out of place for this jurisdiction to be completely out of step with the federal government in this regard.

³⁶ The pardon under the federal Act takes into account the severity of the kind of offence for which a pardon is being applied for, and all those various things.

Then we come to the issue of the very solid principle that the person is presumed innocent until proven guilty beyond a reasonable doubt. We come to the parallel issue of rehabilitation, the concept of a person paying for his crime, in one way or another, and then it being important that that person be rehabilitated.

The problem that arises with what the government has put forward under 6(i) is that they have placed a person, clearly an employer, in a position where, under the saving clause, the employer can get away with not employing somebody with a record or under a charge, or firing someone, as the case may be, provided that it is relevant to the employment. That is under section 9(b).

Consider for a second the practicality of that. Who determines it to be relevant and when? What kind of quandary does that put an employer in, in a situation where there is no way of being assured whether or not the circumstances amount to the situation relevant to the employment.

The concern I have is that not only are we out of step with the federal *Bill of Rights* — after all, it is their jurisdiction — but, secondly, that the issue of certainty is certainly not achieved with the proposed law as it has been brought forward by the government. It is our feeling that, in most cases throughout Canada, there is a tolerance and understanding — and certainly employers act upon their conscience in determining whether, in their opinion, the charge or record is relevant to the employment.

That is a right that should not be taken lightly. To put fair-minded

people into a guessing game situation with a Human Rights Commission or a Board of Adjudication and the kind of problems that entails, in my opinion, is not to promote understanding and goodwill with respect to charges and criminal records, but rather to unintentionally achieve the opposite effect.

³⁷ It seems to me that in this case we ought not to always be trying to lead the rest of the nation, but at least keep in step with that jurisdiction, which has the issues of criminal conduct under its domain.

Hon. Mr. Penikett: I would defer, of course, to the Leader of the Official Opposition's knowledge of the law. I am sure he knows our Caucus has discussed the proposed amendment.

I would like to take a page out of his book and cite a situation that is not a hypothetical one, but one I found myself in 10 years ago. It arises from a situation in this territory, whereas because of changing attitudes towards drinking and driving, we now have literally hundreds, and perhaps thousands, of people in this territory who have been convicted of a criminal offence, impaired driving.

Ten years ago, when I was on the City Council of Whitehorse, there was a bylaw proposed before Council that proposed to bar anyone who had a criminal record from being a chauffeur or taxi driver in Whitehorse. I think the original proposal was a record of any kind. Later it was amended to include certain specified offences: impaired driving, bootlegging, drug trafficking, offences which have been in some cities, fairly or otherwise, associated with taxi drivers. It was an effort by the city to discourage, presumably on public safety grounds, any possibility that there might be taxi drivers who were either driving drunk or selling booze or drugs from their cars.

Let me just deal with the case of the impaired drivers, because I know that there are literally hundreds and hundreds, and there may be thousands of people, who at one point have been convicted of impaired driving — some of them quite recently. Some people who are taxi drivers have been convicted of impaired driving, not while they were at work, but on their own time. I am sure the Member has constituents, as I have, who are truckers, who have been convicted of impaired driving. There might be some reasonable concern here by some people, and it might make a convincing argument that someone who has been so irresponsible as to drive while they were impaired, whether they were at work or not, has disqualified themselves as a professional driver, as someone who should be put in charge of a vehicle that is transporting people or goods. I am not making that argument myself, but I think you could make an intellectually defensible argument on that score.

³⁸ However, I tend to fall somewhat on the other side of the argument. I recognize that there are hundreds of people who have convictions. I am not sure that I would want to have a situation — and I did not when I was on Council — where there was a blanket prohibition against that very large group of people who may have been convicted of an offense at some point in the past, and in some cases not in the very recent past, from a certain kind of occupation for which they may be otherwise very well qualified and suited and maybe even a choice of occupation.

I must confess that the amendment proposed by the Leader of the Official Opposition troubles me greatly because it would weaken what I think is a sound rule that someone should not be prohibited from employment just because there are charges pending against them, and the presumption of innocence I think is an important principle. If there is a bar, it should be on reasonable grounds — if you have had two convictions in the last few months, or if you have been convicted of driving impaired while you were in your taxi cab. I think those kinds of grounds would cause me, as an ordinary layperson, to say that that person perhaps should not be in charge of a bus or a taxi. If, however, the person had been convicted of impaired, say, three years ago and has since joined AA and was now returning to an occupation, I think it would be profoundly unfair to deny them the opportunity to work.

I am not trying to be provocative, I am trying to explore what the Leader of the Official Opposition thinks is fair. I would like to respond to the point made earlier. In the Yukon Territory, here and now today, we have an unusually large percentage of our population who have been convicted of what is technically a criminal offense,

driving while impaired, and there is quite a large group of young people in this territory who have also been convicted of other, I think what we might accept as, minor criminal offenses, and I would not like to see those young people, for employment prospects may not be great, barred from employment.

I wonder if I could ask the Leader of the Official Opposition at least to respond to the situation as I was facing at least 10 years ago in respect to the taxi drivers. On that occasion, public opinion was interesting. Council met, and the galleries were filled on that occasion by people who thought it was unfair to bar people from a taxi licence on the grounds of a criminal record.

Mr. Phelps: I appreciate the example and the history. I have no difficulty in agreeing entirely with the Government Leader's opinion. Obviously, the vast majority of those in the public cared with regard to the circumstances surrounding the example given. It seems to me that for a law to come forward and bluntly say that that in itself would mean that nobody could get a job within the city would be certainly insensitive to all the different circumstances that relate to why some people are better risks than others. I think you have covered the bases quite well. Certainly if a person has successfully been enrolled in AA for a year or something, that person does not represent a risk and so, under the circumstances, I would have had no hesitation in voting against the law that was proposed under the circumstances.

» The problem is that it is very difficult to come with hard and fast rules to cover the situation for all employers in the circumstances. The simple act of impaired driving does not necessarily make an individual a bad risk. The Government Leader is quite correct on that, but does the proposed legislation really offer the kind of protection that is suggested by the Government Leader? That is to say, the test of relevance to the employment is the only test that determines whether or not there is discrimination. In the case of employment, my suggestion is that it is a case by case value judgment, and the issue becomes who should make the value judgment outside of the court prohibition from driving for two years, or whatever may be the situation. Now you have to wait three years to get your record cleared after that, but not automatically, but after a fairly thorough scrutiny by a panel of character witnesses by the RCMP. It sometimes used to take as long as a year-and-a-half, which is very unfortunate.

It seems to me that the best judgment is that exercised by the employer, in the case of a taxi driver, outside the courts. I do not see how this system is going to work. What kind of situation does it place a person in if he is hiring taxi or bus drivers? What does he do? Does he have a test case by refusing to hire somebody, and that is one kind of category. A person who just finished AA and has been successfully going through an AA program and is a member of AA for a year is okay. I have to hire him. How about a guy who just joined up a month ago and is terribly sorry for what happened before. Who makes the test there? Again, it is the Human Rights Commission. I could take almost any number of examples that you brought forward.

I have a great deal of difficulty about how this system would work in practical terms. I would further advise that it has been my experience that employers are reasonably fair-minded about determining whether or not a charge or offense is relevant. I think this would be a retrograde step.

« **Hon. Mr. Penikett:** I appreciate the answer. Let me ask one other question, which is supplementary. Is the problem not just as great with his amendment? Let me suggest one possible consequence of the amendment that he proposes. In the Yukon where the labour pool is larger than the number of jobs that are available, an employer who has to hire bus or taxi drivers simply finds it convenient to say, "I have hundreds of applications and I only have five jobs in any period of time. I will simply make a blanket exclusion of anybody who has an impaired driving conviction as a matter of convenience." I know employers do make that, and it is the same reason that rationally we say, "I have thousands of people applying for this job, and I am going to say there is a minimum required, which is a BA or a Masters degree and in that way I can cut down the list."

If the amendment proposed by the Member carried, you could

have the possibility of an employer, quite rationally from their point of view, saying, "Look, I do not want to take any risks on this score; let us not consider anybody who has had an impaired driving conviction, and we will put that on the application form and we will not even consider that one." Does that not do a potential injustice to someone, to use the case as we have previously done — let us say that they say "within the last five years" — who may have cleaned up their act and are thoroughly responsible citizens now. To use the example that the Member for Porter Creek East used yesterday, he has a family to support and he wants to be a contributing tax-paying member of the community. Is there not, potentially at least, an injustice done to a class of people on that score?

Mr. Phelps: It is a good point. Of course there would be an injustice done in my opinion. I am not sure what length of time the sentence would have to be in effect, and so on. But, it is a blanket, a precedent set by the employer, and it is not sensitive to the individual's circumstances. Of course, the Government Leader is quite correct.

On the other side of the coin, you have the same kind of insensitivity if you are simply going by precedent set by a Human Rights Commission, because I can tell you what is going to happen. One or two cases will be looked at by the Commission; those will become the precedents, and you will have the same kind of insensitivity built into the system anyway.

Employers are going to play it safe. If there are a few cases that become the precedents, even with impaired driving convictions, you will find you have the inflexibility built in because employers are not going to play games at second guessing the Human Rights Commission.

I think it cuts both ways. Once a couple of cases have been tested, those are going to be the parameters of every case. Not very many employers are going to fool around and go to bat for the exception. I think they will set their rules hard and fast and try to get away from the bureaucratic problems that these sections bring forward. That is my answer.

« **Chairman:** Is it the wish of the Committee to recess at this time or to continue?

Some Hon. Member: To recess.

Chairman: We will recess for 15 minutes.

Recess

Chairman: Committee of the Whole will now come to order. We will continue with clause 6(i), debate on the amendment.

Mr. Phelps: What gives cause for concern are all the gray areas when one looks at the issue of relevancy and at who should be making decisions as to whether or not to employ, or continue to employ, someone. The case that we are making, in part, is that that decision-making and sensitivity ought to be left to the employer rather than to bureaucratic Human Rights Commission.

To take some examples, a person is charged with assault causing bodily harm. The alleged offense is a fairly violent one, showing a vicious temper. The person is applying for a job at a daycare centre. This is not the very simple example that the Minister of Justice gave, but the circumstances show a person with a possibly violent temper and assault causing bodily harm. How does the daycare centre determine the relevancy of that charge to the employment?

One would think, in normal circumstances, it could take a fairly considerable time to have that adjudicated upon. That is just one of thousands of gray areas. Take the situation of someone with an impaired charge applying for a job as a taxi driver. If it is proven, the charge could result in huge costs in insurance to the taxi company. It is a gray area until it is adjudicated upon.

Again, take the offense of assault causing bodily harm. How about a person who is applying for a job in the tourist industry with a tour bus? The indications are that this person has a bad temper, and the employer is uncomfortable employing that individual because of these allegations, or because of a recent conviction, because of the kinds of stress and strain that he knows employees have in those kinds of circumstances. Who determines if it is relevant? How long does it take? Where does the employer stand on

assault; or that kind of violent charge or recent record?

42 Where does it sit if you own the hotel? Do you hire that person as a bartender? Do you hire him as a waiter? How about fraud? A person is charged recently with fraud. Let us assume that the case is fairly well laid out and the person has some knowledge and feels in his heart that the person will be guilty, or the person has just been convicted. Is it relevant if you are employing a hotel manager? Probably. Is it relevant if you are employing a person as a bartender? Well, if he handles cash, probably. How about a waiter? There you get into the circumstances of the exact job details and how business is carried on in the establishment. In lots of cases, waiters and waitresses are able to steal from the employer, so fraud, to me at least, should be relevant. It may not be to the Human Rights Commission.

How about a labourer who works in a warehouse? There are others there, but lots of valuable items in the warehouse. What is the relevance in who determines that? Now it is the employer. We are saying that generally that is the best test for the employer to really know whether he or she is wrong in the circumstances — again, gray area. Our concern is that under this legislation a Human Rights Commission with very little knowledge a priori of the business establishment is going to eventually determine the issue.

Indecent exposure charge; something like that. Well, it may not be at all relevant to people hiring for Cyprus Anvil. It may be relevant at least in the mine assuming that the case is sufficiently well known. In a small town where a person who had a retail shop, a good clothing store, or a gift shop may find that that is entirely relevant in not employing that person as a sales clerk or store manager.

In this case, what the side opposite wants to have judge is, somewhere down the road, a Human Rights Commission. How do they determine the relevancy? You get into a huge complex mass of laws and, it seems to us on this side, that these are issues that are best left in the judgment of the employer. The list can go on and on and on. As long as you have countless examples of gray areas, you have countless potential problems.

We, on this side, have not experienced much in the way of a problem in the Yukon, and we feel that the test of the federal *Bill of Rights* is a more appropriate one.

43 **Hon. Mr. Kimmerly:** The arguments appear to be that there is some uncertainty if we leave the test as it is as "to relevant to employment". There is, admittedly, some uncertainty about that, but the uncertainty is still there if we use the test in (i) here as a pardon and continue with the special provision for related convictions with regard to employment.

The Member has not addressed the question of criminal charges or the problem of the person who is discriminated against because of a charge and has not been convicted, and I would submit to all Members that that is a very important consideration that should lay heavily on our minds in reaching a conclusion on this matter. Some statistics: approximately 1.8 million Canadians have criminal records. In fact, one Canadian male in five over the age of 15 has a criminal record — usually a minor one, but a criminal record.

As an example, I was on the bench here for just under three years, and I sentenced 2,100 people in the Yukon. If you think of the population of the Yukon, that is approximately one in ten in two years. Admittedly some were repeat offenders and some were transients, but of new people, I do not know the exact number; it was a very, very high number. Approaching 500 people a year are convicted of impaired driving here. If you consider that is every year, it is easy to realize how many people this affects.

44 The *Criminal Records Act* is used by very, very few indeed. The basis of this ground here or the best rationale, I believe, is that it is in the best interest of society to rehabilitate and to reintegrate the person convicted of a crime back into a useful and productive life. It is based on the concept of justice that, once a person who has completed a sentence, they should not be punished again for the same crime.

I would submit that all of those considerations ought to be weighed by all Members when deciding on their position on this question.

Mr. Phelps: I have to rise to defend the argument that is made,

because I was speaking about charges; I was speaking about sentences in each of the many examples I gave on the issue of relevancy. Now, it would be our position that if the test were the same as in the Canadian *Bill of Rights*, then the corresponding clause would be dropped. In any case, in any situation where a pardon had been granted under the federal legislation, then it would be discrimination without the issue of relevancy being there at all.

It seems to me, whether it is a fairly recent sentence or charge, that the gray areas are just immense, and the difficulties provided are overwhelming. All we are doing here is trying to substitute the Human Rights Commission for employers, which would indicate that there is some huge problem in the Yukon now. I suggest that, because of the huge number of gray areas, that is probably the very reason that the Canadian *Bill of Rights* reads as it does. I just do not think there is an answer to whether a person charged with assault causing bodily harm should be employed at a daycare centre. All you are doing is substituting a decision by the Human Rights Commission, a cumbersome process, for that of the employer. I just do not understand the necessity for it, particularly when what we are offering in place of this section goes a long, long way. If it is felt that the present federal law is too cumbersome and needs to be revamped and streamlined, I would be more than willing to vote in favour of a motion, on private Members' day, to be sent away to the Minister of Justice on that topic.

45 Simply put, my position is that this raises a lot of problems that are not easily resolved. It is an attempt to replace the employer with the Human Rights Commission. I think it is a cumbersome way of going about things. The need has not been demonstrated. In all honesty, I would agree with many of the points put from the side opposite on this sensitive issue. Were the need demonstrated to me, I would be happy to withdraw the amendment, but I do not see it. I see a lot of mischief caused by going with it in its present form.

Mrs. Firth: I want to briefly express some of my concerns about this issue. The Leader of the Official Opposition has put our position forward very clearly. I have some concerns that have been raised as a result of what has been said by the Members opposite. I cannot accept the fact that the Members in government are asking us to have complete faith in the Commission in the decision-making as to relevancy and, yet, have none in the employer. That is basically what the Minister is saying. The employer is not going to make the right decision, but the Commission will.

I see this as being anti-employer. I agree with the Member for Whitehorse South Centre when he says that the objective is to rehabilitate people, and so on, but we must not lose sight of how the problems got there in the first place. Again, I come back to the individuals in question having to make choices.

The employer did not have any control over that. We agree with rehabilitation, but why is it that the employer is the one who is being punished in this, and the rehabilitation is taking place at the expense of the employer, when the employer had no control over the situation in the first place? It goes back to the question that the Government Leader raised about the options that employers are presented with.

I would see that employers would want what is in the best interests of their place of employment. Although it may not be perceived to be fair by all, there were choices made that created that unfairness. It was not the employer who made the choices.

46 **Hon. Mr. Kimmerly:** I would ask that you stand this matter over. It is certainly my intention to re-read the Blues and to consider at some leisure all of the points made. I would simply ask you to stand the matter over.

Chairman: Is it agreed to stand the 6(i) over?

Some Members: Agreed.

Mr. Lang: I have a concern on Clause 6(j). It is a question of political appointments on behalf of the government. This particular section is very clear. You cannot discriminate because of political belief, political association or political activity, which I agree with fundamentally in principle, but you get into a situation, no matter who the government is, when they change there is a reason for change. There are Order-in-Councils appointed primarily for the purposes of serving with the government over their life and tenure. I wonder if that has been considered as one effect this would have?

Hon. Mr. Kimmerly: Yes, that is clearly reasonable grounds. I think there is no question, especially on Order-in-Council appointments. I also put the position of a political party hiring a researcher or a secretary. One's political belief is, I would suggest, a qualification for those jobs. There is no problem at all here in my view.

Mr. McLachlan: I have no problem with 6(j) as it is written. I want to serve notice that I will be proposing an amendment later on related to political activity in another section, which is the flip side of the coin enumerated here. That is, there is no discrimination based upon belief, association or activity; there must similarly be no inducement or pressure under fear of gain of consequence to induce an employee to join or not to join a political group, association or activity for that reason. It will come up, I believe, under Section 13.

Hon. Mr. Kimmerly: In answer to that, I am certainly aware of the concept, and I will be interested to see the amendment that is brought forward. The only concern I have is an employer-oriented concern, and that is if you have a person who is handing out political leaflets or something like that on the job, for example in a store or to customers or whatever, it would certainly be legitimate for the employer to say, "Do not do that during your hours of work, and do not influence my business in that way." A concern addressing the concern of pressures by employers of employees could certainly be included in the harassment concept in section 13.

Mr. Nordling: I spoke yesterday about a concern I had with respect to clause 6 and read into the record that I would be bringing in an amendment to read, after section (l), "unless bona fide and reasonable cause exists for the discrimination." I have spoken to my colleagues about this, and to Mr. Kimmerly, and we have come to a conclusion that this can be just as well dealt with in section 9 under the heading Reasonable Cause, where there are definitions of what is not discrimination.

The concern was raised with respect to insurance companies and discrimination against individuals on the basis of age, marital status. For example that concern was recognized by Mr. Kimmerly, although he thought that essentially they had nothing to fear the way the Bill was written, and he was prepared to entertain an amendment that would clarify the issue. The subject was debated at some length in *Hansard* on January 13 and again yesterday, so I will not repeat what was said then. I will not, therefore, be bringing my amendment at this time to make an addition to clause 6.

Paragraph (e) of clause 6 was also stood over because if my amendment was accepted, my submission was that the words "after a person's nineteenth birthday" were not needed.

It was explained by Mr. Kimmerly that those words were included essentially for public clarity. At this time, I do not think that there is any harm in leaving those words in, neither do I think, with the amendment that will come in Clause 9, that there is any harm in taking them out. I am prepared at this time to go back and pass (e) as it is, unless the Minister wishes himself to remove the words to make it a simpler Bill. I have no amendment to (e) or, as I say, to Clause 6 as a whole.

Hon. Mr. Kimmerly: After the amendments on Clause 9, I would suggest that the phrase, "after a person's nineteenth birthday", should be removed in order to avoid attention a potential *Charter* challenge. I will be presenting an amendment tomorrow, perhaps, about (e). I would submit though that the deal with Clause 9, next — that is to take the Clauses out of order and to deal with Clause 9 and the amendment — because it may affect the consideration of, especially, Clause 8. If that is agreeable, I am suggesting that that is the best way to proceed.

Chairman: Is there unanimous consent to move to Clause 9?

Mr. Nordling: Yes, perhaps we can do that. I have prepared an amendment to 6(e) deleting the words "after a person's nineteenth birthday", and I would be prepared to propose an amendment at this time. That can be taken care of, and then I would suggest we move to Clause 9.

Chairman: Does that meet with unanimous agreement?

Hon. Members: Yes.

Amendment proposed

Mr. Nordling: I would just like to read the amendment into the

record. I would move that Bill No. 99, entitled *Human Rights Act*, be amended in Clause 6(e) on page 3 by deleting the words "after a person's nineteenth birthday".

Hon. Mr. Kimmerly: We agree with this amendment.

Chairman: The amendment carries.

Amendment agreed to

Chairman: Does 6(e) carry as amended?

Some Hon. Members: Agreed.

Chairman: And clause (l)?

Some Hon. Members: Agreed.

Chairman: So the only one outstanding is 6(i). Is it now the wish of the Committee to move to clause 9?

Clause 6 stood over

On Clause 9

Amendment proposed

Mr. Nordling: I would like to propose an amendment to clause 9. That amendment is:

That Bill Number 99, entitled *Human Rights Act*, be amended in clause 9 at page 4 by deleting the word "selection" and replacing it with the word "treatment"; and

by deleting the word "or" in paragraph 9(b) where it appears the second time; and

by adding the word "or" immediately after the word "offered" in paragraph 9(c); and

by adding paragraph 9(d) as follows:

"other factors establishing reasonable cause for the discrimination."

The reason for the amendment adding clause 9(d) is to take care of the concern of the insurance companies and for clarity. The replacement of the word "selection" with "treatment" is to be consistent with clause 6, which reads, "It is discrimination to treat any individual". We are making it consistent.

The deletion of the word "or" at the end of clause (b) and moving it down to the end of clause (c) is simply housekeeping.

Hon. Mr. Kimmerly: This is a well-reasoned amendment. It improves the Bill, and I thank Mr. Nordling for making it.

Amendment agreed to

Mr. Phelps: In order to be consistent, I ask that Clause 9(b) be set aside until we have a determination on Clause 6(l).

Hon. Mr. Kimmerly: That is agreeable.

Clause 9(b) stood aside

Mr. Phelps: We are prepared to clear the rest of Clause 9 except for Clause 9(b), as amended, if that is what you would like to do.

Clause 9(a) agreed to

Clause 9(c) as amended agreed to

Clause 9 stood over

On Clause 7

Amendment proposed

Mr. Phelps: I am racing around trying to find some copies of amendments I had. I now have a proposed amendment to Clause 7 that I would like to move, and have circulated. The amendment reads that Bill No. 99, entitled *Human Rights Act* be amended in Clause 7(1), at page 3, by deleting the words, "any of the characteristics listed in section 6", and by substituting therefor the following words: "physical disability".

Chairman: Is it necessary to read that?

Hon. Mr. Kimmerly: No, Mr. Chairman.

We may introduce this I suppose, but a debate occurred in general debate about exactly this issue. Again, in the spirit of cooperation and serious consideration, after anybody has anything to add to the debate in general debate, I would ask to stand this section and this amendment, to consider it overnight.

Amendment proposed

Mr. Phelps: I would also like to table another amendment to Clause 7, so it can be considered as well. I will read it out for the record and then have it tabled once the Page comes back with some photocopies. It is an additional clause. The amendment reads:

THAT Bill No. 99, entitled *Human Rights Act*, be amended in Clause 7 at page 3 by adding subclause "(3) This Act does not apply to the structures which, at the commencement of this Act, were existing and complied with the applicable requirements of the

Building Standards Act and Regulations under that Act.”

I do not have a lot to add to what was said in general debate with respect to the certainty issue and section 7. The concern expressed then I express very briefly again. That simply is that I do not really know how far this section goes with respect to the imposition of the special duty to provide the special needs.

To date, the law regarding the duty to provide for special needs seems to be centred pretty well exclusively on physical disability.
52 Both of the amendments that we will be speaking to tomorrow really turn on the issue of certainty. The second clause that we introduced was simply a grandfathering clause for existing buildings that meet existing standards in regulations. This clause is because I really cannot imagine what kinds of duties might be entailed by the rather broad words in section 7(1) when one tries to relate that and imagine the kind of complaints and litigation that might come forward under section 6.

Certainly section 7(1) is almost unique in phrasing the duty in a positive way among statutes in Canada. Generally, the duty springs from the negative wording of discrimination, it being discriminatory to do certain things. So, my respectful submission is that the amendment restricting it to physical disability would certainly be an amendment that would make the Bill far more certain in its application.

Hon. Mr. Kimmerly: I would again ask to stand the amendment for consideration overnight.

Clause 7 stood over

On Clause 8

53 *Clause 8 Agreed to*
On Clause 10

Mrs. Firth: I would like to propose an amendment to clause 10(3)(a), and I will read it into the record if I may, and then ask that you report progress on the Bill in order to give the Government Members an opportunity to look at the amendment. The reason that I am doing that is that we had not anticipated the Minister would stand over some of the clauses, and I do not want to have the Pages rushing around photocopying things. I would like to read the amendment and I will give the Members a copy before we leave this evening.

Amendment proposed

Mrs. Firth: I would like that Bill No. 99 entitled *Human Rights Act* be amended in clause 10(3)(a) at page 4 by adding after the word “home” the following words:

“or in any exclusively religious, charitable, educational, social, cultural or athletic organization.”

54 **Chairman:** Is it agreed to stand?

Hon. Mr. Kimmerly: Yes, Mr. Chairman. I would ask to stand the amendment and, in view of the expeditious way that we are proceeding, I would ask it may save time tomorrow and, possibly, Thursday, to have notice of any other amendments for consideration by the Caucus and for study by legal advisors and the like.

Clause 10 stood over

Chairman: Any further business?

Hon. Mr. Kimmerly: I move that you report progress on Bill No. 99.

Motion agreed to

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

Motion agreed to

Speaker resumes the Chair

55 **Speaker:** I will now call the House to order. May we have a report from the Chairman of 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 of the Chairman of the Committee of the Whole. Are you agreed?

Some Hon. Members: Agreed.

Speaker: I declare the report carried.

Hon. Mr. Porter: I move the House do now adjourn.

Speaker: It has been moved by the hon. Government House Leader that the House do now adjourn.

Motion agreed to

Speaker: This House now stands adjourned until 1:30 pm tomorrow.

The House adjourned at 5:23 p.m.

The following Legislative Returns were tabled February 10, 1987:

87-3-43

Monitoring of the Del Van Gorder gym for safety reasons
Oral, Hansard, p.496 (McDonald)

87-3-44

Rural, and Whitehorse, Facilities studies
Oral, Hansard, pp. 499-501 (McDonald)

87-3-45

School capital projects updates
Oral, Hansard, pp. 496-503 (McDonald)

87-3-46

Whitehorse West Sub-Regional Plan and Klondike Valley Sub-Regional Plan
Oral, Hansard, p. 607 (McDonald)

