



# The Yukon Legislative Assembly

Number 75

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26th Legislature

## **HANSARD**

**Wednesday, February 11, 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 Penikett	Whitehorse West	Government Leader. Minister responsible for: Executive Council Office; Finance; Economic Development; Mines and Small Business; Public Service Commission
Hon. Dave Porter	Watson Lake	Government House Leader. Minister responsible for: Tourism; Renewable Resources.
Hon. Roger Kimmerly	Whitehorse South Centre	Minister responsible for: Justice; Government Services.
Hon. Piers McDonald	Mayo	Minister responsible for: Education; Community and Transportation Services.
Hon. Margaret Joe	Whitehorse North Centre	Minister responsible for: Health and Human Resources; Women's Directorate.

## GOVERNMENT PRIVATE MEMBERS

### New Democratic Party

Sam Johnston	Campbell
Norma Kassi	Old Crow
Art Webster	Klondike

## OPPOSITION MEMBERS

### Progressive Conservative

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

### Liberal

James McLachlan Faro

## LEGISLATIVE STAFF

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Clerk Assistant (Legislative)	Missy Follwell
Clerk Assistant (Administrative)	Jane Steele
Sergeant-at-Arms	G.I. Cameron
Deputy Sergeant-at-Arms	Frank Ursich
Hansard Administrator	Dave Robertson

<sup>01</sup> **Whitehorse, Yukon**  
**Wednesday, February 11, 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 proceed at this time with the Order Paper.  
 Introduction of Visitors?  
 Are there any Returns or Documents for Tabling?

#### TABLING RETURNS AND DOCUMENTS

**Hon. Mr. Penikett:** I have two documents for tabling; one is a legislative return to a question asked by the hon. Member for Porter Creek East arising out of the budget discussions. The second is a copy of a response I have provided by way of memorandum to the hon. Member for Riverdale South in connection with precautions to protect microfiche information.

<sup>02</sup> **Speaker:** Are there any Reports of Committees?  
 Are there any Petitions?  
 Introduction of Bills?  
 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

##### **Kaska Dena Litigation Against the Federal Government — Response of Yukon Government to Protect Yukon Interests**

**Hon. Mr. Penikett:** I wish to report to the Legislature today on the response our government will take to protect Yukon interests in the federal court case commenced by the Kaska Dena Council.

The lawsuit filed by the Kaska Dena Council against the federal government is based on the 1879 Imperial Order-in-Council that brought into the Dominion of Canada all of the lands then known as the "Northwestern Territory". Most of the Yukon and the Western Arctic are covered by this Imperial Order. The issues raised by this case affect the Governments of the Yukon and the Northwest Territories and all of the aboriginal people living in the area covered by the Imperial Order.

To protect Yukon interests in the lands affected and to preserve the progress we have made in reaching a land claims settlement, the Yukon Government will initiate the following measures:

1. We will continue to pursue solutions through negotiations. Recent discussions with several overlapping claimant groups, including the Kaska Dena Council, clearly revealed that negotiated solutions continue to be preferred.

Accordingly we will continue to meet with all overlapping claimant groups and the federal government to determine what can be resolved through negotiations.

2. In order to be assured that the special interests of the Yukon are fully and properly addressed by the federal government in the court case, we will apply to intervene in the federal court. Cabinet has instructed the Department of Justice to retain expert legal advice to assist us in preparing our case.

3. The important constitutional questions raised in this litigation will result in this case being ultimately heard by the Supreme Court of Canada. Consequently, processing the case through the Federal Trial Court of Canada, to the Federal Court of Appeal, and finally to the Supreme Court of Canada will be a costly and protracted process. Prolonged litigation may severely delay the resolution of land claims and jeopardize future developments within the Yukon.

To minimize these delays, costs, and disruptions, we will press the federal government to make a direct constitutional reference to the Supreme Court of Canada.

While we recognize the federal government bears the primary

constitutional responsibility for resolving all aboriginal claims, the interests of the Yukon people necessitate our active participation. Our responses are designed to move on all fronts to resolve as quickly as possible all outstanding aboriginal claims, and thereby enable Northerners to direct their energies to the challenges of northern development.

<sup>03</sup> **Mr. Phelps:** I rise to say that I am pleased the government has finally agreed to apply to intervene in the Federal Court. This announcement makes it unnecessary to proceed with my motion on the Order Paper, which reads as follows:

THAT it is the opinion of this House that the Government of Yukon should engage a law firm with expertise in conducting litigation in the Federal Court of Canada, the Federal Court of Appeal and the Supreme Court of Canada and instruct that firm to intervene on behalf of the Government of Yukon in the Court Case No: 3.86 launched by the Kaska Dena on December 19, 1986 in the Federal Court of Canada Trial Division.

Today's announcement shows a change in position of the government since last December. In December, the Government Leader said it would intervene, but only if it becomes necessary to protect Yukon's interests. The government now realizes that it had a duty to intervene right from the inception of this lawsuit. After all, the circumstances have not changed.

In December, the Government Leader said it is our current understanding that the Kaska Dena Council, in their court action, do not intend to interfere with Yukon land claims or with any third party interest in the Yukon. The Government Leader now admits that the litigation will delay the resolution of land claims and jeopardize future developments within Yukon.

In today's statement, the Minister states that it will press the federal government to make a direct constitutional reference to the Supreme Court of Canada. In our opinion, such a tactic is unwise. The onus is on the Kaska Dena to prove the existence of aboriginal title over a specified area of land in Yukon.

To accomplish this, they must prove their exclusive use and occupancy over certain lands since time immemorial.

<sup>04</sup> Our government must take this opportunity to test the Kaska Dena Claim, and this requires a full trial in which evidence may be produced by the Kaska Dena and tested by the other parties. If our government does not insist on a full trial with witnesses, it will be derelict in its duty to all Yukoners. Of course, such a trial cannot take place in the Supreme Court of Canada.

As I have already said, we welcome this government's announced intention to intervene. We hope that it will take the necessary steps to protect all Yukoners in this important case.

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

#### QUESTION PERIOD

##### **Question re: Northern land use planning agreement**

**Mr. Phelps:** The Minister of Community and Transportation Services tabled Legislative Returns to certain questions I raised regarding the land use planning process for Whitehorse West and for the Klondike Valley.

One of these returns states the following: "That as a result of representation by the Council for Yukon Indians, Indian representation was increased to reflect the one-third Canada, one-third Yukon and the one-third CYI formula in the proposed Northern Land Use Planning Agreement.

My question of the Minister is what is the status of the proposed Northern Land Use Planning Agreement right now?

**Hon. Mr. Porter:** That specific responsibility rests within my department, and I can tell the Member that there is a draft agreement that has been produced between ourselves and the federal government, but that agreement has not proceeded to the final stages.

<sup>05</sup> **Mr. Phelps:** There was an agreement, which had been agreed to by all three parties, about three years ago. I am wondering which party — the CYI, the federal government or the Yukon government

— is wishing to change the terms of the agreement that was reached after extensive negotiation?

**Hon. Mr. Porter:** I believe that the Member is speaking to the proposed agreement contained within the agreement-in-principle negotiated at the land claims table. The draft agreement that has been negotiated follows, for the most part, the principles that were contained in that proposed agreement.

**Mr. Phelps:** For the Minister's information, I was not referring to the Agreement-in-Principle; I was referring to the agreement that was negotiated at some length, and it took a long period of time and was agreed upon by all parties, but not signed. I am wondering whether we could be advised as to which party, or whether all parties, wanted to change the agreed land use planning formula?

**Hon. Mr. Porter:** Basically, I think the proper characterization of the most recent negotiations held on the land use planning agreement would fall in the area that all parties that were involved were agreeable to negotiating further.

#### Question re: Northern land use planning agreement

**Mr. Phelps:** Again, with regard to the northern land use planning agreement, when can we expect to see the agreement? When is it to be completed, and when is it to be tabled in this House?

**Hon. Mr. Porter:** I think that a general timeframe would be best said that the potential for an agreement this spring clearly exists. I cannot be definite as to when that agreement will be concluded, but, as a general timeframe, I would say within the next couple of months.

06

#### Question re: Resource Development Impact Project

**Mr. Phelps:** Again, on the issue of land use planning in Yukon, I have been receiving some correspondence from the Carcross-Tagish Indian Band with respect to the Mount Skukum-Wheaton River Valley area, speaking about the Resource Development Impact Project. Can the Minister advise what input, if any, this government has into the Resource Development Impact Project, and exactly what that project is?

**Hon. Mr. Porter:** What is being talked about with respect to the Watson-Wheaton area is that we are looking at developing a subregional planning mechanism that will involve not only the band members in Carcross, but as well such groups as the Chamber of Commerce of the Southern Lakes Area, the community association of Carcross and the major mining corporations that are involved in that area. We are attempting to set up a subregional planning process that brings all those parties together.

As I mentioned in the Capital Budget debates, that was the purpose of some of the monies we voted in Capital — to begin that planning process.

**Mr. Phelps:** Would the Minister be prepared to tender written answers to me, in the same spirit of cooperation that the Minister of Transportation displayed, advising us about who is going to be on the planning team, the process, and all those kinds of things?

**Hon. Mr. Porter:** I would be more than prepared to follow the fine example set by the second member of the land tag team on this side of the House, and forward a written answer to the Member to inform him of all the details that are known to date.

07

#### Question re: Skagway port facility

**Mr. McLachlan:** I have a question for the Minister of Community and Transportation Services. In December a Ministerial Statement was read in the Legislature in regards to a port facility study at Skagway, Alaska in cooperation between the two governments. What is the update on the port facility? Is the study going ahead and proceeding as the Minister indicated in December?

**Hon. Mr. McDonald:** Yes, the port facility study will be undertaken jointly with the City of Skagway. I am not sure about the cost sharing arrangements, but I can check for the Member with respect to that matter. A pre-feasibility study will be undertaken, and I would hope that it could be completed in the not too distant

future.

**Mr. McLachlan:** If I understand the answer of the Minister correctly, there will be a pre-feasibility study. Based upon the results of that study, we will then embark upon a more detailed study, is that correct, which will examine further items such as cost and room for expansion in the City of Skagway?

**Hon. Mr. McDonald:** Yes. Who carries on with pre-feasibility plans will be determined at some later date. The government has no intention nor has it made any plans to engage in any further studies at this time. We will wait for the outcome of the pre-feasibility study. As I mentioned in the Ministerial Statement and around the time the announcement was made, it would be the government's intention to encourage the private sector to provide the facilities if those facilities would be justified. The options are open to us, and we will consider the options when the results of the report are made known to us.

**Mr. McLachlan:** In the Ministerial Statement, one of the things that was referred to was export of lumber out of the Yukon Territory to foreign ports at least. In light of the opening now of the mill at Watson Lake — and there is some urgency I would think on the part of the government to have answers as to the feasibility of the results and the answers produced in that study — can the Minister indicate more specifically when he hopes to have the pre-feasibility study completed?

**Hon. Mr. McDonald:** I would hope to have the pre-feasibility study completed some time this spring, but I can tell the Member that there seems to be sufficient capacity currently in the White Pass port facility to handle immediate needs for the handling of timber. I would not suspect that there is an urgency that cannot be met at the present time. We will have to determine the long term interests of the Watson Lake Forest Products as things evolve and do our best to ensure that the transportation system can handle whatever Watson Lake Forest Products produces.

08

#### Question re: Surplus school furnishings

**Mrs. Firth:** Yesterday, I read an article in the *Whitehorse Star*, dated Tuesday, February 10, where two officials from the Department of Education were interviewed by the media. Can the Minister of Education tell us if authorization was given to the department officials to speak to the media with respect to the chair issue?

**Hon. Mr. McDonald:** This is an open government. As a matter of course, I do not restrict information that is not related strictly to policy matters, et cetera, to the public. If the public comes and asks — and the public happens to be the media — and the information is known to us then, as a general rule, I encourage the department officials to respond accurately and factually to them.

I was aware that the acting deputy minister spoke to the media. I believe that, to the best of his knowledge, the information he provided was accurate.

**Mrs. Firth:** What we are trying to determine here is who is in charge and who knows what is going on.

The Minister made a commitment to the Legislature to do a full investigation. We did not ask for it to be done in the media. He made a commitment to do the investigation and bring it back here to the Legislature. Can the Minister tell me if that commitment still holds fast, or if this investigation is going to be done within the media?

**Hon. Mr. McDonald:** I committed myself to provide details of the situation to the House. I do not recall making a commitment that there would be a code of silence over the Legislature until such time as the issue was broached next by the Member for Riverdale South.

The information that we have is being collated now and will be transmitted to the Legislature as soon as it is collated, at the earliest possible opportunity. Some of the things that we have discovered are that there were chairs that were disposed of through the Board of Survey — 21 of them, to the best of our knowledge — and there are other aspects to the investigation that the Minister of Government Services and I would like to see pursued. When those things are pursued, we will transmit the full report to the House.

**Mrs. Firth:** My concern is that the officials made contradictory statements in the news report. In order to get a precise story of what happened, I would like the Minister to follow through with his

commitment that he reports back to the Legislature with respect to the issue, as opposed to it being discussed in the media.

**Hon. Mr. McDonald:** I am not familiar with the information being contradictory. There were a number of things that were provided to the media to the best of the officials' knowledge. The information is not top secret. I would suggest that the investigation will be conducted, the results will be tabled by me in this House, and any recommendations for appropriate action will be made public at that time as well, if any wrongdoing, or if any actions that should not have been done were done. There is no way of knowing that yet.

**Question re: Property taxation**

**Mr. Lang:** I have another question for one of the Members of the tag team over there, the Minister of Community and Transportation Services. It has to do with property taxation. It has come to the attention of the public that the federal government is no longer paying taxes on behalf of Indian-owned businesses in municipalities. I would like to know if it is the government's position that these businesses should pay property taxes just like other businesses within the community?

**Hon. Mr. McDonald:** It is the government's position that property taxes should emanate from some source to compensate for services provided to those businesses. Normally, it is a grant in lieu from the federal government. For the time being, it is our position, despite federal policy, that the Indian businesses the Member mentions should be considered as extensions, for the purposes of taxation, of the federal government, at least until a land claims agreement is provided, and that the federal government should pay the tax bills.

**Mr. Lang:** There are a lot of people who might disagree with that. In view of the fact that the Government of Canada has made it very clear what their policy is, and that they do not intend to pay the property taxes on behalf of Indian-owned businesses, is it the position of the government then that the municipalities will have to forego the revenue in view of the fact that the Government of Canada will not pay these taxes?

**Hon. Mr. McDonald:** If the Member is asking whether or not the territorial government is going to pick up the tab, I would suggest that the answer is no. Clearly the municipalities are going to want to provide a service, and as a local government they have to be paid for that service, and they seek recompense. I would suggest their dispute is with the federal government.

**Mr. Lang:** In a situation where a company is a joint venture between natives and non-natives, and they have a business that requires the paying of property tax, is it the position of the government that the federal government should pay that tax as opposed to the business?

**Hon. Mr. McDonald:** It depends on a number of things. I am not a lawyer and would have to check on the particular facts of the situation and report back. I would say that, historically, certain lands were federal Crown lands on which native businesses were located. Historically, the assumption was made, even prior to the policy change — and even prior to the policy change the assumption was correct — that the federal government would pay a grant in lieu for those businesses. Those businesses were on Crown land. What historically took place was that the federal government did make a grant in lieu. In like circumstances, the federal government ought to pay the grant in lieu.

**Question re: Wildlife Habitat Canada**

**Mr. Phillips:** I have a question for the Minister of Renewable Resources. Has the Government of Yukon and Wildlife Habitat Canada reached an agreement for some funding for programs in Yukon?

**Hon. Mr. Porter:** Yes, we are at the stage of an agreement, and we will be bringing forward to this House, as part of the O&M budget, the specific nature of that agreement. The agreement that we have with Habitat Canada is contingent on the fact that we also put some money forward.

**Mr. Phillips:** Since the majority of Wildlife Habitat Canada's funding, in fact in all Wildlife Habitat's funding, comes from the

sale of duck hunting licences and stamps, has the Minister consulted any of the wildlife groups in the Yukon concerning programs they are interested in pursuing?

**Hon. Mr. Porter:** Yes, I had an extensive meeting with the representative of Ducks Unlimited.

**Mr. Phillips:** Is the government planning to meet with any other groups in the Yukon that are also contributing? Yukon sportsmen contribute to Wildlife Habitat Canada when they buy a duck licence and, in fact, do have a very sincere interest in the programs they are pursuing.

**Hon. Mr. Porter:** I would respond in the affirmative to the representation made to the Member. If it is desired by the other groups to meet specifically with us on this particular issue, we would have no problem complying with that request.

**Question re: Placer mining**

**Mr. Nordling:** I have a question to the Minister of Economic Development with respect to placer mining. Two weeks ago I asked if the Minister could update this House on the status of the negotiations between DIAND and the Department of Fisheries regarding effluent standards for the placer mining industries. The Minister said that he would put the question to his officials and try to provide an update within a few days. Does the Minister have an update at this time?

**Hon. Mr. Penikett:** It is my hope to provide the Member and the House with a more complete answer. Let me tell him that, unfortunately, since Christmas we have not had any communication from the gentleman identified as a mediator by the federal government. We have, following inquiries of this House, initiated contact again. It appears that a resolution to the matter is not moving as expeditiously as we had originally thought. We are expecting a new draft proposal to which we will be responding. I have not received any information whether we received it this morning, but, as soon as we do, we will be preparing a response to that proposal. The last knowledge I have is that we have not had it yet, and we were initiating contact with the federal people.

In any event, we will endeavour to respond to the Member. If I cannot provide a complete and substantial response by the time the House rises in this sitting, perhaps the Member will be content with me communicating by letter the substance of the information he seeks.

**Mr. Nordling:** I would be pleased to receive the answer by letter if the House is not sitting.

I also asked the Minister if the government would take a position in writing to be presented at the negotiations. The question has partly been answered in the previous answer. The Minister said he would put the suggestion to his officials and see if they thought it had any wisdom. Has the Minister put that question to his officials; if so, what was the result?

**Hon. Mr. Penikett:** The Member is correct. I have already answered the question. The most useful thing for us to do, rather than to develop an entirely independent position, is to respond to the proposal put to us by the federal government, and that is what we will be doing. I have no problem sharing that information with the Members of the House and the public.

**Mr. Nordling:** My understanding is that the negotiations may have stalled. The Government Leader mentioned that, if the negotiations were not proceeding as he had thought before Christmas, he would investigate altering the present Yukon strategy of simply keeping track of the negotiations. Could I have the Minister's undertaking that the strategy will be re-evaluated?

**Hon. Mr. Penikett:** At some point, if our Cabinet deems the situation to be reaching a crisis, or an unsatisfactory breakdown in the negotiations occurs — a situation where a compromise or satisfactory resolution does not appear to be near before the next mining season — I think one proposal we will be happy to consider, and have already talked about informally, is that we might try to convene a meeting of the interested parties to see if we can expedite the discussions.

**Question re: Rural and Whitehorse Facilities Study**

**Mrs. Firth:** With respect to the legislative return the Minister

of Education tabled yesterday, the Rural and Whitehorse Facility Study, in the response, the Minister indicates that a committee of the City of Whitehorse, the Education Council, other public sources and the Public Schools Branch is developing a report summarizing the recommendations. Can the Minister be any more specific as to when the report is going to be ready?

**Hon. Mr. McDonald:** The report will be ready in the next couple of weeks. I have had indications from the responsible people that it will contain some overall conclusion, which include not only the major construction, but also renovations. As the legislative return says, that report will then be communicated to school committees and the Education Council for evaluation.

**Mrs. Firth:** In that evaluation, since there is also a rural facility study being done, when he talks about the study going to school committees, is he talking about all school committees looking at both studies, or are they going to confine it to the Whitehorse committees receiving the Whitehorse study and the rural ones receiving the rural study?

**Hon. Mr. McDonald:** I would suggest that the rural study and the Whitehorse study would both go to the Education Council, and the rural study would go to rural schools and the Whitehorse study would go to Whitehorse schools. There may be an area where the distinction between urban and rural is fudged on the periphery of Whitehorse, in which case, to be safe and sure, we would communicate both the facility studies to those Whitehorse School Committees. Anybody who wishes any facility study will receive it upon request.

**Mrs. Firth:** That was my final supplementary. I wanted to know if Members in the opposition would be provided with those studies that the Minister has been consistent in providing in the past.

**Hon. Mr. McDonald:** Surely.

#### Question re: Carcross-Fraser highway

**Mr. Lang:** Back to the tag team there, I would like to ask the Minister of Community and Transportation Services a question on an ongoing problem here: the question of sanding trucks. We had an accident here towards the end of last week, and the Minister committed himself to reporting back whether or not he deemed it necessary to locate a sanding truck in the Fraser Maintenance Camp. I would like to point out that last evening I had a number of further phone calls, in fact one from his riding, where an individual almost had a very serious accident there about two weeks ago because of the icy portion of the road.

Could the Minister update us with respect to what the situation is as far as the infamous sanding truck that he refused to locate in the Fraser Maintenance Camp?

**Hon. Mr. McDonald:** The Member continually makes unsubstantiated accusations that the failure to provide a sanding truck is a reflection on the irresponsibility of the government and the department to provide for safe driving conditions on that road. I stress that the allegations and accusations are unfounded, and I would like to have the opportunity to be able to report back to the House on the particular accident that occurred last week.

I asked the department on Monday, as I indicated in the House already, for a full and thorough accident report. There have been site inspections done and there is a request in to the RCMP for a copy of its accident report. I have also asked the department to review with the owner of Yukon-Alaska Transport and Curragh Resources, and also all the individual truckers, all the concerns they may have identified on the road, and to collate them in order to provide further information. That is the responsible approach and the indications from the department are that they are doing their best to ensure that conditions are safe.

The Vice-President for Transportation for Curragh Resources wanted me to quote him, if need be, to say that he had had discussions with Yukon-Alaska Transport recently and that he had received no complaints whatsoever from Yukon-Alaska Transport, but only kudos for the department for providing safe driving conditions on that particular road. I will provide that report to the House because it is important, if only to make all the circumstances of that particular accident clear.

**Mr. Lang:** As I indicated to the House the other day, there may well have been a variable with respect to that particular accident. Even if it was not, the fact is that there are numerous complaints being lodged by truck drivers, primarily, with respect to that section of road and the fact that it is glare ice at times and very slippery. It would be very much of an added positive step forward if a sanding vehicle were made available in close proximity to the Fraser maintenance camp, as opposed to waiting for it to come from Carcross.

Regardless of what the outcome of that particular investigation is, the question is whether or not a sanding truck is going to be located in the Fraser maintenance camp for use when it is necessary?

**Hon. Mr. McDonald:** In spite of what the Member has just said, he has been trying to tie the accident in some way to icy conditions, our preliminary indications are that there were snow-pack conditions on the road, not icy conditions, in which case sand would have very little, if any, effect.

I draw the Member's attention to the fact that there are other maintenance camps in the territory that cover a great deal of the road. Stewart Crossing covers a couple hundred miles of road, from at least Midway to Gravel Lake, with a sanding truck, which is a good deal longer than the distance that Carcross has to maintain, in terms of the highway system.

The department is committed to ensuring that when sanding is required sanding will be done.

**Mr. Lang:** First of all, just for the Minister's edification, the ore trucks do not travel over the Stewart Crossing-Dawson City highway. Secondly, the conditions are entirely different, with respect to maintenance for the Klondike Highway over that pass as opposed to the other section of road that he compared it to. He is comparing apples and oranges.

I have been confronted by numerous truckers saying that it is a problem. Do I have to crawl over broken glass to make my point? All I am asking is for a sanding truck to be located at the Fraser maintenance camp, in order to be able to be brought into use when the conditions warrant it.

Would the Minister reconsider the decision of denying a sanding truck for that particular area — unless we need a major accident to warrant it?

**Hon. Mr. McDonald:** The government's intention is to provide for safe driving conditions on that road, and on any road. If the Member feels himself to be better qualified than the highway maintenance section of the government, perhaps what I can do is provide him with an inventory of all the vehicles and all the camps, and he can pass judgment on whether or not he feels there are enough graders, snow blowers, sanders and pickup trucks in order to do the job.

#### Question re: Carcross-Fraser highway

**Mr. Lang:** Is the Minister telling me and the public that the truckers', who drive that road day in and day out, request for sanding truck is unreasonable?

**Hon. Mr. McDonald:** It has been said by me, many times, that it is in the interest of the government, the travelling public and the truckers to ensure that the driving conditions on that particular road are as safe as possible. If the conditions are icy and warrant sanding, the sanding will be done no matter where the sander is placed. If the sanding truck at Carcross cannot do the job for logistical reasons, then consideration would have to be given to provide a sanding truck at Fraser or some other location. If the sanding truck at Carcross can do the job then there is no need whatsoever to purchase another sanding truck at taxpayers' expense and put it at Fraser.

**Mr. Lang:** I just asked a question. I am bringing this forward to the House because of representation that was made to me by professionals who use the highway, who maintain that at certain times that stretch of road does not get the adequate sanding because of the need to wait for the sanding truck to come from Carcross. Does the Minister believe the truckers' requests are unreasonable? That is what I hear him telling me; the government bureaucracy knows better than the truckers; is that what he is saying to us?

**Hon. Mr. McDonald:** The truckers' requests and the travelling

public's request to have a safe road is entirely reasonable and entirely within the means of this government to provide. That is the request that I will be responding to on behalf of the government. We will ensure that the driving conditions on that road are perfectly safe. If the road requires sanding, the road will be sanded.

**Mr. Lang:** I got a long distance phone call from the Community of Elsa last night from a member of the travelling public who almost had a very major accident about two weeks ago. He claims it was because of the slippery conditions that perhaps could have been avoided with better sanding. When can I have a definitive answer so I can tell these people whether or not the Minister, in his good judgment, feels a sanding truck will be located at the Fraser maintenance camp? Will it be this week or next week so I can give them a yes or a no? Or are we going to wait for spring and then I can ask for the next fall.

**Hon. Mr. McDonald:** I will reiterate once again, irrespective of whether or not the constituent who complained comes from the beautiful community of Elsa. No matter where they come from in this territory, if they travel that road we will ensure that that road is as safe as we possibly can. The department will ensure that the road is as safe as it possibly can be.

Obviously, we cannot locate a sand truck beside every icy patch. There has to be some location for the sand truck. There is a sand truck in Carcross and, so far, I have been assured that the sand truck can perform the work at Fraser to the border and to the Whitehorse area, for the whole section of the highway. I have asked the department to review it. We will provide a report on the accident that occurred because the Member had tried to tie the accident to icy conditions. We will report back to the House conclusively as to what the conditions actually are.

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**Answer re: Faro social worker**

**Hon. Mrs. Joe:** I have a correction that I have to make with respect to a question from the Member for Faro. Yesterday, he asked me that when the position of the social worker was 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, and I answered that is the information I gave the Member for Faro in a letter. The answer was that the social worker will be based in Ross River.

**Question re: Tribal Justice Committees**

**Mr. Phillips:** Further to my question yesterday on the report by the Justice Review panel, this report recommended that Bands be encouraged and assisted to establishing tribal justice councils or committees. Has the Minister accepted that recommendation?

**Hon. Mr. Kimmerly:** Yes, in principle. I am anticipating that that very issue will be the subject of land claims negotiations and developed there.

**Mr. Phillips:** May I suggest to the Minister of Justice that the Judicial Council discussed this very matter several times when looking at JP appointments and problems they had in various communities. I would like to recommend to the Minister that he maybe look at establishing a small pilot project in Old Crow, where there is some difficulty.

**Hon. Mr. Kimmerly:** The Judicial Council has not communicated with me in any way about tribal councils. As pilot projects, that has already occurred in Carcross and in Old Crow in various forms. In Dawson City, in the 1920s, there was an experiment in the nature of the pilot project, as well.

**Question re: Deputy Minister of Education position**

**Mrs. Firth:** After reviewing the many applications for the position of Deputy Minister of Education, can the Government Leader be any more specific as to when the new Deputy Minister will be appointed — perhaps this week?

**Hon. Mr. Penikett:** No, I regret I cannot add anything to the answer I gave to the Member's question a few days ago.

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**Question re: Carcross fire alarm and pumphouse**

**Mr. Phelps:** I have a constituency question for my good friend from Community and Transportation Services.

Yesterday I asked him about the situation concerning the fire alarm which is not functioning in the municipality of Carcross. Can the Minister tell us what has been done to correct that situation?

**Hon. Mr. McDonald:** Yesterday, I was not aware that the new fire alarm that was installed was ringing without there actually being a fire in the community. The preliminary investigation suggests that the problem lies with the NorthwesTel lines that carry the signal. At the present time the departments are working on solutions to this particular matter. We hope they can come to an agreement with NorthwesTel on a solution shortly.

**Mr. Phelps:** We are also concerned about the situation regarding the fire pumphouse that was tendered and then dropped. Can the Minister advise whether or not that project will be going ahead this year?

**Hon. Mr. McDonald:** In the last few weeks we have, certainly since the Member's motion — and I believe I have sent a letter on the particular matter clarifying some of the points made in debate — attempted to get in touch with White Pass on the use of the bridge. As I indicated, they have tied in a number of issues to the general issue of making use of the bridge for a pump, and so far indications are not particularly positive that the long-term use of that bridge will be possible. I would hope we will find an alternative solution shortly. It is looking a little bleak, if one has pegged his hopes on making use of the bridge.

**Mr. Phelps:** Can the Minister advise why this matter went out to tender without having a firm agreement with White Pass about the bridge; and as well is it true that a pump has already been purchased for the pumphouse?

**Hon. Mr. McDonald:** I am not aware of any pump being purchased for the pumphouse. I can check on that for the Member. My understanding is that the pump design is unique, or special to the bridge, and there was clearly not a desire to invest in a significant capital investment that could only use the bridge. Should the bridge not be made available it would be impossible, of course, to use the pump in the pumphouse. Every attempt will be made to resolve the situation, and I can only tell the Member that at one point it seemed very likely that a pumphouse on the bridge would be a reality. Indications from White Pass were encouraging at one point, but things changed in negotiations.

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**Speaker:** Time for Question Period has now elapsed.

**Mr. Lang:** The House Leaders have reached an agreement on the Order of Business for today. That agreement is that Motion No. 86 should be called under Motions Other Than Government Motions; that the order of Motions respecting Committee Reports should not be called, and that Bill No. 7 be called for Third Reading under Government Bills. I would ask the unanimous consent of the House to follow this order of business agreed to between the House Leaders.

**Speaker:** Is there unanimous consent?

**All Members:** Agreed.

**Speaker:** There is unanimous consent.  
Motions other than Government Motions.

## MOTIONS OTHER THAN GOVERNMENT MOTIONS

**Motion No. 86**

**Clerk:** Item No. 1, standing in the name of Mr. Lang.

**Speaker:** Is the hon. Member prepared to proceed with Item No. 1?

**Mr. Lang:** Yes, Mr. Speaker.

**Speaker:** It has been moved by the hon. Member for Whitehorse Porter Creek East, THAT it is the opinion of this House that the Rural Electrification Program should be extended to include telephone service for rural areas.

**Mr. Lang:** Before you, you see a very straightforward resolution with respect to a situation that some people are experiencing, primarily outside the boundaries of municipalities. To give some history with respect to the Rural Electrification Program, it was implemented in 1984 by the then government, which was meeting a

demand by a number of unorganized areas where there was a call for electricity to be provided in certain areas. One area that comes to mind is Judas Creek.

What happened is that serious consideration was given to the request, and the decision was taken under the authority of the *Assessment and Taxation Act*, which would permit the government to effectively pay the capital cost of the installation for the property owners and recover those costs over a ten-year period.

One requirement, I should point out further to that, is that 75 percent of the property owners are required to consent to such an installation to ensure that a good majority of the people are prepared to have the service, and also to pay for the service.

This service has been quite successful. I understand that it has been implemented in two, three or four areas across the territory at the request of people in a given area. In view of what has taken place over the course of the past year, it would seem to me that it would be time to seriously consider whether or not we should consider also permitting the utilization of telephone services and costs to be put into such a program.

In reviewing the situation, I know we are not talking about a great deal of money, but it does provide a vehicle for an unorganized area to get a service that most Yukoners take for granted. I also know that a number of the personnel with NorthwesTel have, at least indirectly, encouraged the government to consider such a step forward, because it would assist them in meeting some of the demands they get from individuals in rural communities for the purposes of providing that kind of service.

It also provides the individual property owner with a mechanism to come to government for assistance. When I say assistance, I am not talking about handouts, I am basically talking about a loan where it would take ten years to recoup the amount of money that is initially put up for the capital installation.

I do not see a major problem that could be encountered by the government with such a program move. I believe that it would be in the best interest of the public we serve. It provides a mechanism, or tool, through which government can assist individuals, yet, at the same time, it is not going to be a burden for the taxpayers. It is user pay, but it provides a vehicle for individuals to get together and say they want to put in an installation at these particular costs.

I present it to the House as a positive initiative that the government can take, with very little cost to themselves. Under the regulations, the present authority is in place with the *Assessment and Taxation Act*. It would take a very minor amendment in order to put it into effect for this year.

**Hon. Mr. McDonald:** I do not intend to be lengthy in my remarks in response to the Member's motion. I can indicate to him, from the outset, that we support the motion. The idea that we should extend the program to cover rural electrification is not new. I am sure the Member knows that the government has been considering this for approximately a year. As the Member points out, NorthwesTel has made a formal request for information about the program in recent months, and has made mention of it in their presentation before the CRTC.

As the Member mentions, this program does provide for upfront funding for the extensions of power lines currently, essentially at a time when the demands on the lot purchaser are the highest. When a new subdivision is opened up and the program is made available to rural people, the demands on people to come up front with the necessary capital to buy property and to build a house make it more difficult for the property owner to assume the costs of power line installations.

This user-pay program does provide the funding over a long term. It minimizes the cost to each individual property owner by ensuring that everybody pays a share of the total installation costs. There are a number of safeguards in this program that I think are useful to re-mention, as the Member has already made mention of them. There is a requirement for 75 percent vote in favour of the installation to protect property owners' interests.

The program is successful. In the time that I have been associated with the program, the interest in the program has climbed considerably, from only a few quiet inquiries into what the program

might do, to people actually taking it up and making good use of it.

There is some good rationale in incorporating telephone line extensions with the existing program. As people have discovered, separate power poles and telephone poles for power lines and telephone lines can be a very costly venture.

I think if property owners can anticipate that they will be have both access to power and access to telephone they can do the proper advanced planning so that one set of poles can be erected for both purposes.

We, of course, will support the motion, as I say, and feel that the principles behind this program can be extended to perhaps a variety of services that rural people may wish to take advantage of.

I would like to comment briefly on one point, and that is that it would not be our intention to allow NorthwesTel to abrogate its responsibility in providing telephone extensions. We made that clear in the CRTC intervention process, and if it is clear that NorthwesTel will take its own responsibility seriously in providing telephone extensions, then we will certainly consider assisting the general public and property owners by making use of this particular program to support them as well.

**Mr. McLachlan:** I am glad to support the motion brought forward by the Member for Porter Creek East. I see it tying in, in some respects, to the debate we had two weeks ago in this Legislature about the provision of rural telephone service and the issues that relate thereto for the financial costs and the costs to the provider of the services.

Before we get into that, I would like to relate one story that I have recently experienced in Carmacks with the provision of telephone service, just to show you how bad the situation is. In one particular location, one or two individuals had requested NorthwesTel to provide them with a phone and the answer provided by the phone company was in the affirmative, that they could, thank you very much, but the price tag was \$42,000. I am not aware of too many people, other Adnan Khashoggi, who can pay \$42,000 for an individual telephone service. The debate went back and forth and the plan was revised by NorthwesTel and a different method of providing the service was arrived at. When the phone company came back with the next quote they had told the people that they had revised the program and they had come back with a substantially lower cost. They would thus time be able to do it for \$28,000. That was still out of the question, and I am sure that there are many people in this location in Carmacks that were certain that the telephone company was refinancing its major transmission line on their backs. The statistics referred to in the rural electrification program, with a 75 percent/25 percent split for the capital costs of a 10-year repayment period is exactly the type of program that would assist program in the situation that I have enumerated in receiving telephone service.

I think that the motion, as I have indicated, is indeed a good one, and without some sort of help on the part of government to people who live within a reasonable distance of established telephone service, I think there may be a very long waiting period for some of them to receive a telephone.

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**Mr. Webster:** I want to thank the Member for bringing this motion forward. It is an excellent one because it provides another option for people to pay for installing new telephone service in the way that was described.

Currently new subscribers have no choice but to pay up front in one lump sum for telephone service. This could add to a great deal of money. I want to make that clear. There was a case in my constituency. Two years ago, 75 percent of the residents of Bear Creek banded together to sign an application for service. The main line was put in this past summer. It was not until that time that the residents realized that it would cost them \$795 per multi-party line. This is probably twice what most people estimated, and it is quite a significant sum of money to put up front.

The same situation is developing for Rock Creek next year, which is just further south down the highway from Bear Creek. Already they have notified people in that area that the cost will be \$875 per multi-line service, and this is the only one available to them.



This is a very significant amount of money. If there is another option available to them, I am sure most will pursue it.

I would like to reinforce a comment made by the Minister, giving another good reason for supporting this motion and for making both programs available for electrical and telephone. That is, of course, the dual use of the telephone poles or power poles.

We have a situation in my riding where the people at Hendersons Corner, which is about 25 households, are looking for both telephone and power installation. As the Minister correctly stated, if we know in advance that these two policies are in place, we can do some proper planning in advance and kill two birds with one stone, so to speak.

I would like to thank the Member again for bringing this motion forward, and we support it.

**Mr. Phelps:** I am very pleased to rise in support of this motion brought forward by the Member for Porter Creek East. It is true, as the Minister says, that back in the good old days before the motion about quality of service a couple of weeks ago, back in the days when we were on good speaking terms with NorthwesTel, they had made an informal request to several Members, including myself, that this be extended.

Telephones are a big issue in Hootalinqua, as I have had occasion to say in the House, and one area, Judas Creek at Marsh Lake, was the area that caused the policy for electrification to be adopted in the first place. It was successfully utilized for the first time at Judas Creek and was, in fact, designed for those circumstances.

As it happens, residents of Judas Creek are looking for an extension of telephone service, an extension that would parallel the kind of development in Tagish. So far, because of the cost, it has been a no-go situation, although we are lobbying hard for it. We hope very much that this will be of assistance there. I would also like to join with the Minister in his comments that this program should in no way absolve NorthwesTel from its responsibility to give good quality service throughout the Yukon. We will be watching the policy and how it affects NorthwesTel, in the same manner as the Minister.

I am very pleased to support the motion.

**Speaker:** The hon. Member will close debate if he now speaks. Does any other Member wish to be heard?

**Mr. Lang:** Very briefly, I would like to thank the side opposite for their comments with respect to the motion that has been put forward. I am very pleased to see the success of the rural electrification program. I recall, when we sponsored that particular program, that there was some question as to how it would work and how successful it was going to be. It is interesting to look back, after three or four years, and evaluate the success of initiatives that have been taken. Most times, it does take a number of years prior to having the ability to analyze a situation to see whether or not you have met the objectives that you set out to do.

In this particular case, I am pleased to see that it has. I cannot see any reason why it cannot be extended. I also want to reiterate that it is not our intention to absolve NorthwesTel of their responsibility. As the Leader of the Official Opposition said, they do have some responsibilities, and they will have to continue carrying them out.

I should end by saying that, with respect to the program, when we brought in the rural electrification program, consideration was for including telephone service at that time. It was deferred to see how the program would work for the purposes of electrification. Initially, there was some thought to include it at the beginning of that program but, because of the economics of the day and the financial constraint that the government was under, it was decided not to proceed at that time but to wait.

In view of the financial position of the government, I cannot see why it cannot continue.

*Motion No. 86 agreed to*

**Speaker:** Government Bills?

## GOVERNMENT BILLS

### Bill No. 7: Third Reading

**Clerk:** Third reading, Bill No. 7, standing in the name of the hon. Mr. Penikett.

**Hon. Mr. Penikett:** I move that Bill No. 7, entitled *First Appropriation Act, 1987-88*, be now read a third time and do pass.

**Speaker:** It has been moved by the hon. Government Leader that Bill No. 7, entitled *First Appropriation Act, 1987-88*, be now read a third time and do pass.

*Motion agreed to*

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

**Speaker:** It has been moved by the 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 of the Whole will now come to order.

### Bill No. 101 — An Act to Amend the Home Owners' Grant Act (No. 2)

**Mr. McLachlan:** I move that you report progress on Bill No. 101, although somewhat limited in its scope, occasioned by the Randy Andy debate of the Member from Whitehorse South Centre.

**Chairman:** You heard that lengthy question. Are you agreed?

*Motion agreed to*

**Chairman:** Before we get into Bill No. 99, *The Human Rights Act* we will recess for 15 minutes.

*Recess*

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

### Bill No. 99 — Human Rights Act — continued On Clause 7

**Hon. Mr. Kimmerly:** I would ask the indulgence of Members to return to the clauses stood over, but again to stand over Clause 6(i), criminal charges, for another day, and to proceed to Clause 7 and the amendments which we have been given notice of.

**Chairman:** Does this meet with the agreement of the Committee?

**Some Members:** Agreed.

**Chairman:** It is agreed then.

**Mr. Phelps:** On Clause 7, I have some copies of the motions that I tabled yesterday. Have they been distributed? Do you need copies?

I will table the first one — after I read it from one of these books I have here — THAT Bill No. 99 entitled the *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".

I spoke about this issue last night and previously discussing the issue of certainty. I have no further comments to make.

**Hon. Mr. Kimmerly:** Upon reflection of the rationale, as stated last night, the government is prepared to accept this amendment.

*Amendment agreed to*

**Mr. Phelps:** In that event we can clear Clause 7(1) as amended?

**Chairman:** Correct. Clause 7(1) as amended has been carried. Subsection (2) has not been carried.

**Mr. Phelps:** I have an amendment to Clause 7, and I suppose the amendment should read to Clause 7(2), so the amendment will be that Bill No. 99, entitled *Human Rights Act* be amended in Clause 7(2) at page 3 by adding subclause: "7(2)(1) This Act does

not apply to 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."

<sup>23</sup> I have copies to distribute.

**Chairman:** The way the amendment was originally proposed, as 7(3) would be preferred by the Chair, as opposed to 7(2)(1) to ...

**Mr. Phelps:** Fine then, I will have the amendment distributed in that form.

**Hon. Mr. Kimmerly:** This amendment provides a degree of certainty and, I would suggest, a degree of comfort which, in my opinion, is technically unnecessary, but, in fact, is a factor that adds certainty and comfort, and the government accepts it as an improvement in the Bill. We intend to support it.

**Chairman:** Is there any further debate? Are you agreed to the amendment?

*Amendment agreed to*

**Chairman:** Then 7(3) is carried as amended.

*Clause 7 agreed to as amended*

*On Clause 9*

**Chairman:** Clause 9(b) was stood over.

**Mr. Phelps:** I suggest that that be continued to be stood over until we resolve the issue of Clause 6(i).

**Chairman:** It has been agreed.

*Clause 9 stood over*

*On Clause 10*

**Chairman:** We are on 10(3)(a).

*Amendment proposed*

**Mrs. Firth:** Last evening I proposed an amendment to this clause, and I have copies of that amendment for the Members. I will read out the amendment: THAT Bill No. 99, entitled *Human Rights Act*, be amended in Clause 10(3)(a) by adding after the word "home", the following words, "or in any exclusively religious, charitable, educational, social, cultural or athletic organization."

I brought forward this amendment particularly at the request of the Ministerial Association, in view of the acceptance of Clause 6(g), I believe it is, sexual orientation, and it was a concern of theirs that they would no longer have the ability to determine the individuals employed by them.

<sup>24</sup> They were particularly interested in Clause 13(1) in the *Fair Practices Act*, which said, "This ordinance does not apply to employment of persons (a) in domestic service in a private home, (b) in any exclusively charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for private profit, or (c) in any organization that is operated primarily to foster the welfare of a religious or racial group, and that is not operated for private profit."

We chose to put it in addition to Clause 3(a) and changed the wording a bit to be consistent with the wording of 10(1), and to be consistent with the Minister's objective of keeping the wording understandable and the Act brief and simple.

**Hon. Mr. Kimmerly:** This presents a substantial difficulty. I am going to argue that it is unnecessary. I will argue the necessity first, because that is the most important aspect.

I would argue that, especially now that section 9 has been strengthened concerning reasonable requirements or qualifications and additional factors are included, that is, the concept of reasonable cause is strengthened now, that there is no necessity for this amendment at all.

I would refer Members to a case, the leading case in this area now, *Caldwell and Stewart*, which was decided in the Supreme Court of Canada, the decision of December 20, 1984. The factual situation there is that a Roman Catholic teacher in a Roman Catholic school was not rehired, or her contract was not renewed, after she married a man who had previously been divorced in a civil ceremony.

<sup>25</sup> It was a marriage recognized by the civil authorities, or the law, but not recognized by canon law under the Roman Catholic Church, so under canon law, technically she was living with a man in an unmarried state, or living in a state of adultery, solely because her contract was not renewed. This arose in Vancouver and went to the BC Commission and then through the BC courts, the BC Court of Appeal and right to the Supreme Court of Canada. They held that,

in fact, she was disqualified, and that the requirement for teaching in the school that the person be in good standing in accordance with canon law was legitimate.

They served to define the question of bona fide qualifications for employment, especially in this situation. They found that that was a legitimate exercise of a bona fide qualification, or, to put it another way, this woman, by violating the canon law, disqualified herself from employment in that situation.

I would suggest that because the factual situation there is somewhat milder than the person who is homosexual, certainly in social terms and accordingly would certainly allow the church laws, authorities or standards to be applied. The situation is really quite clear and there is no danger. I would argue that this is unnecessary.

Going on to the other argument, this amendment essentially exempts these organizations essentially from the whole Bill because Section 8 is the real meat of the Bill. The Bill does not apply to many things that religious organizations do. It only applies in the way that Section 8 describes offering or providing goods and services to the public, and employment and the like.

<sup>26</sup> In my judgment, it would not be a thing that most religious, charitable, educational, social, cultural or athletic organizations would even want, to be exempted generally from the whole Bill or, practically speaking, from the whole Bill. In fact, there is no real need to legislate for these kinds of organizations. They are generally very fair-minded in any event. There is a potential harm if we exempt these kinds of organizations described so widely from the Bill. I am going to use the example that has been used before of the Klu Klux Klan. There are such cultural organizations, or social organizations. I would suggest that we do not want to exempt those kinds of organizations from the Bill, generally. I would suggest that there are certainly some exemptions necessary in section 10(1) and the concept of reasonable cause and bona fide qualification answer very adequately those concerns.

Consequently, we are not convinced in the utility of this amendment.

**Mrs. Firth:** I would like to express to the Minister what the concern is. He has already admitted that he feels that these organizations are generally fair minded. The concern is that if that is so, why not continue to allow those organizations to make the decision, as opposed to the Commission doing it. That is where the religious organizations, particularly, feel that they have lost the ability to make those decisions.

**Hon. Mr. Kimmerly:** This is a theoretical concern, rather than a practical concern. The practical concern has been about qualifications for teachers, especially in religious-oriented or religiously run schools. The Supreme Court has handled that question very nicely, and the law is quite settled, as much as you can say about a Supreme Court of Canada case only three years ago — actually two years and two months ago.

<sup>27</sup> The potential for organizations that are on the fringe, shall we say — you can argue about some of the less popular but infamous as the Moonies, the Hari Krishnas and those sorts of organizations — that there is the public interest in seeing that the general principles about discrimination apply widely. There is certainly a public interest in allowing for things like religiously-run schools to operate and to hire teachers of a particular religious practice and faith. That issue has been adequately dealt with, and this amendment goes far too far and allows for other things that are undesirable.

**Mr. Phelps:** I would like to go through some of the comments made by the Minister in response to the proposed amendment.

I am not exactly sure whether the Minister has the intent of this proposal. This proposal deals only with the employment people, not with the other grounds of discrimination set forward under Clause 8. The Minister has referred to the *Caldwell versus Stewart* case decided in the Supreme Court of Canada. The problem that I have with that, as justification for denying this amendment, is that the facts may be somewhat unique and there is absolutely no guarantee that the case will give comfort to the organizations for which this amendment is intended to protect. There is no real indication that because a person, say, is gay, and wants to teach in a church that feels that that is wrong, that that is the same, in kind, as the teacher who is judged not to be married by canon law. It is certainly not

clear from the factual situation in the Supreme Court of Canada case that an exclusively cultural organization would not be forced, under certain circumstances, to engage, say, a director of the organization who was not of the same culture.

<sup>28</sup> It just seems to me that the intent of this amendment is to give solid comfort to those organizations that were given exactly the same protection under the existing legislation, mainly the *Fair Practices Act* and certainly in our minds the amendment is reasonable and there is a huge degree of uncertainty surrounding the aspect of relying solely on the reasonable grounds provided in Clause 9 under "reasonable cause".

It seems that when one starts speaking about potential mischief, I cannot see where a purely religious organization would be very mischievous if they were restrictive in who they hire for purely religious purposes, and the same would go for all of the organizations on the list. It is not intended that it go beyond employment, it is not intended to go to business organizations controlled by a church or something. It is simply that we have groups that have been created because of a shared belief or a shared object, and all of the objects here are objects that are salutary in our society. Indeed, virtually all of these classes of groups come under our general laws regarding charitable organizations, regarding exemptions from income tax, regarding governments encouraging people to assist in the creation of such organizations. For them to hire someone purely for the basis of the general objects of their organization, I do not see how that can be misconstrued or misused, and I doubt very much that any government is going to accept the Klu Klux Klan as a charitable organization for the purpose of anything, including the exemption from income tax or encouraging people to donate to that organization in order to reduce their taxable level of income.

I really see this as a very narrow amendment. I see it as simply preserving the status quo, which is there right now in the *Fair Practices Ordinance*. I see it as something that is intended to meet, and does meet, the concern raised to us by many of the kinds of groups described in the amendment. Some churches and some cultural organizations have come forward saying that they are upset because they are losing this perceived right that was in the previous human rights legislation.

<sup>29</sup> **Hon. Mr. Kimmerly:** It is interesting. I used the example of the Klu Klux Klan, because it was used by opponents of the Bill in the past — that and the Nazi Party and the like. It is interesting that when that same argument is used in the other direction, it is rejected.

The exemption in Section 10(1), which we have already passed, is perfectly adequate to address these needs. I am aware of the concern of some churches. It is a minority of churches, commonly called fundamentalist churches. It is virtually exclusively around sexual orientation, which is precisely what Mrs. Firth said when she introduced this amendment.

I am arguing that it is quite unnecessary. More than being unnecessary, it would substantially reduce the scope of this legislation. The list of religious, charitable, educational, social, cultural and athletic organizations really encompasses almost everything, except a business for profit.

The phrase "social organization" is a very wide phrase. It would include things like the Legion, the Yukon Order of Pioneers, the Elks Club, the Rotary Club, and those kinds of organizations. The principle that the government is promoting is that those organizations should have the right to promote their own organization, or to give preference to their own members and, also, to people who the organization exists to serve, if they are actually a service organization.

That is a sensible principle, but to simply give a very wide exclusion is contrary to the public interest. There may be, in the future, cases along these lines. The resolution of them ought to be that if, for example, the Rotary Club or the Elks Club wishes to employ someone either permanently or parttime or something, that it gives preference to its members, or to people whom the organization exists to serve, perhaps the Special Needs Association and people who have special needs. Those kinds of preferences are justifiable and totally within the public interest.

<sup>30</sup> However, where those organizations refuse to hire a woman or a man, or to give preference to people of only one of the sexes, or even a religion, that is not a protection they need to exist at all, and is contrary to the public interest. I would suggest that this amendment goes farther than the perceived problem, and that in fact there is no problem. There is a perceived problem by a minority of the churches, but they are simply not understanding the protections that are there. There is no problem here.

**Mrs. Firth:** I beg to differ with the Minister. I believe when we were debating Clause 1(2) under the objects of the Act, and we were talking about this Act not affecting the rights of aboriginal people established by the *Constitution* of Canada or by a land claims agreement, the Minister said exactly the same thing then, only he reversed it. He said the only reason that was there was because it was addressing a concern and was there to be reassuring. That is all we are asking for; we are not asking for extremes in this case.

We are saying to simply allow these organizations, if the Minister genuinely believes what he has said — that they are fair-minded organizations — to make the determination as opposed to the Commission. As in Clause 1(2) in the objects, there are other protections for that minority group also. Maybe I could put it to the Minister this way: maybe he would consider including it then for the comfort of those organizations and groups who are making the request. That was the reason and the logic he gave us for the Act including Clause 1(2) in the objects. Certainly the Minister cannot deny that to that minority group. Then, both minority groups are, in a sense, being treated equally and being treated fairly.

**Hon. Mr. Kimmerly:** Were this a case of simply giving comfort, as one or two of the other amendments have been, we would have no objection. It does a lot more than just give comfort. It opens a very, very large loophole. It reduces the scope of the Act quite substantially, and for that reason we cannot accept it.

<sup>31</sup> **Mrs. Firth:** I disagree with the Minister. It is giving comfort. It is a concern that it is a protection, or a right, that these organizations presently have and that it is being taken away from them. It is no different than the discussion we got into about the land claims process and about existing protections for aboriginal peoples and new protections. It is the same argument. If these organizations are fair-minded, as the Minister said, then it would only be logical that they be allowed to make those determinations, as opposed to the Commission doing it, and that they not feel that even the new clauses, or the new amendments to Clause 9, would satisfy their concern.

**Mr. Phelps:** In looking at the booklet put out by the government, if you read the explanation of Clause 10, under exemptions, in the last sentence, a church could insist that an employee handling religious matters be a practising member of their own faith, but could not refuse someone a job because of their age or ancestry or sexual orientation, and that is what the churches are concerned about.

**Hon. Mr. Kimmerly:** No, that is not accurate. The explanation is accurate, but it is there as an example. It is exactly as in the Caldwell and Stewart case. If a person is not practising according to the church rules, that would operate as a disqualification for a church. We have no less of an authority for that general principle than the Supreme Court of Canada. The protections here are very clear and, I would submit, quite concrete, now that the Supreme Court of Canada has laid down the rule very well.

*Amendment agreed to*

*Clause 10 agreed to as amended*

<sup>32</sup> *On Clause 11*

**Mr. Lang:** Can the Minister tell me the reason for the section?

**Hon. Mr. Kimmerly:** I can explain what systemic discrimination is, but that is explained on the explanatory notes I think as well as I can explain it. The reason is that in some of the earlier cases conduct which is not designed as being discriminatory has been held to be not covered in other Acts because this section was not there.

The question of whether something is discriminatory or not should depend on the result of the action not solely the intention of the person who is perpetrating the Act. One of the best examples is

the restrictions for hiring and weight and height restrictions and, in fact, some of those are reasonable qualifications for the job, but not all of them have been. They have operated as a practical barrier to some races and most often women, and there is a need to specifically state in the law that discrimination is actions that result in discrimination.

<sup>33</sup> *On Clause 12*  
*Clause 12 agreed to*  
*On Clause 13*  
*Amendment proposed*

**Mr. McLachlan:** I have an amendment to propose for Clause 13(1). The amendment says:

That Bill Number 99, entitled *Human Rights Act*, be amended in sub-clause 13(1) at page 5 by adding the following paragraph immediately after paragraph (b):

“(c) no person shall induce any employee, by direct or indirect means

(i) to participate in any political activity or  
 (ii) to refrain from participation in any political activity when not at his or her place of employment.”

In explanation, it was intended to be part of 6(j) but, because of the very simple nature in which the prohibitive grounds are specified in the legislation, this particular amendment would have muddied the water in the manner in which Clause 6 is written, leaving the only logical place to put it under 13(1).

As I explained earlier, it is a companion to 6(j). If we are to prohibit discrimination on the basis of political activity, then it is only fair to not also unduly induce someone to join a political party or not to join a political party, simply on the basis of rewards or, put simplistically, it is intended to say that nobody should be promised a job of a deputy minister or a director in a particular department because they may or may not be packing the right political card.

**Hon. Mr. Kimmerly:** I wonder if the mover of the amendment might consider the friendly amendment, or perhaps I should propose a sub-amendment to delete the word “any” and substitute the words “his or her”.

The meaning, or the general intent, of this amendment is certainly acceptable to the government, but the wording presents a problem. If the wording is left as it is, it would apply to people who are employees, and if an inducement were made by anyone to an employee, it would be caught. There may be legitimate reasons to induce people to participate or refrain from participation in political activity, but the intent here is that if the employer induces the employee.

*Sub-amendment proposed*

**Hon. Mr. Kimmerly:** Perhaps I will move a sub-amendment that in the amendment the word “any” be deleted and substituted by the words “his or her”.

**Chairman:** Just for clarification, is that where the word “any” appears the second time, or the first time?

**Hon. Mr. Kimmerly:** Where the word “any” appears the first time.

**Chairman:** Just to clarify that, a sub-amendment has been moved to replace the word “any” as it first appears in the amendment, by the words “his or her”. Debate on the sub-amendment?

**Mr. Lang:** I think perhaps the government should take some time to consider it as opposed to giving it *carte blanche* and verbal on the floor. On one hand, they are asking for us to put our amendments forward in such a manner as to give them 24 hours to consider in conjunction with their legal people, which I appreciate and think should be done. We are considering laws here and just because it is a whim and a person likes the idea, I have a number of concerns about the idea.

Here is a case for another complaint. Where does this apply with respect to somebody who comes up to the Minister in a private conversation in the cafeteria at coffee break, and says that he or she would like to participate in the political process? Are you supposed to stand there and say, “No”? If you answer one way or the other, that is adequate charge to say that he was directly or indirectly induced to participate. I think it is very, very dangerous. If

somebody is approached one way or another, we are in a situation where people can take retaliatory measures where somebody has had an innocent conversation. I think we have to look at that very seriously.

It is difficult enough to get people in our small population to be prepared to participate. If we get more law into place, we will have a situation where people will say, “Oh no, not me; that is the other guy’s responsibility”. Really what are we doing in the spirit of making it a perfect world. Harassment is one thing, but to have an indirect or direct conversation with somebody under this particular section is very dangerous, I think. If you are going to do this, then put it into the *Elections Act* where it belongs, not in the *Human Rights Act*.

<sup>35</sup> **Hon. Mr. Kimmerly:** I have no problem at all with the prospect of standing this over. In fact, after we deal with the sub-amendment, I was going to argue on the amendment. The Member for Faro and I have discussed this and we have discussed the concept of coercion rather than inducement. The phrase “induce any employee by a direct or indirect means” is extremely wide, and pressure or coercion is perhaps the better phrase to use. In any event, I have no problem with standing this matter over.

**Mr. Nordling:** I would just like to make one comment on it. I would prefer it to be stood over too and, just glancing at it, I would ask the Member who brought it forward to look at the last words in section (ii) “when not at his or her place of employment.” If that was intended to refer also with respect to section (i), it should be at the end of that section also or section (i) and section (ii) could be removed and it could read as one paragraph.

I think the Member should look at the intent with respect to the place of employment when talking about participating in any political activity as well as refraining from participating. I agree it should be stood over and looked at a little more carefully.

**Mr. McLachlan:** I have no problem in standing it over if the Members wish to re-examine it. I would agree with the comments of the Minister of Justice that perhaps the word “coerce” is a stronger word than “induce” and that “induce” is too wide. I find myself not agreeing with the comments from the Member for Porter Creek West, because many people are aware of the fact that rewards can be offered as inducements for carrying on or to join a political party with the hopes of further reward. That is the reason that it is in there. I cannot agree with those comments.

**Mrs. Firth:** I have a concern. Perhaps the Member who is sponsoring the amendment could respond to it when he returns with any proposed changes or explanations. My concern is that I interpret this as affecting the private sector as well and, therefore, if someone who is running a business had some employees there and were asked to do some political activity like stuff envelopes or something, would that be considered an inducement of being involved in a political activity, which I do not think is an inducement, but I would have to have some further explanation on that.

<sup>36</sup> **Hon. Mr. Kimmerly:** It appears that this is approaching the conclusion of the debate before it is stood over, although I do not mean to preclude any other Members from speaking in any way, if they wish. This problem is an example of what problem we can get into if the amendments are not presented in such a way as we have some notice about them — I mean notice to all parties and time to properly reflect upon and consider the amendment.

*Clause 13 stood over*

*On Clause 14*

**Mr. Nordling:** My position with respect to Clause 14(1) is that a pay equity clause, which this is, whether it be equal pay for work of equal value, equal pay for similar work or equal pay for equal work, should more properly be in the *Employment Standards Act*, where this issue is dealt with at the present time. Failing that — and I am assuming that the government will insist on having a pay equity clause in this Bill — I would like to propose an amendment to make Clause 14 consistent with the *Employment Standards Act*.

**Chairman:** Read it, please.

*Amendment proposed*

**Mr. Nordling:** It is a fairly lengthy amendment, however, I will tell the Members that it is taken virtually exactly from the

*Employment Standards Act*. I am sure that they have all read it. I will read it into the record.

I move That Bill Number 99, entitled *Human Rights Act*, be amended in Clause 14 at page 5 by deleting the title preceding Clause 14 and by deleting Clause 14 and substituting the following:

"Pay Equity

14.(1) No employer or person acting on behalf of an employer shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee, or vice versa, employed by him for similar work performed in the same establishment under similar working conditions and the performance of which requires similar skill; effort and responsibility, except where such payment is made pursuant to

- (a) a seniority system;
- (b) a merit system;
- (c) a system that measures earnings by quality of production; or
- (d) a differential based on any factor other than sex.

(2) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(3) No organization of employees, as the case may be, or its agents, shall cause or attempt to cause an employer to pay his employees rates of pay that are in contravention of this section.

(4) Where an employer has not complied with this section, the Board may determine the amount of monies owing an employee, and such amount shall be deemed to be unpaid wages."

This amendment, in a sense, goes further than the clause that now exists in that it would apply to both the public sector and the private sector.

**Chairman:** Is there any debate on the amendment?

Are you ready for the question on the amendment?

*Amendment negatived*

*Amendment proposed*

**Mr. Lang:** I would further propose an amendment which, in view of the commitment by the government to the communities, should be seriously considered, and given the stated principle that the Government Leader and his Cabinet have put forward, that when it comes to the responsibilities of the municipalities, their responsibilities should be theirs to take care of, and the senior level of government, the Government of Yukon, should stay out of their business.

In order to be able to comply with that particular section, I would move the following motion: THAT Bill No. 99 entitled, *Human Rights Act*, be amended in Clause 14 (1) at page 5, by deleting the words, "and municipalities and their" after the word "Yukon", and by substituting therefor the following word: "its".

**Chairman:** The amendment is in order.

**Mr. Lang:** I should hope so, Mr. Chairman.

The amendment we have before us is following a principle that I think all sides of the House have espoused at one time or another. It flows from the passage of the *Municipal Act* that was passed in 1980 by all Members of the House, unanimously. Endorsed in that particular piece of legislation was the principle that the municipalities were capable of handling their own affairs and, therefore, wherever possible they should be in a position to make their own decisions, politically and economically, within their financial framework.

What I have proposed is a motion that takes out the requirements of the municipalities to apply the principle of equal pay for work of equal value, and maintain the present principle that is in the *Employment Standards Act*, and, if they wish, to bring into effect the concept of equal pay for work of equal value. That would be their decision to make.

Right now, the way the Act is proposed, the government is making the decision on behalf of the municipalities. They are saying to the community of Dawson City, to the village of Haines Junction, the town of Watson Lake and the City of Whitehorse: you shall implement the concept of equal pay for work of equal value.

I will stand here and defend the government's right to implement it as the senior level of government for their own employees. I recognize that by the count in the House the government has the majority, and they can exercise it accordingly. What I am proposing

here is that I do not believe they have a mandate from the municipalities to invoke and enforce such a principle on the municipalities.

For example, take the neighbourhood that I represent, Porter Creek East, people are coming to the realization that, if this concept is put into effect for the City of Whitehorse, as high as a five percent increase in taxes could be felt by all property owners within the City of Whitehorse. That is substantial, when you think that an average tax bill in the City of Whitehorse runs in the neighbourhood of \$800 to \$1,000 — in some cases \$1,200 and \$1,500. You start adding five percent on for the implementation of such a concept, then it is going to affect every homeowner within the City of Whitehorse and, for that matter, the communities throughout the territory.

It would seem to me that, in deference to the community, the communities, themselves, should be able to make that decision of how they want to deal with their collective bargaining process and deal with the final agreement that is arrived at between their employees and the employer relationship that has developed in the various communities.

I think it is safe to say that I believe the village of Haines Junction, the village of Watson Lake — and now I believe, Dawson City, as well — have taken a position that they do not want to come under this particular section of the Bill; not that in some cases that they might implement it themselves, just from the principle that they do not believe it should be forced upon them.

Accepting that principle, I can understand that. If the City of Whitehorse wishes to implement the principle, that is its decision to make. It is their decision to face the electorate at any given time with respect to the tax increases that they have to impose upon the people of Whitehorse. It would seem to me to be very logical that, with us all accepting the principle of local authority and local control, we, as senior legislators, as a senior legislative chamber in the Yukon, should uphold the very basic principle and tenet that we have all accepted.

Therefore, I have before you a very straightforward amendment that, I think, is in the best interests of the municipalities that we have created through the *Municipal Act*, that will leave the authority to them to make the decisions. If they wish to implement the principles and concepts and they are going to be required to increase their tax taxes, it should be their decision to make, and theirs alone.

**Hon. Mr. Kimmerly:** This is essentially a repeat of the debate that we have had in general debate and debate we have had in other forums. I would submit that it is appropriate that the pay equity comes to Yukon in the public sector and that it comes in the public sector now. The situation with regard to the territorial government is that this is already practically achieved, of course, and we are simply giving a statutory regulation or enshrining the policy of the pay equity in the public sector in the law.

I would submit that it is appropriate in this jurisdiction that the public sector act at approximately the same time and act according to the same basic rules. Practically speaking, in the terms of government employment, the market has already adjusted to the pay equity although not completely. I would also say that this principle is not any longer an experiment but is a fact of life and the next practical step, of course, in Yukon is the application of the principle on pay equity in the municipalities. We are, in fact, behind the Conservative government in Ottawa who are taking a tougher approach than we are. I would quote from a CP article, which was reprinted in Monday's *Star*: "The government is getting tough with companies that do not provide equal pay for work of equal value in federal jurisdiction. Labour Minister Pierre Cadieux said Wednesday that 200 more employers will be subjected to checks as of April to ensure they are complying with the law." It goes on and on as to the position of Labour Canada and the position of the Canadian *Human Rights Act*. He is quoted as saying, "Equal value is hardly an experiment."

We are behind the country generally; we are behind the Conservative government in Ottawa. It is necessary that we take this next practical step, and I would submit to all Members that we move forward rather than stand still.

**Mr. Lang:** I just want to follow up a little further. It is difficult to find the rationale and reasoning for the debate, in most part, from the Minister of Justice. He loves quoting Ontario, Ottawa and Manitoba. If things are that good down there, I would be more than happy to pay for a one-way ticket for him to hit the road.

I am talking about Yukon law here, not the federal Conservative government, not the federal Liberal Opposition or the federal NDP Opposition in the Parliament of Canada, I am talking about the Yukon. We have had a request from three municipalities that they not be placed in a position of having imposed on them what they deem to be a costly principle with respect to their collective agreements that they have to negotiate on an annual or bi-annual basis.

Perhaps I could ask the Minister if he believes Watson Lake Town Council's request to him to be unreasonable?

**Hon. Mr. Kimmerly:** We can repeat the debate. The position of the Watson Lake Town Council is that equal pay or pay equity is not a principle that they support in either the public or private sectors. We have a contrary position.

**Mr. Lang:** What about the Village of Haines Junction who sent quite a lengthy request dated January 29, 1987. I think it should be read into the record.

"Dear Mr. Kimmerly: The council of the Village of Haines Junction supports the position taken by the Town of Watson Lake regarding the position of the proposed Human Rights Legislation that deals with pay equity.

"Council is aware that individuals working the same position with the same qualifications need some form of protection to ensure that the pay rates are equitable and support the principles of equal pay for equal work." That is basically the employment standards.

"The *Employment Standards Act* already provides legislation to ensure equal pay scales for similar work performed in the same establishment, under similar working conditions, and requiring similar skill, effort and responsibility are in place. The intent of Section 43 in the *Employment Standards Act* is similar to that under the proposed Human Rights Legislation. Although the Yukon government may have found certain technical difficulties in the *Employment Standards Act*, it is not clear to council why this issue needs to be entirely readdressed in the proposed Human Rights Legislation."

I guess that speaks to the issue that a lot of people have been expressing to me. In fact, I had a phone call last night from people saying that there is a lot of very major principles being discussed in the *Human Rights Act*, which really have not gotten the media attention and exposure to fully explain to the electorate that we represent exactly what the implications are going to be.

<sup>41</sup> I do not think the Minister would argue that point. The principle of sexual orientation has overshadowed everything else in the Bill, as far as exposure is concerned, which I think is to the detriment of the electorate we serve. I have had a number of people mention to me, in the last week, that they are concerned about their taxes going up five percent through actions of Members of this House.

In view of the letter that the Village of Haines Junction has sent to him, what is the government's position on the Village of Haines Junction? Is it just to tell them thanks, but no thanks? Is this the consultation process that we talk about, where you go out have the communities say that there are some things that they do not want, or is this the concept of listening and consulting and then going ahead and doing what you want?

**Hon. Mr. Kimmerly:** This is essentially the same question. The letter supports the position of Watson Lake. I am unaware of the particular positions of the particular councilors, or of the particular citizens of the Junction, but the council is opposed to pay equity as a matter of principle. This government is in favour. The Conservative Party, territorially, is opposed. The Conservative Party, nationally, is in favour. The Liberal Party, territorially and nationally, is in favour. New Democrats all over the country are in favour. It is a matter of principle upon which we differ.

I would submit that it is appropriate to argue the principles, which we have done. I would suggest, *ad nauseum*. This is a very modest proposal. The government is moving far more slowly than many would like. We are taking the next practical step to ensuring

that women get paid a fair and decent wage, and we are sticking by it.

**Mrs. Firth:** It never ceases to amaze me how the Minister of Justice always uses things to his advantage and tells us half the story, or a part of the story, or a tenth of the story.

I get very annoyed with the Minister when he tells us that everybody is accepting pay equity, and we are kind of the last jurisdiction in the whole world to accept pay equity. It is not true. <sup>42</sup> There are three jurisdictions in Canada that have what the Minister's version of pay equity is and maybe we should get that defined right off the bat. We have never said that we disagree with pay equity. Our interpretation of pay equity is different than the Minister's. Our interpretation of pay equity is equal pay for equal work and equal pay for similar work, not equal pay for work of equal value. Let us call it what it is: it is equal pay for work of equal value.

There are three provinces that are seriously looking at it right now. We know the story about Quebec; they have their own version of pay equity, their own interpretation. Everyone does have their own interpretation of what pay equity is. Ontario, Manitoba and the Yukon Territory are looking at pay equity — equal pay for work of equal value, pay equity. Of those jurisdictions, it has been confined to the public sector in Manitoba and in Yukon temporarily — temporarily in the Yukon because the Minister has already indicated to us that we know full well what the direction is.

I really get annoyed when the Minister stands up and says every one is doing it and liking it because that is not true. Now, if he wants to go all over the world and look for statistics, let us go all over the world and look for statistics and look for what is happening.

In places where equal pay for work of equal value is being talked about, it is not being received as openly as the Minister would like to say. There have been some court cases in the States, and I believe that they are finding out that the courts are not willing to substitute their judgment for that of the market place. I think that is what is happening with the court cases. I am sure it is figures and facts that I have received from the Canadian Federation of Independent Business. Comparable worth has been far from warmly embraced by every state or local government that has considered it. That is not an accurate statement that the Minister makes. In the states of Minnesota and Iowa, and in Los Angeles, they talk about the great successes of equal pay for work of equal value, but they do not talk about the states that have turned it down. They do not talk about the other states that are considering it but are proceeding with extreme caution, extreme caution. No states have imposed it on the private sector — none of them. As a matter of fact, they are adamantly opposed to it being in the private sector, and they express that quite vocally and quite clearly.

<sup>43</sup> In some places that have established equal pay for work of equal value, the Minister does not tell you that some of the employees are requesting that they be exempt from those statutes — groups of employees like the police, like firefighters. That is what municipalities are doing. They are asking that those employees be exempted from those equal pay for work of equal value statutes.

The Minister does not tell us anything about the impact that equal pay for work of equal value has had on women and employment of women. He simply uses it as a women's issue, which I really object to. I really object to being used as an issue for the Minister.

In Australia, five years after they had enacted equal pay for work of equal value, the rate of unemployment for women is now higher. There are more women working part time and on a contract basis. They have shown that, generally, there is a slowdown in the female workforce participation and in the growth rate. The Minister never brings that information back to us. He does not put it out in the information that is provided to the municipalities and as information they are supposed to use to make their decisions with.

It is great for the Minister to stand up and say that in public opinion polls all across Canada everyone is in favour of this. It is because the pollsters ask questions like, "are you in favour of pay equity?", and because there are people like the Minister who go around saying that pay equity is a women's issue, and if you are not in agreement with it you are against women and are an advocate of

women earning less money than men, which is absolutely untrue.

The pollsters ask if they are in favour of pay equity. They say yes, but when they try to find out what the individual's understanding of pay equity is, you get a very broad understanding of what pay equity is, or lack of understanding. It is not equal pay for equal work, which a lot of people feel it is, so they do not disagree with the idea.

There have been at least three or four municipalities that have expressed, through letters to the Minister, some reservation about the concept of equal pay for work of equal value. All we are asking is that he allow those municipalities to make up their own mind after they have had an opportunity to collect all the information that is going to help them make their decision. The Minister cannot deny the fact that, collectively, the mayors and the councillors within the municipalities make up a far greater number than we do here in this Legislative Assembly, and they come from a much broader walk of life. Therefore, we should value their opinions and their input.

The Minister is prepared to stand up and say no, because this Government of Canada is pushing it and going to get tougher, and everybody accepts it, and it is a women's issue. That is the kind of intellectual dishonesty the Minister talks about in this Legislature all the time.

41 I think it is up to the municipalities to decide whether they want equal pay for work of equal value, how they want to implement it, when they want to implement it and if they want to implement it.

The Minister has to take a look at the collective numbers because it is a very important fact. There are a lot of people, and their opinions, represented on those councils, and I think they should be the ones who are making the determining factor. They are the ones who are going to have to be accountable for the expenditure of the funds, and for any increase in funds that result because of this concept that the government is so determined on imposing on everybody.

**Chairman:** Order. Is it the wish of the Committee to continue or to take a brief recess?

We will recess for 15 minutes.

#### *Recess*

45 **Chairman:** Committee of the Whole will now come to order. We are debating the amendment in Clause 14(1).

**Hon. Mr. Kimmerly:** This debate will go on for a short time, I hope. The Member opposite has said a remarkable thing. I just cannot help commenting about it. I could not believe my ears. She said that pay equity was not a women's issue, and she gets angry when it is called a women's issue. I will, of course, leave the public to decide that question for themselves. I do wish to quote from Brian Mulroney, who was talking about equal pay for work of equal value, and I would quote, "My government agrees that this concept is one of the keys to achievement of economic equality for women". Well if that is not a women's issue, I do not know what is.

The argument was made about the positions of village councils and city councils, and I am going to table the letter I received from the City of Whitehorse, and read part of it into the record. Before I do, let me say that it is absolutely clear that pay equity will have an effect on the City of Whitehorse. It will have very little, if any, on the municipalities with very few employees, which is all the others. The best estimate is that it will have no effect on the total wage bill.

The City of Whitehorse wrote me a letter. It is signed by the Mayor, and it refers to the newly proposed human rights legislation. I will read this. I quote, "Further to our meeting held in City Council Chambers on November 13, 1986 on the subject matter, we wish to make some comments. Although we agree with the basic concepts of the proposed legislation, we do have some concerns in the following areas...", and they have some concerns about pay equity, which they list, and I will table this letter.

46 They go on to say, and I would quote, "With respect to the sexual orientation part of the legislation, it is our opinion that social and moral standards should not be legislated." That is exactly the position of the government.

The City of Whitehorse, of course, is the major area where this legislation will apply, and they have some concerns about exactly how pay equity will be implemented, all of which are being addressed administratively. The letter speaks for itself. Although it is qualified, it clearly is in support of the basic principles of the Bill, because it specifically says so. This measure, as I have said before, is the next step in the implementation of pay equity, and I would recommend it to all Members.

**Mr. Lang:** I just want to pursue a little bit further in respect to the municipalities. The basic principle we are discussing here is whether the municipalities should make their own decisions or whether Mr. Kimmerly should make it on their behalf. That is the question that is before the House. We have dealt with the concept of equal pay for work of equal value. The majority of Members in this House do not believe in equal pay for equal work, they believe in equal pay for work of equal value. That is established.

Now the issue is whether or not government should impose their political will on the municipalities. My question is to the Minister: in view of the statements that have been made that the cost to the City of Whitehorse will necessitate up to a five percent increase in property taxes, does he believe that is reasonable?

**Hon. Mr. Kimmerly:** We have jurisdiction in this area, that is undeniable. The position that is reasonable is that the City should establish its pay structures and should look at its employees in accordance with the basic principles enumerated in this Bill. The decision as to what level of pay increases, if there are any pay increases at all, should be made by the City.

**Mr. Lang:** That is my point. That is the reason for the amendment. I have a question for the Minister, not only as the Minister of Justice sponsoring this Bill, but also as an MLA in Whitehorse: in view of the fact that this is going to necessitate up to a five percent increase to the property taxpayer in Whitehorse in a riding that he represents, does he, as the MLA of that area, think that is reasonable?

47 **Hon. Mr. Kimmerly:** I reject the premise of the question. The question is not reasonable.

**Mr. Lang:** Could he explain to me why it is not reasonable, in view of the fact that the mayor and staff within the city have indicated that this is going to necessitate a percentage increase to the property tax owner in Whitehorse? Could he tell me why it is not a reasonable question to ask him, as the Minister of Justice, that an increase in the property tax base of Whitehorse, which is necessitated by this legislation, is not a reasonable question to ask the Minister if he supports a five percent increase in property tax?

**Hon. Mr. Kimmerly:** I support the principle that women should be paid fairly and be paid on the basis of pay equity.

**Mr. Lang:** You would think that the Minister is the only one who has ever gone out with the opposite sex and the only one who shows any respect to any member of the opposite sex and is the only one who believes they should get paid. It is so devious, it is unforgivable. I want to get back to the tenet of the question. Could he answer a yes or no, instead of waltzing around? He is an MLA in Whitehorse. We are looking at a five percent increase of the tax base within Whitehorse, which means every property owner's taxes are going to go up by five percent. Does he sanction that property increase for the purposes of implementing this legislation?

**Hon. Mr. Kimmerly:** I do not support the premise of the question at all. It is a perversion of the facts.

**Mr. Lang:** Is the Minister telling us that implementing this particular principle, specifically to the municipality of Whitehorse, will cause no increase in taxes and cause no increase in expenses to the City of Whitehorse?

**Hon. Mr. Kimmerly:** I am expecting that the total wage bill will increase, and the beneficiaries will be women who are now unfairly underpaid.

**Mr. Lang:** I asked a question. I am not getting into men versus women. Does the Minister not admit that the implementation of this principle, this concept, in the City of Whitehorse will mean an increase across the City of Whitehorse that will, in turn, necessitate an increase in the percentage levy on property?

48 **Hon. Mr. Kimmerly:** That is the same question, and I will give the same answer: yes, I am expecting that the total wage bill

for the municipality will increase, and the beneficiaries will be women who are now unfairly underpaid.

**Mr. Phelps:** I am having a little difficulty with the way the Minister is conducting himself today. We have these rather sneaky and snide answers that do not really meet the issue.

I would like to ask the Minister if he was serious, or was it tongue in cheek, or was he deliberately misleading the House when he said that the quotation from the letter from the City of Whitehorse states, regarding discrimination, "With respect to the sexual orientation part of the legislation, it is our opinion that social and moral standards should not be legislated."

Now is he sincerely saying that he feels that is a statement in support of the government's position on sexual orientation?

**Hon. Mr. Kimmerly:** Mr. Chairman, I suppose I should ask for a ruling on whether that is in order on this particular question. I read it as it was included in the letter that I tabled. The answer is that is exactly the position that the government has, that morality should not be legislated, and the answer is yes. It is totally clear to me that if the City of Whitehorse were opposed to a particular measure, they are quite capable of saying so clearly. They have not. They have made a statement about legislating morality, which is exactly the same principle that is held by this government.

**Mr. Phelps:** I am sure that there will be a lot of people at City Hall shaking their heads over this one when we make them aware of the misleading remarks of the Minister. I must say that I do not really find it amusing. It is certainly very clear to anyone who reads the letter that this is a statement against including the sexual orientation subclause in the Bill.

**Mr. McLachlan:** We have heard from Haines Junction, Watson Lake and Dawson City. I am not sure of the position of the municipalities of Teslin and Carmacks; I cannot remember the discussions. I do know that the Municipality of Faro was the one that indicated a support for the measure of pay equity amongst the municipalities, and that position was communicated to me. I believe, with two female employees, the effect is almost negligible on the tax base.

I want to further say that we were on record, at the time the Minister released the legislation on December 1 or 2, as believing the pay equity issue should have gone further in some areas. The Minister did stop, for reasons that only he knows, at government and municipalities.

Just to conclude my remarks, I want to say we will be voting against the amendment and for the inclusion of pay equity amongst municipalities.

**Mr. Lang:** I want to go back to the Minister. He makes it difficult, because he does not want to answer the question. All I want to know from the Minister is: with the implementation of this concept, is it not true that there will be an increased cost to the City of Whitehorse for the purposes of implementing the concept?

**Hon. Mr. Kimmerly:** The Member for Porter Creek East phrases his questions in a ludicrous way. Another example is that when he was speaking to the media about the petition, which was about exactly this issue, he criticized the NDP comments about the lack of knowledge of the people who signed the petition. We made no such comments. He was making that up.

That is improper and irresponsible. The question here has been phrased in a convoluted way in order to try to make it appear that the situation where many female employees are unfairly underpaid is going to be corrected, and that is going to cost all the taxpayers in Whitehorse an additional five percent.

The real question here is: do we or do we not stand for the principle that female employees ought to be paid on the basis of pay equity? We do; they do not. The next question is: how is it applied? How it is applied should be up to the City of Whitehorse, as long as it follows the basic principles of pay equity, which is in this Bill — not the precise mechanism, but the principles of fairness. That is the sensible question.

**Mr. Lang:** Talk about fairness and justice. I just think a correction should be made. He referred to the petition again and, just for the record, the petition was a year before the passage of *The Children's Act*, and the appropriate sections were revised and modified to meet the requests that the petitioners had put forward

for the legislative changes. The Minister forgets to mention that. We have a petition here, and the Minister has refused to make any changes as far as the fundamental principles of the Bill are concerned.

I just want to know this, I would like to ask this question: In view of the fact that this particular section of the Bill is going to be an added cost, primarily to the City of Whitehorse, is the government prepared to pay that difference in cost, in view of the fact that they have chosen to impose opposed to let the municipality implement it themselves.

**Hon. Mr. Kimmerly:** We are imposing the principles by which people employed in the public sector will be paid, and the principle is fairness, it is pay equity, it is a women's issue, it is correcting the historic imbalance where women have been underpaid. That is the principle. Now the way that is done is the decision of the City, and the way it is done will determine the extra expenditure. That will be a decision ultimately made by the City Councillors in Whitehorse.

**Mr. Lang:** He still has not answered my question. The Minister in his quiet, arrogant manner, has said he is going to impose on the municipalities this particular concept, and I recognize nobody in here wants to talk about costs because why should we talk about costs; we have a financial formula with nothing but money. This government can implement it with no problem at all because of the money that Ottawa provides for the next couple of years. There is not going to be any immediate effect. That is not the case for the City of Whitehorse. My question, I think, is quite legitimate. If it increases the costs to the City of Dawson, if it increases the costs to the municipality of Watson Lake or Haines Junction, or for that matter Faro, or for the City of Whitehorse, is the government prepared to pick up that difference in costs, in view of the fact the government has chosen to impose this particular principle as opposed to having the municipalities go at it voluntarily or at their own discretion? That is the question; I think it is a legitimate question.

**Hon. Mr. Kimmerly:** The answer to that question is no.

**Mrs. Firth:** I think the Minister is probably, again, oversimplifying the issue to the point where it is rather obvious why we have this debate.

The Member for Whitehorse South Centre, Mr. Kimmerly, has never heard us stand up in this House and say that we were against women having fairer wages. He has never heard that. Because we raise questions about the wisdom of adopting equal pay for work of equal value does not mean that we somehow favour wage policies that are unfair to women. That is the emotional argument and the rhetoric that the Minister likes to throw out. That is what he likes to say: that we discriminate against women and we want them to be paid unfairly.

It is the advocates of equal pay for work of equal value who want it specifically for women, and let us not forget the fact that this is not going to just apply to women. This applies to all jobs, all forms of employment, not just women. The Minister likes to stand up and say it is just women, even though it is advocates like himself who make that kind of representation to the public — feminist organizations and organized labour groups.

Where are the professional and the business women in this debate? The women who run businesses?

<sup>52</sup> It is not just the women in the world whom the Minister represents, and the advocates of like philosophy.

I object to the Minister standing up and saying the things that he has been saying, like you cannot raise this question, or you are obviously in favour of some kind of unfair value. I am raising the whole question of equal pay for work of equal value, and nowhere in the Bill does it say that it is just going to apply to women; it applies to all jobs. All levels of jobs are going to be compared.

Sure the Minister is going to take advantage of the fact that women are being paid unfairly in certain areas, and this is the solution to it all. What does it do to the rest of the economy? What does it do to the market supply and demand?

In all of the literature and information I have read about equal pay for work of equal value, I keep reading the same thing, and it applies to all jobs. What we are talking about are these four things,



four key elements. We are talking about equal pay for different jobs, which are supposedly equal in value. All jobs. It is not equal pay for equal work.

We are talking about comparing similar jobs based on their intrinsic or internal value. It completely disregards the labour market.

We are talking about relying exclusively on job evaluations, on making assumptions that every job can be objectively measured and points assigned. There is nothing wrong or anti about me raising these questions. It also deals with requiring some kind of third-party involvement, most likely the government, in all cases the government, usually the Pay Equity Commission or the Human Rights Commission.

<sup>53</sup> We are not just talking about making women's wages better. What we are talking about here applies to all jobs. We are talking about comparing dissimilar jobs based on their internal value as determined by some supposedly objective job evaluation system that is ministered or subject to review by some third party. That is equal pay for work of equal value. I have a lot of concerns about it.

The biggest concern I have is the lack of foresight that this government has shown, and the way they are using the term "pay equity" in the public sense, and saying, if you are against pay equity, you are against women. That is not true. They say if you are against equal pay for work of equal value, you are against women. That is not right.

There are a lot of concerns that the municipalities have about this question. I do not get any relief from the Minister standing up and reading the letters sent by the city. In the letter, they raise some questions. They raised questions where they are looking for more information. For him to stand up here and give the appearance of purposely misinterpreting what they are saying and then reading it into the record, that is not right on the Minister's behalf. It is not right of him to do that.

I would like the Minister to seriously reconsider what he said today.

<sup>54</sup> I know there is going to be a lot of people unhappy with his comments. I know the Minister is not prepared to change his mind. He is telling them the way it is going to be, and that is all there is to it. We have seen other Ministers in this government do the same thing. You either like what we are doing or it is just too bad.

It is just too bad that the government is taking that kind of attitude. They are not going to be able to go out into the public and say, "well, you know we consult and we listen to people and we are listening to you, we are doing what you want, we are doing what the people in the Yukon want". They are just not doing that, and for the Minister to assume that he has the authority to go ahead and impose this on the municipalities because he got a letter from one municipality saying they wanted it phased in, but they had some serious questions about it — he got three letters from two other municipalities, the Village of Haines Junction and the Town of Watson Lake and Dawson City — saying that the principle of equal pay for work of equal value should be removed. One said it should be replaced with equal pay for equal work, another one said they wanted it removed. Who does he think he is that he can just stand up and say they are going to do it anyway?

**Hon. Mr. Kimmerly:** I do not mean to go on for a long time, but this is an appropriate time to mention some of the, what I will call, baffle-gab of the Member opposite. I am going to table two more documents and Members opposite will not mind, but I am going to table the propaganda sheets that the Member for Riverdale South and Riverdale North obviously sent around on their Legislative frank to the...

**Mrs. Firth:** I want a point of order. I speak on a point of order in that I am rescuing the Minister from making a false accusation in this Legislative Assembly. This was not sent under my franking privileges, and I think I should afford him the opportunity to stand up and withdraw his remarks or substantiate his accusations.

<sup>55</sup> **Hon. Mr. Kimmerly:** On the point of order — there is no point of order, of course — I have no knowledge at all about whether this was on the frank.

**Chairman:** Order, please.

**Mrs. Firth:** For the Minister to stand up and say something like

that when he had absolutely no knowledge of it is unforgivable in this Legislature.

If I did something like that in this Legislature, that gang across the way would jump up and call me a fear-monger and a liar. That is absolutely inappropriate and unforgivable.

**Chairman:** There is no point of order.

**Mr. Brewster:** I apologize for a very small individual remark that people all over the place laughed about, and I expect the Minister to apologize to the lady on this side.

**Hon. Mr. Kimmerly:** The letter or the propaganda sheet was obviously not sent on a Legislative frank. I should not have said it was, obviously, and I am sorry for that.

That piece of propaganda is called "Pay Equity, The Hidden Meaning", and it makes totally inaccurate, erroneous statements, and it gives a totally misleading picture of the government's intention.

<sup>56</sup> The first sentence here is, "The NDP government wants to force equal pay for work of equal value on small businesses in the Yukon." It goes on. That particular issue was debated here, and it was clearly said that the position of the government is that we are supporting pay equity in the public sector, and not the private sector. This kind of trashy propaganda and misinformation and misleading innuendo is characterizing this debate, which is most unfortunate. I would submit that the debate here should be on the principle of pay equity in the public sector. It should speak about the principles that are involved. The section of the legislation clearly establishes general principles.

The City of Whitehorse is asking questions about the application, as well they might. Those administrative things can be, and will be, sorted out.

<sup>57</sup> I would submit that the amendment here is really to oppose the principle of pay equity, and the amendment should be defeated.

**Mrs. Firth:** I have just one final comment to make. This newsletter was sent to the constituents in Riverdale South only, not in Riverdale North. I have had many responses to it. It has been received very favourably. It is the way I see it. The Minister has expressed his opinion and his interpretation, and we all know what that is worth today.

**Mr. Phelps:** On the issue of sophistry and misleading the public, we had the Minister just recently refer to the petition and comments by Mr. Lang about the facts as they occurred during the earlier petition on *The Children's Act*. The facts are that petitions were presented to this House in 1983, that the Bill was withdrawn as a result, that the then Minister toured the municipalities of Yukon and came back with amendments in 1984. At that time, there were some additional petitions. There was more than one petition tendered. The Minister managed to take a half-truth and say nothing of the kind occurred.

He was only half-right, as usual. He managed to suck in the media on this.

<sup>58</sup> I invite the media to come and look through *Hansard* with us because it will show that the Minister did not tell the whole story. There certainly were petitions tabled, the Bill was drawn as a result, and amendments were made as a result, and that is clear in the record.

**Chairman:** Any question on the amendment? All those who agree?

**Some Members:** Disagree.

**Chairman:** Disagrees have it.

*Amendment negatived*

**Chairman:** Before we recess until 7:30, I would like to remind Members on both sides of the House to keep your remarks parliamentary, please.

*Recess*

<sup>01</sup> **Chairman:** Committee of the Whole will come to order. We will proceed with Clause 14(1). Is there any further debate?

**Mr. Lang:** I would like to take the opportunity of introducing the 1st Porter Creek Scout Troop who are here along with their leaders. I

appreciate the fact that they came down to see how the government and the Legislature works. I also want to express my appreciation for the hard work put in by the parents and by the leaders in getting them here and for the work they do throughout the year.

*Applause*

**Chairman:** Any further debate?

**Hon. Mr. Kimmerly:** We were debating, at at the time we broke at 5:30, the question of pay equity. Of course, there is a motion on the floor to delete a section of the pay equity provision which, of course, would serve to...

**Mr. Lang:** On a point of order, unless I am getting old and moving along in time, I thought we had already voted on the amendment and it had been disposed of.

**Chairman:** The amendment has been voted on and defeated. We are now on debate of Clause 14(1). Is there any further debate? Are you ready for the question? Are you agreed?

**Some Members:** Agreed.

**Chairman:** The agrees have it: Clause 14(1) agreed to.

We will now move on to 14(2).

<sup>02</sup> I would just like to explain to Members of the Committee that if they are not satisfied on the decision on the voice vote of the Chairman that they can call division and stand, and we can have a standing vote.

**Mr. Lang:** I am pleased to hear that you made that statement, because if it had been required we would have. We obviously would have won the standing vote. It would have at least been tied up to the point where the Member from Watson Lake wandered in to say hello to us.

On Clause 14(3), I have a question on assessing this equal pay for work of equal value, this concept that the Minister continues to tout. Can he tell me why, in assessing the value of the work performed, the ability of the employer to pay is not taken into account?

<sup>03</sup> **Hon. Mr. Kimmerly:** Because the employer's ability to pay determines the wages that the employer will set. This principle in no way establishes wage rates. As a practical example, if one employer pays \$10 an hour for janitors, and another employer pays \$4 an hour for janitors, that is entirely the decision of the employer. The principle only applies to the relative wages of jobs that are male dominated or female dominated, not the amount of wages at all. The legislation that governs the amount of wages is in the *Employment Standards Act* and is the law about minimum wage.

**Mr. Brewster:** I just have to get into this. As a businessman, I am having a real problem with what goes on here. The territorial government is one of the biggest employers and biggest contractors. They set the wages that you have to pay when you bid. Anybody who bids on these contracts has to pay that, therefore, they control all the wages in the Yukon because they are set on what they do. If you have someone working for you, and you get on a territorial job, you pay that price. You are not going to be able to take that same man and go to another job and pay a different price.

Let us quit the foolishness that they are not setting the rates. They are setting the rates.

**Hon. Mr. Kimmerly:** The Member for Kluane is talking about the fair wages schedule, which is established through the tendering procedure. It becomes part of government contracts.

<sup>04</sup> The federal government does the same thing. The fair wage is recommended by the Employment Standards Board. The federal Conservative government is imposing a scheme that is called contract compliance, which is requiring that those companies in the private sector who contract with the federal government must have a pay equity, or an equal pay for work of equal value, scheme in their companies.

The federal government are in advance of the Yukon government in that score. We are not proposing contract compliance, which is what the Member for Kluane is alluding to.

**Mr. Lang:** We are making the laws of the land for the Yukon. I want to stress that to the Minister. I want to impress upon him that we are not in Ottawa. What we do here is going to have an economic effect on all the people in the territory. In some respects, it could be very inflationary, but that is another issue.

Why do we not, as part of assessing the value of the work, put a

section in requiring the ability of the employer to pay to be taken into consideration, instead of leaving it wide open, with respect to saying that "I think my job is worth \$100,000 a year"?

<sup>05</sup> **Hon. Mr. Kimmerly:** Because employers automatically do that, it is for the employers to set the wage rates.

**Mr. McLachlan:** Can the Minister advise the Legislature, because the definition of wages, Article 4, is it in line with the *Employment Standard Act* definition of wages?

**Hon. Mr. Kimmerly:** Yes.

**Mr. McLachlan:** Further to that, since this Bill was first drafted in December Revenue Canada now has a different interpretation on the expression value for board, rent, housing and is now, in fact, a taxable benefit. Does that have any effect on the definition of wages?

**Hon. Mr. Kimmerly:** No.

**Chairman:** Anything further on Clause 14(4)?

**Mr. Lang:** I just want to go on the record, but I am not going to prolong this. I just feel that this problem represents, in my judgment, the absolute irresponsible viewpoint of the government's side, in not considering that the economic ability of even the government to pay to be a consideration of the Board of Adjudication or the Commission with respect to when they do hear appeals, and that kind of thing. It just seems to me that leaving it wide open says that there is a blank cheque and let us get at it. If that is what you want, that is fine, but at least come out and say it. There does not seem to be any controlling factors with respect to the section.

**Hon. Mr. Kimmerly:** That is blatant nonsense. The employers set the wage rates, and, in this case, it is the government. It is the governments that determine the level of the wages, and that is the fact of the matter regardless of what the Member for Whitehorse Porter Creek East says.

<sup>06</sup> **Mr. Lang:** That is absolutely what could be termed as an untruth. The reality of the situation is, the way the legislation is designed, it will not go down. You will not go down in costs, you will go up. All I am saying is, as far as a guiding principle, you would think that any responsible government would incorporate it into their legislation that the ability to pay would be taken into consideration. That is all I am asking, and the Government Leader says it is nonsense. I do not think it is nonsense that we should ask in our legislative process that at least some guidelines be put into place to govern the workings of a commission that is going to be the end-all and the be-all and is going to direct all the lives of the people in the territory, one man or another.

**Hon. Mr. Penikett:** Either the Member does not understand it or does not want to understand it. This Commission is not going to be setting wages. Let us get that quite clear. What we are talking about is an injustice that every bit of evidence exists throughout our society where women are paid less than men for equivalent work. Where that situation exists, this legislation proposes to correct it. If you have a situation where women are doing work of equal value and the woman is getting \$4 an hour and the man is getting \$10, or the woman is getting \$6 and the man is getting \$10, this suggests that you provide a means of correcting that situation.

It also means you cannot correct it by — and this is true of everywhere in the country where this law is proposed, it is true in the federal rules too — lowering the wages of men in order to achieve equity. That is only fair. It does not say that the wages shall be X or shall be Y. It does not specify that. It does not have that effect at all. You can have two different businesses — let us take a case quite obviously in town, you may have a corner store where retail clerks now are getting minimum wage or close to it, and you have other stores in town, perhaps Super Valu, where they have a Teamster collective agreement where they may be making more than twice that much.

The issue here is not the disparity between those two employers, which may be great, the issue is the disparity between men and women working in the same business. That is the issue.

<sup>07</sup> **Mr. Phelps:** We have been through this before. The Government Leader chooses to totally ignore the marketplace and the forces of the market. To go by the letter of this and ignore the real

world is dangerous. It may be fitting of people of his political persuasion, but most of the people with any kind of economic background in his persuasion, even, do recognize the market forces do exist.

**Hon. Mr. Penikett:** Yes, market forces exist, and they exist to the disadvantage of women. Why should economic development, or why should any business be carried on, based on the cheap wages of women? That is a principle that, I am quite happy to say, my movement has been fighting for hundreds of years.

Going back to the days when we talked about this, at the beginning of this debate, when women were the property of men, there is a systemic discrimination borne out by evidence. The Members opposite wave their hands. Do you want the facts and figures? There is certainly evidence in this government, the largest employer of the territory, of significant disparity between men's wages and women's wages for people of equivalent qualifications doing equal work. The facts were there. A study commissioned by the previous Conservative government found that:

**Mr. Phelps:** Why do you not direct your attention to the argument.

**Chairman:** Order, please.

**Hon. Mr. Penikett:** Let us talk about the principle here.

**Mr. Phelps:** Direct your attention to the argument.

**Chairman:** Order, please.

**Mr. Penikett,** continue.

**Hon. Mr. Penikett:** What the Members are arguing there is that somehow an injustice or an inequity that exists should be borne by women — that is what you are saying. You are arguing that somehow an injustice, because it may produce a cost to an employer, should be continued to be borne by women because the rectification of the injustice may produce a cost to the employer. That is what you are saying.

**Mr. Lang:** I pointed out. I was not arguing man versus woman, homosexual versus heterosexual. All I was talking was...

**Some Hon. Members:** Oh, oh.

**Chairman:** Order, please.

**Mr. Lang:** The point I was making was in the criteria to determine in the section of equal pay for work of equal value, it says assessing the value of the work performed, the criterion to be applied is the composite of the skill, effort, responsibility required and the working conditions. Why was this section not put in with respect to the ability of the employer to pay, so that could be taken into consideration?

I am not here to argue equal pay for work of equal value, or equal pay for equal work. This side has never said a woman should get paid less than a man. That is not what we are saying. I have to take the Government Leader to task. Why do we not put in a section regarding the employer's ability to pay.

Correct me if I am wrong, but it is my understanding that grievances can be heard outside the government collective bargaining if the Commission or the Board of Adjudication wishes to hear it.

In making a definitive decision, I am saying that the employer's ability to pay should be taken into account.

**Hon. Mr. Penikett:** The answer is: because this body is not setting the basic wage rates. If you listened to the example I gave between the two different kinds of affected retail clerks, we are not suggesting, and this proposal does not suggest, that the retail clerks working at a corner store be raised to the level of the retail clerks at Super Valu. What it is designed to address is a wage inequity, should it exist, between people doing equivalent work in the same business.

**Mr. Phelps:** I have difficulty with what the Government Leader just said about government being allowed, at their mere whim, to trample on the rights of employers and people in the free enterprise system. It seems to me that his argument is nonsensical, and he has attributed things to me that I did not say. I am suggesting that he and his troop on the other side are saying that socialism shall prevail, and the free market is something that they are going to ignore. I am very happy for him to say that because that is something that a lot of people in the Yukon do not agree with.

**Mr. Lang:** I do not understand why that section was not put in

there so that the employer's ability to pay is taken into consideration in making that definitive decision by whatever body makes the decision. That is all I am asking.

**Hon. Mr. Kimmerly:** The answer is because the Commission and the scheme here does not set wage rates; employers set wage rates. Employers set wage rates. This only establishes the principle of basic fairness.

*Clause 14 agreed to*

*On Clause 15*

**Mr. Nordling:** I will put the Minister's mind to rest by saying that I am not going to bring an amendment. I would like some clarification with respect to the word "shall" at the end of the first paragraph of 15(1): "and the Commission shall promote the principle that every individual is free and equal, promote education, promote a settlement". What I want clarified is that this word "shall" does not force the Commission to go out and do anything; that this is the Commission's reason to be; that just by existing the Commission will be promoting the principle that every individual is free and equal in dignity and rights; that the Bill does not order the Commission to go out and print brochures and hand them out, whether the Commission thinks they are necessary or not, to fulfill the command in Section 1.

**Hon. Mr. Kimmerly:** The reason for the word "shall" is to be very clear that the Legislature instructs the Commission to pay attention to each of these principles, that it is the Commission's duty, if you will, to carry out, or pay attention to, or to follow these five detailed instructions. If we say "may", that would enable the Commission to decide for itself which it would emphasize and which it would not, or to decide not to do one or any of these things. The word is for clarity so that the Legislature establishes clearly what the instructions to the Commission are.

*Amendment proposed*

**Mr. Nordling:** On clause 15(2), I would like to make the motion that Bill No. 99 entitled, *Human Rights Act*, be amended in Clause 15 at page 6 by deleting subclause (2).

As I was saying, the issue of equal pay for work of equal value has been debated considerably in general debate and with respect to section 14. The feelings on this side have been made very clear. We disagree strongly with the Commission educating the private sector on equal pay for work of equal value. There has been considerable discussion with imposing it on municipalities, and we are even more strongly opposed to this attempt, or this forerunner, of imposing it on the private sector, which I do not think has been done. This is a precedent that, we submit, should not be set in the Yukon.

**Mr. Lang:** I believe there was a request that if research had to be done, it should be done through the auspices of the Yukon Chamber of Commerce, as opposed to having a government body studying and examining the private sector with some intent, whether it be intended or otherwise, of appearing to be setting up a program of propaganda. Is the Minister prepared to consider that the Yukon Chamber of Commerce be allocated X amount of dollars as an alternative, as opposed to this exalted body that we are putting together for the purposes of looking at the options that the private sector would have available to them and ensuring that there would not be a slanted approach taken to any studies that were done?

**Hon. Mr. Kimmerly:** This question has already been debated in general debate. I understand the Chamber of Commerce is interested in research. The appropriate course of action is for the Commission to make a decision whether they will do it themselves, as a commission, or to contract it out. If they contract it out, they very well may give a contract to the Chamber of Commerce. They may also wish to give a contract to a group, such as the Status of Women, and balance the research, or education, in that way. That would be a decision for the Commission to make.

**Mr. Lang:** What is the position of the Minister? Does he think the Commission should contract out with the Yukon Chamber of Commerce?

**Hon. Mr. Kimmerly:** I was asked that before, and I will give the same answer: it is a decision which should be made by the Commission, not by the government. The Commission should carry out their research in a balanced way so that the research satisfies all

interests which need to be satisfied. One of the interests is clearly the business interest. The way they do it is up to them.

**Mr. Lang:** How much money in approximate terms does the Minister foresee being allocated for this purpose? The Commission does not determine that, he does?

**Hon. Mr. Kimmerly:** Well, it is not technically true that I do. The Legislature does in the O&M Budget. That amount is not determined, and it would be determined through an O&M Budget.

**Mrs. Firth:** I would like to ask the Minister if his department has done any research on the financial impact that this could have on the business community in the Yukon. The government has been collecting some statistics about business, about numbers of employees, and so on. I wonder if he could tell us how much a job evaluation is going to cost the average businessman per employee? Have they looked into that? Can he tell us what the total impact would be on the territory's business community of the so-called one percent increase in costs that is going to be to the businesses to implement the equal pay for work of equal value that the government has in mind?

**Hon. Mr. Kimmerly:** Those are precisely the questions, or among the questions, that the education and research should answer. The research is not now done; if it were, we would know about it. The research needs to be done, and that is why the section is necessary.

**Mrs. Firth:** The Minister has made it quite clear in the House that this is an eventuality for the business community. I feel that this kind of research should have been done at the time that the legislation was being drawn up and that the government was assessing what kind of financial impact this legislation was going to be having on Yukoners.

I do not settle for the argument that the Commission is going to do it, and they are going to determine how much it is going to cost, and so on. I think that is the government's responsibility before they implement the legislation.

Is it going to be up to the Commission to determine whether they are going to have a pay equity group that is going to be responsible for assisting businesses with their job evaluations and going in and asking them how much they pay their employees and on what basis they pay their employees? Is that going to happen?

**Hon. Mr. Kimmerly:** That is a decision that the Commission will make. It is my expectation that, if a specific business asks the Commission for assistance, that the Commission will obviously want to assist within the budgetary limits that they have and the guidelines that they establish for themselves. It seems to me to be a very practical way to go about it, that businesses, one by one, will be consulting with the Commission and voluntarily putting into place their own pay equity system. A smart business will do that.

**Mrs. Firth:** The Minister tries to make it sound very pleasant. He uses words like consulting and voluntary. However, we have had this debate before. The Minister made it very clear that the pay equity commission, or whatever they are going to be called, will be assisting the businesses, whether they want it or not. They will be going around and talking to the business people and asking them the questions that I raised just a few minutes ago.

The businesses are going to have to answer those questions whether they want to or not. That is not consulting and doing things voluntarily. It is doing it because the business people are going to feel intimidated if they refuse to answer the questions: they are going to feel intimidated and feel they have to answer the questions.

The business person loses both ways. It is not consulting and it is not voluntary. It is a law that the government is going to impose on the business people.

**Can the Minister tell us what size of businesses are going to be affected. Are they businesses from two employees up to as many as we have, or what influence is it going to have on the business community?**

**Hon. Mr. Kimmerly:** Mrs. Firth is making reference to proposed legislation that is not before us.

**Mr. Nordling:** I would just like the Minister to confirm that the government's intention in including this section in the Act is that the government plans to impose equal pay for work of equal value on the private sector in the future.

**Hon. Mr. Kimmerly:** I was asked that question repeatedly before, and I have repeated the answer. The answer is that it is the policy of this government that there shall be pay equity in the public sector and that any equity schemes in the private sector will be voluntary, and that the Commission will conduct education and research on the application of the principles of the pay equity in the private sector. That is absolutely clear, that is our position and that is the policy in the Bill before us.

**Mr. Nordling:** I would just like to ask the Government Leader why he is not jumping up at this point talking about the inequities and the wage differential between women and men in the private sector and how it is terrible and should be fixed immediately. The Government Leader argued very ferociously and sanctimoniously about how he was going to fix things for women and how it had been going on for hundreds and hundreds of years. I would just like to know why he is not getting up and defending it and making his policies perfectly clear? We know what he wants.

**Hon. Mr. Penikett:** Well, of course I work very hard at being sanctimonious, but I recognize that I have a long way to go before I achieve the levels achieved by the Member opposite. I promise to try hard. I will see if I can achieve his high standing in that area at some point.

The evidence certainly is, in the nation, that there is considerable inequity in the private sector in pay of men and women. The evidence that the government has so far warrants extending the principle here to the public sector. Until the research that is proposed to be done by the commission here is complete, and until the kind of consultation about some of the questions asked by Members opposite about the practicality of extending the principle — the difficulty of extending the principle, the appropriateness of extending the principle and to what kinds of businesses the principle can or ought to be extended — is complete, we do not think we have an empirical basis for going quite that far. Let me say, having looked quite seriously at what information is available on the economics of this question in the Yukon Territory, the business structure here is quite unique in that the vast majority of businesses operating in the Yukon Territory have fewer than five employees. In fact, there is a very tiny percentage that have more than 50, I would think.

Most of the large companies where there are collective agreements, either the Crown corporations such as NorthweTel or the mining companies, where they have a cooperative wage study system or some mechanism like that built into their collective agreements, have the means to move quite readily to a system of pay equity or something approximating it. The situation here with respect to the number and the variety of small businesses is such that we do not have a situation that is exactly comparable to others in the country, and it does warrant the kind of research and the kind of consultation with not only the business community, but also the women and men who work in those businesses. That is what this research is designed to do, and I think it is a prudent kind of research before we take the principle further.

*Amendment negated*

*On Clause 16*

*Amendment proposed*

**Mr. McLachlan:** On Clause 16(1) I have an amendment to put forward. It has specifically to do with the Commission and its manner of appointment. The amendment specifically makes reference to appointment of the Members of the Commission by the Legislature rather than by Commissioner and Executive Council. It requires deletion of the last three lines of the clause.

I move that Bill No. 99 entitled, *Human Rights Act*, be amended in Clause 16(1) at page 6 by deleting after the first "the" the words "Commissioner and Executive Council but whose appointment will not continue beyond the next sitting of the Legislature unless confirmed by the Legislature", and substituting for them the following word: "Legislature".

**Hon. Mr. Kimmerly:** The government has no argument with the principle of the amendment. The wording is as it is because the amendment would set a precedent. There is no Board member presently simply appointed by the Legislature, although that is not impossible. It would set a precedent if we accept this, and I have no

particular problem in accepting it. Appointments are all done by Order-In-Council.

The only practical problem that may occur is in the event of illness, death or resignation of present Commissioners. It would be necessary to wait until the next Session of the Legislature in order to appoint the Commissioners to replace the absent or resigning Commissioners. Now, that is a practical problem, but it is not a particularly serious problem. Given the intentions of the government to consult with the Legislature in any event, which is only wise — the appointment must be confirmed by the Legislature — this is not a problem; it is a minor amendment that may create a small practical difficulty. In fact, it is cleaner wording, and it avoids a political perception of the government appointing rather than the Legislature appointing, which is, in fact, the real intention of the government. We have no problem with the amendment.

**Chairman:** Order. The Chairman has a problem with the amendment in that it is out of order. It is deleting after the second "the". I will ask the Member, please.

**Mr. McLachlan:** Thank you, Mr. Chairman, for pointing out the problem. The first "the" simply introduces the clause. It was intended that the amendment was to read the second "the".

**Chairman:** Is the Committee agreeable to that?

**Some Hon. Members:** Agreed.

**Chairman:** It is agreed.

**Mr. McLachlan:** I would like to point out, for the benefit of the Members to my right, I am aware that the present Commissioner in Executive Council has said that he would be more than fair in appointments to the Commission, knowing full well that the whole idea of the Commission and who is on it is a controversial issue. Members to my right should remember that the present Commissioner in Executive Council will not always be the Minister of Justice, much to their pleasure I would hope, and that the next Minister of Justice might be, in fact, tougher or not quite as condescending, perhaps. I just wanted to point that out.

**Mrs. Firth:** I would like to pose a question to the Member who is proposing this amendment. We had some debate in this Legislature about the Committee being chosen from the Members of the Legislative Assembly and having a committee made up of a token Tory, a token NDP and a token Liberal. I believe there was a unanimous nodding of heads that they did not want to see a Human Rights Commission made up like that, that it was not really in the best interest of the Commission, nor of the public the Commission is supposed to be chosen to serve. This amendment, I feel, leads to the structuring of that kind of Commission, and I am not in favour of that type of Commission, nor did I think the other Members of the Legislative Assembly were.

**Mr. McLachlan:** There is one observation I would like to make. In the event this particular amendment is accepted, it would also be necessary to change an article later on at clause 21(2), which refers to the Adjudicator, because it has a similar type of wording. Members should be aware of that.

**Mrs. Firth:** The government is going to appoint the Commission like they appoint their other boards and committees. They bring it to the Legislature for confirmation. If any of us, as Members, have any disagreement with the appointments to the Commission, we have an opportunity to stand and express that concern. That is what it means by the Legislature confirming the appointments. That is how the government has been appointing their boards and committees. The Water Board is one that comes to mind immediately that has to come to the Legislative Assembly to be confirmed. We expect that the panel of adjudicators will be appointed that way also, as was indicated by the Minister of Justice. We see our role as opposition Members to raise our concerns at that time, when it is the appropriate time.

**Hon. Mr. Penikett:** I want to join my colleague in expressing to the House the wish that the official opposition will not see their role in this matter simply as critics, nor, I hasten to add, do we see the role of the parties in the House as simply appointed tokens. There has, I think, been appropriate concern — the Member for Riverdale South has just spoken, if she will permit me to finish now — in the public about the makeup of the Commission and about the balance of views in the Commission. Now I concede immediately

that the balance of views does not have to be represented by a variety of partisan views, but I think it is appropriate in something like this for there to be consultation with the parties in the House about the membership. I think it would be our wish to talk to the parties opposite about candidates for the Commission, and it would be our hope that they would offer names as potential candidates. Citizens whom they feel are worthy, people whom they think would be good Commissioners, without, perhaps, regard to their political colour, but people who they think would be the right type of people to serve on the Commission.

**Mrs. Firth:** I think the Commission that is eventually chosen by the Legislature, made up of people who have been sponsored, if you like, from a variety of points of view, is more likely to have widespread public acceptability, and that, at least, is our wish.

**Mrs. Firth:** With all due respect to the Government Leader, I would submit that the public perception is that we are each appointing a person of our stripe. We are not kidding the public. When the government is the government and they appoint boards and committees, the perception is that they appoint people of their choice.

I can remember standing in this Legislature and having the Members, who are now the government, accusing me of forming boards and committees that were selected from the Tory ranks. I remember that very clearly. Probably that side opposite is partially responsible for that perception being out in the public because they made that allegation when we were the government, and that accusation. With all due respect that would be the perception because I have asked people if each party appointed someone they would automatically assume it was a Conservative, it was a Liberal and it was an NDP. The Government Leader has already done that on some of his boards and commissions, and he never fails to remind me about my friends he puts on boards and committees. The perception is out there in the public, and I do not want to try to fool the public or make something seem like it is not. So, as a Member of this Legislature, I will have an opportunity to stand up and discuss the commission and the names that they bring forward and express my concerns at that time.

**Hon. Mr. Penikett:** At the risk of prolonging the debate, I am not quite sure what point the Member opposite was trying to make. Yes, the previous government was criticized for appointing people to boards and committees who were exclusively from its ranks. That was one of the reasons why we changed the policy in that respect, and I can tell the Member for darn sure that the Conservatives and Liberals who we have appointed to boards and committees did not suddenly become New Democrats when we appointed them. That, of course, is not the issue. The point I want to make, and I want to try and make it sincerely, is that I do not want to see our role in this process as simply being, as Members Opposite say, passive. Obviously, if they do not suggest we vote for the Commission, public or otherwise, then obviously we have to take some responsibility and find candidates. I only want to record here my sincere hope that they will propose names.

**Mr. Lang:** I think there are a couple of points that have to be made, and I think they have to be made clearly and succinctly. The Minister stands up in here in all due sincerity and says he wants consultation and he is prepared to listen. We brought forward major amendments to this Bill in a number of major areas and the only consultation we got, and the only right we got, was to spend time in the House discussing our side of the argument, which was completely ignored by the side opposite.

**Mrs. Firth:** Now we are to the point where the Government Leader stands up, in the process of consultation and listening, where he wants us to have the token Conservative on his Board so that, in the future when a decision is made and somebody says it is the wrong decision, he can say, like he has done in the past, oh, there is a Conservative there. That is exactly what has emanated from his office.

Further, the Minister of Justice has stood up and said a number of things on the public record, and even went as far as hiring some Conservatives, as if he was the Public Service Commissioner. And, you are expecting me to put somebody into that position where he or she could be publicly derided by the side opposite? You have to

be kidding.

Further to this, I suggest that if this Bill was unanimous, and there had been some unanimity between the sides opposite of what we felt should be a Human Rights Act for the territory, then maybe there would be a good basis for it. However, I go back to the fact that we laid out our position as the official opposition. We have brought forward amendments, we have brought forward alternatives, and nobody has listened. The only amendment that we have won is when the side opposite could not count and one Member left. We have had two or three minor amendments, very minor, and the Government Leader is aware of it. And he wants consultation and to listen.

Take your responsibilities and get together with your colleague. You have a couple of IOUs out there yet. He has stuck with you for a year-and-a-half. Figure out what you are going to do. You are the ones who are going to have to live with it.

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

**Some Hon. Members:** Agree.

**Some Hon. Members:** Disagree.

**Chairman:** I think the yeas have it.

**Mr. Nordling:** I think we should have division.

**Chairman:** Would those in favour of the amendment please rise? Those not in favour?

*Amendment agreed to*

*Clause 16 agreed to as amended*

*On Clause 17*

**19 Mrs. Firth:** Clause 17 deals with the annual report of the Commission. I have already given the Minister some notice that I was going to consider some amendments at this time. However, that was a long time ago. He may have forgotten.

I do have an amendment I would like to propose to Clause 17.

*Amendment proposed*

**Mrs. Firth:** It is: That Bill Number 99, entitled *Human Rights Act* be amended in Clause 17 at page 7 by adding the following: "The report shall not publish:

(a) any dollar amounts of the penalties awarded pursuant to this Act, or

(b) any names of individuals or businesses in which a complaint was dismissed or has not yet been dealt with."

**Hon. Mr. Kimmerly:** This is essentially about the privacy of information. I am going to ask that the amendment stand because I am expecting discussion around about Clause 31, or after Clause 31, about privacy and that aim may be far better achieved in a more general sense. I would ask to consider that amendment after the proposed amendment, which I am aware of, considering privacy generally.

**Chairman:** Does that meet with the agreement of the Committee?

**Mr. McLachlan:** Since I will be proposing the amendment in Clause 31, to which he is referring, is it clear in the Minister's mind that the amendment proposed by the Member for Riverdale South speaks specifically to the annual report, and if there is reference in Clause 31, fourteen clauses later, about the annual report, that will not cause any confusion with the amendment to come in Clause 31?

**Hon. Mr. Kimmerly:** It is easier to make a decision after we have seen both amendments. I would suggest that is the best way to proceed.

**Mrs. Firth:** The only point I want to raise here is that I think that the amendments, although they may deal with similar subject matter, are really different amendments. I believe the Member for Faro was proposing an amendment to do with the information that was collected during the evidence-collecting stage of a complaint being registered, and what was going to happen with that information within the confines of the Department of the Human Rights Commission.

This deals with the publication of the report and the information to be contained in that report for publication. I believe, when we debated it earlier, that the Minister had indicated, if we were willing to give specific direction to the Commission as to what the report should contain, that he was prepared to look at that. I do not have any problem holding it over, but I think there is a distinct difference between the two kinds of concerns that the Member for

Faro and myself have.

**20 Amendment to Clause 17 stood over**

*Clause 17 stood over*

*On Clause 18*

**Mr. Phelps:** I propose that we go for coffee.

**Chairman:** I understand there could be a lengthy debate on this clause. In anticipation of that lengthy debate, we will now recess for 15 minutes.

*Recess*

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

*Clause 18 agreed to*

*On Clause 19*

**Mr. Nordling:** I would like to propose an amendment to Clause 19(1).

*Amendment proposed*

**Mr. Nordling:** The amendment is: That Bill No. 99, entitled *Human Rights Act*, be amended in Clause 19(1) at page 7 by adding immediately after the words "contravention of this Act" the following words "against him or her".

**Chairman:** The amendment is in order.

**Hon. Mr. Kimmerly:** This principle has been debated at general debate and in the media fairly substantially. Although the government position is that this weakens the Bill in that there are persons who would benefit from a complaint being made on their behalf, it would still allow a complaint to be made by an agent of a person. It is a compromise that we are willing to accept.

**21 Chairman:** On the question on the amendment, are you agreed?

*Amendment agreed to*

**Mr. Brewster:** On Clause 19(2) I would like to propose an amendment that Bill No. 99, entitled *Human Rights Act*, be amended in Clause 19 at subclause 2 at page 7 by deleting the words "one year" and substituting therefor the following words: "six months".

I am not going to say very much about this. I should like to do one thing for the small business people up and down the highways, north, south and a few other places, and not particularly including Whitehorse. I think I can speak very freely for all of them. I also have a letter that was sent to Mr. Kimmerly from the Yukon Division of the B.C. Hotel Association that feels that six months is an adequate time to file.

Also, I have from the province of Alberta, six months; Manitoba, six months; Ontario, six months; Prince Edward Island is 12 months; Quebec is 12 months; B.C. is six months; Northwest Territories and Yukon have nothing, and I hope the Minister notes that I also put in the ones that are not agreeable with me, but they are all in there.

**Hon. Mr. Kimmerly:** I would ask to stand this amendment for consideration by the various Caucuses.

*Amendment to Clause 19(2) stood over*

*Clause 19 stood over*

*On Clause 20*

*Clause 20 agreed to*

*On Clause 21*

*Amendment proposed*

**Mr. McLachlan:** On clause 21(2), I have the sister amendment to clause 16(1). The amendment reads that Bill No. 99, entitled *Human Rights Act*, be amended in Clause 21(2) on page 8 by deleting the words "Commissioner in Executive Council but whose appointment will not continue beyond the end of the next sitting of the Legislature unless confirmed by the Legislature.", and substituting for them the following: "Legislature".

**22 Mr. Nordling:** I think that we have gone far enough in setting a precedent whereby the Legislature is going to appoint the Commission, but I do not think that we should go as far as having the Legislature now appoint the panel of adjudicators. I think the Commission and Council can do this. These people can be confirmed by the Legislature.

*Amendment agreed to*

*Clause 21 agreed to as amended*

*On Clause 22*

Clause 22 agreed to

On Clause 23

**Mr. Phelps:** On 23(1)(f), we had a great deal of debate earlier about the issue of costs generally. At that time, we were discussing the subsequent clause pertaining to regulations.

<sup>23</sup> If I recall correctly, the main part of the debate was about section 33. The Minister was going to consider some of the representations made at that time about the necessity of some certainty regarding costs, because of the huge impact the schedule of costs would have on a person who might be forced to pay costs, and we were going to determine whether or not it might be possible to come back with some kind of a schedule or proposal from the government, if I recall the debate correctly.

**Hon. Mr. Kimmerly:** I returned the information in general debate but my memory was that the Member was absent temporarily at the time, but I will repeat that the proper procedure would be to put a regulation in which is a regulation pursuant to Section 33(a) to the effect that costs would be paid on a certain basis. The recommendation I would have is that the Act be silent but that there be a regulation, and the regulation endorse a schedule of the Supreme Court Tariff of Costs, and also go further so that costs could be assessed by a Clerk of the Supreme Court or a taxing master. It could be established which schedule on the Supreme Court Tariff is the most appropriate one. This is exactly the way it is done in section 38(5) of the *Legal Professions Act*.

**Mr. Phelps:** I thank the Minister for that clarification. I do recall getting the information he did send over.

<sup>24</sup> Clause 23 agreed to

On Clause 24

**Mr. Phillips:** There was a great deal of debate on this principle in the second reading. At this time, I would like to make an amendment to this clause.

Amendment proposed

**Mr. Phillips:** The amendment reads: That Bill Number 99, entitled *Human Rights Act*, be amended in Clause 24 at page 9 by deleting all words between the word "was" in line 1, and the word "respondent" in line 4, and substituting therefor the following words:

"frivolous, vexatious, malicious or false or that the proceedings have been frivolously, vexatiously, maliciously or falsely prolonged the board may order the complainant and/or the commission to pay to the"

**Hon. Mr. Kimmerly:** I would like to check this wording with legal advisors. I would ask that it be stood over and dealt with tomorrow. I am expecting it could be dealt with very expeditiously.

Amendment to Clause 24 stood over

Clause 24 stood over

On Clause 25

Clause 25 agreed to

<sup>25</sup> On Clause 26

**Mr. Phelps:** I have an amendment to Clause 26(2), I would like to bring forward now, if I can find it.

Amendment proposed

**Mr. Phelps:** It reads: That Bill No. 99, entitled, *Human Rights Act*, be amended in Clause 26 at page 9 by deleting subclauses (2), (3) and (4) and substituting therefor the following: "(2) The hearing of an appeal under this section shall be a trial de novo and the decision of the judge is conclusive and not subject to further appeal."

**Chairman:** Debate on the amendment?

**Mr. Phelps:** Just in reading it out, it seems to me that there is a typographical error. "The hearing of the appeal under this section...", instead of "the"? Is there unanimous consent to that being changed?

All Hon. Members: Agreed.

**Mr. Phelps:** We debated this to some extent — the lawyers did — in earlier discussions on general principles. It seems to this side that the grounds for appeal are rather narrow in the existing legislation. Of course, an appeal to the Court of Appeal is generally on law, and it is the feeling of a great many people that they would like to have the opportunity to a full re-hearing of the evidence in certain cases.

<sup>26</sup> It seems that the procedure laid down in the existing law, the *Fair Practices Act*, is more appropriate and certainly it is our opinion that it would be far better that people do have a chance, if they feel strongly, to call a full case before the higher court.

**Hon. Mr. Kimmerly:** I think it expedites matters if I simply ask this matter to stand for consideration for the Caucuses. I would ask that before that happens the reasoning to include in the amendment the prohibition against further appeal. It seems to me that that is inconsistent with the argument made in favour of the motion. That may help in our deliberations.

**Mr. Phelps:** Yes, of course. It seems that there ought to be some certainty at some stage, and I guess the distinction we were making was that in the minds of most laypersons, when asked what they thought being appealed to a higher court meant, was that they really felt that they would have a change to bring forward an appeal that is in the nature of a trial *de novo*. As to a further appeal all that was weighed inserting those words was the issue of certainty, and I believe that a similar phrase is used in the *Fair Practices Act*.  
<sup>27</sup> That is why it was introduced. I could stand corrected, as it is a while since I looked at the *Fair Practices Act*.

In the *Fair Practices Act*, the trial *de novo* was final appeal. That is the reason it is here. It is open to persuasive argument to extend the appeal beyond that.

**Mr. McLachlan:** I have no objection with it standing overnight. For the other 12 of us present who did not go through law school, could the mover of the motion explain the meaning of the Latin expression trial *de novo*?

**Mr. Phelps:** I will do my best, in Latin. Do you want it in Latin, ancient Greek, or . . .

**Chairman:** For the benefit of *Hansard*, English would suffice.

**Mr. Phelps:** All I could say is: phew. Trial *de novo* is that evidence can be adduced before the higher court whereas, in an appeal, as contemplated in the normal course of beyond the trial to a court of appeal in the Yukon, normally you do not have exceptional circumstances and the chance to introduce evidence and cross-examine witnesses and that kind of thing. What you appeal on are narrow issues, generally, of law or a mix of law and fact, so that, in the minds of most people, if the appeal people or the adjudication does not give them a fair shake, they would like another kick at the cat in a court. That is why we are proposing it be done this way.

<sup>28</sup> Amendment to Clause 26 stood over

Clause 26 stood over

On Clause 27

Clause 27 agreed to

On Clause 28

**Mr. Lang:** I have an amendment on Clause 28.

Amendment proposed

**Mr. Lang:** It reads as follows: That Bill No. 99, entitled *Human Rights Act*, be amended in Clause 28 at page 10 by deleting the title preceding Clause 28 and by deleting Clause 28 and substituting the following: "False Reports

28. Any person who maliciously and falsely reports to the Human Rights Commission regarding a contravention of this Act commits an offence and is liable on summary conviction to a fine of up to \$5,000.00 or imprisonment of up to six months, or both."

I hear the MLA for Faro laughing. This was debated at length over the course of the second reading debate with respect to the possibility of false reporting to this illustrious body that is being set up by the government. The concern was to ensure that there was some protection or some fallback situation for somebody who has been maliciously or falsely accused. What this section does is provide that avenue for the wronged party, under this law, to take the necessary steps to ensure that anyone who has to go to this extent can be rectified to some degree — at least salvaged to some degree; they can never be fully rectified.

The other point I want to make is that this was a section that was taken out of *The Children's Act*. It was brought in primarily in the course of debate at that time, along the same principles we asked for at second reading debate for this particular Bill to ensure that the individual who has been wronged has some recourse.

<sup>29</sup> The reason it is put in this section is that on the question of

retaliation that is presently in here, it is our considered opinion that section 27 takes care of the intent of the present section 28 the way it is written. If one reads that particular section — obstruction, as it is referred to — “every person who wilfully obstructs or interferes with any person acting under the authority of this Act commits an offense”. That takes in the case of anybody who retaliates or threatens or does anything of that kind, and it can be proven beyond a doubt, I would assume that particular section would take it into account.

This is brought in as I think there was some common agreement on all sides that this particular situation which had been cited by the Leader of the Official Opposition there should be a section to ensure some recourse for a party or parties who had been maliciously or falsely accused of something that they had nothing to do with, especially if it was knowingly done.

**Hon. Mr. Kimmerly:** I would ask the amendment and the section stand.

*Amendment to Clause 28 stood over*

*Clause 28 stood over*

*On Clause 29*

**Mr. Lang:** If there is acceptance of our amendment, then section 29 would have to be amended, so that would have to stand, as well.

*Clause 29 stood over*

*On Clause 30*

*Clause 30 agreed to*

*On Clause 31*

*Clause 31 agreed to*

*On Clause 32*

<sup>30</sup> *Amendment proposed*

**Mr. McLachlan:** I have an amendment to add to Clause 31. It will, in fact, be a new clause to Clause 31 relating to what happens to the information gathered during an investigation by the Commission. There is a great deal of concern, as I mentioned early, about the Commission and about information they gather and what shall be done with it. It is a subject that is of great interest to people. The method I am proposing says thusly: THAT Bill No. 99, entitled *Human Rights Act*, be amended in Clause 31 at page 10 by adding immediately after Clause 31 the following sub-clause:

“(2) Personal information under the control of the commission shall not, without the consent of the individual to whom it relates, be disclosed except

(a) in proceedings under this Act or for any other purpose for which the Commission obtained the information or a purpose consistent with that purpose, or

(b) in accordance with an order or rules of procedure of a court or other adjudicative tribunal.”

**Hon. Mr. Kimmerly:** I would ask that the amendment stand for consideration by all Caucuses.

**Chairman:** Is it agreed that it be stood over?

<sup>31</sup> *Amendment to Clause 31 stood over*

*Clause 31 stood over*

*On Clause 32*

*Amendment proposed*

**Mr. Lang:** I have an amendment for Section 32. I will read the amendment, THAT Bill No. 99, entitled *Human Rights Act*, be amended in Clause 32 at page 11 by deleting all the words after the word “Employers” and by substituting therefor the following words: “are not responsible for the discriminatory conduct of their employees unless it is established that the employer consented to the conduct and did not take care to prevent the conduct or, after learning of the conduct, did not try to rectify the situation.”

If I could speak to it, I appreciate the Minister will want some time to review it. Basically the principle is that right now the employer is guilty until he proves himself innocent under the present section, the way it is written.

I do not think anybody in this House is going to condone any employer who is prepared to sanction, and knowingly sanction, any type of discrimination. I do not think that this House should be assuming the employer is guilty until he proves himself not guilty.

What we are doing is trying to put back the principle that you are innocent until proven guilty, but make it very clear that the

employer still has a responsibility. I hope the side opposite sees fit to accept such an amendment because I feel the way it is written at the present time automatically assumes that employers are guilty and have to carry the burden of guilt unless they can prove otherwise. I do not think that is the foundation of our judicial system in Canada, and we should not be trying to change it under our human rights legislation.

*Amendment to Clause 32 stood over*

*Clause 32 stood over*

<sup>32</sup> *On Clause 33*

*Clause 33 agreed to*

*On Clause 34*

**Mr. Phelps:** The *Interpretation Act* has a definition of “person” in it, I believe. Is there a difference in any way. Does this add to it, or what is the relationship?

**Hon. Mr. Kimmerly:** This adds to it. It adds unincorporated organizations and adds trade — all of the phrases are added. In the *Interpretation Act*, “person” includes a corporate body. I believe all these are additions.

**Mr. Lang:** I have heard the figure quoted quite liberally in this House that the number of homosexuals within the Yukon Territory is as high as 10 percent. Can the Minister of Justice tell me where he got that figure and what substantiation there is for such a figure?

<sup>33</sup> **Hon. Mr. Kimmerly:** It is a figure widely quoted as a figure that, in fact, goes across national boundaries and across cultural boundaries. It has been established by research done mainly in the United States and western Europe.

**Mr. Lang:** On the question of sexual orientation, specifically homosexuality in the Yukon, the side opposite believes that 10 percent of our population is homosexual? Is that correct?

**Hon. Mr. Kimmerly:** That is a matter for scientific or sociological fact. The belief of any particular Member is almost irrelevant. That is the figure generally accepted in the community.

**Mr. Lang:** There are a number of people who are questioning that figure within the community. If you say it enough times, and it is written enough times, people start to believe it. I really question that figure, as far as the Yukon is concerned, at least the Yukon I know. I respectfully say to the side opposite, I would hope that the government would refrain from using that figure unless they do their own demographics within the Yukon to prove such a statistic. I think it is misleading to the public. I think we have a responsibility to be as factual as we possibly can on any given issue, especially an issue of this kind. I think it is misleading.

<sup>34</sup> *Clause 34 agreed to*

*On Clause 35*

*Clause 35 agreed to*

*On Clause 36*

**Mr. McLachlan:** The question I have is on paramountcy of the Act. This Act supersedes every other Act within the Yukon — is that the interpretation, Yukon law, not Canadian?

**Hon. Mr. Kimmerly:** Yes.

*Clause 36 agreed to*

*On Clause 37*

*Clause 37 agreed to*

*On Clause 38*

*Clause 38 agreed to*

**Hon. Mr. Kimmerly:** In view of the hour, I move you report progress on Bill No. 99.

*Motion agreed to*

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

*Speaker resumes the Chair*

**Speaker:** I now call the House to order.

May the House have a report from the Chairman of the Committee of the Whole?

**Mr. Webster:** The Committee of the Whole has considered Bill No. 101, *An Act To Amend the Home Owners' Grant Act (No. 2)*, and *Bill No. 99, Human Rights Act*, and the Committee reports progress on the same.



**Speaker:** You have heard the report from the Chairman of the Committee of the Whole, are you agreed?

**Some Hon. Members:** Agreed.

**Speaker:** I declare the report carried.

The time being 9:30 p.m., this House now stands adjourned until 1:30 p.m. tomorrow.

*The House adjourned at 9:30 p.m.*

**The following Legislative Return was tabled February 11, 1987:**

87-3-47

Memorandum dated January 30, 1987, from Tony Penikett to Bea Firth regarding Precautions to protect Microfiche (Penikett)

