The Yukon Legislative Assembly

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HANSARD

Wednesday, November 5, 1980 — 1:30 p.m.

Speaker: The Honourable Donald Taylor

Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake
DEPUTY SPEAKER — Grafton Njootli, MLA, Old Crow

CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
Hon. Chris Pearson	Whitehorse Riverdale North	Government House Leader — responsible for Executive Council Office, Public Service Commission, Finance and Pipeline.
Hon. Doug Graham	Whitehorse Porter Creek West	Minister responsible for Education, Justice, Consumer & Corporate Affairs, Information Resources, Government Services and Workers' Compensation Board
Hon. Dan Lang	Whitehorse Porter Creek East	Minister responsible for Renewable Resources, Tourism and Economic Development
Hon. Geoffrey Lattin	Whitehorse North Centre	Minister responsible for Highways and Public Works, Municipal and Community Affairs, Yukon Housing Corporation, and Yukon Liquor Corporation.
Hon. Meg McCall	Klondike	Minister responsible for Health and Human Resources

Government Members

(Progressive Conservative)

Al Falle	Hootalinqua
Jack Hibberd	Whitehorse South Centre
Peter Hanson	Mayo
Grafton Njootli	Old Crow
Donald Taylor	Watson Lake
Howard Tracy	Tatchun

Opposition Members

(Liberal)

Iain MacKay	Whitehorse Riverdale South
Alice P. McGuire	Kluane

(New Democratic Party)

Tony Penikett	Whitehorse West

(Independent)

Maurice J. Byblow	Faro
Robert Fleming	Campbell

Clerk Of Assembly	Patrick L. Michael
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Whitehorse, Yukon
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Mr. Speaker: I will now call the House to order.

We will proceed at this time with Prayers.

Prayers

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

DAILY ROUTINE

Mr. Speaker: Are there any Returns or Documents for Tabling?

TABLING OF DOCUMENTS

Hon. Mr. Pearson: Mr. Speaker, I have for tabling today an answer to Written Question Number 13.

Mr. Speaker: Are there any Reports of Standing or Special Committees?

Petitions?

Reading or Receiving of Petitions?

Are there any Introduction of Bills?

Notices of Motion for the Production of Papers?

Notices of Motion?

Are there any Statements by Ministers?

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

QUESTION PERIOD

Question re: Gas Distribution to Highway Communities

Mr. MacKay: My first question is to the Government Leader with respect to the Alaska Highway Gas Pipeline. Has the Government yet devised a policy, with respect to the granting of franchises to supply natural gas to the communities along the Alaska Highway?

Hon. Mr. Pearson: No, Mr. Speaker, we have not devised a policy yet but, Mr. Speaker, I am very happy to tell the House that we have done a tremendous amount of work in this area. We have got an awful lot of research done. We have been dealing with the Province of Saskatchewan, the Province of Alberta, their administrative people in respect to just what might be the best way to handle this issue when it does arise in Yukon.

Mr. MacKay: Having done all this study, Mr. Speaker, can the Government Leader give the House an assurance, which he has failed to do in the past, that it would not be their intention to see such franchises being given to the present suppliers in electrical energy to these communities along the Highway?

Hon. Mr. Pearson: Well, Mr. Speaker, I cannot give that assurance at all because, Mr. Speaker, I just honestly do not know at this point who might be seeking these franchises.

Mr. MacKay: To perhaps put it in a more positive way, can the Government Leader say his policy will favourably consider the granting of franchises to any Territorially-owned energy corporations?

Hon. Mr. Pearson: Yes, Mr. Speaker, I can say that without hesitation.

Question re: Government Decentralization.

Mr. Penikett: I too have a question for the Government Leader. Three years ago a study for the legislature indicated that 97 government positions could be decentralized from Whitehorse to rural communities, among them the Yukon Housing Corporation and the Yukon Liquor Corporation. Could the Government Leader say whether the Government's plans at this point are to relocate these two, or part of these two, Crown Corporations to the rural communities?

Hon. Mr. Pearson: No, Mr. Speaker, our plans are not to relocate either of these two departments. Mr. Speaker, I am cognizant of the report that the Honourable Member has mentioned, but there are costs involved and we feel that we must balance the costs against the benefits that might be derived from this kind of a scheme.

Mr. Penikett: The report also indicated that a decentralization plan should occur over a five-year period. Could the Government Leader say whether his plans for decentralization will involve a similar phase-in period of five years, or is it intended to be done on an individual, ad hoc basis?

Hon. Mr. Pearson: Mr. Speaker, we have been looking at it on an individual, ad hoc basis, again tying what we are trying to do to the costs. Where costs are allowing us, we are trying to decentralize that way.

Mr. Penikett: Since the value of cost efficiency may run counter to the political value of decentralization, could I ask the Government Leader if it is his hope, should the decentralization plan succeed, to be able to reduce the need for rental office space in the City of Whitehorse, for example?

Hon. Mr. Pearson: Well, Mr. Speaker, it would certainly be a hope all the time, but, Mr. Speaker, in spite of everything we do, this Government is growing and we find the need to have more office space all the time.

Rental office space in Whitehorse, or any office space in Whitehorse, of course, would be offset by the need for office space in whatever community the decentralization was taking place.

Question re: Impaired Driving

Mr. Byblow: Mr. Speaker, I have a question for the Minister of Justice, firstly on a matter of policy. On the topic of impaired driving, can the Minister say if it is the intention of his department to encourage more severe penalties for or on convicted offenders?

Hon. Mr. Graham: Mr. Speaker, in the first place, this Government does not have the legislative ability to impose stricter sentences on impaired driving. In the second place, Mr. Speaker, the Crown Counsel in the Yukon Territory is a responsibility of the Solicitor General of Canada; however, my department will work closely with Crown Counsel in any manner that we can to help, in sentences to all convicted impaired driving offenders.

Mr. Byblow: I would note to the Minister that in 1978 the presently enforced Territorial *Motor Vehicle Ordinance* was passed except for two sections pertaining to impaired driving. These two sections, had they been passed, would have instituted uniformity with other jurisdictions in matters of offences for impaired driving. Is the Minister aware of this?

Hon. Mr. Graham: Mr. Speaker, I am not certain of which two sections the Honourable Member opposite is speaking of. I would imagine they are the sections which deal with compulsory suspensions of licences and compulsory fines after a certain number of offences. I would imagine that the reason these two sections have not yet come into force, is simply due to the fact that the Government of Yukon has decided to stay with the judicial decisions handed down. We have decided to stay with judicial discretion instead of making compulsory fines necessary in certain offences.

Mr. Byblow: I believe the Minister is quite correct in that Section 236 of the new ordinance was not proclaimed in favour of Section 34 of the old ordinance. Since a recent Hersch report on impaired driving confirmed that nearly 40 per cent of impaired driving offenders are given conditional licences under Section 34 of that old ordinance, will the Minister investigate whether perhaps it is in the public interest to have the unproclaimed sections brought into force?

Hon. Mr. Graham: Mr. Speaker, if the judiciary in the Territory is giving conditional licences to convicted offenders, then I would imagine they are doing so with a great deal of discretion. I am willing to look at the situation; however, I have a great deal of problem believing that the Honourable Member opposite feels that the judiciary in the Yukon is not effectively carrying out the responsibilities that they have been charged with.

Question re: Alcohol Consumption in Yukon

Mrs. McGuire: I have a question for the Government Leader. The Government Leader said yesterday that he did not believe that Yukoners drank more alcohol per capita than anybody in Canada. If this is so, can the Government Leader explain why his Government is spending ten times the national average on combating alcohol-related problems?

Hon. Mr. Pearson: Mr. Speaker, we are spending it because there are that many more people who need this kind of help in Yukon Territory.

Now, Mr. Speaker, I think probably the question is how much are we spending per person that is being treated? I do not believe, Mr. Speaker, that we are very far away from the national average in that respect. I do not have any hesitation in saying that there are more people in Yukon Territory, per capita, that need help for alcoholism and I think we recognize that now.

Mr. Speaker, I am still of the firm opinion that, on an average, as a whole, I, as a Canadian, do not drink any more than somebody from Ontario. Mr. Speaker, the statistics are exactly that, statistics, and they are never all-revealing.

Mrs. McGuire: Perhaps we do not drink anymore, but we do not drink any less, either.

Could the Government Leader perhaps explain, concerning the statistics produced by his own Government, how, after reducing the consumption to allow for summertime visitors in the Yukon, it is still 50 per cent higher than the national level?

Hon. Mr. Pearson: Mr. Speaker, I could argue for days about what that reduction figure should be. There are all kinds of arguments and I am sure the Yukon Liquor Corporation would have all kinds of arguments as to why they picked that particular number. Possibly the Honourable Member would have all kinds of arguments for another number. Mr. Speaker, that is an arbitrary figure. I have just as good a chance of guessing at what the arbitrary figure might be, just as well as anyone else has. The one thing that has not been considered, Mr. Speaker, is that it is not only the tourist trade in Yukon, particularly here in Whitehorse. Hotel rooms in this town have a tradition of a very high occupancy rate. That indicates, always, that there are people other than residents in the City. Mr. Speaker, that too would have quite a bearing.

Question re: Energy/Oil Price Increases

Mr. Penikett: Yesterday, the Minister of Tourism and Economic Development said that the Yukon should have adequate supplies of oil in the event of cut-backs by the Province of Alberta. Today the President of White Pass has announced that when Alberta's supply of crude oil is reduced, refineries may have to replace it with imported crude. Once that happens, Mr. Speaker, Mr. King says Yukoners will notice a traumatic increase in the price of petroleum products. I wonder if the Minister of Economic Development could say if he is aware of this situation?

Hon. Mr. Lang: Mr. Speaker, I do not think I needed Mr. King to announce that. I think it is fair to say, from everybody's perspective, that if the crude oil is not coming from the Province of Alberta, at a discount price, and we have to buy it elsewhere at a dramatic increase in cost, it obviously is going to cost you and I, the consumers, more. All I can say, and I am sure the Member probably wishes I were involved, is that we hope Alberta and the Government of Canada can come to some reasonable conclusion with the so-called negotiations that are about to take place. I think it is imperative that they do, but I do not have any control over that, Mr. Speaker. I hope that has clarified the matter for the Member.

Mr. Penikett: The Minister has some political affinity with the rulers of Alberta, and I wonder if he would be prepared to use his good offices to try and establish, on behalf of the public of this Territory, exactly what kind of price increases the residents of this Territory are likely to face as a result of Alberta's cut-back in oil production.

Hon. Mr. Lang: Mr. Speaker, I am sure there are a number of variables involved; such as where they purchase, how far it has to travel to get to its destination, so that is all going to reflect in the price. It would be strictly be subjective on my part in making these inquiries at this late date. I just hope that the situation between the fair Province of Alberta and the Government of Canada can be resolved.

I should further point out, Mr. Speaker, while I am on my feet, that the Member knows full well there are a number of agreements that this Government has signed to promote energy conservation, which I think for the long term are going to be our salvation, and that is in building our homes and ensuring that they are adequately insulated, et cetera.

Mr. Penikett: Given that the wheels of industry in this Territory depend absolutely on the supply of oil, and given my question of a few days ago to the Government Leader concerning energy price security for the Northwest Territories, will the Government Leader give his assurance that should dramatic price hikes in Yukon fuel oil be indicated as a result of the actions of the Province of Alberta, he will seek from the Minister of Northern Affairs similar assurances to those given by that Minister to the people of the Northwest Territories?

Hon. Mr. Pearson: Yes, Mr. Speaker, I can do that without reservation.

I should tell the House, Mr. Speaker, that it is anticipated that the Minister will be in Whitehorse on November 14th and we are scheduled to meet with him that afternoon. This certainly will be a matter that will be raised with him.

Mr. MacKay: Supplementary to the previous question, would the Government Leader be prepared to seek from the Minister of Indian Affairs a similar type of price underwriting to that that the Maritime Provinces have, when they are in the position of being forced to pay for imported oil?

Hon. Mr. Pearson: Mr. Speaker, we have been seeking that type of an underwriting for a number of years. It is still not forthcoming, but we are in the process of finalizing, with the Department of Indian Affairs and Northern Development, a scheme of subsidy for fuel oil in the Territory that is going to be, we hope, of benefit to everyone in the Territory, and will almalgamate the multi- federal schemes that now exist.

Mr. MacKay: We could go on on this one all day, Mr. Speaker. This policy that seems to be forthcoming, is it relative only to energy, or does it include transportationfuels as well?

Hon. Mr. Pearson: No, Mr. Speaker, this policy relates only to energy.

Question re: Freight Carriers/Inter-provincial Agreement

Mrs. McGuire: I have a question for the Minister of Consumer and Corporate Affairs. The Yukon inter-provincial carriers that run through BC are liable for: BC four per cent tax on value of their carriers; must purchase BC licence and insurance; can individually apply for rebate of pro-rated BC cost, but in a lot of cases are refused rebates. According to BC pro-rate management concerning Yukon inter-provincial carriers, BC's universal pro-rate agreement applies only to the provinces and to some of the States. The Yukon refused to enter into an agreement with BC. Would the Minister perhaps shed some light on why the Yukon refused to enter into an agreement with BC, which could only be beneficial to Yukon-based carriers?

Hon. Mr. Graham: Mr. Chairman, in the first place we did not refuse to enter into an agreement with BC. We did not enter into an agreement with various other provinces in this country, not only BC; we refused to enter into an agreement with many of the provinces. We, along with the Northwest Territories, felt that the drain on our financial resources entering into this agreement, which would have been somewhere in the neighbourhood of one million dollars, would not have done any good to the Territory at this time because we would have quite naturally had to raise the million dollars in some other method: probably some kind of additional licencing fee on truckers. Therefore, I see absolutely no advantage to the inter-provincial agreement that was signed in Canada; neither did the Northwest Territories or several of the Maritime Provinces.

Question re: Programs for Handicapped

Mr. MacKay: My question is to the Minister of Education. Mr. Speaker, in September, the Director of the Child Development Centre gave a submission to the Special Commons Committee on the Handicapped and Disabled, in which he said there were virtually no programs or staff available outside of Whitehorse in Yukon, to help handicapped children or adults.

Does the Minister plan to implement any special education programs or teachers in the outlying areas of Yukon?

Hon. Mr. Graham: Mr. Speaker, at the present time, we have a special education staff that do tour the areas outside of the City of Whitehorse. We cannot be expected to establish a facility in each community outside of the city, just on the simple basis that there might, at some point in time, be a child that requires those facilities. The capital expense and the expense of maintaining such facilities is much too great.

In special cases throughout the Territory, we attempt to meet the needs of handicapped persons and persons with special needs. However, if the Member opposite is suggesting that we establish a facility in every community, no, I am sorry, we will not do that.

Mr. MacKay: I think the Minister is as aware as the rest of us of the *Thousand and One Needs Report*, pointing out the 1,001 needs of children in this Territory.

Mr. Speaker, the same Director of the Child Development Centre also told the Committee that the Centre has programs for infants and children up to seven years, but there is no follow-up available for older children. Does the Minister's department have any plans to implement such a program and follow-up?

Hon. Mr. Graham: Mr. Speaker, unfortunately I do not have the advantage of having the brief in front of me; however, I believe that we do provide some special education facilities in our schools. We provide a great many special education facilities in our schools at the present time, for children with special needs. So, I reject the argument that we do not provide anything for children over seven years of age; we do.

Mr. Byblow: Just as a supplementary to that, Mr. Speaker, I would ask the Minister if he can assure the House that he will expedite the hiring of a special education coordinator position that has been vacant since July?

Hon. Mr. Graham: Mr. Speaker, the reason that position has been vacant since July is that we made the decision, within the department, that we would first of all look within the Territory for a person qualified to fit that position. We have been unable to find a person we felt was suitably qualified, and have been forced to go outside the Territory to hire somebody for that position.

Question re: Constitutional Development

Mr. Penikett: I have a question for the Government Leader. A Yellowknife newspaper recently published a confidential letter from Mr. Bud Drury to the Minister of Northern Development, regarding the proposed federal policy on constitutional development. I would like to ask the Government Leader whether he is aware of this letter, and, if he is aware of it, if he has had a chance to study its contents.

Hon. Mr. Pearson: Mr. Speaker, I am not sure that I am thinking of the same letter. I am aware of a letter that Mr. Drury wrote as a result of his report. But I have not seen that article in the Yellowknife newspaper, and I am therefore just not sure that I have seen the same letter.

Mr. Penikett: In the letter to which I refer, Mr. Drury raised the concern that the draft policy of the federal government advocates continuing colonial -type, interventionist control by the federal government in the North. I would like to ask the Government Leader if he has read such a letter containing such a charge, and, if so, has he communicated his concerns to the powers that be in Ottawa, concerning this matter?

Hon. Mr. Pearson: No, Mr. Speaker, I have not, to my recollection, read a letter with that particular phrase in it. I think it is a beautiful one. I would be most anxious to read the letter. Obviously it is a statement that we, on this side of the House, could subscribe to.

Mr. Penikett: Mr. Drury was also concerned with the lack of understanding by the federal government of the need to have northerners accept responsibility for constitutional initiatives in this area. I would like to ask the Government Leader whether, if he comes into possession of Mr. Drury's letter and the federal government papers upon which Mr. Drury's comments were based, he would then be prepared to undertake to table the same in this House?

Hon. Mr. Pearson: Well, Mr. Speaker, I am not sure exactly what the Honourable Member is asking me. If he has something that he wants tabled in the House and he is in possession of it, certainly he has the capability of tabling it in the House.

Mr. Speaker: It would appear the question was bordering on the hypothetical, in any event.

Question re: Mineral Leases on YTG Land

Mr. Penikett: I have a question for the Minister of Municipal Affairs. Where applications are made to the federal government for the Crown to grant mineral leases on Territorial Government land, could I ask the Minister if, as a matter of practice, the Territorial Government is informed of such application?

Hon. Mr. Lattin: Mr. Speaker, no, I do not think we are informed in that particular case.

Mr. Penikett: Can the Minister then confirm or deny whether it is the practice of the federal mining recorder to withdraw from disposition, under fedearl mining laws, lands within residential subdivision boundaries being developed by the Minister's department?

Hon. Mr. Lattin: Mr. Speaker, I am not particularly sure, and rather than misinform the Member I would ask if I could take that question under advisement.

Mr. Penikett: When the Minister is seeking his advice, would he also seek advice on the following matter: since under the *Quartz Mining Act* there appears to be a requirement for a miner to post a security bond, prior to his exercising his sub-surface rights on titled land, could the Minister find out if in fact that practice is going on?

Hon. Mr. Lattin: Yes, Mr. Speaker, when we are investigating and/or looking into to it, I will take that matter under consideration also.

Question re: Destruction Bay Road Maintenance Camp

Mr. MacKay: My question is to the Minister of Highways and Public Works. Can he tell us if there has been any recent change in Government policy with respect to hiring only non-permanent employees in their road maintenance camp at Destruction Bay?

Hon. Mr. Lattin: No, Mr. Speaker.

Mr. MacKay: I am pleased to hear that, Mr. Speaker. I hope he knows whereof he is talking.

Can the Minister also tell us if the Yukon Territorial Government has had any consultations with the federal government departments who also have employees living in Destruction Bay, and who will require continued municipal services?

Hon. Mr. Lattin: Mr. Speaker, at the present time we are in consultation with them and I suppose we will continue to be in consultation with them.

Mr. MacKay: In the process for looking around for other things to axe, has the Government considered at all abandoning the Swift River Road Maintenance Camp?

Hon. Mr. Lattin: Mr. Speaker, I do not like the reference to "axe". I think that is very inappropriate at this particular time or at any time.

No, as far as the Swift River Camp, we review all the things, but we have made no decision on any other place.

Question re: Commonwealth Study Conference Report

Mr. Penikett: I have a question for the Government Leader. This past summer, Yukon was blessed by the visit of a study group under the sponsorship of His Royal Highness the Duke of Edinburgh, known as the Commonwealth Study Conference, who made a report which our Government has received a copy of.

In view of the nature of some of the observations in the report, can I ask the Government if there was in any manner an official response to its findings?

Hon. Mr. Pearson: No, Mr. Speaker, there has not been, as yet.

Mr. Penikett: Can I ask the Government Leader, then, if his Government were to have any serious objections to any of the findings or comments on them, if it would still be the Government Leader's intention to convey those to His Royal Highness' organization?

Hon. Mr. Pearson: Mr. Speaker, we were asked to comment on the findings of the report and I am confident that we will do that. I am sorry, I would have to do some research to determine exactly where that is at presently.

Question re: Workers' Compensation Board Rulings

Mr. Penikett: I have a question for the Minister of Manpower and Labour. I would just like to ask the Minister: on October 16th, the Minister took a question under advisement regarding the secrecy of Workers' Compensation Board rulings and policies, and I would like to ask the Minister if he has an answer yet to the question he took under advisement?

Hon. Mr. Graham: Mr. Speaker, I recently, in fact, this morning, discussed with the representative from the Workers' Compensation that particular question and I think I will be prepared to give a written answer to that question on Monday.

Question re: International Year of the Handicapped

Mr. MacKay: My question is to the Minister of Human Resources. In recognition of the fact that 1981 will be the International Year for the Disabled, Mr. Speaker, an article in the *Edmonton Sun* dated October 31, noted that the Alberta Government is one of several provinces which has committed itself to providing grants implementing public awareness programs, and otherwise providing assistance to handicapped groups. Could the Minister advise the House as to if and when her department will announce similar measures?

Hon. Mrs. McCall: Mr. Speaker, our department is very much in touch with the committee for the Year of the Disabled, and we have some plans. We are not ready to announce them yet.

Mr. MacKay: Are the plans now completed and we are just merely waiting for the appropriate time to make this announcement, or are they still in the process of formulation?

Hon. Mrs. McCall: Well, Mr. Speaker, the Honourable Member opposite has already heard that we have approved $100,000 for the new Rehabilitation Centre. We have public awareness progams in the works and he will be hearing about them before long.

Question re: Lobird Trailer Court Highway Sign

Mr. Penikett: I just have a short question for the Minister of Municipal Affairs. I wonder if the Minister can yet report progress on the installation of a turn-off sign at the Alaska Highway, in the vicinity of the Lobird Trailer Court?

Hon. Mr. Lattin: I was only this morning talking to my deputy and I think within the next few days the Honourable Member will be able to see a sign up there.

Mr. Speaker: There being no further questions, we will proceed to Orders of the Day.

ORDERS OF THE DAY

MOTIONS OTHER THAN GOVERNMENT

Mr. Clerk: Item Number 1, standing in the name of Mr. Hibberd.

Mr. Speaker: Is the Honourable Member prepared to discuss item 1?

Mr. Hibberd: Yes, Mr. Speaker.

Motion Number 21

Mr. Speaker: It has been moved by the Honourable Member for Whitehorse South Centre, seconded by the Honourable Member for Tatchun, that this Assembly urge the Government of Yukon to consider the introduction of pharmacare for Yukon senior citizens, and, if possible, to implement such a progam during the next fiscal year.

Mr. Hibberd: Mr. Speaker, I am sure all Members are aware that our senior citizens are carrying an unusually heavy load as far as their health care problems are concerned; particularly the cost of prescription drugs which they face.

It is unique to this age group, Mr. Speaker. It is estimated that there are several of our senior citizens who are spending in the range of $25 to $30 a month on prescription drugs alone. Many of these illnesses which affect the senior citizens run a protracted course so that long-term therapy is required. Most of the illnesses which they face at this age are treated by drugs more than by any other method; all serving to increase the load on senior citizens.

This same group, Mr. Speaker, has suffered from the changes in our society such as: we no longer have a three-tiered family structure whereby their needs are taken care of within the family home, and they are often in the position of having to support themselves. Most of them have indeed made the effort to prepare for that in their future. But, of course, inflation has hit this group harder than any other, because their earning years are now behind them and the preparation is therefore no longer adequate. At the same time, Mr. Speaker, either through inability to work, or because the job market of this age group is extremely limited, they are unable to supplement whatever they might have prepared for the future.

Mr. Speaker, there is a chronic drug list that has been maintained in the Yukon for several years now. That drug list is designed to assist those who will require long-term therapy. It is a very narrow-based group of illnesses that can be treated in this manner. Although it is very useful for those somewhat unique type of illnesses, it is very, very limited in its application on a general basis for any age group.

Mr. Speaker, there are not many senior citizens in the Yukon who would be receiving assistance under pharmacare. It is estimated that there are approximately 700 in the Yukon at the present time. Many of these are now receiving help from the Government, from various sources, and usually through some method of welfare. Indeed, this is not acceptable to a majority of senior citizens. They want to maintain their own homes; they want to maintain their dignity and their place in society. In forcing them into this position of accepting welfare we are not providing the answer.

I consider it, Mr. Speaker, a right rather than a privilege for senior citizens to have drugs available when they are required.

Mr. Speaker, recently, the Yukon Council on Aging submitted a brief to this Government, concerning, among other things, pharmacare for senior citizens. I would like to quote just the conclusion of that, Mr. Speaker, and I will. "We feel that senior citizens should be encouraged to maintain their own homes and their independence as long as possible. The Yukon Council on Aging therefore, on behalf of the senior citizens of Yukon, petition to the Yukon Government for a blanket coverage, without means test, to provide these benefits free of charge for all senior citizens."

Mr. Speaker, the motion under consideration at the present time is an expression of support for that brief and for our senior citizens, and I would like to urge all Members to express their support.

Thank you.

Mr. MacKay: I would be very happy to lend my support to this motion, Mr. Speaker. I think that I can do so without any allegations of conflict of interest, since it will be many years before I will be seeking any assistance for aging. I hope other Members bear that in mind as they speak.

The principle, though, is really sound; I cannot agree more. The only fault I have to find with the thing is that I did not think of bringing this in myself as a resolution. It is not a fault, it is a compliment, I hope, to the Member opposite. It will have my full, whole-hearted support.

Mr. Penikett: I just want to say that wherever my Party has been in power they have brought in pharmacare legislation. I shall therefore be pleased and proud to support this resolution, and any legislation that is forthcoming as a result of it.

Thank you.

Mr. Hanson: Mr. Speaker, I will not be voting or speaking on this resolution, as it could be well said by some Members in the House that I have a pecuniary interest in the resolution in the near future, so, I will be abstaining.

Mr. Byblow: Mr. Speaker, I am certainly going to lend support to this motion. I think the matter was brought before the House in Question Period on April 17, and at that time the Minister of Health and Human Resources supported the idea; I am certainly encouraged by the Government's having brought this forward.

I think at that time I raised the concern of the amount of money it would cost, and it would have been interesting to hear the figures that would be required to put this into legislated effect.

Nevertheless, as a resolution, it is certainly going to receive my whole-hearted support, and we expect to see legislation following by Spring.

Mr. Njootli: Mr. Speaker, it will be many moons before I receive this service, however, I rise in support of Motion Number 21 on the basis of the high cost of living in Yukon: even higher in the village where I come from, because there are no employment opportunities for the senior citizens. I understand also that senior citizens who are Indian people have certain rights under the Indian Affairs; however, I still rise in support of non-status Indians who are under this Government, because most of these people have contributed work and services to the Territory in their earlier years. I hope that the House rises in support unanimously on Motion Number 21.

Mr. Fleming: I rise in support of the Motion very definitely, and also to prove that there is no conflict of interest yet; you know I am not quite there, though there may be a little doubt in some minds. However, I would like to rise definitely, and say that I am sure that this non-political party up here will really be in support of this Motion, and has been for many years, whoever has been in that party.

Hon. Mr. Lang: Mr. Speaker, I do not know if I have a conflict of interest or not; sometimes when I leave the House at night I feel like I am verging on the age of maybe 80 or 85, so I guess it is a question of perception. But, Mr. Speaker, I would like to comment and compliment the Member for bringing it in. I think it is overdue. I think if one looks back over the last number of years there have been major pieces of legislation, as well as capital investments, made by the Government of the Yukon Territory, for the benefit of our senior citizens.

If one looks back a number of years ago, the implementation of the Pioneer Utility Grant reflected the philosophy that was expressed by the Member, that we try to offset the cost of living for senior citizens who are staying in their own home, and I think it is a very fine program, that particular one.

You have implementation of the Home Owner Grant, which has helped senior citizens, as well as other people with their own homes.

Also at the same time, Mr. Speaker, the other aspect that I think all Members in the House should recognize and for that matter

should be given credit — I recognize it is not scandal so the media does not necessarily want to carry it — but the fact is that there have been major investments made in the area of housing for senior citizens who cannot afford it.

I think the opening of the 32 or 39 suites of the senior citizens' housing over on 4th Avenue has been a real accomplishment by the Government and a real benefit for senior citizens; also the advent of senior citizens' housing being provided more and more in all communities of the Territory as finances become available. I think that it is important that they have the option of staying in the community they desire, if they do not have their own home.

Mr. Speaker, I will support the motion. I do not think that the financial obligations are going to be that onerous but only time will tell that, Mr. Speaker.

Hon. Mrs. McCall: Mr. Speaker, I would like to thank my colleague on this side of the House who has proposed this motion, and who has given of his considerable expertise in looking at this subject. I would as well express my feelings of satisfaction for the interest that has been shown by the Legislature in the development of a prescription drug benefit program. The issue has been of particular interest to me for some time, and I would like to assure this House that I instructed my officials some time ago to begin a review of the drug benefit programs that will meet the needs of the people of the Yukon. In fact, it is my intention to bring forward a number of program proposals in the spring of 1981 which will provide services and benefits for senior citizens living in the Yukon. I am anticipating, of course, that the prescription drug benefit program will be part of a package of benefits available to Yukon senior citizens.

Some weeks ago I received a very interesting brief, as my colleague mentioned. It was from the Yukon Council on Aging with regard to a prescription drug benefit plan. I welcomed it.

In July, 1980, there were approximately 689 old-age security pensioners in the Yukon. Of this 689 pensioners, 337 received old-age security only, and 352 received both the old-age security and the guaranteed income supplement. In addition there were 20 people who received the spouse's allowance as part of the old-age security program.

When considering the needs of this segment of our population, there are two important issues which must be kept in mind: first the amount of income that Yukon senior citizens receive and, second, the cost of living they face in the Yukon. According to the 1977-78 inter-provincial task force inventory of social assistance programs, Yukon had a high proportion of guaranteed income supplement recipients among old-age security pensioners. The receipt of income supplement is indicative of poverty amongst the aged; thus, the Yukon has a significant rate of poverty in the senior citizen group.

When you consider that, in addition to the above fact that Yukon has a relatively high cost of living compared with other regions of Canada, it is apparent that senior citizens require special consideration with respect to income benefits and other forms of assistance.

This Government is deeply concerned with the situation of Yukon senior citizens who are on fixed incomes and face high cost of living in the North and are therefore disadvantaged.

Again, I would like to thank the Members of this House for their interest and support in the areas of health and social service delivery in Yukon, and I will look forward to deliberations in this House on the various programs I will be bringing forward in order to provide services and benefit to senior citizens of Yukon.

Mrs. McGuire: I will just rise in support of the motion put forth by the Member. Of course, I am always in support of anything that is beneficial for the elderly, and I have often toyed with the idea of introducing a motion here in the House that could perhaps exempt the elderly totally from paying property tax. It is something to think about, because I always maintain that the elderly, 65 and over, have paid their dues.

Thank you.

Motion agreed to

Mr. Clerk: Item Number 2, standing in the name of Mr. Hanson.

Mr. Speaker: Is the Honourable Member prepared to deal with Item 2?

Mr. Hanson: Yes, Mr. Speaker.

Motion Number 23

Mr. Speaker: It has been moved by the Honourable Member for Mayo, seconded by the Honourable Member for Hootalinqua, that the Standing Committee on Rules, Elections and Privileges investigate and report to the Assembly on (a) the position of the Member for Whitehorse Riverdale South in relation to Section 10 of the *Yukon Council Ordinance* and (b) any recommended amendments to such legislation.

Mr. Hanson: Mr. Speaker, there are two reasons for bringing forward this motion at this time. The first reason is to protect the credibility of this House. The second is to provide the Leader of the Opposition with the opportunity to protect his own name and credibility.

In a community as small as Yukon, Mr. Speaker, we have to be very conscious of street-talk, and I am sure the Leader of the Opposition is as aware, as any Member of this House is, of questions being raised, about his position, in that street-talk.

To let the matter remain on the street and not to raise it in the Assembly is unfair to both the Leader of the Opposition and to the Assembly itself. The question raised, of course, relates to the Leader of the Opposition's open and honest declaration of his intent to move to Vancouver.

The contention one hears, on which I do not wish to make any judgment, is that he has in fact already changed his place of residence from Whitehorse to Vancouver and is therefore no longer eligible to be a Member of this House.

Section 10 of the *Yukon Council Ordinance* states no person is eligible to be a Member of the Council, or to sit or vote in the Council, at any time that he not be entitled to vote in an election of Members of the Council, pursuant to the *Election Ordinance 1977*.

Mr. Speaker, to be eligible to vote in an election one must be a resident of the Yukon. The difficulty then is in determining who is a resident of the Yukon. Quite frankly, Mr. Speaker, the Leader of the Opposition, is in a difficult position. He may still be legally entitled to call himself a resident, and to vote, I do not know. The problem for him is that many citizens take what may be called a common-sense point of view and they are saying, "Look he has moved his family to Vancouver. He has purchased a home there. He has made clear his intention to move. How can he still be a resident of the Yukon?"

Personally, Mr. Speaker, I hope the Leader of the Opposition is qualified to remain in his seat. The last thing I want to see is a case where any citizens of Yukon are not represented in this House. The problem I have with merely keeping quiet about this issue is that not to do anything about it brings the Assembly into some kind of disrepute.

In the bill introduced by the Minister of Justice yesterday, we are talking about policing our own affairs in relation to Members of this House. It seems to me that the public is getting the perception that we are not doing that , since nothing has been said about the Leader ofthe Opposition.

I want to be clear on the point, Mr. Speaker, that I have certainly made no judgments about his position; I just believe we should be open and above-board about the whole thing, and that by doing so, we will enhance the credibility of the Assembly and its Members. By bringing this motion forward, I am showing that the Assembly is responsible and will look after its own affairs.

The motion also provides the Leader of the Opposition with an opportunity to clarify his position in the public forum, and to remove what he has called "the cloud over his head".

I might also mention, Mr. Speaker, that the second part of the motion that is giving the committee to capability to recommend amendments to the *Yukon Council Ordinance*, comes from a feeling on my part that the legislation may be unfair if it deprives the House of a Member, in a case such as the one before us.

I thank you, Mr. Speaker.

Mrs. McGuire: I welcome this opportunity to arise in defense of my colleague and Leader.

Mr. Speaker, Mr. MacKay has provided me with personal information, which I believe will assist the Members of the Progressive Conservative Party to withdraw their challenge to unseat the Leader of the Opposition. Mr. Speaker, it is my firm belief that the question was obviously raised at such a time and in such a manner that there can be no other motive than a political one.

There can be no doubt as to the fact, Mr. Speaker, that the Progressive Conservative Party has been fully aware of the plans of the Leader of the Opposition since May — six months ago, Mr. Speaker — when Mr. MacKay declared his intention to step down

from the leadership of the Liberal Party and, consequently, his seat.

He made it quite clear that he intended to fulfill his obligations to his constitutents in south Riverdale, not to mention his colleagues in Opposition, and to remain a resident in Yukon until after the fall Session. It has always been his intention to remain a Yukon resident until after the fall Session.

All that has changed is that, to give his children the opportunity to start a new school at the beginning of the year, he moved his family to Vancouver. Again, the Leader of the Opposition has made no secret of that, Mr. Speaker.

No doubt the Progressive Conservatives have read the legislation affecting the question of residency, and have seen only what they want to see. What they cannot know from the legislation — which is the key to their case, what they did not even bother to ask the Leader of the Opposition, what they did not want to know, because it spoils their little attempt at political assassination.

The question is this: when was it the Leader of the Opposition's intention to leave Yukon; when did the Leader of the Opposition intend to take up residence outside of Yukon? The answer, of course, is after the fall Session. On that very basis, the challenge to the Leader of the Opposition falls flat.

Mr. Speaker, if the Progressive Conservatives had wanted personal particulars, to verify Mr. MacKay's residency, they were welcome to these particulars at any time, but it appears, Mr. Speaker, that they did not want to know that the Leader of the Opposition does own a residence in Yukon, continues to carry out his business and earn a living in Yukon; or that he does own and drive a vehicle in Yukon, is licensed in Yukon, and continues to pay premiums to Yukon Medicare. My colleague also maintains his personal banking records in Yukon.

Mr. Speaker, throughout this Session, he has continued to represent his constituents and their interests very well. It is true, Mr. Speaker, that he also likes to visit his wife and kids in Vancouver.

Mr. Speaker, I ask the Government Members who sit in judgment in this House today, that in making their own individual decisions on the final outcome of this matter, they do so with honesty and integrity, putting aside all partisan obligations and party prejudices , and keeping in mind that they must live with their own consciences. Mr. Speaker, if the Progressive Conservatives still feel bound and determined to question the Opposition's seat after this, there can be no other interpretation of their action except straight political revenge.

Thank you, Mr. Speaker.

Hon. Mr. Pearson: Mr. Speaker, I do not know when I have ever been so disappointed in anything said by any one Member of this House, since we have come here.

Mr. Speaker, it was my intention to rise and inform the House that I consider this a matter of the House; that it is not a matter of government policy, and that I would like to declare that this will be a free vote in this House. Then I had intended to sit down.

Mr. Speaker, I simply cannot let go by what the Honourable Member from Kluane has said.

Mr. Speaker, we are not trying the right of the Honourable Leader of the Opposition to hold his seat. The request in the motion by the Member for Mayo is that the matter be referred to the only body in this House that can make any kind of interpretation of the *Yukon Council Ordinance* and the *Elections Ordinance*, that are in question here. That body is our own Committee. Now, Mr. Speaker, that Committee is asked to do two things: to come back and tell us what the position of the Honourable Leader of the Opposition is, with respect to the ordinances, and whether there should be some amendments made.

Now, Mr. Speaker, I do not particularly care how often the Honourable Member for Kluane says that this is a political ploy; it is not. The Member for Mayo was explicit. This is street-talk, and this House is being held in disrepute because this question has not been raised. Mr. Speaker, I admire the courage of the Honourable Member for Mayo in doing this.

Mr. Penikett: I believe everybody here today realizes what a profoundly serious matter this is. If they do not, they should very soon become aware of it. It has been said that the business with this motion is not to decide a question of whether the Member for Riverdale South is guilty or not guilty. A point has been made, however, and it is an important one, that there is a public perception of some problem or question or uncertainty or cloud over a Member's head.

Unfortunately, this is a very serious matter from my understanding, for us to deal with "it" — and I say with "it"; to deal with "it": the most serious question we can deal with in this House, the fitness of a Member to continue to hold office. The number of times in the history of the Commonwealth that legislatures have taken actions to remove a member from office are very, very few. I believe that in the Canadian House of Commons you could probably count the occasions on one hand, and you probably would not require very many fingers.

I know of one instance a long time ago in Saskatchewan. I know of one or two cases in Britain. We all know the Fred Rose Case. We are talking about the most serious punishment that any parliamentarian anywhere can suffer. Now I am not a lawyer, I am just an ordinary citizen like everybody else here. But all of us through our educations and upbringing absorb some notions of justice, particularly British justice, from our schools and our churches and our homes and our families. There are certain principles that apply, whether we are lawyers or not.

Among those principles is the fine principle of a trial by one's peers; presumably that is what is contemplated here by the motion. But another very, very important principle is that the punishment must fit the crime. What we are talking about here, what we are contemplating, what we have raised the possibility of, what may be happening here, is setting the machinery in motion, turning the switch on; a series of steps, a process, which can grind irrevocably on to the most extreme and final punishment that a legislative body can inflict on any one of its members under any circumstances at any time.

Such a motion, even if it requires only the flick of a finger to start it off, is an extremely profound occasion.

What is the problem here? None of us are lawyers. What is proposed to be referred to a committee which does not include a single lawyer is a legal question of interpretation: a question about whether somebody is technically still a resident, still an elector, still entitled to sit in this House; someone who stood for election and won election against great odds, but now, on a technicality, faces the prospect of being removed.

All of us who have ever had occasion to be caught up in the wheels of justice and fall into the clutches of lawyers and so forth, have reason to fear the Juggernaut of that process, because it is mysterious, it is beyond us, it is beyond the competence and expertise of every single Member of this House.

What we are talking about here is not a serious crime, not something that a Member should suffer for; we are talking about a technical problem and that by some technical judgment of some court, some law, a Member may fall on one side or the other. That is the question that is in the public mind. At very worst, even if the Member were found to fall afoul, found wanting on that technicality, the punishment ought to fit the crime, ought to be the most modest and insignificant reprimand.

What we are proposing here to set in motion is a process that, once reversed, can even lead to absolution, but not absolution without a cloud, to either lead to the unpleasantness of some kind of formal trial or inquiry by a committee of this House, which normally meets in camera, but the possibility of the most extreme sanction of all. What we have here, Mr. Speaker, is a problem that time will solve.

As the Member for Kluane has pointed out a member has announced honourably and openly his intention to retire from this Assembly: an unusual courtesy to be presented to an Assembly. There may be street-talk. Those of us who cannot stand a little street-talk to our faces or behind our backs do not belong in this business. Because it goes on; it went on a hundred years ago, Riverdale South has left us.

We have a matter here which is very serious towards the end of a Member's parliamentary career, no matter how brief. We are faced now between the choices of allowing a Member, honourably elected to office, who has honourably served, to leave with dignity, to walk out on his two feet; or to raise the horrible prospect of that Member's being dragged kicking and screaming from this Chamber, which should not happen except for the most heinous of offences.

The question of common sense has been raised. I do not believe there is anybody in this community who, as a matter of common sense, would suggest you hang a man who is terminally ill.

Now, the question has been raised about self-policing and I agree, that is a difficult responsibility which we will take on for

ourselves. But if self-policing is to mean anything, surely it means that the first responsibilty for self-policing is for a Member to be the judge of his own conduct. And having, by his own ethical standards, performed according to those standards as best as human beings are able, then at some point in the future, he must submit himself to the judgment of his peers based on that.

Now, Mr. Speaker, on a point of order, I must submit to you, given the gravity of the consequences of this motion, and given the fact that there is no charge — no Member has made a charge against the Member for Riverdale South, or specifically challenged his fitness to sit in this House — I would submit that the motion before you, the motion before the House, is therefore out of order.

Thank you, Mr. Speaker.

Mr. Speaker: Is the Honourable Member raising a point of order?

Mr. Penikett: Yes, Mr. Speaker.

Mr. Speaker: Well the Chair has looked at the motion, and can find no precedent in any way, shape or form as to why the motion would be out of order. If the Honourable Member could draw the attention of the Chair to a precedent which would show why this may be out of order, the Chair might consider it.

Mr. Penikett: Mr. Speaker, the Chair will understand the consequences of proposing a trial which is to judge a Member's fitness to serve. Mr. Speaker will be fully cognizant of the fact that the consequences of making such a charge in a Legislature, and failing to substantiate that charge, has, throughout our history, brought the most serious penalty onto the head of the person making that charge.

Mr. Speaker, this Legislature has heard no such charge. It seems to me that no judicial process, no legal process can proceed without a charge. Neither you nor I can be taken to court and judged, juried, sentenced, prosecuted or defended without a charge being brought against us. No such charge has been made. If a charge were made, Mr. Speaker, the Member making that charge, I believe, would be bound by precedent to present the evidence in support of that charge. If that charge was found wanting or unsubstantiated, that Member would then face the moral responsibility of either having to withdraw the charge or themselves resigning their seat.

I therefore submit, on the point of order, that Mr. Speaker, as the protector of the rights of the Assembly, cannot permit a trial on this basis, without there being a specific charge laid. There having been no specific charge laid, Mr. Speaker cannot countenance any kind of trial.

Mr. Speaker: I thank the Honourable Member for his remarks. The Chair has noted that the Honourable Member makes reference to the judiciary, which, of course, has no part in the parliamentary process. The parliamentary process which we are undergoing in the course of the sitting of this Legislature is governed by the rules which we have laid down for ourselves.

I certainly find that the point of order raised by the Honourable Member is unacceptable to the Chair, because the motion before the House is quite in order, according to the Standing Orders and the Rules of this House.

Mr. Fleming: I think this is really a horrible decision to have to make, on my part or on anybody else's. I think there are a couple of questions which I have to answer, and which the Honourable Member on my right will have to answer, too.

First, I must try to find out or try to establish why we have such a motion. That is going to be a problem, whether this motion was put forth in this House in a political sense for political reasons. Now, Mr. Speaker, I want it to be clear I am not saying this was done; I am saying I have to judge if that was the case, because, if that were the case, there is no question where I would vote. I would like to throw the motion right out the window.

The other question is: if the Honourable Member who placed this motion here did so because of some constituents in the Yukon Territory; if, for some reason, someone felt that the Member in question should be checked to see if he was legal in this House, then I consider the Member maybe is only trying to do his duty. In that case, it makes a little bit of a different motion and a difference in how I am going to vote.

However, and the Member from Whitehorse West has explained it very clearly: when any Honourable Member brings a charge, which is not really what this is, but coming forth with this type of a motion, having it go to a committee, and having that committee decide — it is absolutely a legal question, really, in the long run, because that committee will not know any more about it than this House knows now. They will have to have legal guidance before they can come up with any resolution saying that it is legal for the Member to sit or not.

I find that this matter, if it goes that far, is going to be nothing but a farce and a sham. I respect the law in this Territory and any other territory, but I can see a committee and I can see their legal advice saying "yes, I think the Member should be unseated." I can see another one sitting down saying, " I do not think the member should be unseated." I can see it going into, I do not know how long, to even find out if the member was legal or not legal, and then coming up with an answer; and maybe because the law said at that time that it was so, we accept it. It might not be the case at all, because there are never two legal beagles in the world that want to keep with the same principle.

In the first place I think it has been explained fairly well by the Member for Kluane that we do not really know the *Elections Ordinance* that well and we do not really know for sure, maybe, in our minds, whether the Member is illegal or not. But the very fact that that Member made his intent clear to this House — I know he did to me, many months ago: that he did not intend to become a non-resident of the Yukon Territory, he intended to be a resident of the Yukon Territory, and to sit in this House and serve his constituents until this Session was over. I think that is commendable as long as he was doing it as legally as possible. In my opinion, I think he is doing that. For to various reasons, after this Motion may have passed this House, I would like to say to all the rest of the Members here that they should be very, very careful, too, that possibly more people in this House might be in the same position, and there may be every reason that some Member should put them in that position, which is just another farce. The Member is, as far as I know, and as far as most Members would know, still quite qualified and legal to be in this House.

He has not taken up a residence somewhere else and I take his word that he has not actually taken up a residence anywhere else.

So, how does a person like myself go about deciding? I have no political reason to defend the Member; I have no political reason to shoot down the Member. I would hope, in this House, that no one else has. I commend the Government Leader on what he was going to do and I would say this now: hopefully he will still be willing that every Member in this House has a free vote to vote where he wishes, and I am sure that that is what the Government Leader said. That, I hope, is true, in this instance.

I also hope the Member who moved this motion realizes the seriousness of it and what could happen to him, to the Member he is opposing in this motion: not opposing, but trying to find out if this is a legal matter. I would suggest that we throw the motion out the window. If there is a necessity to do something about it, maybe find out first whether everything is really legal in the first place, whether the Member should sit.

I have no problem at all. I am afraid I am not going to be able to support the motion, and in doing so I am putting myself in a position where I am not even trying to find out if the Member is legal. That is a terrible position to put a person in, but right from here, I believe the Member is legal and I think it should be decided in this House whether he is or not and I think there is only one way to do that and that is to move it out, and then that decision would have been made.

Mr. Byblow: Mr. Speaker, I think we have to consider very thoughtfully the statements of the previous two speakers. I think we should give serious thoughtfulness to the matters that may be set in motion as a consequence of this motion.

We are dealing with something very serious. Perhaps I could just review a couple of points. It seems to me that, as the motion stands, it calls for a committee investigation into the eligibility of the Member for Riverdale South to sit in this Assembly and represent his constituents. Further, Mr. Speaker, it seems that the eligibility of the Member to sit here rests on the question of his residency. I do not think we have given this adequate attention. The fact that the Member has stated his intention to reside elsewhere, following this Session, and gave full notice to that effect a number of months ago, has, I think, been somewhat miscalculated as to its full meaning. I think the motives of the Honourable Member for Riverdale South have been made quite clear. It was his intention, and it has been supported by his performance, to reside in Yukon until this Session is over. So what is the problem? He is representing his constituents. He is performing his duty as Leader of the Opposition. It seems only logical sense to carry that responsibility through a

Session of the Legislature at a time when representation is heightened; when it is critical; and when it is necessary to be particularly vocal and active in representation if our democratic system is supposed to work.

Mr. Speaker, I would hope, given the seriousness of what mechanics are being put in place if this motion goes through, I would sincerely hope that there was no intention to suggest that the Honourable Member, who has committed himself to a course of representation over the next two weeks, should be asked to step down.

I would hope, Mr. Speaker, that this Motion is not saying that the Honourable Member is no longer eligible to sit because he plans to move to Vancouver after the Session. I would hope that this motion is not implying that the Honourable Member is not doing his dutiful responsibility and must be removed. I would hope that that is not the intent or motive behind the motion, because we are talking about a very serious matter, as so well articulated by the Honourable Member from Whitehorse West.

I would simply then ask: is there a charge that has necessitated the question of his right to sit here? Really Mr. Speaker, I hope this motion was not intended in any form of innuendo, as if there was some kind of charge on the Member's performance, and his subsequent right to sit here. I would hope that the matter being raised is not being raised and sent into the committee in an attempt to shroud the issue and leave some cloud over it.

I believe, as does the Honourable Member to my left, that the matter should be debated and dealt with here and now. If is sent to committee, there will hardly to be any need to report within a matter of days or a couple of weeks, because the Honourable Member has stated his intention, very clearly, that he will cease his residency and will terminate his position in this House.

I cannot support the motion as it stands. It does not seem to me that it warrants committee investigation.

Hon. Mr. Graham: Mr. Speaker, we have on the Order Paper a bill, entitled the *An Ordinance to Amend the Yukon Council Ordinance*. This bill came about as a result of a Committee on Rules, Elections and Privileges meeting over a long period of time, and the Committee concurred in the report, or at least a majority of the Members concurred in the report. As a consequence, this bill is now on the Order Paper.

The basic underlying point in that bill, Mr. Speaker, is that Members should govern their own affairs. I believe in that concept, Mr. Speaker. I was an advocate of the changes that are before us now in this bill and I believe very strongly that not only should Members govern their own affairs, but that these Members, the Members of this Legislature, have the capability and the desire to govern their own affairs.

Mr. Speaker, there has been a question raised by Members of the public about one of the Members in this Legislature. Now, Mr. Speaker, I firmly believe that had that Member of the Legislature been a Member of the Government Party, the Government backbench or the Government front bench, we would have been in the same position. It was an extremely difficult decision to make and I think this is evident by the simple fact that most of the Members in this Legislature have known about this possible conflict for a period of a month, yet no one has brought it forward. I think the reason that no one has brought it forward is because they realized the gravity of the situation.

However, Mr. Speaker, there is no way that we can avoid our responsibility. In my opinion, if we believe in this new conflict-of-interest guideline at all, if we have any commitment to governing our own affairs at all, then it is incumbent upon every Member in this Legislature to ensure that there is not a shadow of doubt hanging over any Member's head.

I believe, Mr. Speaker, that the Member for Mayo did a very, very courageous thing in bringing this motion forth. I believe, Mr. Speaker, that the Committee on Rules, Elections and Privileges should look at this situation. I also believe that if there is a potential conflict here, or if what the Committee eventually finds is, in this Legislature's opinion, not morally correct, then this Legislature should enact changes in that legislation to ensure that not only does this situation never happen again, but also that all Members are never put in this position again.

Mr. Speaker, I have a great deal of problem believing that, in defeating this motion, we have cleared the question. I do not think we would do so. I think what we would do, if we defeat this motion, is create an even larger question in the mind of the public. That question will be: "Are those people really competent to handle their own affairs and to govern themselves? Or should their conflict of interests be governed by the courts? At least then we would have some reasonable assurance that no conflicts are going to arise, or, if they do, that the courts will look after the place".

Mr. Speaker, I will be voting for the motion, because I think that a question has been raised in the minds of many of the public, and I think we have to answer that question. We have to take the responsibility ourselves for governing our affairs. We say we can do it; then let us show it.

As I said before, I have a great deal of difficulty believing that we are going to solve anything by defeating this motion. Consequently I will be voting for it, because I believe in this Bill Number 60, *An Ordinance to Amend the Yukon Council Ordinance*, and I believe that the Members of this Legislature have the competence to govern their own affairs.

Hon. Mr. Lang: Mr. Speaker, I guess at some times in one's political life one wishes he was never in it. I guess this is one of those days for me. I fully recognize the gravity of the situation, Mr. Speaker. It is one of those things that when you get involved in politics, there are times when you have mixed feelings on an issue and yet are forced to vote; you can see logic on both sides. Personally, I believe, Mr. Speaker, and believe very strongly, that this resolution should not go forward. I have given it a great deal of thought. That is one of the reasons I disagreed yesterday with the proposal that we immediately discuss the resolution. I wanted more time to think about what my position would be with respect to this particular resolution. I have given it a great deal of thought since then, and even spoken with some of the Members opposite, as well as the Members within the Tory Caucus here, as to the pros and cons.

I want to make a point here, Mr. Speaker, which has not been raised, and it is time, I submit, that it be raised.

I have heard everybody on the other side standing up pontificating, saying, "Well, it could go away. It is a technical matter, the gravity of the situation." I just want to tell the Members opposite that when they are in this House and when they are trying to destroy a Member of this front bench, which I have seen with my own eyes in the past two weeks — . I think they had better start thinking twice too: the way they phrase their questions, the way they try to test the credibility of an individual on this side of the House. What I am saying, Mr. Speaker, is that it is a two-way street.

Politics, I recognize, is a very tough game, but all I am saying is, just remember everyone in this House is human; when they are asking their questions, when they are going after principles, just remember how you do that, and what you are doing in the long-term in respect to an individual, especially when you get away from the principle of what you are talking about.

Mr. Speaker, back to the situation at hand here. In respect to my colleague from Porter Creek West, who likes to say he is taller than me but he is not, I think we are taking the responsible step. I applaud the Member from Mayo for bringing it forward, because it should be discussed in here, not in the street. But I also personally believe that we are governing ourselves. I have looked at the *Elections Ordinance*, I have looked at the *Yukon Council Ordinance* ; I am not a lawyer, but I know for a fact that you can get $200,000 a day lawyers, and they can take either side of the case and they will be able to present a legal opinion that could, depending on the ability of the lawyer, sway Members one way or the other.

From my layman's point of view, Mr. Speaker, I personally believe that the Member for Riverdale South is eligible to vote in the Yukon Territory and therefore he is eligible at this time to be a Member of this House. The reason I say that: he has not permanently left;, he has stated, as was said I think by a Member opposite, his intention to permanently leave at such-and-such a time. To me, that is the key.

There is good reason for the legislation the way it is written. I mean I was involved in discussion a number of years ago, and I recognize I am getting older, on that particular matter, and the idea was that you could not have an MLA from Alberta representing a constituency within the Yukon. I do not question, Mr. Speaker, the honesty or the integrity of the Member opposite from Riverdale South, and I do not think anybody in this House does, and I do not think it should be implied that anybody does.

I personally think he conducted himself well in this Territory, not only from his own personal point of view, his personal life, but just as importantly, politically. I think he has raised the stature of this House considerably since our election in 1978.

Mr. Speaker, I think that the key issue is whether or not we are going to go to a committee to get nine legal opinions on one side and ten legal opinions on the other side, and I personally believe it is a question of common sense. I personally believe that the Member is eligible to sit in this House and I do not think that the resolution should continue, or be carried.

Thank you, Mr. Speaker.

Mr. Hibberd: Mr. Speaker, the Leader of our party has indicated that this is to be a free vote, that we should vote as our conscience. Mr. Speaker, when I applied this problem to my conscience, I simply cannot support this motion.

Mr. Speaker, the motion has served a good purpose. There have been stories around that something should be done, the problem should be addressed. The motion has done that; it has brought it to the floor of the House, but, more importantly, Mr. Speaker, it has given the Member involved the opportunity to explain his situation, to clarify that talk and to do it here, Mr. Speaker, where he should do it, nowhere else, but on the floor of this House.

Mr. Speaker, I have no reason to doubt the integrity of the Member and when that Member tells me, Mr. Speaker, that he believes he is still a resident, as he did two days ago in this House, and he also tells me that has a legal opinion that backs that position up, then, Mr. Speaker, I believe him. I have no reason not to believe him. He has told me he is eligible. He is an honourable gentleman and therefore, Mr. Speaker, although the motion has brought this issue to the floor, it, in my mind, has now been resolved. The Member has had the opportunity to state his case; he has done so, andI believe him.

So, I will not be supporting this motion, Mr. Speaker.

Hon. Mrs. McCall: Mr. Speaker, we speak of honour in this House and I believe that if the Honourable Leader of the Opposition has stated that he is a resident, then by sending this to committee we are doubting his word.

I will not be voting for the motion.

Mr. Njootli: Mr. Speaker, being a new Member to the Legislature, I remember that I introduced a motion to the House in the first Session of the 24th Legislature here, seconded by Mr. Pearson, in relation to Rules, Elections and Privileges. Within that motion, as far as I can recall, the committee has the power to call for persons, papers, and records, and report to the Legislature its findings.

As far as this matter is concerned, Mr. Speaker, I feel that being a Member of this Legislature, it is my responsibility to react to any type of motions that comes before this House. In this case it is Motion Number 23.

I would like to rise in support of the motion put forth by the Honourable Member for Mayo, based on the fact that there is a question whether a Member of this House is a resident or is not a resident, pursuant to Section 10 of the *Yukon Council Ordinance*. So, based on those opinions, Mr. Speaker, and being a Member of this House, I will rise in support of that motion.

Mr. Tracey: Mr. Speaker, I have a real problem with this motion. I think all of the Members across the floor have stated their points very well, but there is a question in my own mind of legality here. I have a real question in my mind whether the Member is actually conforming to the law or whether he is not conforming to the law.

I do not feel competent to make a decision on my own, and I have to support this motion because if this goes to a committee the committee has the ability to call on the legal advice that they need to give us our counsel.

Mr. Speaker, I would like to say that I would vote against this motion, but I find it totally outside my power to do so. I have to support the motion.

Thank you, Mr. Speaker.

Hon. Mr. Lattin: Mr. Speaker, I have considered this motion, I have dwelled on it, and after careful consideration, I will have to support this motion. The reason for my decision, Mr. Speaker, is that I say that in this House we have a means to govern our actions. Mr. Speaker, I believe that means the Standing Committee on Rules, Elections and Privileges. I think, Mr. Speaker, we have to have the internal fortitude in this House to refer our problems like this to this particular committee. This committee will deliberate on them, and I submit to you that no matter which way they go, when they bring a report back, we then are not denying the Members here a chance to debate it in this House, because when the report comes back we are all able to read or debate their deliberations.

Mr. Speaker, it would seem to me that this is the only way that you can get the cloud of suspicion from any particular Member at a time like this.

I maintain, Mr. Speaker, that this is the route to go and for that particular reason, Mr. Speaker, I will be supporting the Motion.

Mr. Speaker: Is there any further debate?

Mr. Falle: Yes, Mr. Speaker, I have to rise in support of this motion also. It seems to me that the question is residency, and I can only think in my mind that if this question came up, whether or not I could get a hunting licence or something like that, to the layman, it would be no problem for our Game Department to tell that person what his residency status was. And that happens to be the law. I cannot put ourselves above the law so I have to support this motion, Mr. Speaker.

Mr. Speaker: Is there any futher debate?

Mr. MacKay: I must say I have truly enjoyed the debate thus far. It is not often that you get to view your own trial in such luxurious surroundings. I compliment all the Members in dealing with the matter on hand in such a diplomatic and, shall we say, tactful way. And indeed, as I count up the votes as they come up back and forth, I can see that it is going to be a very close vote. That makes it very interesting for all the voyeurs in the gallery and for all the press. It does not really assist me very much, Mr. Speaker.

The problem I have — let me give you a parable. When the British Government decided to take over the Suez Canal, they launched an attack, Mr. Speaker, and they went in there, they got in on shore, and they suddenly realized, from all of the opinions they were hearing around the world, that they had made a terrible mistake. They had launched an attack that they should probably not have. So they were winning. They were winning the battle, but they were losing the war. So they stopped, they pulled out, and they appeared to be defeated. Mr. Churchill, who was still alive at the time, said, one of my favourite quotations, "Having begun, I would not have stopped, but in the first place I would never have started".

That is the position, I think, that the Members find themselves in. I have some sympathy with the Member from Whitehorse North Centre when he indicates that perhaps it is the only way that we can clear the air. Indeed, Mr. Speaker, I was anxious to bring this motion forward at the earliest opportunity so that such a conclusion could be reached.

I have heard the debate. Really what has gone on here is a trial. It is a funny kind of trial, Mr. Speaker, because the accuser really did not have the courage of his convictions to make the accusation. I suggest he is being a bit hypocritical when he says he heard it on the street. He has no opinion, but he thought he would just bring it to the attention of the House. I frankly find that a little hard to take, Mr. Speaker. We are all faced with decisions about what to raise in the House. We are often asked by especially the more radical members of our constituencies or of our parties to go after somebody in this House. I know whereof I talk. I presume I probably have just as many radical members in my party as the Members opposite have in theirs.

Mr. Speaker, I have made it a policy, since I entered this House, of never going after a Member on such an issue as this. The Minister of Justice, having such a thin skin, seems to forget that he was never questioned. Perhaps we are now seeing from the Minister a little bit of a motive behind this thing. I hope that he is not seeking, as my friend to the right said, "political revenge".

Mr. Speaker, I do not think I have been treated particularly fairly. I think that I have been above-board with this House; with the public; with my constituents. I have always said that it is my intention to represent my constituents throughout this Session. It was only a matter of family convenience, in the process of moving to Vancouver; I took on the responsibility of moving my family there primarily so that my children might start school in the normal part of the year. So nothing changed my intent to remain a resident of this Assembly and to represent my constituents.

You know, it is hard to refute a non-accusation. I think my honourable friend to the left here had a reasonable point to make on the question of the order of this thing. It is quite obvious that every single Member of this House has passed a judgment on an accusation, yet the motion does not make an accusation directly. Indeed, the Member himself will not bring himself to make that allegation. I challenge him to make the allegation when he closes debate, because I think it is only fair to everybody in this Assembly that we hear the Member say that. If he lacks the intestinal fortitude to do that, he is going to be the loser.

I did not want to get too radical on this but I think I should divulge one thing. It might be a bit of a shock to some of the Members opposite, it was rather shocking to me. The day this Assembly was presented with the notice of motion — of which I received five minutes' notice, that morning, Mr. Speaker — the Chairman of the Committee for Rules, Elections and Privileges, came to me, and, he also being the Minister of Justice, the Member for Porter Creek West, suggested that because of street-talk, because of pressure from certain individuals, one of whom is a prominent Member of the Conservative Party outside this House, because of these pressures, I should stand up in this House and put the question to the House as to my residency.

Mr. Speaker, I do not like that kind of deal. I said to the Minister that I did not feel I had a residency problem, that I had taken legal advice and I was satisfied that this was the case: that I was entitled to be here.

Mr. Speaker, the Chairman of Rules, Elections and Committees then said "I guarantee we will clear you in the committee."

Now let that sink in. I am sure the other Members of the Committee might be slightly miffed. I did not feel it was a very appropriate thing for the Chairman of that Committee to say. But I bring it out now because I think that we should be aware, Mr. Speaker, that it is not just a little legal technicality we are talking about. It is a very real, political power that we are talking about. It is very real, moving and shaking in this area. I must admit that I took the tabling of that motion and the refusal to debate the matter yesterday, as a personal affront. As the Honourable Minister of Human Resources has said, she believes me. As the other Members are saying, as I read it, they do not believe it. One has trouble when one's word is doubted.

Turning to the self-policing aspect, Mr. Speaker, I think that when we talk about protecting the credibility of this House, I feel that this House has had a great deal of credibility in the last two years. One of the reasons we have had that is because we have managed, I think, to stay away from personality in-fighting. The kind of thing that plagued the previous Council has not arrived in this House. By and large we have managed to stick to the issues, to the policies and we have tried to do the best we can. That certainly has been my goal. So when we talk about self-policing, that is what we have been doing. We have been policing ourselves. Sometimes we find things out that we do not like about somebody else and we do not pursue it, because we do not want to bring this House into disrespect, because it is the public out there, Mr. Speaker, who are judging us. Sure, you are judging me, but they are judging us; and when we get into this kind of stupid debate, on legal technicalities, by what I think are poorly motivated people, I think the whole of this House suffers, not just me. It is a sad day.

I think what we are going to come down to is a very close vote, Mr. Speaker. Regardless of the outcome, I do not think that anything that is happening after this is going to remove the cloud that has been placed over my head.

I do not feel sorry for myself in that respect. I feel sad for the House. I do not plan to vote on this motion, Mr. Speaker. To do so, I would sit in judgment on myself. If the matter goes to committee, I shall defend myself there, however useless it may be. I shall defend myself to the public after this debate. I shall continue to defend myself as long as I can, and as long as I am part of this Legislature.

I appreciate very much, Mr. Speaker, the support I have received from both sides of the House. I hope that everybody weighs their vote very carefully, because I am on trial, regardless of the reservations expressed about going this one step further. Once the wheels are in motion, nobody knows what the outcome will be. If they are not going to accept my word for this, then so be it. Let us have the vote.

Mr. Speaker: Division has been called. Mr. Clerk, would you poll the House?

Hon. Mr. Pearson: Disagree.
Hon. Mr. Lang: Disagree.
Hon. Mrs. McCall: Disagree.
Hon. Mr. Lattin: Agree.
Hon. Mr. Graham: Agree.
Mr. Njootli: Agreed.
Mr. Hibberd: Disagreed.
Mr. Hanson: Agreed.
Mr. Falle: Agreed.
Mr. Tracey: Agreed.
Mr. MacKay: Abstain.
Mrs. McGuire: Disagree.
Mr. Penikett: Disagree.
Mr. Fleming: Disagree.
Mr. Byblow: Disagree.

Mr. Clerk: Mr. Speaker, the results are six yea, eight nay.

Motion negatived

Mr. Clerk: Item Number 3, standing in the name of Mr. MacKay.

Mr. Speaker: Is the Honourable Member prepared to deal with Item 3?

Mr. MacKay: Yes, I am, Mr. Speaker.

I wonder if it would be in order to have a brief recess in order that I can gather my papers?

Mr. Speaker: I am afraid that will not be possible at this time. Does the Honourable Member still wish to proceed?

Mr. MacKay: Yes, Mr. Speaker.

Motion Number 19

Mr. Speaker: It has been moved by the Honourable Leader of the Opposition, seconded by the Honourable Member for Kluane, that the Assembly concur with, and urge the Government of Yukon to implement, the main recommendation of the Brass Report, and encourage the establishment of an independent foundation, assisted by Government, to launch a sustained campaign to significantly reduce the abuse of alcohol and drugs in Yukon.

Mr. MacKay: Mr. Speaker, we have heard some brief, almost-debate in the House over the last two days about various judgments on the seriousness of the alcohol problem in Yukon.

Mr. Speaker, there is no doubt in my mind that the single greatest social problem facing Yukon today stems from alcohol and drug abuse. Alcohol is the root of family break-ups, Mr. Speaker; alcohol is the root of crime; alcohol causes fatal accidents; alcohol causes child neglect; alcohol causes health care problems; alcohol causes this Government to spend vast amounts on social welfare programs.

I do not think these are loose assertions. I think they are some facts that we should consider. The Yukon has three times the national average of impaired driving charges: 783 to be exact, in 1979. Mr. Speaker, more than half of the inmates of our prisons in the Yukon are there due to alcohol-related offences. This Government spends $800,000 in directly combatting this problem; plus, Mr. Speaker, indirect costs, which are a staggering amount, in social welfare, health care and justice. The Brass Report suggests that the total of these services is $11,500,000. Mr. Speaker, that is about one-third of our budget.

But what cannot be quantified is the cost in human misery, Mr. Speaker: the broken families, the neglected and sometimes beaten children; the mangled bodies in car accidents; the anguish of families standing by and watching one of their members slowly destroying themselves with liquor.

Mr. Speaker, we cannot sweep this problem under the carpet. The volume of consumption of alcohol in Yukon is staggering, regardless of what the Government Leader is saying, in trying to be optimistic. We cannot believe that the high volume of visitors has much to do with the high volume of consumption. Mr. Speaker, the highest single month of the year is December. So few visitors come to the Yukon at that time; it is almost a statistical anomaly to find any. People stock up; true. But there is still a 50 per cent higher consumption in that month than there is during the highest month in summer: $1.2 million, to be precise.

Even when you look at the shorter months, there seems little difference between these and the high summer. I do not think I am accusing Yukoners, as a whole, of being terrible boozers, but let us recognize that a very significant portion of our population has alcohol problems.

I think it is a monumental problem, Mr. Speaker. It is one of the tragic ironies in this situation that the Government has a vested interest in reaping higher profits from liquor. This is one of their main sources of revenue: $5,000,000 last year. In fact, I believe that because of that, it puts a tremendous onus on the Government to combat the problems of alcohol abuse.

However, Mr. Speaker, I should make it clear that it is not my intention to attack the Government for its conduct or for its programs in this area. I hope the Government will not take a defensive

posture from this motion; it was certainly not intended to provoke a defense; it was intended to provoke a solution. I cannot concur with the entire Brass Report findings. No doubt there are statistical and factual errors in it, but I ask the Government not to fall into the bureaucratic trap of criticizing the failures of that report while ignoring the vast amount of good stuff in that report. It was written by a man who passionately believed that the problem can be met and even solved; most of us I believe have never even reached for that kind of end. We have got used to it;, it is like seeing cripples in the street; we have got used to it, we feel we can do nothing about it.

Well, Mr. Speaker, it is incumbent on us as elected people, as leaders of the community, to try to find solutions. We should not get caught in another bureaucratic trap which is yawning out there, of refereeing some turf fight between the Yukon Liquor Corporation and the Department of Human Resources. That again is irrelevent to what we are talking about here today.

We should not allow these little power struggles to overshadow the purpose of this debate, or waste any words or energy on the outcome of these things.

The main goal, Mr. Speaker, is to recognize the seriousness of the problem of alcohol and drug abuse. In this we should recognize that in a recent survey of my constituents, some 80 per cent of the respondents felt strongly that alcohol and drug abuse was a major problem in Yukon. I am not making these opinions out of my own head; these are from my constituents, Mr. Speaker. We should heed our constituents, and we should lead our constituents, lead them towards solutions to the problem.

The Brass Report has a major recommendation, and that is the setting up of a semi-independent, quasi-independent foundation, to be assisted by government. One thinks that maybe we are trying to get the government out of the business; are we trying to suggest that this is the only way to solve the problem? I do not think it is the only way, but it seems to me it has a very great merit. If alcoholism is somewhat of a socially acceptable thing, and I suggest to you that in this century it has become somewhat socially acceptable — . If you have a few too many drinks, it is sort of looked upon as "he is one of the boys"; it is not any great slur on anybody to have an alcohol problem.

In a way that is good because there is no point on passing moral judgment on these people who have the problem. It is not a moral issue. In the end it is a physical disability.

It comes from a social acceptance: one of attitudes, of social mores, of public habit, and I suggest to you because of that root of the problem, we have to turn public opinion around; we have to mobilize it; we have to get them involved in the problem, we have to make them feel it is their problem, it is not the Government's problem.

I hope my friend to the left here does not take offense when I knock the Government's action in trying to alleviate these problems. I think,, the Government is spending a lot of money right now, trying to do this; the Brass Report indicates that it is perhaps $30 per capita as opposed to an average of $3; it might be one of the statistics that needs a little brushing up. It is a lot of money in any event. But I do not think we are really attacking the root problem. I think the root problem is our need to have the public on our side. We have to have them involved in seeking the solutions. As I said, I was involved last year in a community group that formed very quickly in response to an emergency; it was for the Vietnamese boat people. Mr. Speaker, in the course of about one and a half months, this community was mobilized. There were groups working voluntarily, helping to place these unfortunate people in more favourable circumstances. This Government assisted, not by delegating 25 civil servants to go and help; they said, "Here, volunteer group of workers , take some money from this Government and help settle these people." Well, Mr. Speaker, that was a wonderful experience for me because it taught me this one thing, that if you can mobilize the spirit of the people, they will solve the problem. I think a foundation, as suggested by Brass, has that merit.

It is interesting to note, in the report to the Standing Committee on Alcohol and Drug Abuse, when you look at the composition of that committee, what you have is a group that represents every facet of people in this Territory who seem to be prepared to solve this problem. We should keep that group together, we should give them something to work with, we should accept this recommendation of that committee's report, and we should set about immediately bringing into fruition a foundation dedicated to the solution of the problem. We could put up a crusade in this Territory to stamp this thing out, to make it socially unacceptable, to give people help. We could do all that, and I think if we mobilize the people behind us that we can.

That is why I feel so strongly today and that is why I have put forward the motion that we should take this one, first, small step to start on that long road towards a solution to the alcohol and drug problems of Yukon.

Hon. Mrs. McCall: Mr. Speaker, I appreciate the Honourable Leader of the Opposition's very thoughtful appraisal of the situation; however, I do not think he has really examined the whole picture carefully enough. Therefore, although I appreciate his concern and the intent of his speech just now, I think he may be adopting, without enough examination, a simplistic approach to a very many-faceted and complex problem. I appreciate his concern, I want him to know that.

In June of this year, the steps that were taken to amalgamate the departments of Health and Human Resources, and this is very important because it changed the picture drastically, was done to better coordinate services, especially at the community level. It is not perfect yet and there is much room for improvement, but it did change the whole picture quite a lot.

One of the services which benefits most from this coordination and amalgamation of the departments is Alcohol and Drug Services.

At the same time that this took place, the Brass Report was discussed by the Standing Committee. The report was critical of the Yukon Government's Alcohol and Drug Services, and its only recommendation called for the establishment of a foundation to take alcohol and drug treatment programs out of the hands of government.

There is no wish to build empires, none at all. Had the report looked at other alternatives and had the report analyzed carefully existing alcohol and drug services, as they were obviously improving constantly, and had it arrived at a logical and well-indicated conclusion that a foundation be established, I might well be in favour of such a recommendation, without reservation.

However, the report did none of those things. The only recommendation of the report was based on inaccurate and out-of-date information. In order to back up some of its findings, the report descended to personal slights and unsubstantiated personal attacks on the staff. By doing that, as far as I am concerned, the report lost much of its credibility.

I definitely stand behind the work and efforts of my department's alcohol and drug services staff, in spite of accusations contained in the Brass Report on alcohol treatment programs in the Yukon, and I believe the Brass Report did not accurately portray the drastic improvements that were happening. Even while Mr. Brass was studying the subject, he was not in contact with most of these people. He did not consult with them; he really did not look at the programs with fresh eyes; he was going on reports that he had that dated further back.

Nevertheless, I am prepared to look at alternatives and that is exactly what this Government is doing at this point in time. When we look at the past we see that Alcohol and Drug Services have been a branch built only over the past seven years or so. It is still in the building. It is still improving. It is still changing. The programs require constant assessing and altering, to see that they are indeed answering the needs of the people whom they serve. We know we are as far from solving alcoholism as the police and corrections are far from solving crime. The one thing I do welcome about the Brass Report is that it does focus the attention of the public on the seriousness of the alcohol problem in the Yukon.

We, therefore, shall not be dismissing the recommendation of the Brass Report out of hand. However, we will be looking at that recommendation together with other alternatives. Within the next few weeks we will be seeking the views of organizations, individuals, and users of the service, as to the future of these programs. This, together with information received from staff and programs in the provinces, will allow Cabinet to make a balanced decision.

To act more hastily would be foolish at this point, and unnecessary, since it is clear to me that our present services are well established, well organized, and delivered in superior fashion by a very dedicated staff.

I want to correct some misstatements as far as funding is concerned. The funds this Government spends per user are comparable with the national average. The amount spent on alcohol, quoted in the Brass Report, did not reflect the true picture. We do, indeed, look seriously at alcoholism. We are searching for answers. We know there is room for improvement. We work with it daily.

In conclusion, Mr. Speaker, the latter part of this motion is the creed of Alcohol and Drug Services. Therefore, Mr. Speaker, in the light of what I have reported to this House, I move that we adjourn debate on this motion.

Mr. Speaker: It has been moved by the Honourable Minister of Health and Human Resources, seconded by the Honourable Minister of Economic Development that debate be now adjourned.

Motion agreed to

Mr. Clerk: Second reading, Bill Number 102 standing in the name of Mr. MacKay.

Mr. MacKay: Next sitting day, Mr. Speaker.

Mr. Speaker: So ordered.

Mr. Clerk: Second reading, Bill Number 103 standing in the name of Mr. MacKay.

Mr. MacKay: Next speaking day, Mr. Speaker.

Mr. Speaker: So ordered.

GOVERNMENT BILLS AND ORDERS

Mr. Clerk: Second reading, Bill Number 52, standing in the name of the Honourable Mr. Graham.

Bill Number 52: Second Reading

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Old Crow, that Bill Number 52, *Personal Property Security Ordinance*, be now read a second time.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Old Crow, that Bill Number 52 be now read a second time.

Hon. Mr. Graham: Mr. Speaker, the enactment of the proposed new *Personal Property Security Ordinance*, which we have here before us today, will not call for vast changes in the practices and procedures or in the documentation presently followed or in use in this Territory. What it should do, Mr. Speaker, is make secured financing much easier and much less risky than it is under the present law. It will enable Government to deliver the services of a registry system that is significantly better and much less complicated than is the present system.

This ordinance, Mr. Speaker, is one in which this Government has followed the lead of other jurisdictions, although it is done so with a mind to its own special needs and problems. This proposed ordinance is based on a uniform law project. Similar legislation is in place in 49 out of the 50 states in the United States and in 3 of the 10 provinces in Canada.

Our proposal is similar to the Ontario Act which was passed in 1967 and similar also to the Law Conference of Canada's Uniform Act recommended in 1972. Legislation containing modifications to the Ontario Act have been in effect in Manitoba for some time now, and Saskatchewan enacted a bill, again with modifications, to the Ontario Act, which received consent last June in that province.

Alberta and British Columbia are also preparing legislation which is hoped to be introduced soon in their provinces.

Our ordinance, Mr. Speaker, is most like the Saskatchewan bill, although this Government has not adopted all of the special provisions which that province brought forward.

We have had access to a great deal of information, both public and private, and we feel that in this ordinance we have anticipated the most widely accepted principles. The legislation in all jurisdictions is similar in structure, and the law under all of the legislation differs only as to detail. Accordingly, the textbooks prepared for lawyers and bankers and other people in that line of work may be used to help these people interpret the ordinance.

Mr. Speaker, I plan to deal with the ordinance in several sections. First, I will outline the subject matter contained in the bill, next the purpose, then the reasons for our approach, and, finally, I will deal with the registry system. There are also a few key sections in this legislation which I feel sum up the entire content and policy concerns in the proposed legislation, and I will also take a little time to outline these sections, as well, near the end of my address.

The *Personal Property Security Ordinance* deals primarily with loan transactions on personal property, and the security taken thereon. Personal property is anything except real property, which is land and buildings, basically, upon which a security interest may be taken. Lastly, the security interest is basically a basic interest, under this ordinance, taken by a money lender to secure payment for money lent. Typically, this means that if you borrow money to buy a car, the lender takes a security interest in the car to ensure repayment, and if you fail to repay then the lender takes the car as payment for the debt.

So, the sum of this is quite simple, Mr. Speaker. The bill will provide a comprehensive legal code regulating all aspects of security interests in personal property, and it will also provide one common registry for all security interests registered in Yukon.

The purpose of this bill is not to enact new consumer protection legislation as such. Most consumer transactions will be contained within the scope of this legislation; however, the main effect of the legislation will be felt by the lending institutions and by commercial borrowers. Although the law quantifies, for example, the law relating to seizure and sale of personal property under a security agreement, it does not take special note of consumer rights. These rights are found in special consumer legislation.

Accordingly, it is not expected that this legislation will have a significant effect on the market for consumer credit. All it will do is simplify procedures and rationalize the law for consumer credit, in the same way as it does for commercial credit.

Now that I have told you basically what the ordinance is not, I will give the main purpose of the ordinance. First, it will simplify registration and search procedures. It will also rationalize the competition between security interests, and, finally, it will remove the artificial restraints on the availability and form of credit for commercial transactions.

The existing law relating to personal property security interests is contained in a number of ordinances and a greater number of judicial decisions. It is very confusing, in that judicial decisions pronounced in many jurisdictions have been based on many different statutes. Moreover, the existing statutory law is based on legal concepts dating back to Victorian times. The concepts are awkward relating to modern financial transactions, especially those relating to business transactions.

The many important questions, particularly as to priorities between competing interests, can only be resolved by a judicial decision for each case. The uncertainty thus created doubtless has a negative effect on the availability of many people to obtain credit where it should be available to them. Accordingly, the new ordinance will replace this uncertainty with a complete and orderly set of rules governing such questions.

Now, I would like to deal with the registry systems:

The confusions in the law have been reflected in the confusion of the registry system. Different types of security interest registered under different ordinances and different consequences result in each case.

For some types of security interest, no form of registration is required at all. Also, in some cases, the registration of a security interest seems to have no practical results. The registry that has been maintained under these circumstances does not really fulfill a useful purpose. The proposed ordinance will provide one registration system, with the registration of almost all security interests in personal property. I should add that there are a couple of exceptions, the exception of interest registered under the *Canada Shipping Act* and Section 88 of the *Bank Act*.

With the growing volume of registrations taking place here in the Yukon, indications are that the Government should take advantage of the use of new computer technology to give us a more efficient and accurate registration system. The lack of similarity between our existing ordinances makes this impossible. So it is imperative that we change to this new system of registration as quickly as we can.

There will be a three year transition period provided for in the implementation of the new law as well. Existing security interests will remain effective for a period of three years after the new law comes into effect. And thereafter they will lose their priority unless they have been registered under the new law.

The sections of this ordinance, Mr. Speaker, which are key to understanding the proposed system are as follows: first, the definition of security interest is the central concept in the whole ordinance. This is basically the interest which secures performance of an obligation.

The next important section is section 12 which deals with attachments. This term refers to the time when a security interest arrives.

Sections 23 and 24 both deal with the concept of perfection, which establishes the priority of various security interests. So we now have a secured interest which has to attach, and must be perfected,

in order to get priority.

Section 35 deals with priorities. The basic idea here is to establish the order of perfections of various security interests in the same collateral.

The remainder of the ordinance deals mainly with procedural matters and special cases which are handled differently than under the general rules. I might add, there are a great number of exceptions.

I will conclude, Mr. Speaker, by stating that the proposed ordinance is designed to provide a comprehensive and rational framework for the acquisition of security interests in personal property. The policies that it embodies are not new. They are ones that have been part of our law and practice for many years. But in this ordinance they are presented in a systematic system , with all of their implications carefully worked out.

Mr. Penikett: I am pleased to respond to this Bill Number 52. In doing so I want to thank the Minister very much for originating a new procedure in this House, which is an advance copy of the ministerial text on a second reading, which I must say I found very useful, and I hope will become a practice when we are dealing with difficult legislation.

The bill is of course an extremely complicated one; it may require someone with a lot more legal training than I have, and perhaps even a couple of law dictionaries for non-lawyers, to be able to figure out exactly what the implications of all these things are.

I am not sure, when the Minister was speaking at times today, whether he was speaking as the Minister of Justice or the Minister of Consumer and Corporate Affairs, but in this bill he seems to have found a way of melding both responsibilities.

This bill is a fairly long affair and after we have finished with the *Municipal Ordinance* it should be sufficient to keep us in Committee for another couple of weeks, which I am sure will bring joy to the Government Leader's heart. There are some questions, of course, I am sure I will have and all Members will have about this thing.

In expressing my general support, and I am of course reassured by the fact that the Province of Saskatchewan is alleged to have done something similar, although I have reason to be suspicious, since the law was originally based on a law from Ontario — I will have to resolve that conflict myself.

I want to ask the Minister a question now, in connection with this bill, but it is really more of a general question than a particular question. I would appreciate, at some point, from the Minister, perhaps on debate of this bill or at some other, some indication as to how far we are going with this uniform law movement. Now, I understand the enormous bureaucratic, judicial advantages of having laws which are similar from one jurisdiction to the next. I am allowing for some kind of commonality and equality and universality in procedures in a number of areas.

However, I must, because I am a bit of a sentimental old fool sometimes, express one concern. It seems to me if this movement were to continue, and it seems to have built up an incredible head of steam and I am sure now that it has Mr. O'Donoghue leading the charge, we may find quite an avalanche of legislation following, because he is a very loquacious and eloquent and persuasive man. We are very much wedded to the movement now, in the person of Mr. O'Donoghue.

What I am concerned a little bit about, is if this movement were to eventually take over most legislation — of course this is an absurd proposition, but — ultimately the result would be to render provincial legislation uniform. What that would probably do is to make much individual character of different provinces a thing of the past.

In some areas of important provincial jurisdiction, it might, for all intents and practical purposes, render provincial boundaries meaningless.

Now, I think you can take individualism too far, but I do think different parts of the country do have different character, they do have different needs; the peoples in different parts of Canada are different, and they have different requirements, different needs, and, in some cases, different traditions.

It is not a reason for opposing this bill at all and I want to assure the Minister of that. I do hope though that at some point we will have an opportunity in this House to discuss this very matter, because I, for one, am getting just a touch — no stronger than that — just a touch nervous that we do not go around adopting too much uniform law legislation; basically on the grounds that everybody else is doing it. It seems to me, if it is good for us; if it is right for us; if it is necessary for us, we should do it. We should never simply adopt a law just because everybody else is doing it.

Motion agreed to

Mr. Clerk: Third reading, Bill Number 61, standing in the name of the Honourable Mr. Pearson.

Bill Number 61: Third Reading

Hon. Mr. Pearson: Mr. Speaker, I move, seconded by the Minister of Health and Human Resources, that Bill Number 61, Third Appropriation Ordinance 1979-80, be now read a third time.

Mr. Speaker: It has been moved by the Honourable Government Leader, seconded by the Honourable Minister of Health and Human Resources, that Bill Number 61 be now read a third time.

Motion agreed to

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

Hon. Mr. Pearson: Yes, Mr. Speaker. I move, Mr. Speaker, seconded by the Honourable Minister of Health and Human Resources, that Bill Number 61 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the Honourable Government Leader, seconded by the Honourable Minister of Health and Human Resources, that Bill Number 61 do now pass and that the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I declare that Bill Number 61 has passed this House.

Mr. Clerk: Third reading, Bill Number 45, standing in the name of the Honourable Mr. Graham.

Bill Number 45: Third Reading

Hon. Mr. Graham: I move, Mr. Speaker, seconded by the Honourable Member for Mayo, that Bill Number 45, *An Ordinance to Amend the School Ordinance*, be now read a third time.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Mayo, that Bill Number 45 be now read a third time.

Motion agreed to

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

Hon. Mr. Graham: Yes, Mr. Speaker. I move, seconded by the Honourable Member for Mayo, that Bill Number 45 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Mayo, that Bill Number 45 do now pass and the title be as on the Order Paper.

Motion agreed to

Mr. Clerk: Third reading, Bill Number 48 standing in the name of the Honourable Mr. Graham.

Bill Number 48: Third Reading

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Tatchun, that Bill Number 48, *Dependants' Relief Ordinance* be now read a third time.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Tatchun, that Bill Number 48 be now read a third time.

Motion agreed to

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

Hon. Mr. Graham: Yes, Mr. Speaker, I move that Bill Number 48 be now passed and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Tatchun, that Bill Number 48 do now pass and that the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I declare that Bill Number 48 has passed this House.

Mr. Clerk: Third reading, Bill Number 55 standing in the name of the Honourable Mr. Graham.

Bill Number 55: Third Reading

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Old Crow, that Bill Number 55, *An Ordinance to Amend the Cooperative Associations Ordinance* be now read a third time.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Old Crow, that Bill Number 55 be now read a third time.

Motion agreed to

Mr. Speaker: Are you prepared to adopt the title to the Bill

Hon. Mr. Graham: Yes, Mr. Speaker, I move, seconded by the Honourable Member for Old Crow, that Bill Number 55 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Old Crow, that Bill Number 55 do now pass and the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I declare that Bill Number 55 has passed this House.

Mr. Clerk: Third reading, Bill Number 53, standing in the name of the Honourable Mr. Graham.

Bill Number 53: Third Reading

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Hootalinqua that Bill Number 53, *An Ordinance to Amend the Judicature Ordinance* be now read a third time.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Hootalinqua, that Bill Number 53 be now read a third time.

Motion agreed to

Mr. Speaker: I am sorry, the Chair apologizes to the Honourable Member, but I am afraid the question has been put, and there can no longer be any debate.

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

Hon. Mr. Graham: Yes, Mr. Speaker, I move, seconded by the Honourable Member for Hootalinqua, that Bill Number 53 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Hootalinqua, that Bill Number 53 do now pass and that the title be as on the Order Paper.

Mr. Penikett: Judicature, Mr. Speaker.

Mr. Speaker: I fail to understand the point made by the Honourable Member.

Motion agreed to

Mr. Speaker: I shall declare that Bill Number 53 has passed this House.

Mr. Clerk: Third reading, Bill Number 39, standing in the name of the Honourable Mr. Graham.

Bill Number 39: Third Reading

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Tatchun, that Bill Number 39, *An Ordinance to Amend the Defamation Ordinance*, be now read a third time.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Tatchun, that Bill Number 39 be now read a third time.

Motion agreed to

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

Hon. Mr. Graham: Yes, Mr. Speaker, I move, seconded by the Honourable Member for Tatchun, that Bill Number 39 do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Tatchun, that Bill Number 39 do now pass and that the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I declare that Bill Number 39 has passed this House.

May I have your further pleasure?

Hon. Mr. Graham: Mr. Speaker, I move, seconded by the Honourable Member for Campbell, that Mr. Speaker do now leave the Chair and that the House resolve itself into Committee of the Whole.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Campbell, that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

Mr. Speaker leaves the Chair

COMMITTEE OF THE WHOLE

Mr. Chairman: I call Committee to order.

At this time the Chair would like to ask the Honourable Member, Mr. Graham, if he is prepared to deal with Bill Number 52 in the Committee?

Hon. Mr. Graham: Mr. Chairman, I am prepared to deal with Bill Number 52 if all Members of the Legislature are.

Mr. Chairman: Okay, the Committee will consider Bill Number 52 after the break.

Recess

Mr. Chairman: I call Committee to order at this time.

Committee will consider Bill Number 52, *Personal Property Security Ordinance*.

Pursuant to Standing Order 48, Section 3, the Committee Chairman has to receive notice from the appropriate Minister regarding the attendance of his witness. Mr. Jim Almstrom is the legal draftsman for the bill at hand. Is it the consent of the Committee to have the witness present?

Some Members: Agreed.

On Clause 1

Hon. Mr. Graham: I think, Mr. Chairman, I kind of summed it up in my second reading speech, this afternoon, and we might just as well go on to clause-by-clause reading.

Mr. MacKay: I missed the delivery of the speech, but I had an opportunity to read it in advance, and all I can say is good luck to us all in the forthcoming 73 pages, or so. I hope that we can have some fairly free-wheeling discussions on some points, with the witness involved, so that we do gain some appreciation of what it is we are doing, because it seems to be a very, very technical ordinance.

Resting on the fact that it is enforced in 49 out of 50 states, and some of the other provinces, I have no doubt that the principle of what we are trying to do is good, and I hope that Mr. Almstrom's drafting is sufficiently accurate that we are not going to run into any problems later, because I rather doubt that there is anybody in this House particularly well-qualified to find anything wrong with it.

Hon. Mr. Graham: Mr. Chairman, in light of what has been said, I would just as soon have the free-wheeling discussion right now. The ordinance is kind of difficult to go through on a clause-by-clause basis, if you do not understand the underlying reason behind the ordinance.

So, I think it would be easier for us now to state the principle of the ordinance, and the process by which things are done, rather than attempt, when we get on page 50, to answer a question that we will have to go back to page 1 to answer.

So, Mr. Chairman, I think if we have any questions, or if any of the Opposition members want us to outline clearly what the bill will do, even more so than in second reading speech, perhaps now is the time to do it.

Mr. Byblow: I certainly agree with the Minister that some of that free-wheeling debate could take place now. It has already been pointed out that it is a fairly technical ordinance, and it is with some difficulty, I believe, that we are trying to comprehend the whole purpose behind it.

Now, the Minister made reference in his second reading delivery — and again, I do appreciate receiving a copy of his address ahead of time, because that certainly does help sort out the complexity of something like this — he made reference to he present law's being very risky, in matters of securing property for purposes of lending money. Why is it so risky? I have certainly not had a situation arise, and none has been brought to my attention, where the risk exists.

Hon. Mr. Graham: Mr. Chairman, I do not know that I said exactly that it was risky in some areas. It is just that there is no order, no method in dealing with the lending of money for personal property at the present time in the Yukon. I think we are covered by something like 46 ordinances. Various ordinances such as the *Mechanics' Lien Ordinance*, and, you know, there is a whole list of ordinances, that currently are the law governing lending transactions in the Yukon Territory.

What this proposed ordinance will do is eliminate many of the requirements under those ordinances, and put them all together. At the present time, for example, we have a registration system in the department of Consumer and Corporate Affairs under which

some documents are registered; some documents are not registered; chattel mortgages are registered in one file; other things are registered in another file. What we are trying to do here is to bring them all together so that we have, as I see it, two things: one of the fine reasons behind instituting the ordinance is to bring the registration system up to date. The registration system, to me, is extremely important and to this Government it is extremely important.

The registration system that we are proposing in this ordinance is a registration system by which orginal bills of sale, original chattel mortgages, original mechanic's liens, etc., will be registered here, but the original bill will not be filed here. As it is now, the orginal bill is filed here. What this ordinance is saying is that we do not want any of that stuff anymore. All we want is the registration. You keep your original bill. If there is a conflict, then you have it. We do not have the responsibility for holding on to the original bill. It is to arrange in some logical, rational way a method of priorities for various security interests on, shall we say, a car. If I go out and buy a car, and borrow $10,000, and then turn around at a later date and borrow another $2000 against that car, then what we are trying to do is priorize the registration system. Maybe Mr. Almstrom would like to elaborate a little more.

Mr. Almstrom: One thing that should be emphasized in this ordinance is that the type of transaction to which the bulk of its provisions are directed is the financing of large commercial undertakings. I do not think that any of us have experienced too much difficulty with secured transactions for the personal property with which we are familiar. Buying a car and getting it financed by the bank has not proven to be a large problem. Ordinarily, you do not find banks offering second, third, fourth, and fifth mortgages on the strength of someone's car.

When you talk about financing a highway construction company, or a mine, and you are financing the mill equipment, the number of people who can have interests in that personal property can mulitiply to considerable proportions. So, when you have a construction company that, for example, owns $2 or $3 million worth of bulldozers and scrapers, and that sort of thing, and they decide that they want to raise some more money to buy some more equipment, you have a situation where they go to the bank, and the bank lends them $1 million on the strength of $2 million worth of equipment. Then they decide that million dollars was not enough and they go to another bank, and on the strength of the same equipment, they get some more money. And perhaps they then go to another bank and they get some more money. Meanwhile, the pool of assets is continuing to increase, and more and more people are getting involved. Then, for one reason or another, the whole outfit goes bankrupt, and all the people who have financed this company are left holding the pieces, trying to sort out who gets what: whether one of them gets some of the machinery, or whether they all have a partial interest in all of the machinery. This kind of difficulty has to be sorted out.

I do not know if there is anything else that you would like to know.

Mr. Byblow: The Minister and the witness gave an excellent run-down of essentially what I was inquiring about. I take it from what they have said that in every case where there is money lent, the lending institution is obligated to file with a central office, that is the Registry, the nature of borrowing against what sort of collateral?

Mr. Almstrom: The sorting out of priorities between money lenders in a situation like this is indeed one of the central purposes of this type of legislation. The basic idea is, as you say, that security interests should be registered. The reason for that is that when a second money lender comes along, he should be put on notice that there is someone standing in line in front of him.

To get into one of the central concepts of the ordinance, I think it is appropriate at this time that we introduce the concept of perfection. Perfection is basically the act of giving notice to third parties that already have an interest in the property, which puts them on notice to take that into consideration when they lend the money. Perfection is ordinarily going to be done by registering a document in the Registry, so that if you are lending money, you go down to the Registry and you check to see if the property that is going to be your security is already charged.

The other way that perfection can be accomplished is by the secured party taking possession of the property. That ordinarily occurs with a seizure. If the secured party under a previously existing agreement has already seized the property, then a subsequent money lender is put on notice that the prospective debtor does not have the right to grant a further security interest in a property, because he does not have it in his possession.

The central concept of this is to ensure, as you said, that there is notice. The concept of raising money by taking security in personal property was originally prohibited by law. In Victorian times, the only type of security interest that was recognized was the pledged transaction that you got between a pawnbroker and a private person. He would take in his precious ring or something like that, and raise money on the strength of it. What he would do would be to grant possession of the personal property to the money lender. Then, of course, no one else could lend money on it, because the first money lender already had the property in his possession. That type of transaction continues to be recognized. It also continues to be used in financing some commercial enterprises.

Mr. MacKay: I think the registration system sounds very fine and sounds quite analogous to the land registry system that we have in place, with respect to being the final judge of who has what claim against the particular property.

I have some more particular questions; but I am interested in (a) the transition from the present system we have into this one: the practical steps that will occur to ensure that people do not lose any place in the — I notice it is a three-year period, but I am wondering about obligations that are longer than for three years. Is there going to be a publicity campaign surrounding this new thing, making people aware that they have to register their claim against these assets?

In setting up this system of perfection, will this weaken the claim that an ordinary creditor might have if he has only, for example, a promissory note or a personal guarantee or any of these things? I guess what I am concerned about is that now, in order to make a valid commercial transaction, does every citizen need to be fairly familiar with this law in order to be able to do it, or is it going to be only in specific commercial transactions that this will come into effect?

So, two questions: the transitional provision; how does it affect matters, say, between friends who say, "I'll lend you this money" and take back a note.

Mr. Almstrom: The transitional provision, first of all, raises this question: under the existing law, the position of secured creditors is, in very many cases, uncertain. So, regardless of how good our transitional provisions are, I suppose if they do affect anyone, it is a question of just how much they are losing when the existing law is uncertain, and, accordingly, their security may be uncertain. However, we have taken every measure to ensure that these people are protected. The transitional scheme proposed is that the existing registrations will remain in force for a three year period.

During that three year period, or indeed at any time thereafter, those registrations can be continued simply by making a further registration under this ordinance. As I understand it, every effort will be made to ensure that those who need to have notice of these transitional provisions will indeed get that notice, and have full opportunity to make the necessary registrations.

The other thing I would like to say is that this new law would not upset or repeal the existing law, so far as sorting out the questions of priorities between existing registrations. The people who have security interest at this time entered into those arrangements on the basis of the existing law and, accordingly, I think they have every right to expect that their relations between each other will continue to be regulated by the existing law.

Now, security interests created under the new ordinance, of course, introduce a new factor into the security field, and, of course, have to be taken into special consideration. The existing law contained a number of registrations for which there was no expiry. The state of our registry is such that it may not even be possible to identify some security interests that were filed years and years ago with no expiry date. There could be a certain number of these we will have to advertise. I think it is just about the only solution that we have, to try and make sure that these people — if indeed there are any, and we cannot even find out that — to see that these people do get notice of the ordinance and to bring it into force.

The ordinance deals almost entirely with personal property secured transactions, in the common sense. It will not upset the existing situation as against unsecured creditors, which I think was your second question. A person who has lent money and just taken a note will, as under the existing law, rank behind those who have actually taken a security interest in the property.

Mr. MacKay: One of the more common debt instruments that has been used lately by banks, Mr. Chairman, has been the debenture. One of the reasons given for their having this type of instru-

ment is to try to get the best kind of security they can.

I am wondering whether this legislation will decrease the need for that kind of blanket situation; if the prospective borrower can say, "Well, you can get good and specific security against my assets without having to grant a debenture."

Does the witness or the Minister see this legislation as being an avenue whereby you get away from giving blanket debentures, which, of course, have some unfortunate repercussions when they are exercised in the immediacy with which they have been done in the past?

Mr. Almstrom: I do expect that that would be a consequence of this bill. What the existing law requires is that every financing transaction, in relation to personal property, be forced into a particular mould. The transaction, generally speaking, has to be a conditional sale contract, a chattel mortgage, an assignment of book debts, or there is a residual field of such vague things as debentures, but in most cases, for a transaction to be registered, it has to be forced into a particular mould.

What the proposed ordinance does is recognize the basic similarity of all security interests in personal property, and it, in effect, for most purposes, abolishes any distinction, for registration purposes particularly and for priority purposes, between the various kinds of security interest. What the ordinance therefore does is permit the creation of a whole range of new security interests that we have never heard about.

For example, I think something that should be very useful to the local business community small retailers is that it would permit a secured financing transaction for inventory. Under the existing law, you could take out a chattel mortgage for your inventory, but the chattel mortgage is specific to the specific goods that you buy with the money that you borrow. So, as soon as you sell those goods out of inventory, you have got to go and get a new chattel mortgage.

The whole procedure is so cumbersome that that type of inventory financing just is not available. Under the new ordinance, you would take a type of floating security charge over that inventory, and what it would do is attach to whatever inventory the guy happened to have in stock at the time. So the borrower would go to the bank and get his money, buy his inventory, and if for any reason the business failed, the bank would then have the first charge on whatever stock happened to be in the store. This type of security, I think, should reduce the need for debenture financing.

Mr. MacKay: I always thought that the banks could take securities under Section 88 of the *Bank Act*, and I an wondering if this is going to replace that. Perhaps the witness could address that one.

Also, I have looked through it a bit, and I must admit I have not read it all, word for word, at this point. Hopefully, by the time we are all through we will have done that. But I did not see reference to the registration of a share transaction, for example, where shares are held in escrow, or where there might be some trust condition, or some sort of shadow over the ownership these shares. Will that be traceable now through this kind of system?

Mr. Almstrom: Yes, Mr. Chairman, that type of transaction will be registerable. A share is an instrument within the meaning of the ordinance, and the transaction will be registerable.

As to the other question, relating to Section 88 of the *Bank Act*, it is my understanding Section 88 deals, on the whole, with farming and fishing type of enterprises. This definitely does not replace Section 88 of the *Bank Act*. Section 88 will continue to run, and continue to be, I suppose, a bit of an anominous bother to people who are both obtaining and giving secured financing. A Section 88 security would be registrable under this ordinance. The registration of it, however, would not have any particularly ill effect, inasmuch as registration is still required under the *Bank Act*, and in order to find out whether a person has a Section 88 registration we have to check with the nearest office of the Bank ofCanada. That is going to continue to run as under the existing situation.

Mr. MacKay: I like this bill more and more. I think that many debtors tend to sign debt instruments in the heat of the moment, when they need the money and you know, "I will sign anything," sort of thing. I think they could be quite surprised later on what it is they have signed.

This seems to fall right into the Department of Consumer and Corporate Affairs' bailiwick. Assuming that this is all passed, will there be some kind of advertising campaign making people aware that they can come and seek advice, perhaps, from the Department of Consumer and Corporate Affairs on this kind of matter? You know, whether they have to now go the debenture route, for example; or do you still consider that to be an area where our lawyer friends can reap fees?

Hon. Mr. Graham: Mr. Chairman, that, we intend to make part of our consumer education program. Probably you know, over the last little while, we have announced a couple of things that we are trying to get into. Consumer education is one of them. We do not intend to institute any form of debt counselling service here in the Consumer and Corporate Affairs Department, but we hope to be in a position to advise consumers in the Territory as to what kind of financing is available: what should be done in certain cases, and that kind of thing.

So, in answer to the question, we are attempting to educate consumers, but we do not have a whole lot of resources at the present time to do it.

Clause 1 agreed to

Mr. Chairman: I want to point out to the Committee that clause 2(1) covers nine pages. The chair will deal with clause 2(1), definition by definition.

On "accessions"

"accessions" agreed to

On "account"

Mr. MacKay: Does that mean that we are bringing in betting bills here, when it says, "whether or not is has been earned by performance"?

Hon. Mr. Graham: No, that is not the intent. Perhaps Mr. Almstrom could expand on that.

Mr. Almstrom: No, Mr. Chairman, the section definitely does not include that type of transaction. The definition is intended to include just what is ordinarily included in the assignment of book debts. The question of whether or not it has been earned by performance: the concept covered there is payment in advance, or the incurring of an obligation in advance of the transaction. An example there would be where an entry is made on a person's account, making him responsible to pay for something that he has yet to receive: for example, a delayed delivery date.

"Account" agreed to

On "Building"

"Building" agreed to

On "Building materials"

"Building materials" agreed to

On "Buyer"

"Buyer" agreed to

On "Chattel paper"

"Chattel paper" agreed to

On "Collateral"

"Collateral" agreed to

On "Consignment"

"Consignment" agreed to

On "Consumer goods"

"Consumer goods agreed to

On "Creditor"

"Creditor" agreed to

On "Debtor"

"Debtor" agreed to

On "Default"

"Default" agreed to

On "Document of title"

Mr. MacKay: I see they do not define "bailee". Is there some particular meaning in Yukon, or is it just some kind of officer of the court?

Mr. Almstrom: I think the term, perhaps, is being confused with the term "bailiff", which ordinarily is an agent of someone employed to seize property. The term "bailee" is a term well-known to the law, at least in the situation where a person deposits property with another person to hold for him. The person with whom the property is deposited is a bailee for the person who actually owns the property.

"Document of Title" agreed to

On "Equipment"

"Equipment" agreed to

On "Execution Creditor"

"Execution Creditor" agreed to

On "Financial Institution"

"Financial Institution" agreed to
On "Financing Statement"
"Financing Statement" agreed to
On "Fixtures"
"Fixtures" agreed to
On "Fungible"

Mr. Almstrom: I looked in vain for this word in the dictionary and it seems to be a word that is unkown to Mr. Webster or the Oxford Dictionary. Accordingly I guess it really does required definition in the ordinance.

The concept referred to here, is basically the similarity of various types of goods. For example, a money lender may take a security interest in the stock and trade of a tire store. As a matter of fact, it may take security interest of the stock and trade of a number of tire stores. If we have a number of bankruptcies inthe tire business, then the money lender seizes this property, the tires may be all stacked in the same yard. And if all the tires are identical, within the meaning of the ordiance, the idea is that they would be called "fungible". The interest of the various people will be sorted out according to the proportionate, their share forms to the mass as a whole.

"Fungible" agreed to
On "Future Advance" agreed to
"Future Advance" agreed to
On "Goods"
"Goods" agreed to
On "Indebtedness"
"Indebtedness" agreed to
On "Instrument"
"Instrument" agreed to
On "Intangible"
"Intangible" agreed to
On "Inventory"
"Inventory" agreed to
On "Lease for a term of one year or more"
"Lease for a term of one year or more" agreed to
On "Money"
"Money" agreed to
On "Obligation secured"
"Obligation secured" agreed to
On "Pawnbroker"

Mr. Penikett: I assume this definition is one that has been developed and is fairly universal. Just for the record, is the Minister aware of how many such businesses there are in the territory? Are there very many operating? I guess what I am getting at is, are there any people operating under this definition now?

Hon. Mr. Graham: To the best of my knowledge, Mr. Chairman, there were three. I stand to be corrected.

Mr. Almstrom: Mr. Chairman, I know nothing about that.

Hon. Mr. Graham: I believe there were three.

"Pawnbroker" agreed to
On "Person"
"Person" agreed to
On "Proceeds"
"Proceeds" agreed to
On "Purchase"
"purchase" agreed to
On "purchase money security interest"
"purchase money security interest" agreed to
On "registered"
"registered" agreed to
On "registrar"
"registrar" agreed to
On "registry"

Mr. MacKay: I guess it is probably appropriate, while we are talking about it, to enquire as to whether this is going to generate a lot more costs for the government in terms of operating this registry than the ones previously?

Hon. Mr. Graham: Mr. Chairman, it is our sincere hope that the registry will not only avoid increase in costs but that it will reduce costs considerably in government because of the fact that we hope to put the registry system on computer, in the near future, and we hope to clarify and rationalize the registry system in the Territory, so it will be much less complex and much easier to administer.

"registry" agreed to
On "secured party"
"secured party" agreed to
On "security "
"security" agreed to
On "security agreement"
"security agreement" agreed to
On "security interest"

Mr. MacKay: I think this is a fairly crucial part of the bill and I am wondering if, in plain English, we could get a little layman's explanation from the expert?

Mr. Almstrom: Mr. Chairman, that is exactly correct that this is a central concept in the ordinance. The concept expressed in paragraph (a) of this definition really sums up most of what the ordinance deals with, and that is just exactly what we know now as "security interests". Now, there are a certain number of other transactions in which interests in property are separated from possession of the property. In other words, the owner of the property, or a person with some other kind of interest in the property, may not in fact be the person who is in possession. Not all of that type of interest are things that can be dealt with in this ordinance.

There are paragraphs of this definition that bring in a number of other things that might not ordinarily be regarded as security transactions. For example, one of the easiest to understand is the lease. In a lease transaction, if you are leasing a car, you are not leasing the car, you do not have to raise money on it, but you would have possession of the car, and anyone who might be inclined to lend you some money on the strength of your possession of that car, should be put on notice that really somebody else owns the car. So, a lease transaction can be registered under the ordinance. The idea of bringing these things in is to extend that type of protection to a certain number of transactions that are completely unprotected under the existing law.

Mr. Penikett: To use Mr. Almstrom's example, I wonder how it would be possible to obtain credit on the basis of a leased car. I ask the question in all seriousness because I have not had an occasion to engage in that kind of financial transaction. Surely, it would be improper. Is it the registry that is the first place that such an improper transaction would be caught, or, presumably, there are other devices that would prevent me from borrowing money on a lease like that.

Mr. Almstrom: Yes, the example of a car lease transaction is perhaps not all that good, inasmuch as we do have a system for the registration of motor vehicles. It is usually quite clear who the owner is from the registration. But when you are talking about the leasing of something like mining equipment, for which there is no other registry, it is often very difficult for a lending institution to be able to satisfy itself that the person who is coming to borrow the money really does have title to the property. He has to have somewhere that he can make some kind of enquiries.

What this ordinance does, instead of requiring everybody who owns anything to register his property, is to focus on those transactions where a difficulty might arise, and if a person is leasing property to someone else, and it is the sort of situation where he might be worried that his interest could be prejudiced by someone else taking an interest in it, then he has the opportunity to register.

"Security interest" agreed to
On "Special consumer goods"
"Special consumer goods" agreed to
On "Specific goods"
"Specific goods" agreed to
On "Sufficient description"
"Sufficient description" agreed to
On "Trust deed"
"Trust deed" agreed to
On "Value"
"Value" agreed to
On "Goods"
"Goods" agreed to

On "Sufficient description"

"Sufficient description" agreed to

On "Headings"

Mr. MacKay: I am curious why in this bill we have, this little section. For example, in the *Municipal Ordinance*, there does not seem to be an equivalent section.

Mr. Almstrom: Because this bill is so complex, quite a large number of additional headings were introduced that ordinarily would not appear. Ordinarily the bill would be printed only with the headings identifying a division in the ordinance and the parts.

I think the provision of the additional headings does make the ordinance much more readable. We have a particular problem here, though, that this is basically uniform law.

The other thing I should say is that it is ordinarily a presumption of law, in the construction of statutes, that the headings form part of the statutes and therefore influence the meaning of the words that appear under the heading. Because these additional headings do not appear in the provincial statutes, we wanted to avoid the possibility that my choice of words in the headings might influence a court to decide that the sections under those headings meant something different in the Territory than they meant somewhere else.

The provision reads almost identically with the provision contained in the *Interpretation Ordinance*, that says that the marginal notes do not form part of the enactment, and are deemed to be inserted for convenience of reference only. All we are doing is extending the rule that applies to marginal notes so that it applies also to these additional headings.

"Headings" agreed to

Mr. Byblow: Mr. Chairman, I am sorry we did not bring this up when we crossed the term, but I am wondering if, on page 5, the definition of "intangible" is correct the way it reads?

Mr. Chairman: Is the Committee prepared to give unanimous consent to reopen the definition of "intangible"?

Hon. Mr. Graham: Mr. Chairman, I do not know what the question is but we would be only too willing to hear the concern and try and answer it.

Mr. Byblow: I guess the concern stems from the phrase "including choses in action", mainly because I do not understand the meaning of "choses" as it reads.

Mr. Almstrom: As a general principle in the drafting of statutes, there are only two reasons for having definition sections at all. A word may be defined where you want to shorten the need to express yourself more fully in other sections, so if you have a concept that is repeated over and over again and it is really a kind of complicated concept, instead of putting the long set of complicated words in every section, you put it in the definition and use a short term.

The other reason for putting in a definition is to alter the dictionary definition. In this particular case, the use of the word "intangible" in the ordinance does not mean exactly the same thing as it means in the dictionary.

There are certain kinds of personal property that you cannot see, feel or touch. Those are intangibles. A security interest can still be taken in an intangible. A typical intangible is a chose in action. A chose in action will include such thing as a right to recover money from someone else. You cannot see it, feel it, touch it, or smell it, but you can still raise money on it. That is what an intangible is in this ordinance.

Clause 2 agreed to

On Clause 3

Clause 3 agreed to

On Clause 4

Mr. MacKay: I am wondering about exclusions. My question revolves around the right of set-off. I am wondering how this ordinance will affect the right of a creditor to offset, on money owing to him, by keeping certain things, or by not paying another bill, for example. I was looking at exclusions to see if there is anything like that mentioned, and it may be that I am not looking at the right section, but, it seems to me, that there has always been a right of set-off. Is this affected at all by this ordinance?

Mr. Almstrom: The ordinance does not apply specifically to a right of set-off, as such, inasmuch as a right of set-off is not a personal property security transaction. A right of set-off is peripherally affected by the ordinance, however. As an example, in a contract for the sale of goods, say a person is buying a piece of machinery, and he does not come up with the money, if the seller of the machinery has not delivered it yet, he can keep the machinery. But someone else may have a security interest in it. So, there may be some conflict between the right of set-off and the security interest, and that sort of conflict would be regulated by the ordinance, if it did arise. Such a right of set-off, unless the right of set-off itself is used to raise money, will not be registered, and otherwise is not dealt with in this ordinance.

Clause 4 agreed to

On Clause 5(1)

Mr. MacKay: I am always curious about things I do not understand, and "possessory security interest in securities" is something I have not come across. "Possessory security interest" - could I have a definition?

Mr. Almstrom: "Possessory security interest" refers almost entirely to the situation where, as security for the lending of money, a person's bonds or his shares in a company, the certificates themselves, are taken into possession of the money lender, similar to the pawntransaction, in paragraph (b), restricted to documentary type of things.

Clause 5(1) agreed to

On Clause 5(2)

Mr. MacKay: This seems to put an onus on a creditor to register, if the goods are moved into Territory. Let us talk about a car driven up the Alaska Highway; it seems to put the onus on the creditor to be aware that his security has just gone up the highway, and if he does not have that knowledge, does he lose his protection?

Mr. Almstrom: This is a problem that has been dealt with in one of the more recent amendments to the existing law, which is to say that it took place within the last couple of decades, maybe three. It is a situation where it is necessary to make some kind of a trade-off.

Where a chattel mortgage, for example, exists on a piece of machinery in Alberta, and the property is subsequently brought into the Territory, and the person in possession of the thing obtains a security interest in the Territory, in other words, another chattel mortgage is placed over the machinery, the question then is, what is the position as between the Territorial security interest and the one granted in Alberta.

Under the existing law, they were forced to come to the same conclusion, that you cannot protect both parties. So, what they say is that in order to prevent the fraud that otherwise would be very easy to perpetrate by taking property from one jurisdiction to the other, they give protection to the person who had the first security interest, from the outside jurisdiction. But if that person finds out that his collateral has been taken to Yukon, then he has got a time period, 60 days, within which to get the interest perfected in the Territory.

That is basically the same position as we have under the existing law and, as a matter of convenience, it has been found necessary to make that type of a trade-off.

Mr. MacKay: I think there is a typo in the second bottom line of that section, "interest is perfected", there is an "e" missing.

Mr. Chairman: Does the Committee agree that there is a typo in perfected?

Some Members: Agreed.

Clause 5(2) agreed to

On Clause 5(3)

Clause 5(3) agreed to

On Clause 5(4)

Clause 5(4) agreed to

Clause 5 agreed to

On Clause 6(1)(2)

Clause 6 agreed to

On Clause 7(1)

Clause 7(1) agreed to

On Clause 7(2)

Clause 7(2) agreed to

On Clause 7(3)

Clause 7(3) agreed to

On Clause 7(4)

Clause 7(4) agreed to

On Clause 7(5)

Clause 7(5) agreed to

On Clause 7(6)

Clause 7(6) agreed to

Clause 7 agreed to

Mr. Chairman: The Committee will recess at this time until 7:30.

Recess

Mr. Chairman: I call the Committee of the Whole to order. I refer the Committee to Bill Number 52 at page 14.

Clause 8(1) agreed to

On Clause 8(2)

Clause 8(2) agreed to

On Clause 8(3)

Clause 8(3) agreed to

On Clause 8(4)

Clause 8(4) agreed to

Clause 8 agreed to

On Clause 9

Mr. MacKay: I am not just sure I understand this one. I would not like to declare that I understand everything else but this particular one: "Security interest is not enforceable against the person other than the debtor unless (a) the collateral is in the possession of the secured party at the time when the other person acquires an interest in the collateral,..."

I am trying to think of the instances when that would be happening. Perhaps I could ask for an example.

Hon. Mr. Graham: I do not have any real examples, but I think basically the intent of that section is to prevent secret security interest, ones that are not registered, that no one else knows about.

Clause 9 agreed to

On Clause 10

Mr. MacKay: What would constitute delivery?

Mr. Almstrom: Mr. Chairman, delivery would be simply giving a copy of the agreement to the debtor.

Mr. MacKay: Would that include mailing?

Mr. Almstrom: Yes, it would include mailing, as long as the debtor received it.

Mr. Penikett: Is it a convention in Canadian law right now that proof of mailing is sufficient proof of delivery?

Mr. Almstrom: I really cannot answer that question for all purposes. For this particular purpose here, my opinion is that proof of mailing would be proof of delivery.

Clause 10 agreed to

On Clause 11

Clause 11 agreed to

On Clause 12

Mr. MacKay: I think I would like a little explanation on these sections 12(1)(2)(3), just so I fully understand them.

Mr. Almstrom: Yes, Clause 12 is one of the central sections in the ordinance. The scheme of the ordinance is essentially this: a security agreement has to come into existence at some time. When that security agreement comes into existence, the possibility arises that other security agreements may also come into existence dealing with the same collateral.

The concept of attachment relates to the time when the security interest comes into existence. The concept of perfection, as we have seen already in a number of places in the bill, relates to the establishment of priority by either registration or taking possession. So attachment is the first of the time when the security interest actually comes into existence.

Can you see under 12(1) that in order for a security interest to attach, value has to be given. In other words, it is a loan transaction. So the debtor has to get some money for the thing. If there is no value given to him, then you do not have a loan transaction and you cannot have a security agreement. And, the debtor has to have rights in or to the collateral, which is simply to say that he has to own it. He cannot grant to somebody else a security interest in something that he does not own.

In addition to that, the thing has to be enforceable, which merely means that, referring back to section 9, it has to be in writing or the collateral has to be in the possession of the secured party, in order for it to be enforceable against somebody else. So it is not a secret agreement.

Therefore, in order for the thing to be recognized by this ordinance it has to attach. The concept of attachment, in a different word, means that the security agreement comes into existence. Now, in order to grant a security in trust, you have to own the property. Subsection (2) and (3) merely set aside the question as to whether a person does or does not have an interest in property sufficient for him to grant a security interest. For example, if you are a fisherman and you want to grant a security interest in your catch, obviously you cannot just grant a security interest in fish that are out in the sea, because somebody else might catch them. That is the sort of thing that subsections (2) and (3) relate to.

Mr. MacKay: Would this section include the granting of options? Would that fall under this section, whereby there would be some right granted to somebody at their option?

Mr. Almstrom: Only if the option in some way was either security interest itself, or was collateral for another security interest. That is the only way that an option would be affected.

Mr. MacKay: If I were to grant an option to a business associate for him to buy shares in a company I had, for example, that would not be something that would appear then on the register of securities, or the register of liens, that you have developed; that is one of the things that would not appear.

Mr. Almstrom: No, that is essentially a sale transaction; it is not a loan transaction, the granting of an option. The option is not taken as security.

Clause 12 agreed to

On Clause 13

Mr. Penikett: Forgive me, Mr. Chairman, but a question has just occurred to me in connection with Section 12 and I wonder if I just might have consent to ask it.

Mr. Chairman: Do I have unanimous consent to open section 12?

Some Members: Agreed.

Mr. Penikett: My question concerns the phrase in Section 12(3)(c) concerning rights in the sections here: crops until they are crops, fish until they are caught, the young of animals until they are conceived. Now I know when you are dealing in emotional questions like the abortion debate, the question in law of when life begins becomes a very difficult kind of concept. Here, it seems to me, it is the first time I have seen it; a legal statement that in fact there is not a person, but at least an entity or a commodity which comes into being at the point of conception rather than when it is born. I wonder if, Mr. Chairman, with your consent and the Minister's consent, if I could have an explanation of that.

Mr. Almstrom: What the paragraph does verify is that a security interest can be granted, for example, a farmer's herd, and the security interest will extend not only to the cows but to any calves they might be carrying at the time the security interest becomes enforceable.

Mr. Penikett: I do not want to push this, Mr. Chairman, I just want to understand, though. Is it possible to have security interest in an unborn calf, for example?

Mr. Almstrom: Yes, it is.

Clause 12 agreed to

On Clause 13

Clause 13 agreed to

On Clause 14

Clause 14 agreed to

On Clause 15

Mr. MacKay: I do not think I know what this means. Perhaps the witness or the Minister could just elaborate a bit.

Mr. Almstrom: This is a section that appears in all of the other drafts. When I met with the Law Form Commission in BC to discuss their report on personal property security, they were not really sure just why the original draftsman had included this provision. They did not seem to think it was absolutely essential , but apparently at some point there had been a worry that this ordinance might have been thought of as displacing the law that applies in general to sale transactions.

I think the purpose of this section is to state, so that it is beyond doubt, that this ordinance only affects the security aspect of a transaction and does not interfere with the sales aspect of the transaction.

Mr. Penikett: Just so I am perfectly clear on that, Mr. Chairman, I wonder if I could ask about the rights in the following kind of case? I buy a car under warranty. I use that car to secure a loan from a third party. How is the security affected if the car breaks down or the engine fails, and one has to appeal, under warranty, to have the thing replaced?

Presumably, in the registry, the car is now worth less than as registered. It seems to me that that could get a little complicated. I wonder if I could have an explanation as to what would happen?

Hon. Mr. Graham: As far as I understand, there is no value attached to that automobile in the registry. It is just registered as a piece of security and there is money owing against that piece of security. Your argument with the warranty would not affect the money lender at all. The fact that the car broke down would not affect your obligation to pay that money to the money lender. Perhaps Mr. Almstrom has something else to add to that.

Mr. Almstrom: The question of the warranty is really outside this ordinance. The ordinance would not interfere with the warranty. In general, the law relating to warranties would have to be applied and it is not really all that explicit in the Territory. The terms of the security agreement also probably would, in a normal case, enable the holder of the security interest, upon seizure of the property, to exercise all of the rights of the person who orginally bought it to ensure that the warranty was enforced, if it needed to be enforced.

Mr. Byblow: I am not sure, but I think this may be dealt with later on. I think I may have seen it. But, in the case of proceeds being derived from a property, you know, very legitimately; are they part of the security interest, or are they automatically part of the security interest?

Mr. Almstrom: Mr. Chairman, the security interest under this new law will ordinarily extend to the proceeds of the property. Thus, if the security interest covers highway equipment and the debtor sells the equipment, the proceeds of the sale are covered by the original security agreement, and if he buys more highway equipment the security interest will attach to the new highway equipment.

The result then is that when the person goes to a money lender, the money lender will search Registry, the Registry will be indexed according to the name of the debtor; it does not matter who you are lending money to, you just look up his name in a Registry, and you will see what his complete financial position is.

A prudent money lender then will say, "What happened to this highway equipment", and he will say, "Well, I sold it and I am using that money to buy some new collateral and I want you to help me finance the new collateral." I will say, "Now, just a minute, somebody else is going to have security interest in it."

The proceeds are covered and it will come along later in the bill.

Clause 15 agreed to

On Clause 16

Mr. MacKay: There is a question in here of what might be an example of a commercially reasonable ground for a creditor to believe he is about to lose some rights. The only example I can think of is where the lessee is going bankrupt and the lessor could exercise some rights. Is that the kind of thing we are talking about here or is there some other?

Mr. Almstrom: The idea that is being expressed here refers to a situation, for example, where the secured party learns that the debtor is about to become bankrupt. That would be commercially reasonable grounds for him to accelerate payment under the security agreement. But if he had learned that the debtor had just shovelled the snow off his sidewalk, that has got nothing to do with the security agreement, and definitely would not be commercially reasonable grounds to accelerate. It is just to restrict him to commercial reasons.

Clause 16 agreed to

On Clause 17

Mr. MacKay: I would just like to make sure that all the Members opposite are fully aware of and grateful for the fact that a secure party shall keep the collateral identifiable, but fungible collateral may be commingled.

Clause 17 agreed to

Mr. Chairman: Because Clause 18 has sections up to 11 we will deal with individual sections. At this time I will open general debate on section 1 which is at the bottom of page 19 and top of page 20.

Mr. MacKay: Thank you for the introduction. I actually want to ask a question about the previous section, could it be possible to have unanimous consent to ask that?

Mr. Chairman: Do we have unanimous consent to re-open Clause 17?

Some Members: Agreed.

On Clause 17

Mr. MacKay: Yes, my question was this: this appears to deal with the situation where the creditor has possession of the secured asset. Does this preclude the creditor from putting to use a revenue-earning use: the particular asset that he has. I am thinking perhaps he has a bus, and for him to sit in that bus and not use it is going to create loss for the debtors as well as for himself. Reading it over, it seemed to me that there was some impairment of visibility to put that revenue-earning use to use, even though it benefits both parties.

Mr. Almstrom: No, the secure party is definitely authorized to use the collateral. Ordinarily the terms of its use will dealt with in the security agreement itself, in commercial financing. For example, in a bus line or something like that, the secure party actually could use the busses and thereby continue to receive revenue from the collateral and reduce the obligation. It is contemplated, actually commercially expected, that the secured party will use the collateral where it is commercially reasonable to do so.

Clause 17 agreed to

On Clause 18(1)

Mr. MacKay: I just wonder how often he can demand this information. It might make quite a hardship if it was done on a daily basis. Is there any sort of rules of reasonableness that would apply to this?

Mr. Almstrom: As I recall, there is a further subsection in here, subsection (7), that would enable the secured party to charge for the reply. Presumably that would cover his expenses.

Hon. Mr. Pearson: Mr. Chairman, I would just like to ask the witness if, right at the top of page 20, the words "...containing an address for...", I believe are double-printed.

Mr. Almstrom: They do not seem to be double- printed on my copy.

Hon. Mr. Pearson: It says, Mr. Chairman, on my copy, "A debtor, creditor, or other person with a legal or equitable interest in or to the collateral may, by a notice in writing, containing an address for containing an address for reply and served..."

I would suggest there is a typo, it is just duplication of words.

Mr. Chairman: Do you move that we delete the words "containing an address for"?

Hon. Mr. Pearson: I would suggest, Mr. Chairman, if there is unanimous consent, we could treat that as a straight typo, because the words are added twice.

Mr. MacKay: I would suggest that, as we have more and more things printed by word processors, this will happen more often.

Mr. Chairman: Unanimous consent that we delete "containing an address for"?

Some Members: Agreed.

Clause 18(1) agreed to

On Clause 18(2)

Clause 18(2) agreed to

On Clause 18(3)

Mr. MacKay: This is a pretty onerous provision: 15 days. I know that in my profession we frequently send requests to third parties to receive confirmation of balances owing on securities; it is a fair day in Whitehorse when we get it back in 15 days. I am wondering if there is any experience to indicate that this is a reasonable time limitation?

Mr. Almstrom: The duty to reply, expressed in this subsection, relates only to a reply from the secured party's own records. The standard provision in all the other jurisdictions has been ten days. We have extended that to 15 days to take into account the extra difficulty we have with communications in the Territory.

Clause 18(3) agreed to

On Clause 18(4)

Clause 18(4) agreed to

On Clause 18(5)

Clause 18(5) agreed to

On Clause 18(6)

Clause 18(6) agreed to

On Clause 18(7)

Clause 18(7) agreed to

On Clause 18(8)

Clause 18(8) agreed to

On Clause 18(9)

Clause 18(9) agreed to

On Clause 18(10)

Mr. MacKay: Either I have lost track of this whole thing, or I had too good a supper again. When we are talking about "...the latest of the following events:" if reinstatement is ordered, it is the date on which the security interest is registered. I am trying to imagine, Mr. Chairman, where one would not have a security interest registered already. It seems to me that if you go to a judge and have the secured party's interest security declared void — I cannot see where the circumstances arise where there would be two different dates for these things.

Mr. Almstrom: There could indeed be a reinstatement of a security interest that had never been registered, where the origin-

Clause 18(10) agreed to

On Clause 18(11)

Mr. Falle: I would like to know in this one, Mr. Chairman, in this event here on 15 days, if you had registered mail, and you were not home, like for example lots of people just leave to go mining for the summer.

Mr. Chairman: Mr. Falle, are you asking for unanimous consent to re-open Clause 18?

Mr. Falle: I did not think it had been closed yet; if you want, I will ask for it.

Mr. Chairman: The Chair considered it closed. Are you asking for unanimous consent?

Some Members: Agreed.

Mr. Falle: This notice by registered mail, is it possible that a person can be away for a couple or three months, and come back and find his house seized or his security seized, because he was not there to pick up his mail?

Mr. Almstrom: That is really no problem. The section deals with giving notice to the secured party. Secured parties are money lenders and ordinarily they are companies and usually there is someone on hand to receive the mail. If there is not, there is always the chance that the interest may be declared void, but the person would have to stay away for an awfully long time for that to happen.

Clause 18 agreed to

On Clause 19

Mr. Fleming: Yes, Mr. Chairman, I think there might be a typo there in section (b) "all steps required for perfection under of". I was just wondering if that is the proper wording.

Hon. Mr. Graham: I think that is just a typographical error. I think the word "of" should be deleted in the end of section 19(1)(b), "all steps required for perfection under" and then the word "of" should be deleted.

Mr. Chairman: Do I have consent of the House?

Some Members: Agreed.

Clause 19 agreed to

On Clause 20

Clause 20 agreed to

On Clause 21

Clause 21 agreed to

On Clause 22

Mr. Penikett: Mr. Chairman, I wonder if I could just give notice of a question right now. I do not know where to ask about it in this bill, but I think it is worth asking.

A small contractor has four or five pieces of equipment. All of them are purchases with large loans. The contractor, the person who has of course, provided the money, the loans are secured with the equipment. The contractor, though, falls afoul in the contract and has a huge cost over-run, goes belly-up, cannot pay his bills. What is the law here, in terms of the money due to the employees versus the lender, in the case of an operation as simple as that?

Mr. Almstrom: I believe that is taken care of in our *Labour Standards Ordinance*.

Mr. Penikett: So, just to be sure, nothing that we do here in terms of protecting the security of lenders would take precedence over the rights given to employees under the *Labour Standards Ordinance*.

Mr. Almstrom: That question has not been entertained, but we will check to make sure that that is so.

Clause 22 agreed to

On Clause 23

Mr. MacKay: I always heard that possession was nine-tenths of the law, and reading this section it looks as if it is ten-tenths. It seems to give a lot of power to the possessor of the goods. Is this a change? Are we making some change to existing law in this area?

Mr. Almstrom: The concept of perfection by possession relates only to the establishment of priority in relation to the collateral, as against all other security interests. It does not have any other rights attached to it, except, of course, the rights and duties of the secured party in dealing with that collateral while it is in his possession. He has to take care of it. If the collateral happened to be a race horse that has to be exercised, he has to exercise the horse, that sort of thing. But, aside from that, it does not upset the general law.

Mr. MacKay: I am thinking in terms of goods held in a warehouse, by a warehouse — I forget the word. Not a registered warehouse, but one which can give a warehouseman's lien to an individual; and that in fact is good security and he or his agent is holding it. But that does not in fact allow him to dispose of that, in realization of security, if there are other claimants on it. As I understand it, it only gives him the first right. For example, if he has a debt of, say, 50,000, against a property worth 100,000, he gets the first 50,000. Is that what possession gives him?

Mr. Almstrom: That is the intention of this section. It relates only to the establishment of priorities. As to the disposition of the security and paying out other secured parties, that is dealt with at length in, I think it is part 5 of the ordinance.

Clause 23 agreed to

On Clause 24

Clause 24 agreed to

On Clause 25

Mr. MacKay: Are we talking here about somebody being able to seize a TV set that has been sold, is that what we are talking about, that kind? It says item, a small item; just sending someone and seizing it, and taking it away, automatically perfects their security, is that the kind of thing there?

Mr. Almstrom: I was hoping someone would ask a question on this section. This is a section that was recommended by the Law Reform Commission in BC. What it does is avoid getting a multitude of registrations in relation to small consumer purchase financing transactions. The concept of special consumer goods is defined back in the definition section. We will be introducing a dollar amount in the regulations. It may be in the neighbourhood of $1,000. So any asset that is purchased for less than that value will automatically not require registration or to be perfected.

The effect of that is that money lenders are put on notice. If they are lending money on the strength of the person's refrigerator, TV set, or something like that, there might be another security interest in the thing. Security interest for those things tend to be purchase money security interest which we just passed over. The purchase money security interest receives special protection anyway, so there is not much of a market for second financing in small consumer transactions. What this section does is takes them out of the registry.

Mr. MacKay: The mention there was of a dollar amount of $1,000. I am not sure if he said $1,000 or $5,000.

Mr. Almstrom: The figure we are thinking of right now is $1,000.

Mr. Penikett: I am just wondering, Mr. Chairman, looking ahead, if there is a typo. I notice in 26(1) then 26(2) and then another 26(2), presumably that should be (3).

Mr. Chairman: We are dealing with Clause 25 now.

Mr. Penikett: I am just looking at 26.

Clause 25 agreed to

On Clause 26

Mr. Chairman: Did you find a typo somewhere, Mr. Penikett?

Mr. Penikett: I think you will find this has two 26(2)s, Mr.

Chairman.

Hon. Mr. Graham: I think, Mr. Chairman, that that is a typographical error. The second "26(2)" should be "26(3)".

Some Members: Agreed.

Clause 26 agreed to

On Clause 27

Clause 27 agreed to

On Clause 28

Mr. MacKay: Are we talking about a pawnbroker situation in this? I see the witness shaking his head, which is not recorded in *Hansard*.

Mr. Almstrom: This section deals with the situation we mentioned earlier, when I was asked to give a definition of the term "bailee". Where goods are deposited, for example, in a warehouse by the owner, the person who runs the warehouse is the bailee for the owner.

Now, in ordinary commercial practice, a document of title is usually issued, either upon deposit of the goods or at some subsequent time. The document of title may have the name of the owner on it, in which case the goods will be delivered back to the owner; or the document of title may be negotiable, in which case, the document of title will be delivered to just about anybody, and whoever shows up with the document of title gets the goods.

In those circumstances, the document of title itself actually is as good as having the goods themselves, so special consideration has to be taken in that particular situation.

Mr. MacKay: So, what happens to the poor old banker who has got a security over this stuff in the warehouse, for which a certificate has been issued to some other party? Does he lose out when the third or fourth party arrives with the certificate of title and says, "I am taking the goods"? Is the banker out of luck?

Mr. Almstrom: Ordinarily that question does not arise at all because we are talking about a security interest in the goods or a security interest in the document of title. The banker will require production either of the goods or the document of title before he will lend the money.

Clause 28 agreed to

On Clause 29

Mr. MacKay: I am not sure I understand subsection (6).

Mr. Almstrom: This section deals with the financing situation that is common in, for example, the car business. The owner of the car lot may have financing from a number of sources. He may have financing for his inventory from one source. He may have, for example, working capital financing from a bank, secured by a charge on his book debts. In the ordinary course of trade he will be selling cars from off his car lot. What happens, when the car is sold, is that the security interest in the inventory expires as to that car, and attachs to a new car — whatever new car is brought back on to the lot to replace the one that was sold. The other security interest will, of course, attach to the book debt that is created by the sale of the car.

What happens, though, if the car is either later returned because the buyer does not like it, or is repossessed because he did not pay for it? Under those circumstances, the original security interest in inventory will re-attach to the car when it is returned into the inventory. The question then arises, what about any security interests that the purchaser of the car created while he had the car in his possession? What this whole section does is, it sorts out those interests. And, invariably, the security interest created by the purchaser while he was in possession has priority over the inventory- secured interest.

That generally is the effect of the section.

Section (6): special protection is given under this ordinance for transactions in chattel paper. Ordinarily, what happens when a car is sold and a chattel mortgage or a conditional sale contract is made up, is that the auto dealer immediately discounts that chattel paper to a financer. Because that type of business is so common, special protection is given to that type of transaction. That is the security interest under subsection (4).

Off the top of my head, I cannot give you an example of exactly what Section (6) states, but that is the subject with which it deals.

Mr. Penikett: Mr. Chairman, I was confused by something the witness said. I wonder if I could just understand. I will give a very simple example. I buy a car. I keep up my payments for a couple of years, say. I do not have any other encumbrances on it, like a second mortgage or anything. I have the car pretty well paid off and then for some reason, near the end of the period of the term plan I run into financial trouble, lose my job or something and the car is re-possessed. Now a car is perhaps a bad example because it has probably depreciated quite a bit. A house for example: how do I secure the interest or the equity that I have in it? Presumably it does not have the same rank as the lenders, what kind of order is it?

Mr. Almstrom: The first thing I would like to say is that this ordinance does not apply at all to real property so a house would not apply. A similar example would be construction equipment, some substantial piece of equipment like that. What would happen in those circumstances, and this is dealt with exhaustively further on in the ordinance, is that the secured party would be entitled to sell the asset and charge the expenses of the sale to the proceeds of the sale. He would pay himself off, pay off any other secured parties, and he would have to account for the change, if any, to the owner of the collateral.

Mr. Penikett: Let me ask the question, if is not relevant now, I will ask it when we come up to it. Let us say it is a car, and it is a car that does not depreciate very quickly, possibly a Jaguar, perhaps a Rolls Royce; the lender, and perhaps he did not sell the note, he just kept the paper, keeps it in inventory, and in fact does not convert it into cash or sell it again immediately.

How do I secure my interest in it? I have trouble; even though I may have paid for three-quarters of the darn thing, I have now lost it, because I have lost my job. What obligations are there between myself and the lender, in terms of recovering my interest in the vehicle?

Mr. Almstrom: As I just mentioned on a disposition of the property, they would have to account for whatever the balance of the proceeds was. Aside from the disposition, if you were to assign the paper when you had just about finished paying for the property, the basic principle in the law is that you cannot sell a greater interest than you have, and that principle is carried forward in this ordinance inasmuch as the person who receives the chattel paper on the assignment receives it subject to all the equities that prevail between the original holder of the chattel paper and the debtor.

So, therefore, if you have paid for nine-tenths of the car and the guy gets the chattel paper, then there is only one-tenth left over.

There is a problem if you sign something that is negotiable. If you signed a bill of exchange, a promissory note, cheque or something like that, and that is what is assigned, that is under federal law, which we do not interfere with here, and, except in consumer transactons, you are liable for the whole amount, and no equities at all can be established against that. But we do not deal with that in this ordinance.

Clause 29 agreed to

On Clause 30

Mr. MacKay: I remember in the law courses that I took that the law of contracts, as I recall, this seems to deal with it. Is it making any change from the basic law of contract? As I seem to understand it, when you buy something, if you pay for it in good faith, it is yours unless somebody can prove that it was, perhaps, stolen before, but, in terms of security or any of that stuff, if you pay for it in good faith then you have got it.

Mr. Almstrom: One of the basic principles of contract law is that the seller cannot sell you a greater interest than he had. That principle is recognized and carried forward in this ordinance.

Aside from that, the ordinance does not upset sales laws. The section with which we are dealing now is made necessary because we are introducing this concept of a fluctuating inventory financing. The concept that has to be expressed is that the inventory financing, that security interest, remains with the inventory that is in stock. But when someone buys out of that inventory in the ordinary course of business, if someone goes down and buys themselves a new Kenworth at the dealer, the security interest in the inventory expires, as to the truck. Because as part of the original financing transaction, the bank that lent the money to the truck dealer knew that this was going to be inventory financing, and knew people were going to be buying trucks off the lot in the ordinary course of business. So it is completely fair, and this section expresses it, that the inventory security interest should expire when the truck is sold to a buyer in the ordinary course of business.

Now if he sold his whole inventory in one shot, that is a different kind of transaction.

Mr. Penikett: I do hope the principle enunciated by my friend, Mr. MacKay, is not the case because it seems to me then that if

some fool came along and paid $100,000 for the Tagish Bridge, even though the person who sold it might be a criminal, the fool that bought it might then have a claim to it, which I think would be embarrassing to say the least.

Clause 30 agreed to

On Clause 31

Clause 31 agreed to

On Clause 32

Mr. MacKay: Perhaps I could have an example of where a lien would not have priority over a security interest.

Mr. Almstrom: My research in our ordinances reveals that there are not any existing liens that ought to be given priority. It is fashionable, and always has been in the past, for governments to give priority to their liens over all other interests of any nature whatsoever, particularly where taxes are involved. That is not, perhaps, as fashionable now as it used to be. But, as an example, a lien to enforce a support payment or something of that nature: consideration might, in the future, be given to creating a priority in another ordinance. But at this time, my understanding is that that section does not apply to anything that is in existence right now.

Clause 32 agreed to

On Clause 33

Mr. MacKay: Example: a man has paid for half a car and he fails to make the payments on the other half. It is seized. The person who seized it turns around and sells that car to somebody else. Is that now legal by virtue of this section? Or does he not have to realize the whole proceeds? It seems to me that the rights of a debtor in a collateral may be transfered involuntarily, notwithstanding a provision in a security agreement prohibiting a transfer. I am trying to visualize whether that would be a fair thing to happen.

Mr. Almstrom: I am not sure, Mr. Chairman, that I understand the question, but I will try to answer it anyway.

The existing law develops a lot of very technical rules and some very fine distinctions in order to create greater security for money lenders. One of the typical things for a seller of goods to do, where he was granting credit on the sale, was to reserve title to himself. This is seen in the conditional sale contract where the purchaser gets possession of the collateral but he does not get title to it until he pays for it.

Now, under this ordinance, we are trying to get rid of the need for any such fine distinctions. The security interest is now fully protected under this ordinance, by the provisions relating to perfection and priority. We have an obligation to preserve also the security of title to property when people buy it. So, when a person buys something, if he has gone and checked the Registry and he has ascertained that the debtor had possession, in other words, he has done everything that is reasonable for a money lender to do when he grants security, or for a purchaser to do when he is buying something; if he has done those things, then he really ought to get good title.

This is, in effect, an encouragement for people that have security interests, to make sure that the things are registered before they do take possession and that the thing is properly perfected under the ordinance.

I hope that answers the question, whatever it was.

Clause 33 agreed to

Mr. Chairman: Before we go to Clause 34, the Chair will declare a short break.

Recess

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

On Clause 34

Clause 34 agreed to

On Clause 35(1)

Clause 35(1) agreed to

On Clause 35(2)

Clause 35(2) agreed to

On Clause 35(3)

Clause 35(3) agreed to

On Clause 35(4)

Clause 35(4) agreed to

On Clause 35(5)

Mr. MacKay: It seems like a fairly important section. Maybe the witness could give us a brief rundown?

Mr. Almstrom: The section deals merely with the situation where a secured party has an interest that has been registered, and, for one reason or another, he neglects to renew his registration. The registration lapses and someone else comes along and registers.

It will be evident from the Register that the previous one has lapsed and may be reinstated within the 30 days. But, if more than 30 days go by, then the old interest is subject to any new interest that may have been registered in the intervening period.

Mr. MacKay: I am sorry. I thought we were still at 35(1) et al. We are still in 35, so I guess I want to go back to the beginning of the clause and ask about the first subsection (1)(a). I am not sure if I understand the order by which priority is set. It can be set by registration, possession, and perfection.

Mr. Chairman: Does the Honourable Member have consent of the House to re-open subsection (1)?

Some Members: Agreed.

Mr. Chairman: Proceed.

On Clause 35(1)

Mr. MacKay: I thought registration was perfection, as is possession under Clause 23.

Mr. Almstrom: The registration is perfection only if the security interest has already come into existence.

In order for a perfection to be caused by registration, you also have to have attachment. That is essential in all cases of perfection, but you can register a security agreement before the documents are signed, which would be the normal situation, for example, where a bank is lending money for the purchase of a car. The secured party cannot grant a security interest until he owns the car and he cannot own the car until he pays for it. So what the bank will do is, they will register immediately when they give the guy the money, and then the second that he pays for the car the bank security interest attaches. It is a perfected security interest but registration has occurred before perfection. In that case, the bank's priority dates back to the time when they registered. It is not delayed until the bearer actually takes possession of the car.

Clause 35(1) agreed to

Clause 35(4) agreed to

On Clause 35(5)

Clause 35(5) agreed to

On Clause 35(6)

Clause 35(6) agreed

On Clause 35(7)

Clause 35(7) agreed to

Clause 35 agreed to

On Clause 36(1)

Mr. MacKay: I know we are involved with a lot of different definitions, in fixtures we covered before. I am trying to think of an instance. It seems to me that once you attach something to a house, then it becomes part of the house. How about a furnace, for example, can we talk about that? Does this provide for Gulf Oil to retain security over the furnace? Is that the purpose of this section?

Mr. Almstrom: Mr. Chairman, that is exactly what this section provides for.

Clause 36(1) agreed to

On Clause 36(2)

Clause 36(2) agreed to

On Clause 36(3)

Mr. MacKay: Perhaps the witness could explain this because I am not very sure what section 125 of the *Land Titles Act* says.

Mr. Almstrom: The section of the *Land Titles Act* referred to relates to the filing of writs of executive against property. Ordinarily this is for the enforcement of a judgment, where real property can be seized and sold to satisfy the judgment of the court.

Clause 36(3) agreed to

On Clause 36(4)

Clause 36(4) agreed to

On Clause 36(5)

Clause 36(5) agreed to

On Clause 36(6)

Clause 36(6) agreed to

On Clause 36(7)

Clause 36(7) agreed to

On Clause 36(8)

Clause 36(8) agreed to

On Clause 36(9)

Clause 36(9) agreed to

On Clause 36(10)

Clause 36(10) agreed to

On Clause 36(11)

Clause 36(11) agreed to

On Clause 36(12)

Hon. Mr. Graham: Mr. Chairman, perhaps it would be advanteagous for the witness to interject a couple of comments at this time, because I think we are passing over some points that the Honourable Members should see.

Mr. Almstrom: Mr. Chairman, there seems to be a typo in the second line at the top of page 36. It should be "...removed fixtures from real property..."

Mr. Chairman: Unanimous consent?

Some Members: Agreed.

Clause 36(12) agreed to

On Clause 36(13)

Mr. MacKay: It seems to allow the creditor to enter into a household and really help himself, after having given certain notices, and I am wondering if this is a stronger law in favour of the creditor than we have presently? Could he not do that in any event? Are we introducing new powers here for the creditor?

Mr. Almstrom: Ordinarily this sort of right is dealt with in the security agreement. If the secured party wants to protect himself, he will make sure that he has all of these rights in any event. Now ordinarily the secured party is going to exercise rights such as this, only in commercial situations. The protection of privacy in private homes, that sort of thing, is not dealt with in this ordinance. The Committee may be interested to know that Ontario has amended their *Personal Property Security Act*, to remove all provisions that look like consumer protection provisions in order to place all of that type of law in their *Consumer Protection Act*. That would be the appropriate place for that sort of principle to be expressed in our ordinances.

Mr. MacKay: I am a little unclear as to why we have this section, if the prudent lender or creditor has usually got it in his agreement; are we just reinforcing that right here?

Mr. Almstrom: What section 13 provides is that the secured party has to exercise his right in a way that causes no more than the absolute minimum amount of damage that is necessary to remove the fixtures from the premises. That is a restriction of a right. The secured party probably would not restrict his right in that way voluntarily.

Mr. MacKay: Just to continue the discussion about the consumer, this is really a consumer protection clause then, this 13; it gives them safeguards, some comeback against ruthless repossession. Is it the intention perhaps of the Minister — he made some references as to passing over some important things; if he has something to say about this kind of legislation with respect to consumer protection, let us hear it.

Hon. Mr. Graham: Mr. Chairman, this is not intended to be a consumer protection section. It is here simply to outline our concern that somebody is going to go in. I think it also applies not only to the consumer but also to the case of a mining company where you have a piece of machinery inside of a huge, cement block building, shall we say, that cannot be taken out through the doors. Rather than bash a huge hole in the back of the wall, we would expect that they would take out a little bit of additional space around the doors and take them out through that way. That is basically what it is here for. It is not here as a consumer protection item as such. We have separate legislation for that. We have some other stuff coming up.

Clause 36(13) agreed to

Clause 36 agreed to

On Clause 37

On Clause 37(1)

Mr. Byblow: I would like an explanation of "accession" in 37(1)(a).

Mr. Almstrom: Mr. Chairman, the concept of an accession is defined in the definition section. An accession is the term that seems now to be universally used in the law for what we ordinarily think of as an accessory. The sort of thing most of us are familiar with is the tape-deck people put in their cars. It would also apply to the sort of thing such as a sleeper that the owner of a semi-trailer unit bolts on behind his cab. That is an accession.

The Committee might also be interested to know that the provisions relating to accessions provide, in exactly the same way, for the parallel situation with fixtures. The problems and the solutions are pretty much the same between sections 36 and 37 of this ordinance.

Clause 37(1) agreed to

On Clause 37(2)

Clause 37(2) agreed to

On Clause 37(3)

Clause 37(3) agreed to

On Clause 37(4)

Clause 37(4) agreed to

On Clause 37(5)

Clause 37(5) agreed to

Mr. MacKay: Could I just ask a question, Mr. Chairman?

Mr. Chairman: Are you referring to section (5)?

Mr. MacKay: To the whole of this section 37, not any particular subsection. It seems to me we are giving notice quite often to debtors, here, about the intention of the creditor to come and exercise his right to remove things.

Does that in any way prejudice the actual process? Sometimes I think that surprise is quite a useful device in terms of trying to get something back, especially if it is on wheels. Is this going to make it more difficult for repossessions to occur?

Mr. Almstrom: I do not think it is going to make that much difference. The main provision for notice is for notice to other parties who may be interested, besides the debtor.

Clause 37(6) agreed to

On Clause 37(7)

Clause 37(7) agreed to

On Clause 37(8)

Clause 37(8) agreed to

On Clause 37(9)

Clause 37(9) agreed to

On Clause 37(10)

Clause 37(10) agreed to

On Clause 37(11)

Clause 37(11) agreed to

On Clause 37(12)

Clause 37(12) agreed to

On Clause 37(13)

Clause 37(13) agreed to

Clause 37 agreed to

On Clause 38

Mr. MacKay: Clause 38(2) seems to be a fairly arbitrary way of dividing up the spoils. I guess it overlaps into another concern that I have, and can perhaps raise now: that is the obligation of the creditor to sell for the best price, to make sure he just does not sell it to realize his security, and not care about what happens with that principle. Perhaps you could answer that question, if it is in here.

The other thing is that when we get this sharing of interest, does that not really reduce that principle to the point where the only thing the people are interested in is getting out their security, and no one creditor, at this point, is interested in selling it for the maximum value that is possible.

Mr. Almstrom: The question relating to the value for which secured property is disposed of once it is seized, would probably be best dealt with later on in the bill, when we get to the pertinent sections.

Clause 38 agreed to

On Clause 39

Clause 39 agreed to

On Clause 40

Mr. MacKay: I would like a little general explanation, I do not think I understand this.

Mr. Almstrom: We touched on this subject previously when we

discussed assignment of a chattel paper covering property. We stated at that time that the rights of the debtor continued even as against the assignee.

What the section provides basically is that the assignment can be made that the debtor continues to be protected. If he does not receive notice of the assignment, he does not have to pay the assignee, the person to whom the paper was assigned. It provides, also, in subsection (2), that in the case, for example, of the purchase of a car, if the security interest covers a car and the car proves to be defective, and it is taken back to the dealer and he gets another car in exchange for it, that that type of transaction was not possible under the existing law; however, under the new law, re-secured interest will attach to the substituted car, and a right is created here for that sort of substitution to be made, as long as it is commercially reasonable.

Clause 40 agreed to

On Clause 41

Mr. MacKay: Perhaps we could have some idea of the size of establishment we are talking about here. Are we talking about one individual handling this system at the present time?

Hon. Mr. Graham: Mr. Chairman, I believe at the present time we have four employees plus a Registrar , who is not involved in day to day organization of the registration system. However, you must realize that in the present system we are not dealing with only one registry system. We are dealing with, I believe six different ordinances, registrations under six ordinances, and a much larger number than we are anticipating here.

Mr. MacKay: In some cases you have to pay for registration and also to check into things. Will there be a fee levied for anybody making enquiries as to a security interest?

Hon. Mr. Graham: Yes, there definitely will, Mr. Chairman.

Clause 41 agreed to

On Clause 42

Mr. MacKay: A practical difficulty: often you may get somebody enquiring by mail as to a question of doing a search. From the reading of this section, it would appear that he will not do it unless he sends the money with the letter. Will that be the intent of this section or will there be some provision for billing for the service?

Hon. Mr. Graham: Mr. Chairman at the present time we have approved clients who we do not require to bring with them payment each time they come. I think several legal companies in town are acceptable to us as credit risks, and therefore we are willing to bill them on a monthly basis. I would imagine that same practice would hold true under this ordinance.

Clause 42 agreed to

On Clause 43

On Clause 43(1)

Mr. MacKay: Under section 43(1)(d), "such other information as may be prescribed". I would like a brief description of what other information there could be? We are not going into invasion of privacy here, I am sure.

Mr. Almstrom: There will be a prescribed form. The additional clause (d) is included only to make sure that the form will contain everything that is necessary. For example, I do not imagine that anyone will ever argue about it, but we will probably want to have a date on the thing. We are not looking for any kind of information to which we ought not to have access. It is only for registry purposes: to make sure that, when a person searches the Registry, that he receives the full and accurate information that he needs to find out the credit position of the potential debtor.

Mr. MacKay: I guess, you know, we are not going to be demanding Social Insurance Numbers, dates of birth, sex, and so forth of the various parties involved?

Hon. Mr. Graham: Mr. Chairman, seeing we are also dealing with companies, I think that would be a great difficulty. No, we do not intend to ask for that kind of information.

Mr. Almstrom: Mr. Chairman, in order that no one is mislead about that, it is intended that this Registry be maintained by index, according to the names of the various debtors. Now, if we have two John Smiths, the secured party will, in order to protect himself, have to supply sufficient particulars as to which John Smith he is dealing with, in order to get his protection. So, in that case, the secured party will have to ask the debtor to supply him with additional information that will enable others to know which John Smith we are talking about. The information may be anything that the secured party and the debtor agree to. It might include the debtor's Social Insurance Number if the debtor agreed to that, or it could include his address, or his height and weight, or whatever is necessary to distinguish him from all the other John Smiths in the world.

Mr. MacKay: We have read quite a lot, in the last few years, about the dangers of accumulating data in computers. This would seem to be a very interesting accumulation of data that is going to be in this computer, particularly if it is all nicely laid out by individuals.

For example, how much does John Smith owe? Would that information be available? Can anybody do a search based upon the debtor, or must they be going after the agreement only?

Hon. Mr. Graham: Mr. Chairman, it is not our intention to make this information available to the general public, if that is what you mean. We would expect that, in order for that information to be made available, it would be made available for some specific reason. Maybe Mr. Almstrom would care to expand.

Mr. Almstrom: The Registry is open to the public, but the Registry does not disclose very much. The Registry does not disclose any of the particulars as to the agreement, which is the case now when the existing Registries are open to the public, and you can actually get copies of the agreement.

Under this ordinance, all that will be registered is a financing statement; the debtor's name, John Doe; the secured party's name, Bank of Montreal; identification of the collateral, a 1957 Pontiac. Basically that will be all the information that is on there. There will be a date and probably a number, and there will be some other routine information of that sort.

But, as far as confidential information is concerned, unless the debtor is one of these people who has got a very, very common name, on the whole the information is going to be completely innocuous, and all a person searching the Registry will be able to find out is that John Doe, at one time at least, had a security agreement covering his car with the Bank of Montreal, but the Registry will not necessarily even disclose that the thing has been discharged. Discharge is a subject we get to later. But there is not much in the way of confidential information that will be available that will be of much use to anyone.

Mr. Fleming: This brings rise to a question, though, as to what I think I understood the witness to say: that actually you could get the information that this person had a loan or something from the Bank of Montreal, but the figures and the amounts of the loan will not be in that Registry. Is that true?

Mr. Almstrom: That is perfectly correct.

Clause 43 agreed to

On Clause 44

Hon. Mr. Graham: Due to the lateness of the hour, perhaps I move that you report progress on Bill Number 52 and beg leave to sit again.

Mr. Chairman: It has been moved by the Honourable Mr. Graham that the Chairman to now report progress on Bill Number 52 and beg leave to sit again.

Motion agreed to

Hon. Mr. Graham: Mr. Chairman, I move that Mr. Speaker do now resume the Chair.

Mr. Chairman: It has been moved by the Honourable Mr. Graham that Mr. Speaker do now resume the Chair.

Motion agreed to

Mr. Chairman: At this time I would like to excuse the witness.

Mr. Speaker resumes the Chair

Mr. Speaker: I will call the House to Order.

May we have a report from the Chairman of Committees?

Mr. Njootli: Yes, Mr. Speaker, the Committee of the Whole has considered Bill Number 52, *Personal Property Security Ordinance* and directed me to report progress on same and beg leave to sit again.

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

Some Members: Agreed.

Mr. Speaker: Leave is so granted. May I have your further pleasure?

Hon. Mr. Graham: I move, seconded by the Honourable Member for Mayo, that we do now adjourn.

Mr. Speaker: It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Mayo, that we do now adjourn?

Motion agreed to

The House adjourned at 9:26 o'clock p.m.

The following Legislative Return was tabled Wednesday, November 5, 1980:

80-3-21
Affirmative Action Policy for the Disadvantaged.