

The Pukon Legislative Assembly

Number 8

3rd Session

25th Legislature

HANSARD

Thursday, April 7, 1983 — 1:30 p.m.

Speaker: The Honourable Donald Taylor

Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake DEPUTY SPEAKER — Andy Philipsen, MLA, Whitehorse Porter Creek West

CABINET MINISTERS

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

GOVERNMENT MEMBERS

(Progressive Conservative)

Bill Brewster Kluane Al Falle Hootalingua Kathie Nukon Old Crow

Andy Philipsen

Whitehorse Porter Creek West

OPPOSITION MEMBERS

and Cultural Resources

(New Democratic Party)

Tony Penikett Whitehorse West

Leader of the Official Opposition

Maurice Byblow Faro

Margaret Joe Whitehorse North Centre Roger Kimmerly Whitehorse South Centre

Piers McDonald **Dave Porter**

Mavo Campbell

(Independent)

Don Taylor

Watson Lake

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

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

o1 Whitehorse, Yukon

Thursday, April 7, 1983 — 1:30 p.m.

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

Prayers

DAILY ROUTINE

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

TABLING OF DOCUMENTS

Mr. Philipsen: I have for tabling a memoradum from myself to the members of the House, along with a letter from the Chairman of the Council for Yukon Indians to the government leader.

Mr. Speaker: Are there any further documents for tabling? Reports of committees?

Petitions?

Reading or receiving of petitions? Introduction of bills?

Notices of motion for the production of papers?

Are there any notices of motion?

NOTICES OF MOTION

Hon. Mr. Pearson: I move that this House approves in general the budgetary policy of the government.

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

QUESTION PERIOD

Question re: Cyprus Anvil aid package

Mr. Byblow: My question is to the government leader. It is my understanding that the federal cabinet will be meeting tomorrow to review the Cyprus Anvil aid package and possibly make a decision. Last week, the government leader was in Ottawa lobbying federal ministers of the urgency of the reopening of that mine. Can the government leader assure the House that any misunderstandings concerning this government's position towards aid for the mine have been adequately cleared up during the government leader's lobby?

oz Hon. Mr. Pearson: I am very pleased to report that I did not encounter any misunderstandings at all. I believe, and I still firmly believe, that the only misunderstanding that existed was in the mind of the member for Faro; there was nobody else that questioned, at all, exactly where the Government of Yukon stood on this matter.

While I am on my feet, though, I would like to report to the House that I think that the trip was very successful. I must say that the ministers with whom I did meet were sympathetic and understanding, and I anticipate that when this package does get to Cabinet, given the thinking of the ministers that I saw and if their influence is going to be of any value at all, we are going to come out of the situation with a favourable decision by the Cabinet.

Mr. Byblow: Given the government leader's response that no confusion existed and given that the government leader did not meet with Finance Minister Lalonde, with whom most of the confusion existed and upon whose influence the decision primarily rests, what did the government leader do to mitigate against this factor?

Hon. Mr. Pearson: I tried for three days, personally, to get in to see Mr. Lalonde. I kind of suspect that it is understandable. It happened to be that point in time when he was having to make a decision as to when he was going to bring down the federal budget. I am confident that Yukon and Cyprus Anvil were far from the Minister of Finance's mind, at the time.

In respect to this proposal, it is my perception, and that of the Minister of Indian and Norther Affairs, that the most important

minister to talk to on this matter was Mr. Lumley, the Minister of Industry, Trade and Commerce, and the minister who has control of the envelope that this money, if it is forthcoming, is going to come out of. I had a long, extensive, and, I think, very productive meeting with Mr. Lumley.

⁰³ Mr. Byblow: I appreciate the government leader's assurances. Could I ask if this government has now committed any further funding to the proposed stripping program beyond the \$1 million section 38 program?

Hon. Mr. Pearson: No.

Question re: Ambulance service

Mr. Kimmerly: A question for the Minister of Health: after calling an ambulance for her elderly spouse, a constituent of mine was upset when she received a bill for the call. Could the minister outline very briefly the policy concerning ambulance charges for senior citizens

Hon. Mr. Tracey: I would have to take that question under advisement. I would not want to give the members across the floor the wrong answer on that. I believe we do have a policy to deal with the elderly people and that that person should not have been charged, but I would have to check that out.

Mr. Kimmerly: In view of the six percent increase under the Canada Pension Plan and the relatively small number of senior citizens in the Yukon, will the minister undertake to investigate the feasibility of abolishing all ambulance charges for senior citizens?

Hon. Mr. Tracey: Yes, I would be prepared to have a look at it

Question re: Land claims

Mr. Porter: My question is for the government leader. Recent news reports indicate that a short meeting of negotiators in Vancouver has significantly narrowed the differences between the federal and territorial positions on five of the six issues which kept YTG from the land claims talks for over four months, leaving the issue of land as yet unresolved. To clarify the government's position on this issue, I would like to ask the Government Leader this question: is the government's position that the federal government must turn over jurisdictional control of 15 to 20 percent of Yukon's land mass now, or is it the government's position that there must be an agreement on a process which will turn over land to YTG?

Hon. Mr. Pearson: I am somewhat surprised at the hon. member asking such a question. We have been severely criticized by the members on the other side for the amount of money that we have spent; in fact, telling the people of the territory, including the members opposite, exactly what our stand has been. It has not changed any at all.

Mr. Porter: Well, seeing as I did not get an answer to the question, maybe a rewording of the question might suffice. Let us put it this way: is it the government's position that agreement on the issue of land must be achieved before land claims talks can be resumed with their participation?

Hon. Mr. Pearson: Yes, it is definitely our position that there has to be an agreement between the Government of Yukon and the Government of Canada in respect to the disposition of land during land claims negotiations and after land claims negotiations.

Mr. Porter: Must that agreement address the question of quantum of land or must it specifically address itself only to a process which will eventually lead to a decision on quantum?

Hon. Mr. Pearson: I cannot negotiate with the Government of Canada through the forum of this House, just like the Council for Yukon Indians cannot negotiate their claim with the Government of Canada through the forum of this House.

Question re: Heritage resources

Mrs. Joe: I have a question for the Minister responsible for heritage and cultural resources.

On November 22 last year, in an answer to a question on the protection of a site in Riverdale where artifacts were found, the Minister stated that the protection of that site was under review. Can the Minister inform us if her department has since taken any action to protect the site from further damage?

Mrs. Firth: That particular site is still under review.

Mrs. Joe: Since the government is now preparing legislation for the protection of Yukon heritage resources through a comprehensive paper entitled "Proposed Policy for the Protection and Management of Heritage Resources", which has been circulated for review and comments, can the Minister tell us what stage this proposed legislation is at?

⁶⁵ Hon. Mrs. Firth: We have a policy paper regarding heritage legislation and we are hoping to introduce heritage legislation in the next session or two.

Mrs. Joe: Will the minister make copies of this paper available to members on this side of the House?

Hon. Mrs. Firth: I am considering that at present and my immediate reaction is that we probably will be.

Question re: Fur and game farming

Mr. McDonald: I have a question for the minister responsible for agriculture. Can the minister tell the House what his government's position is regarding fur and game farming, a sector of the agricultural industry, and whether it is promoting this aspect of the industry in any way?

Hon. Mr. Tracey: The fur and game farming comes under the Department of Renewable Resources and if anyone makes a proposal for a fur or game farm we would be quite prepared to have a look at the situation.

Mr. McDonald: Are persons who are leasing land for the purposes of fur and game farming being given first option to take title of the land?

Hon. Mr. Tracey: That would have to revert back to the minister responsible for municipal and community affairs because he is the one who releases the land. However, we would make the recommendation to that department and that department would most likely follow the recommendation of the renewable resources department. I would certainly think that if anyone is getting into the business of fur or game farming they would need title to the land.

Mr. McDonald: Is the Agricultural Development Council now entertaining applications for Crown land from persons who wish to engage in fur and game farming?

Hon. Mr. Lang: Not to my knowledge.

Question re: Canada-Yukon tourism agreement

Mr. Byblow: I have a question I will direct to the minister responsible for tourism. The minister previously indicated and advised the House that her department was working on a Canada-Yukon tourism agreement. Is that agreement in place yet and, if not, why not?

Hon. Mrs. Firth: The groundwork for the Canada-Yukon tourism agreement has been completed and the economic development agreement is actively being negotiated. As soon as the negotiations for the total agreement are completed, the subagreement Canada-Yukon tourism agreement will go into effect.

Mr. Byblow: Is the minister confirming that the tourism sub-agreement is a part of the economic development agreement? Hon. Mrs. Firth: That is correct.

Mr. Byblow: The minister has previously committed an emphasis in the tourism portion of the agreement to be a broadening of the funding incentives for tourist attractions and facilities territorywide. Is this development incentive still a priority of the tourism portion of the agreement?

Hon. Mrs. Firth: Yes, it is.

Question re: Birth control

Mr. Kimmerly: Another question to the Minister of Health, about birth control, this time: given that practical, proven and safe birth control devices could be available for the cost of just one therapeutic abortion, is the minister's department considering making contraception available, free of charge, under the Yukon Health Plan?

Hon. Mr. Tracey: No.

Mr. Kimmerly: Did the minister's department make any studies of the comparative costs of preventative birth control measures and the economic costs and social consequences of

unwanted, unplanned pregnancies and births in arriving at its decision?

Hon. Mr. Tracey: No, and I did not say it was a decision. I said that, no, we had not contemplated putting birth control under the medicare insurance plan; however, if and when we do consider it, we will look at the costs.

Mr. Kimmerly: Will the minister also undertake to investigate the cost effectiveness of current policies as compared to a program of prevention?

Hon. Mr. Tracey: No, I could not give that undertaking; my department is very busy. However, it is one area that I will give the opposition the undertaking that I will be investigating in the future.

Question re: Land claims

Mr. Porter: My question is to the government leader and concerns a long, overdue pregnancy, of sorts. Is it this government's position that land claims negotiations are a tri-partite process?

Hon. Mr. Pearson: No. For the edification of the member for Campbell, land claims negotiations are a process between the Government of Canada and the Council for Yukon Indians. It is not a tripartite process at all. The government of Yukon is at the table with the government of Canada and the process is not tri-partite.

Mr. Porter: Could the government leader explain why the CYI was not involved in the Vancouver talks between the territorial and federal negotiators?

or Hon. Mr. Pearson: Yes, there is a memorandum of understanding that exists between the Government of the Yukon and the Government of Canada. It was signed, I believe, February of 1980, and it clearly says that when the Government of Yukon and the Government of Canada run into problems in respect to stands that are going to be taken at land claims negotiations, or any other matters in respect to the land claims negotiations, then the Government of Yukon and the Government of Canada shall meet and resolve those issues. That is what is happening now.

Mr. Porter: I think the memorandum referred to was signed in February of 1979. What is the government leader's position on involving the CYI in a tripartite process, together with the federal and Yukon governments, and designed to address and resolve constitutional issues that affect the Yukon?

Hon. Mr. Pearson: The member is getting very close to negotiating a land claims settlement in this House and I am actually in no position to do that at all.

Question re: Video display terminals

Mrs. Joe: A question for the Minister of Consumer and Corporate Affairs: some time ago, the minister indicated that his department was monitoring and researching the use of video display terminals, and I understand that the Public Service Commission is also investigating the possibility of health hazards associated with their use. Is the minister's department cooperating with the Public Service Commission in this matter, and will the minister be tabling the results of this investigation?

Hon. Mr. Ashley: Naturally, our departments cooperate with one another. They do not hide things from each other. There is not a lot of information out on these video display terminals so we have been requesting that information from across Canada and compiling that.

Mrs. Joe: A number of groups of employees of private industry in the territory are conducting a similar research on VDT use and hazards. Is the minister planning to hold public hearings on this issue or will he, in some other way, consider submissions from groups of concerned and affected users of video display terminals?

Hon. Mr. Ashley: The answer to that question is no.

Mrs. Joe: If the minister is not prepared to commit his department to conducting public hearings, will he consider the establishment of a select committee of this House to study the use of video display terminals?

Hon. Mr. Ashley: So far, we have no proof that video display terminals are hazardous; if we ever do get this proof we will look at the matter.

Question re: Agriculture

Mr. McDonald: I have a question that is truly directed to the minister responsible for agriculture. Recently, the minister has been saying that much of Yukon's agricultural development depends on the hiring of an agricultural expert. Can the minister tell the House when and where the position is being advertised and what the qualifications for the position are expected to be?

⁰⁸ Hon. Mr. Lang: The member opposite took me out of context in respect to a reply to a question I gave to the fair gentleman last week. I pointed out that I felt that if we had some expertise on staff, or on contract, it would assist those people interested in getting into the area of farming.

I do not have the list of qualifications. We have been in contact with an individual outside, in respect to looking at certain people whom, perhaps, we could hire for a period of time. Once I get a full report on that, I will be in a better position to make a judgement.

Mr. McDonald: Can the minister, first of all, tell the House whether the position is being advertised outside; and will he take it upon himself to table the job description of the agriculture expert in the House, this Session; and further state what the expert's immediate goals and objectives would be?

Hon. Mr. Lang: We are making every effort to contact individuals whom we feel would fit the area of expertise that we would like to have on staff, as opposed to the very costly exercise of advertising outside in the newspapers. We are working through a very well known Yukoner, whom the member opposite probably does not know, Mr. Sugimoto, who spent a number of years — I believe 13 years — at the Experimental Farm, and we are seeking his advice on this matter.

Mr. McDonald: I certainly do know of Mr. Sugimoto.

Will the expert and the Agricultural Development Council be travelling the territory holding public meetings to explain the government's position on agriculture?

Hon. Mr. Lang: First of all, I suggest we hire him.

Question re: Employment programs

Mr. Byblow: I have a question I will direct to the Minister of Education, in her capacity of responsibility for employment programs.

I have had a number of inquiries from small businesses regarding the job retention program for small business. Is this program being extended into this fiscal year or not?

Hon. Mrs. Firth: I have already made that announcement and I believe it was made in the Throne Speech: that it was going to be extended for an additional two months.

Mr. Byblow: Why will it not be extended into a full fiscal year?

Hon. Mrs. Firth: When we were having the budget discussions, we decided that we would extend it for two months, notify all the businesses — and they were in agreement with this — hoping that, by summer, things would improve for them and that they may be able to keep on the staff without the subsidy as the number of tourists picks up in the territory.

Mr. Byblow: Can the minister advise me whether existing businesses who have taken advantage of the program have to reapply for the extension or will they be required to submit a new application?

Hon. Mrs. Firth: No, the businesses were all notified and their application continues; they do not have to reapply for extensions or make any reapplication.

Question re: Yukon Housing Corporation

Mr. Kimmerly: A question for the minister responsible for the Yukon Housing Corporation. In spite of the minister's expressed faith in free market supply and demand principles, the government imposed wage restraint legislation on its employees. Is the minister prepared to enact similar legislation to restrict rent increases for the Yukon Housing Corporation?

Hon. Mr. Lang: No.

Mr. Kimmerly: In the minister's idealized free market economy market forces, for example, fewer people seeking available units should drive down rental rates. The vacancy...

Mr. Speaker: Order, please. I believe the hon. member is now making a speech. Could he get to his question, please.

Mr. Kimmerly: As the vacancy rate has decreased, is the minister prepared to decrease rental payments in response to this market force?

Hon. Mr. Lang: I think the member opposite should ask himself: if we are going to decrease rents in the housing that we provide, is the member opposite prepared to increase taxes to the general population to pay for that decrease? It is basic algebra.

Mr. Kimmerly: Can the minister explain that even though vacancy has decreased, rents increased beyond six percent? What is the explanation for that?

Hon. Mr. Lang: It is all very basic; it is a question of costs. We subsidize staff housing a fair amount as it is. I think, in the last budget, 1982-83, it was something like \$300,000 that the taxpayers directly put torward the operation and maintenance of staff housing as opposed to what we brought in for those particular accommodations. The point is that the money has to come from somewhere and I think it is safe to say that we all feel that everyone should pay their way and, subsequently, it is less of a burden on the taxpayer. Maybe the member opposite thinks otherwise.

Question re: Land claims negotiator

Mr. Porter: My question is for the government leader. Can the government leader tell this House whether or not his government is reimbursed by the federal government for costs incurred by his negotiator and negotiating team in the course of land claims negotiations?

Hon. Mr. Pearson: Unfortunately, I have to tell the House that we are not reimbursed. However, I should also tell the House that we faithfully keep track of these costs in the hope that some day we will be

Mr. Porter: Is the process by which the government is engaged in compiling this bill also aimed at the negotiations that are struck between the federal and territorial government now, in which the discussions around the issue of cost of the land claims negotiations are presently being negotiated?

Hon. Mr. Pearson: Yes, they are all costs and they would be included. It may well be, if we ever get into a situation with the Government of Canada where they agreed to reimburse us for these costs, or a portion of them, I am sure that they would want to sit down and look at specific costs and exactly why things were done.

10 Mr. Porter: Is it the government's intention to bill the Government of Canada for the time spent by this government's negotiator at community public meetings discussing the issue of land claims?

Hon. Mr. Pearson: We do not bill the federal government. I thought I made that clear to the hon. member already.

Question re: Yukon Territorial Public Service Alliance

Mr. McDonald: I have a question for the government house leader or the government leader, one or the other.

The government, I am sure, is aware that negotiations with YTPSA broke off in early March with a stated intention that changes to last session's "six and five" legislation, bill 17, Public Sector Wage Restraint Act would have to be introduced before talks could resume. As negotiations are scheduled to begin on April 13 and expensive negotiators are scheduled to arrive in town soon, when can we expect the changes to this act to be introduced in this House?

Hon. Mr. Pearson: We have asked the YTPSA and their negotiators, in fact, not to come for the meeting on April 13 because we do not feel that we are going to have the legislation ready for tabling in the House, and I feel very strongly that this Legislature should see that legislation in its entirety first, before anyone else does. I am not prepared to break out one specific section and deal with it individually in respect to these negotiations. We have asked the YTPSA to cooperate with us on this because we agree that until that bill is in the House — and it is clear what the intent of the legislation was when it was originally passed — and clearly spelled out that it is really futile for the negotiations to continue at this point.

Mr. McDonald: Can the government leader give some indication to the House why there has been such a long delay in the past four months and could he also further state some sort of date when we can actually expect the amendments to be submitted?

Hon. Mr. Pearson: I am sorry, I cannot give a date yet. The reasons for the delay, though, are that in fact there has been just about daily work done on this piece of legislation; and it is not only here, it is everywhere in Canada. There have been a number of legal opinions given, some of them sought and some of them unsolicited, and all of this information has to be considered. As these issues are raised — and we thought that we were going to be in a position to table the bill today — another issue comes up. I might say that it is completely unrelated to those issues that particularly affect or are the interest of the YTPSA but, be that as it may, it has held up the bill once again. I anticipate that within the next week or two we should be in a position to table the bill in the House. I want to assure hon. members that it will be at the earliest possible date.

Question re: Business before the Legislature

Mr. Byblow: As final question, I would like to direct this to the government house leader; could he advise the House on the intended business for next week? I trust we will not be adjourning.

Hon. Mr. Lang: The tentative schedule is as follows: once the budget speech has been given, we will go into Committee of the Whole to discuss the *Territorial Court Act* and then it would be our intention to proceed with the budget in the forthcoming week.

Mr. Speaker: We will now proceed to Orders of the Day.

ORDERS OF THE DAY

Hon. Mr. Pearson: Mr. Speaker, I would request unanimous consent of the House to proceed with the motion I earlier gave notice to and for the purpose of introducing a bill related to the 1983/84 budget.

Mr. Speaker: Does the hon, government leader have unanimous consent?

Some Members: Agree.

On Motion No. 8

Mr. Speaker: We will proceed. I have a copy of the motion and will read it: it has been moved by the hon. government leader, seconded by the hon. Minister of Education, that this House approves in general the bugetary policy of the government.

Hon. Mr. Pearson: Mr. Speaker and hon. members, it gives me great pleasure to introduce the operation and maintenance budget of the Yukon government for the fiscal year 1983-84. Like the capital budget for the new year, which was passed by the House in the fall, the O&M budget has been prepared with a view to maintaining a relationship between receipts and expenditures, which will make it possible for the government to provide for unanticipated eventualities. The budget I am introducing this afternoon proposes a total expenditure of \$130,400,000, against expected net receipts of \$137,600, giving us a budgetary surplus of \$7,200,000. This level of expenditure represents an increase of \$8,000,000 over the anticipated year-end figure of \$122,400,000 for the 1982-83, or six and a half percent.

Before going on to the details of the budget, I would like to outline the principal fiscal objectives of the government. First and foremost, as I have already mentioned, is the objective of a balanced budget, not only to reflect the need for economy and restraint, but also to restore stability to the financing of the public sector. A further objective, which has been attained, is to place a ceiling on the growth of the public service so that the overall number of person-years in 1983-84 will not exceed the number in the main estimates for 1982-83. The third major goal of the government is to provide sufficient funds to individual departments to enable them to maintain normal levels of service without diminishing the need for increased efficiency and economy.

As I have repeatedly stated in the House and elsewhere, our most

serious concern is the impact of the recession on the economy. The closure of the major mines in 1982, the shut-down of the White Pass Railway and the decline in population which has occurred as a resullt of these developments have seriously restricted our economic growth. This, in turn, has had a detrimental effect on government revenues. The return from income tax is expected to decline from \$20,500,000 in 1982-83 to just over \$15,000,000 in 1983-84, a decrease of 24.67 percent.

Other revenues, estimated at \$23,700,000 for 1982-83, are currently expected to be \$21,100,000 in 1983-84, representing a decline of 10.72 percent. Total recoveries are estimated at \$22,800,000.

Although the coming year will see a restoration of financial equilibrium for the government, it will still be a difficult year. We must ensure that there are sufficient revenues to meet contingencies. It is particularly important that we retain some capacity to respond to proposals which will stimulate economic development and provide employment opportunities. The commitment already made so that Cyprus Anvil can resume limited operations, as well as the negotiations which are currently underway for a new Economic Development Agreement, are examples of the very large potential expenditures in this critical area.

As a means of providing direct relief to the business community, I am proposing amendments to the *Income Tax Act* which will establish a special rate for small businesses.

At the moment, the 10 percent rate of corporation income tax makes no distinction between small business and other corporations. The rate for small business will be reduced to five percent effective January 1, 1983. Changes will also be introduced to reduce the rate of Yukon tax on manufacturing and processing to bring it into line with the federal tax which already provides for a reduced rate. These reductions will cost the government approximately \$386,000.

rate, which has been in effect for recreational property, will be abolished. Starting in 1983, owners of cottages will be taxed at the same rate as other residental property in each assessment area. There will, however, be a compensating increase in the level of service as a result of our decision to provide winter road maintenance in recreational subdivisions. General property taxes outside the municipalities and the local improvement districts will be adjusted as well, to correspond more closely to the cost of service provided. For those in areas receiving more costly levels of service, the rate will be .73 percent. The rate in areas with the second highest cost of service will be .54 percent and the rate elsewhere in Yukon will be .51 percent.

These adjustments to the general purposes tax rate have been made possible for the first time this year because we have now reached a point where all properties in Yukon have been assessed on a uniform basis. There is no doubt that for a number of ratepayers this will create a sharp increase in tax. It is important to recognize, nevertheless, that where this occurs, it has come about either as a result of improvements that have been made to the property or where the property has been seriously undervalued for assessment purposes for some time. In the interests of equality to all ratepayers, we have decided that the time has come for everyone to be treated on the same basis for assessment purposes and to pay tax at a rate which has some relationship with the level and quality of service provided.

With respect to tax rates for school purposes, the formula used in previous years of 11½ percent of school expenditures produces a rate of .34 percent of assessed values and this will be applied to all non-commercial property. As a special measure, to mitigate the impact of the recession, however, the school rate for business will be reduced to .21 percent. This exception to the formula will apply only for the taxation year, 1983. The cost to the government of this special rate will be \$494,000. The combined result of the changes in real property and corporation income taxes will be a benefit to the business community of \$880,000.

Another change on the revenue side of the budget will be an increase in medicare premiums of six percent which will go into effect on June 1, 1983, with a further increase of five percent to go

into effect at the beginning of the fiscal year, 1984-85. The current monthly premium for a family is \$25 per month and this will increase to \$26.50. For a single person, the current premium of \$18 per month will increase to \$19.10. These increases will be applied to the increased cost of medical services.

The Yukon rate of personal income tax will be raised from the present level of 43 to 45 percent of basic federal tax effective January 1, 1983. At the moment, the Yukon rate of 43 percent is, with the Northwest Territories, the second lowest rate in Canada, the lowest being 38 percent in the Province of Alberta. The revenue to be derived from this increase will amount to an estimated \$860,000. The net effect of all the tax changes I have mentioned will leave the government with an estimated positive balance of \$9,000.

With regard to our expenditure proposals, there are several matters which will be of interest to hon. members. In keeping with our commitment to job creation, we propose to continue to support the cost-sharing initiatives of the federal government, and known requirements, amounting to \$525,000, have been provided in the Department of Education Recreation and Manpower. A further \$1,000,000 has been earmarked under the Community Recovery Program as the Yukon government's share of topping-up salaries for the removal of overburden at Cyprus Anvil. This money is not in the estimates before you because our offer is still subject to confirmation by the federal government and the company. If the proposed package is approved by the federal government and Cyprus Anvil, I will be submitting it to you as a supplementary appropriation.

The Student Employment Assistance Program, which was so successful in 1982, will be renewed in 1983, and the \$200,000 allocated for this purpose last year has been increased to \$250,000 for 1983-84. Also in the budget of the Department of Education, Recreation and Manpower, provision has been made to enhance the Basic Training and Skills Development Program. There has been a marked increase in the demand for this service and we feel that a special effort in this direction can make a contribution to the economic future of Yukon as well as the personal wellbeing of the individuals involved.

Before concluding, I would like to point out a number of other significant items in the budget. In the Department of Health and Human Resources, provision has been made for a six percent increase in group home rates, foster home rates and social assistance rates. In the Department of Highways and Transportation, funding has been brought back to levels which will enable that department to maintain the road system at the approved Jorgenson standard. Although some economies will be realized through reduced road traffic as a result of mine closures and surface treatment, it is essential that the road system be brought to, and maintained at, an appropriate standard as part of our effort to improve the economic infrastructure of Yukon.

There are, in addition, a number of other matters which should be mentioned before I close. In keeping with our commitment to eliminate charge-backs wherever possible, we have concentrated all costs in relation to the government's car pool in the Department of Government Services. Apart from the revolving funds, there are still some charge-backs in the budget, but these are relatively minor in comparison to the car pool and the former system of charging office rental. It is our intention to continue to eliminate unnecessary charge-backs wherever possible. Departmental budgets have also been adjusted to reflect a return to the normal working cycle of a ten-day fortnight.

Mr. Speaker, I commend the budget which I am tabling today to the favourable consideration of all hon. members.

Thank you.

13 Mr. Kimmerly: I move, seconded by the member for Faro, that debate be now adjourned.

Mr. Speaker: It has been moved by the hon. member for Whitehorse South Centre, seconded by the hon. member for Faro, that debate be now adjourned.

Motion agreed to

Hon. Mr. Pearson: I move, seconded by the Minister of Education, that bill number 5, Second Appropriation Act, 1983-84, be now introduced and read a first time.

Mr. Speaker: It has been moved by the hon. government leader, seconded by the hon. Minister of Education, that a bill entitled Second Appropriation Act, 1983-84 be now introduced and read a first time.

Motion agreed to

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

Mr. Speaker: It has been moved by the hon. Minister of Municipal and Community Affairs, seconded by the hon. Minister of Education, that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

COMMITTEE OF THE WHOLE

Mr. Chairman: I now call the Committee of the Whole to order. We will take a 15 minute coffee break, after which time we will return to the *Territorial Court Act*.

Recess

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

Before we go any further with the *Territorial Court Act*, I would like to point out to all members of the House that we have a packet of proposed amendments that we will be dealing with as we go through this bill.

On Bill No. 4

On Clause 1

Hon. Mr. Ashley: I would like to table a few of my own amendments here. There are two amendments that have to do with numbering of sections and then three amendments are to do with representations the Yukon Law Society has made to me.

Mr. Kimmerly: At the outset of what promises to be a fairly long committee study of this bill, I would like to ask a question about the form of the bill. My question is motivated by a desire to see the finished product in a readily understandable and readable form.

Bill No. 4, of course, is a series of amendments to the *Territorial Court Act*, originally the *Magistrates Court Ordinance*. The amendments are longer than the original act and I would ask the minister if any consideration went into, at least in form, repealing the old act and writing an entirely new act, as it would be very much easier to go through? Even at this late date, is that a possibility now?

Hon. Mr. Ashley: In answer to the member's question, it was decided that there are certain sections that are in the existing act that should be left in there; we would have just had to roll them into this. This will still leave the good reading of the bill, so it was decided that we would go with the amendments in this form.

Mr. Kimmerly: I am not sure the minister understood my question, but I am not going to pursue it. I will make a statement that, in my opinion, it would be a lot easier for lawyers and lay people alike if, in the future, with these kinds of extensive amendments where the amendments are more than 50 percent of the original bill, a new bill be passed. It would be very much simplier for people dealing with the finished product and also easier to go through it on a clause-by-clause basis, basically only dealing with the changes. I raise that as a suggestion for the minister in future.

I wish to put a few general comments on the record. Mr. Chairman referred to a packet of amendments: we prepared over the last several days 33 amendments and we will be going through those. We supply them in advance on the expectation that debate in days to come will be slightly more informed. I thank the minister for tabling the government's amendments all at once at this time.

15 In the Minister's second reading speech he referred to at least

four major points. I wish to go through them and put our position in committee fairly clearly on record. The first one is that a judicial council is formed for the Territorial Court as well as the Justice of the Peace Court. Our position is that we agree with the general principle of that first point; there is no disagreement, I believe, on the two sides of the assembly on that general principle, that is the principle of a judicial council. When we get to the section of the bill dealing with it, there are several amendments to be proposed and they deal only with the makeup of the committee. In order to facilitate the debate in the future, I will simply identify what our position is in the general principle on that point. This point is the only point where there is some disagreement between opposition members and the submission of the law society. We are in favour of including lay people — that is non-lawyers — on the judicial council; we are not arguing that principle at all. We agree with that principle of including lay people. Our amendment does not reduce the number of lay people, it includes exactly the same number as the government proposes in the bill. We do propose to reduce the size of judicial committee by one person and the extraneous person we believe is the barrister and solicitor appointed by the minister. The president of a law society ought to be able to speak for the interests of the legal community and in our view there is absolutely no reason to appoint another lawyer to the committee. We would prefer it be a lay person if it is necessary at all. The reduction in numbers that we proposed, we believe, reduces the political influence on the committee and increases the independence or the professionalism of the council.

16 On the second point that the minister identified on the 30th of March, that judges are no longer public servants under the civil service legislation, we totally agree with, and there can be, as far as we are concerned, no debate at all on that point.

On the third point, the provision for judicial administration, there is a large division of opinion, obviously. The bill very clearly puts the authority for judicial administration in the hands of the Minister of Justice. Our amendments very clearly put it in the chief judge's hands, and we will go through that, I expect, in some detail, and debate it at some length, I expect, over the next little while.

The fourth question I wish to speak about is about a rules committee, and the constitution of the committee is three lawyers and three lay people under the chairmanship of the chief judge; this is a very unusual provision and it is our position on this side that the rules ought to be made in the traditional way, as they are everywhere else; that is, by the Court of Appeal judges, under the authority of the common law. That works extremely well; it is a flexible system and, in our opinion, the provisions of the bill are not an improvement over the existing system.

Those are the four major issues. There are others, but those were the four major ones.

The judicial administration by the chief judge as opposed to the Minister of Justice, within the budget allotted by the Assembly, is the major point, and will probably attract, in our view, the majority of debate. I hope, seriously, that minds are not closed on these issues. The minister has clearly stated, very properly so in my view, that there is room for constructive amendment, and there is a continuing consultation process with various groups, and we take the minister entirely at his word on those issues.

Lastly, I would make a comment basically for the record. It is our position that expert witnesses should be called in order to clarify various points. We are not going to delay things by presenting motions to that effect because the government's position is already emphatically stated on the issue; in my opinion, unfortunately. I state that for the record.

should look after the problem that the hon, member is having with any of the bills that we have from the past. When we look at legislation, we always take into consideration whether a new piece of legislation should be a total new act or just an amendment to it. When we make an amendment to a bill, it is very expensive and the cost of having to deal with extra sessions not having need of change could conceivably double the cost of the bill, depending on what has to be done with it. That is in answer to most of his questions. We will deal section-by-section with his comments as we go

through the legislation. It is good to hear that they are in favour of a few things that we did, especially the judicial council.

On Clause 2

Mr. Kimmerly: I suggest we do the subsections independently, as opposed to the whole clause.

Clause 2 agreed to

On Clause 3

Clause 3 agreed to

On Clause 4

Mr. Kimmerly: I have several amendments to Clause 4(1). There is also a government amendment that says approximately the same thing, although the numbering, I believe, is inconsistent with the original bill. I would propose to go through the substituted subsections one-by-one and propose amendments where they occur.

18 Hon. Mr. Ashley: I would agree with that.

Amendment proposed

Mr. Kimmerly: In Clause 4(1), I propose an amendment to section 7.1(1). The amendment is that Bill No. 4, An Act to Amend the Territorial Court Act, be amended in Clause 4(1) at page 2 by adding to subsection 7.1(1) after the words "such judges" the words "or deputy judges".

In explaining the amendment, it is really necessary to refer to the next amendment. In the definition section of the bill, the word "judge" is defined as a judge of the court and includes a deputy judge. In this case, the act, as it stands, is very confusing, in that this section deals with the appointment of the judges and other sections with the appointment of the deputy judges. Judges, as defined, includes deputy judges; this amendment clarifies an apparent inconsistency in the drafting of the act.

Also, it is slightly more important than that, in that the next section talks about deputy judges specifically. I am proposing another amendment in order to simplify the wording and also to make it absolutely clear that deputy judges are appointed for a five year term and they may be reappointed; however, if they are reappointed, they go through the same process as on the original appointment. That appears to be the most sensible thing and it clarifies the wording of the act substantially. That is the reason for the first amendment.

Hon. Mr. Ashley: The amendment adding "or deputy judges" is not necessary. In the section that we have just passed, in the definition section 2(1), it states that a deputy judge "...is not appointed to serve on a full-time basis;" and a judge means "a judge of the court and includes a deputy judge;". As that is already looked after in the definition section, we will be voting against the amendment.

of his argument that a deputy judge should be appointed for a term of five years. There are a great many instances when we bring deputy judges in here just to hear a certain case, and we do not need them on our roster of deputy judges for a five-year period. The reason that it is worded this way is so that the Minister of Justice can appoint them for three months, four months, a year or two years, or whatever he wants.

Mr. Kimmerly: As to the first comment, I would reiterate the comment I made that the amendment simply clarifies the wording and assists readers and avoids possible confusion with other sections. I am not going to spend a great deal of time on it. It is in my opinion a minor improvement in the bill. If the minister does not believe that, of course he is not going to accept it, and time will tell as to any future confusion. If it could be avoided, it is a shame it will not be.

As to the other argument about the second amendment, I will address that at the time of proposing the second amendment.

Mr. Chairman: Is there any further discussion on the amendment? Shall it carry?

Amendment defeated.
Amendment proposed

Mr. Kimmerly: I would move that Bill No. 4 entitled An Act to Amend the Territorial Court Act be amended in clause 4(1) at page 2 by deleting subsection 7.1(2) and substituting for it the following: "7.1(2) A deputy judge shall be appointed for a term of five

years."

In speaking to the amendment, I would address the comment made by the former Minister of Justice that it is frequently perceived to be the case by the general public that it is an abuse to appoint a person for a specific case or for a very short period of time, because obviously the selection of the person and the appointment of the person becomes identified with the specific case. That ought to be avoided very, very seriously and Deschane speaks of that practice in the Deschane Report. It is a shame the minister never read it.

The wording of the amendment is, first of all, a clarification of the wording of the existing act, or the amendment in Bill No. 4. The last four lines are totally unnecessary and are very confusing. What they mean, obviously, is that a deputy judge is only eligible for reappointment on the recommendation of the judicial council, which is exactly the way the judges are appointed in the first place; so it is absolutely unnecessary and it is confusing. Aside from cleaning up the wording, the only change in the amendment is that all appointments of deputies are five years and it is a term appointment for five years; the intent is clearly that on any specific case the person who assigns the judge to the case must be the chief judge, and it must be a judicial function as opposed to a political function.

20 There is absolutely no cost consideration involved because a five-year appointment costs absolutely nothing. If a person, in fact, is appointed and comes up and sits on a case or several cases and finishes that work, there is no requirement or no danger that extra expense is going to be incurred. It is not necessarily the case that the chief judge would ever ask a deputy judge to come again.

The way it is now it is subject to the possibility of a substantial abuse. The abuse could arise this way: if no deputy judges are appointed or if the practice is to only appoint deputy judges for specific cases for very short periods, what could arise is a particular judge or all of the judges in the territory may be in a conflict situation or may not be able to sit on the case. In a case like that, the desirable situation is that the chief judge select a judge from a panel of available deputy judges. That is done everywhere else in the free world. I would like the minister to explain why he proposes not to do it here.

Hon. Mr. Ashley: I have to refute the statement that the member opposite just made. For example, in the NWT, the commissioner appoints deputy judges for a term of two years. It does not go through his judicial council or anything; he just appoints somebody. That is not what we are doing here. At least the judicial council is going to be appointing them. If we put it in as a fixed term of five years, you would totally eliminate any Yukon lawyer from being named as the deputy judge or ever being used as a deputy judge. I believe that we need that flexibility.

As you know, deputy judges are used an awful lot here because we only have two judges — conflicts do arise with the judges and holidays have to be looked after — and we need that flexibility on a short term appointment, as well for the purpose of clearing up a backlog or an emergency situation. That is why I need that flexibility of the term. I will be voting against the amendment.

Mr. Kimmerly: There is an interesting argument about using Yukon lawyers as judges for a short period. In view of the future government amendments about judges, after ceasing to be a judge, not being able to practice, that would not achieve the same result. I see, in the government amendment I received a few moments ago that deputy judges are excluded. Obviously, the intention is to occasionally use Yukon lawyers as judges for specific cases and to allow them to practice in the courts immediately after they finish their judicial duties. That appeared to be what the minister stated and I would ask for a clarification: is that the intention of the government?

Hon. Mr. Ashley: At the moment we are not using Yukon lawyers. This will enable us to. What I believe that the member opposite is talking about is further on in the bill. We are not saying that a matter can come before a judge that would put him in conflict. We seem to be confusing the two things. There is no way that the bill would have a deputy judge moving in to be a deputy judge, or stepping out of that, if he is in conflict. He would not be

allowed to do it under his professional code of ethics.

Mr. Kimmerly: I ask for a further clarification because I am further confused. The minister stated awhile ago that he wanted the flexibility of being able to appoint a resident Yukon lawyer as a judge for a short period. That flexibility was necessary in a future amendment that the committee did not reach yet, specifically a proposed amendment to Clause 4(1), 7.5(3) which states, "a person who has ceased to hold office as a judge other than as a deputy judge shall not within 12 months of the day he ceased to hold office act as agent, solicitor or counsel in any proceedings before another judge or justice." What that means is a person who was a deputy judge would be allowed to practice. That is the problem, and I was asking: is it the government's intention to appoint resident Yukon lawyers as deputy judges for a short period and then immediately after the appointment ceases, to practice before the same court immediately afterwards? Is that the intention?

Hon. Mr. Ashley: As I stated previously, I see no reason why they could not if it is dealing with totally different matters.

Mr. Kimmerly: We, on this side, disagree with that practice and the possibility of that practice occurring. What it means is that a person may be a judge one day and a counsel in the same court the next day, albeit on an entirely different case. That should not happen, and the reason why it should not is that on the next case the public perception of that situation is going to be that the person who used to be a judge so recently will have an unfair advantage over the other counsel.

That is the specific reason for imposing a period during which a retired judge cannot practice before the same court, or a lower court. The law concerning Supreme Court judges is absolutely clear in this respect and the principle in the territorial court ought to be the same principle. In our view there must be a balance between allowing a retiring judge to maintain a livelihood and to stay in the Yukon if he so wishes and there must be a respectable gap between appearing in a court as a judge and appearing in the same court or a lower court as a counsel. The two roles are clearly substantially different and there ought to be a substantial gap in order for the public to realize and to be fully aware that there are not some lawyers in the territory with an inside track to the judges and some without that, and the proposal of the minister allows that kind of perception to occur and I would strenuously ask the minister to reconsider the judgement on the matter and receive advice on the question, perhaps.

I am absolutely sure that if that proposal were put to any law society in the country they would be horrified, and indeed in the next few days, if this passes, the law society is going to be extremely upset, I can promise you.

22 Hon. Mr. Ashley: I believe we are dealing with section 7.1(2), which does not really reflect this at all, so I believe we should get on with what we are dealing with here.

Mr. Kimmerly: I condemn the minister's refusal to answer the major point.

Hon. Mr. Ashley: I will answer the point when I come to it; it is another few sections ahead.

Mr. Byblow: Before the amendment is cleared, what is the reason that the minister is giving for not allowing reappointment after a five year term, except upon recommendation of the judicial council?

Hon. Mr. Ashley: That is the whole point of this legislation; that we have a judicial council to make recommendations to the minister, so the government cannot just pick anybody to be a judge and it has to come through the judicial council.

Amendment defeated Amendment proposed

Hon. Mr. Ashley: I move that Bill No. 4, An Act to Amend the Territorial Court Act, be amended in Clause 4 at page 3 by substituting in the proposed paragraph 7.2(1)(a): "barrister and solicitor in Yukon or province" for "barrister and solicitor in a province".

Mr. Kimmerly: This is a slight improvement, but there is a better and a simplier improvement and that is to add "or a territory". The minister's amendment allows a Yukon lawyer to be appointed and not a Northwest Territories lawyer and, I would

submit that that is an unjustified and uncalled for restriction and, in fact, Northwest Territories lawyers are probably better prepared to come to Yukon than provincial lawyers and it ought to be widened to include both of the territories and not only Yukon.

Hon. Mr. Ashley: Our Interpretation Act states that a province covers the NWT, but it does omit Yukon; that is why I have that in. Province means Northwest Territories in our legislation.

Amendment agreed to

23 Amendment proposed

Mr. Kimmerly: On 7.5(2), I move that Bill No. 4, An Act to Amend the Territorial Court Act, be amended in Clause 4(1) on page 4 by deleting subsection 7.5(2). In speaking to the amendment at the very beginning, I would ask the minister the question: what is he providing for and thinking of in this subsection?

Hon. Mr. Ashley: This is basically the same as what is common in most of the provinces; basically the same as the existing section 9 in the old legislation. The policy there is that full-time judges will not dissipate their energies by engaging in other occupations.

Mr. Kimmerly: The minister is obviously speaking about 7.5(1); we are speaking about 7.5(2). What is the justification for that?

Hon. Mr. Ashley: It seems plain and simple to me. What it means is that a judge can go on a committee or commission somewhere. That is basically what it means. It is common, as I said, in provincial legislation, and what is existing already.

Hon. Mr. Pearson: We have the capability, for instance, of asking the judge of the Supreme Court to sit on, and be the chairman of, an electoral boundaries commission when, and if, we ever have one in the territory. It is the kind of thing we can ask a judge to do.

Amendment defeated

Amemdment proposed

Hon. Mr. Ashley: On 7.5(4), I propose an amendment: that Bill No. 4, An Act to Amend the Territorial Court Act, be amended in Clause 4, page 4, by adding the following subsection immediately after subsection 3 of the proposed section 7.5: "(4) A person who has ceased to hold office as a judge, other than as a deputy judge, shall not, within 12 months of the day he ceased to hold office, act as agent, solicitor or counsel in any proceedings before a judge or justice", and by renumbering subsections (4), (5) and (6) of the proposed section 7.5 as subsections (5), (6) and (7) respectively.

Mr. Kimmerly: I have previously spoken about this amendment. In our view, it leaves a very substantial and very important loophole, in that it allows the appointment of a deputy judge and the deputy judge may practice in the court immediately upon ceasing to be a deputy judge and that is inconsistent with the principle of the absolute independence of the judiciary from the private bar as well as from the government.

It is our view that the amendment requiring a 12-month prohibition from appearing in the court or a Justice of the Peace Court is a good amendment and is, in fact, the subject of our own amendment. The amendment ought to include deputy judges as well as judges on the fundamental principle of that independence. Because of the substantial loophole, we are not in favour of the amendment.

²⁴ Hon. Mr. Ashley: As I stated previously, I disagree with the member opposite in this. I believe we need the flexibility. I do not believe we have the right to use a local member of the bar for possibly one month and then cut out his whole livelihood for the following eleven months. Our intention is not to name him as a deputy judge one month, leave him off for a month and then put him on for another month. That is not the intention of this at all.

Amendment agreed to

Mr. Kimmerly: Clause 7.5(5), as it stands, is a good clause and we agree with the principle.

Amendment agreed to

Mr. Kimmerly: On 7.5(5), I propose an amendment that Bill No. 4 entitled An Act to amend the Territorial Court Act be amended in Clause 4(1) at page 4 by deleting the words "No judge" in subsection 7.5(5) and substituting for them the following:

"no judge or justice".

In speaking to the amendment, I wish to say that, in our view, this is an extremely important amendment. It is absolutely clear, and I am sure everyone will agree, that judges should not be involved in partisan political activities. That also ought to include justices of the peace, and it should be specifically stated because, in Yukon, there is considerable public discussion around the effects of the lack of this kind of protection, because what occurs, especially in small communities, is that there are a limited number of people who are qualified to be and are suitable for a JP appointment, and those people tend to be the leaders in the community in all sorts of other areas as well. The factual situation is, or the case is, that many Yukon JPs are very clearly politically identified in their communities; they act at election time very openly, and things like that, and that is an abuse of the principle of independence of the judiciary generally and especially in the Justice of the Peace Court.

In small communities, the Justice of the Peace Court, in practice, is very, very important. The justices of the peace do do substantial judicial work, unlike the JPs in many — I cannot say most —, if not all, of the provinces. It is frequently the case that there is a community discussion around the political affiliation of the justice of the peace and the particular accused. It goes in both directions. If the political affiliation or political identification is the same in the case of the judge and the accused person, it is substantially unfair to the accused person that there is comment about the lack of a fair court or favouritism shown to that person. If the political identification is different, it is that much worse.

23 I argue very strenuously that because of the potential abuse, which is nothing to do with the ability or the fair-mindedness of the particular justice of the peace — it is to do with the perception of a justice in the communities — that this amendment be accepted. It is a time-honoured phrase "justice must not only be done, it must be seen to be done" and it is not seen to be done if the justice of the peace is politically identified. I would argue very strenuously that the justice of the peace court ought to be included in this necessary prohibition.

Hon. Mr. Tracey: I find it hard to believe that the member across the floor would suggest that for a man that we pay \$100 or \$200 a year we should tell him that he cannot involve himself in any political politics or partisan politics.

I have heard a lot of complaints in this territory about justice and about the politics of the people, but it has not been about the JPs, it has been about some of our judges and ex-judges that we have had in the territory, not about the JPs. I think it is absolutely ludicrous that we should tell a person — who is usually the only acceptable person in the community and we have a hard time getting the JPs in the first place — that he cannot involve himself in any partisan politics. If we pay the man \$65,000 a year, as we pay the judges, or whatever, then I think we have the right to tell him he cannot involve himself in politics but, until we start paying that kind of money, I do not think that we can justifiably say how a person can get involved.

Hon. Mr. Ashley: The member seems to have a problem with justices being politically active. If that is the case, there is now a judicial council they can be reported to if people feel that they have been mistried or unfairly treated for a political reason. That is part of the reason for this judicial council.

Mr. Kimmerly: Simply for the record, the government has obviously got a closed mind on the issue and is not addressing the problem. I will not prolong debate; I simply express regret that this problem is going to continue.

Hon. Mr. Ashley: I do not believe our justices take such considerations into consideration when making judgements and I do resent the statement that they do, which it sounded like the member opposite was making. I have never heard the complaint and, if there are complaints, they should come forward. I will be voting against this amendment.

Amendment defeated

Amendment proposed

Mr. Kimmerly: I would propose an amendment to add a new section at this time. I propose that Bill No. 4 entitled An Act to Amend the Territorial Court Act be amended in Clause 4(1) at page

4 by adding the following new subsection: "7.5(7) A judge who ceases to hold office shall not practice in the Territorial Court or the Justice of the Peace Court of Yukon for a period of 12 months from the date that he ceases to hold office".

I have already substantially identified this issue. This is a better amendment than the government's amendment to 7.5(4). I know they are going to defeat it, but I wish to make it for the record.

Mr. Chairman: It would seem to me that the amendment that we have already carried, the new 7.5(4), is quite similar to this, Mr. Kimmerly.

Mr. Kimmerly: I would argue it is a similar principle but it is a substantially different amendment with a substantially different effect. The amendment before us includes deputy judges and the precise nature of acting in the court is defined differently in the two amendments. I would ask you to put the amendment to a vote, as it is not substantially the same as the previous amendment.

²⁶ Mr. Chairman: It would appear to me that this actually should have come as a subamendment to the amendment at (4). What I will do right now is stop for coffee and look at it over the coffee break.

Recess

Mr. Chairman: I will now call Committee of the Whole to order. After looking at this over the break, I have decided that we cannot go on with this amendment and, Mr. Kimmerly, quoting Beauchesne, amendments ruled out of order after discussion begins, 774(1), "that the question raised thereby had already been decided by the committee", and I would suggest to you that it should have been raised as a sub to the original amendment.

Amendment ruled out of order

Amendment proposed

Mr. Kimmerly: I would propose that Bill No. 4, An Act to Amend the Territorial Court Act, be amended in 7.4(1), at page 4, by deleting 7.6(1) and substituting for it the following: "7.6(1) Judges other than deputy judges shall be paid salaries equal to 90 percent of the basic salary of the Superior Court judges appointed pursuant to the Yukon Act".

In speaking to the amendment, I would say that the principle of tying salaries to the salaries of federally-appointed judges is far more important than the actual amount, that is 90 percent, 80 percent or any percent. The principle of the independence is far more important than the amount of money that it represents. In fact, I believe the amount of money it would represent is approximately the same salary as judges now get — it may be a slight increase, I am not sure. If it is an increase, it is a very slight one, I believe.

The principle is one of the most important principles that we, on this side, wish to advocate and support very, very strongly. The changing of judges' salaries and benefits and working conditions—those sorts of things— are subject to abuse and subject to substantial argument between the judicial arm of government and the executive arm of government, and very, very infrequently, with the legislative arm of government. It was said by some members at second reading that they would not allow a judge to set his own salary. We totally agree with that. That is a mis-statement of the issue at hand.

n The salary ought to be a reasonable salary in view of the traditions in the country, so that judges ought to be paid enough to live in relative dignity and would not be motivated to augment their salaries by any other work or, indeed, any other method at all. Federal judges' salaries are now set ultimately by the federal legislature through a committee procedure much like a counterpart of the judicial council. There is a fairly complex procedure to deal with salaries, benefits and pensions and those sorts of things. This bill allows the salaries of judges to be set by the Cabinet and provides for a review annually of those salaries. In an atmosphere of interference, there is a possibility of abuse; that possibility of abuse ought not to be there. It is a fairly simple procedure to peg the salary to independently achieve a figure, and this amendment would guard against the possibility of any interference or any abuse on this question.

Hon. Mr. Lang: I again concur with the principle that the member is speaking to. it is my understanding that the Superior

Court judges' salaries are fixed by legislation at the federal level. In other words, the politicians at the federal level set the salary in respect to the dollars that are going to be paid for this type of commitment by an individual in the legal profession who is prepared to take on the onerous responsibilities of a judge.

First of all, I would point out that I do not think your argument holds water, in view of the fact that at the federal level the politicians — and you speak of interference — do set the salaries. I think it is important to note that there is a great deal of discussion, the way I understand it, at the federal level in respect to people who are either presently presiding as judges or those who have retired; at least some would like to see that the actual salaries be taken out of legislation, because it is very, very difficult to amend legislation to get the necessary increases if inflation continues. Now, with that in mind, it would seem to me that here, this is to the benefit of the judges — their salaries will be prescribed by regulation — and that is law, and every member of this House gets a copy of the regulations, and if they do not believe it is fair they have the ability to go to the minister directly and say, "Look, I think you should review this", or raise it as a public issue that has to be resolved. If you look at the track record that we have had in the past as far as the payment is concerned, I think we are at par, — and in some cases, ahead — in the salaries that are paid for that type of position. I cannot understand why any member of this House would recommend that we go to a percentage of a salary that is fixed by another political arm of government, quoting the principle that it is because of political interference.

I mean, let us be honest; anybody that would put the salary down to a dollar is looking for a political bloodbath of some kind. To say that you are going to commit yourself to an annual review and prescribe the amount that is going to be paid — and further, if you take a look at the attention that has been put into this bill with respect to the benefits for the judges — if you will look sections ahead, it refers to the fact that they still can be deemed to be under the Public Service Commission in order for the purposes of receiving their pension.

28 So I think it is the sincere efforts of the minister and the people involved in drafting the bill, who have tried to take everything into account recognizing the position and the responsibility that goes with the position to ensure that a method of payment or stipend for that particular position is going to be met. We do have a responsibility of meeting it but, at the same time, I would not be prepared, as a member of this House, to commit the taxpayers of this territory to a percentage formula based on a decision that is going to be made somewhere else, because it may well not be in the best interest of the judges here, in view of their cost of living and everything else. It is a two-way street.

I further say to you on percentage formulas, look at the work that we have put into the Rules, Elections and Privileges trying to figure out a fair way of paying members in this House. Every time we think we have got a good formula, we find out a year or two years down the road that it just does not fly.

What I am saying to the member opposite is: why do we not learn from past experience? If the member is that interested, in respect to this particular area, which he may well be, what I am submitting to him is he has the ability to go through the regulations and ensure that the pay is what he deemed it to be. If he does not, he has a number of avenues that he can pursue.

I think we can commit, from our side of the House, that we do not intend to underpay anybody in this particular type of position. I do not agree with the member opposite that this would bode well for interference within the judiciary. Let us be politically frank, anyone who did that type of thing, I do not think, would survive long in politics.

Mr. Kimmerly: The minister is partially wrong in his statements about the federal scheme. It is a legislative scheme, that is true, but it is a process whereby the salaries are eventually established and, from time to time, changed.

The adequacy of the salaries in the general sense is not the issue and I am simply not interested in that issue. The potential for abuse is the issue and the minister is quite wrong in his statements about political interference because it is possible and, indeed, it is likely,

that the political interference would be of a gradual, incremental and minor nature, such that it would not attract political attention. However, it would be a source of subtle pressure over the judges.

Hon. Mr. Ashley: On the principle of this amendment, I disagree with the members opposite. We want to use regulations for salaries and benefits as if they were laid out. We want to use regulations rather than legislation because it is so difficult to change legislation and have any kind of meaningful yearly review, as we are going to be doing as it states later on in this proposed act.

It is a responsibility of the executive side of government to allocate public funds and we have to justify this to the House, as we will be doing with the budget.

In the provinces, the provincial statutes allow the salaries to be fixed by order of the minister. In Ontario there was recently a case dealing with the new *Charter of Rights and Freedoms*. It was found by the Ontario Court of Appeal that it was in opposition to the *Charter of Rights*, so it is perfectly right to do this. That is why we have gone along this line.

Amendment defeated Amendment proposed

Mr. Kimmerly: I would move that Bill No. 4, entitled An Act to Amend the Territorial Court Act, be amended at Clause 4(1) at page 4 by deleting 7.7(1) and 7.7(2) and substituting the following: "7.7(1) Benefits for judges other than deputy judges shall be the equivalent of those to which deputy ministers of the Government of Yukon are entitled".

In speaking to the amendment, I would argue that the principle of this amendment to do with benefits is exactly the same as the principle of the previous amendments to do with salaries. The purpose of this amendment is to peg benefits to an objective figure. It is not subject to any other government; it simply establishes the judicial benefits as the same benefits as deputy ministers. If this is done it avoids the possibility of interference with benefits; for example, vacation and timings of vacations, pension benefits and other similar benefits. If the judges are dealt with independently, they may be given greater benefits. We are not in favour of that. We are in favour of giving exactly the same benefits to judges as all deputy ministers, or the rule for deputy ministers of a particular category, and that would be an independent way of deciding the various questions. Subtle pressures on judges would not be brought to bear if this were passed.

Hon. Mr. Ashley: I again disagree with the member opposite. The judges, in particular, would like an annual review and I happen to agree with them. I do not want this locked into legislation for the simple reason it could lock us in and tie us in so we could never recruit another judge here. We have certain problems for that reason in recruiting people in the north. Sometimes you have to offer more and we would not be able to do that in this case, but the judges themselves want to be able to negotiate yearly.

Mr. Kimmerly: The minister's arguments are partially wrong and partially ludicrous. In any event, the will of judges in obtaining certain benefits is far less important than the principle of independence and I would venture to suggest to the minister that if he asked the judges which of the two systems that the judges preferred, he would get a different answer from what he suggests to us now. In any event, if it is difficult to recruit judges, the benefits ought to be pegged accordingly. It is exactly the same situation with deputy ministers and I do not see why any different principles ought to be applied.

Mr. Falle: I have listened to Mr. Kimmerly's arguments with great interest. One of the things throughout this bill seems to be a phrase that he keeps bringing up all the time: independence. I happen to agree with him, and I do think the judicial system should be as independent as possible. I believe the bill that the minister has brought before us has made given the judges and judicial system as much independence as possible. As it stands, and as I see it, in listening to the hon. member, the judges seem to want independence without accountability. They want to be accountable to nobody. I think it is rather ludicrous. If a judge on the bench does something that is derogatory, or whatever, it does fall on the Minister of Justice. It comes down on his head. He is accountable to the people of the Yukon Territory. If you are going to be totally

independent from the government you have to be accountable. When I think that the judges want total independence, I say they should stand up and be accountable like you and me to the people of the Yukon. Until that time comes, they have to be accountable to somebody, and that is the Minister of Justice. That is worth spending money. I think the Minister of Justice has to have control of the purse strings, and if the judges, in my opinion, are willing to stand up and be counted, like the Minister, like everybody here and they will be accountable to the people — then I would go along with what you are saying. But until that time comes, no way. 30 Hon. Mr. Lang: I just want to reply to the member opposite with respect to a couple of statements that he made. First of all, he is partially wrong and partially ludicrous in some of the comments that he made with respect to the amendment which he brought forward; the equivalent benefits to which a deputy minister of the Government of Yukon is entitled. If the member were to do his homework, he would find out that the present two judges that we have employed will be grandfathered for the purposes of their pension.

If we get a new judge, we are going to be in a situation of havin to set up some sort of pension scheme for the individual involved; maybe going into an agreement with British Columbia, going into agreement with Alberta or whatever course that can be seen that is both economical and fair. If you accept this principle here relating benefits to the deputy ministers and the way they are tied in as far as their pension funds are concerned, it would not equate to the situation that would affect a new judge.

Therefore, if you had this in legislation it would tie the Minister of Justice's hands in trying to look ahead, with a very real problem as far as benefits are concerned. I do not think that it would be in the best interest of the judiciary to have this type of thing written into legislation. In some cases, you may also understand, I am sure that we may well have to offer perhaps a bit more than what deputy ministers get as benefits.

From my perspective, if that is the situation that the government of the day is forced to consider, that is a decision that will have to be made. We recognize, and I think all members in the House recognize, that this is a position that has to be filled in order to ensure that the judiciary can get on with the work that it has to deal with. The point I am making is that there are other variables involved here that cannot relate to deputy ministers' benefit packages because of the federal legislation and the pension and how they relate to the civil service. I think that this particular section would be detrimental to any new judge employed in the Yukon Territory and could cause an impediment, as the Minister of Justice has indicated.

Amendment defeated Amendment proposed

Mr. Kimmerly: On 7.8(1), I make an amendment that Bill No. 4, An Act to Amend the Territorial Court Act, be amended in 4(1) at page 5, by deleting 7.8(1) and substituting the following: "7.8(1) The Commissioner in Executive Council may make regulations fixing the remuneration to be paid to deputy judges".

In speaking to the amendment, I make it, for the record, so that in future if anyone wants to draft a better bill it will be on the record and it is consistent with the previous amendments and I call question.

Hon. Mr. Ashley: Again, I disagree with the member opposite in his statements. If he looks into 32.3(1)(b), he will find basically what he is saying there. It states "The Commissioner in Executive Council may make regulations fixing the amount to be paid to deputy judges." I see no reason why it cannot be there in regulation rather than stuck in here out of place.

Amendment defeated
31 Amendment proposed

Mr. Kimmerly: On 8.1(1): if we are dealing with all of (a), (b), (c), (d) and (e) at the same time, I would propose an amendment which is that Bill No. 4 entitled An Act to amend the Territorial Court Act be amended in Clause 4(1), page 6, by deleting in paragraph 8.1(1)(e) the words "a barrister and solicitor and".

The intent of the amendment is to not overload the judicial

council with lawyers, but to allow for a significant — indeed, a more significant — input by lay people. I see no point in appointing another barrister and solicitor if the president of the Law Society is already there. Also, the two judges are going to be lawyers so there are, of necessity, already three lawyers on the council, and I see no reason to put on a fourth. The intent of the amendment is to change the constitution of the council so that the discretionary appointments made by the minister are lessened, and I would argue that that is absolutely necessary in order to maintain the independence of the selection process from the political process. The political influence in the appointment of judges is clearly there, and there is no amendment proposed about that. At bottom, it is a decision of the Cabinet to appoint a particular person or not to appoint him. That is not the question. The question is the selection process whereby the recommendations are made to the minister, and that process ought to be independent of the political process. It is clear; everybody who knows anything about politics and appointments would expect that the three discretionary appointments are going to have a political influence in their selection, and I defy anybody to tell me otherwise, because I simply do not believe it.

The intent is very clear and I am interested in the rationale of the minister in loading the committee with political appointments.

Hon. Mr. Ashley: I do not consider this a loading with political appointments. It is certainly not loading with political appointments. The reason that we have a barrister and solicitor in this section is because it is the judges who can be in conflict and it is professional people who can be in conflict. I believe there is need for professional legal advice on this committee; they are dealing with the judges and the disciplining of the judges, and it is in that way that there can be conflicts brought out — that certain judges, certain members of the committee, would not be able to sit on the committee and they would be excluded from that. It could over-balance it if we had too many lay people on this. I am in full favour of having the two lay people — do not get me wrong on that - but I do believe that we still need that extra person in case we are dealing with one of the functions of the committee, such as the ruling on one of the judges or the possible disciplining of a judge. 32 Mr. Kimmerly: Would the minister explain in what possible way would the barrister and solicitor, appointed under (e) be different from the representation under (d), that is, the president of the Law Society, if it is not loading the committee with political appointments?

Hon. Mr. Ashley: This could be a member of my departmental staff who is placed on that committee, just so that there is some input from that side of things. It does not make it a political appointment in any way, shape or form.

Hon. Mr. Lang: I find it totally and absolutely ridiculous that you are in legislation putting further constraints on the type of indivudual who could be put on the council. The senior judge and the chief judge are specified; the president of the Justice of the Peace Association is specified, or his nominee — not the government's nominee — the president of the Yukon Law Society, or his or her nominee; and you have three other people.

I have to concur with the necessity for some legal advice. If you are dealing with a situation that may be directly affecting one of the members of the council and, therefore, he cannot participate, both ethically and realistically, if the council is going to take some of the responsibilities that it is set out in legislation to do, then it would seem to me wise to have another member of the legal profession on it. As far as the appointments are concerned, I think it is safe to say that anybody who will be selected for such a task will definitely be qualified and definitely have common sense.

I do not concur with the member opposite, or with his obvious motive of going through each amendment suspecting motives on behalf of the government, because they definitely are not there. We are attempting to find a very find line in respect to where the judiciary is involved and where the executive and the Legislature, in the final analysis, is involved, as far as accountability is concerned.

Therefore, I have to concur with my colleague, the Minister of Justice, that I cannot accept the inferences that the member opposite is putting forward. Secondly, I think it is to the best interest of the

council that we perhaps restrict our legislation to include a member of the legal profession.

Perhaps it may not work. Legislation can be changed, too, down the road, but, using your argument in saying you just want another lay person — and the inferences that they are just going to be political appointments and there are no grounds for credibility or anything else, which I have already indicated to you I cannot accept — a lay person could be a politicial appointment, too. So what is the difference?

Mr. Kimmerly: The minister is missing the point. The other lay people will be political appointments; all three of the people under subsection (e) are going to be political appointments and the point of the amendment is to reduce the number of political appointments from three to two.

The argument about conflict does not meet the issue at hand because the judges involved, if they are in conflict — or, in fact, all of the members in the four subsections, can and would appoint a nominee under other sections who would not be in conflict — and on the question of the recommendation of appointments of judges and JPs, no one is in conflict unless they declare it to themselves because of the degree of personal acquaintanceship, perhaps.

In any event, the question of conflicts does not address the issue; it can be dealt with in other ways. The issue clearly is: are there going to be three political appointments or two? There should be a lesser number of political appointments, as the statutory appointments are appointments by position, as in the first four.

33 Hon. Mr. Ashley: The member opposite has not counted all the appointments that there are. There is an over-balance on the side that are not government appointments. There are four statutory appointments and three government appointments. That should answer the member opposite's question.

Amendment defeated

Amendment proposed

Mr. Kimmerly: I would move that Bill No. 4, An Act to Amend the Territorial Court Act, be amended in 4(1) at page 7 by deleting 8.2(3) and substituting the following: "8.2(3) A meeting of the judicial council my be held only after all members have received a minimum of seven days notice.; 8.2(4) Notwithstanding 8.2(3), the judicial council may meet if all members consent to its meeting with less than seven days notice.; 8.2(5) Subject to 8.2(3) and 8.2(4), the judicial council may make rules of procedure governing the calling of its meetings and the conduct of business at its meetings."

The point of the amendments is to avoid a potential abuse in the council and I would first like to say a word generally about the question of abuse and the previous minister's comments about the imputing of motives or of trying to find abuses. The purpose of good legislation is to make it as nearly as possible impossible to abuse it; to clean up any loopholes which do exist. I am not saying that there is a scheme to use this particular loophole, however it may be used in the future by some person or group of persons with improper or misinformed motives.

The purpose is simply to close the loopholes. There is a loophole here and it is that if the judicial council wanted to constitute itself so that a party, or certain parties, would not be afforded their normal input, or their vote, meetings could occur where a member of the judicial council was not even aware of the meeting; out of town, or something like that, or simply was not notified.

³⁴ It is the purpose of this amendment to not restrict the calling of meetings, as long as all members know about the meetings and consent to the meetings being held. This is an amendment that looks to the potential abuse of the very flexible quorum provision in the bill and it closes a loophole, or an area of potential abuse. It is not in any way restrictive of the meetings of the council, except insofar as every member of the council must get notice of the meeting. It is eminently reasonable.

Hon. Mr. Ashley: I do not particularly think it eminently reasonable. It seems that it would make it very cumbersome and seems to eliminate the possibility of certain emergency meetings of the chief justice, who is the chairman, and a chairman normally calls the meeting. It would eliminate the possibility of him calling that meeting. As Section 8.1(1)(4) states "The senior judge of the

Supreme Court, or his nominee under paragraph (1)(a), shall be the chairman of the judicial council." In my experience it has always been the Chairman who calls the meetings.

Mr. Kimmerly: Once again, that is not so; that is simply not accurate. If a person is going to be unavailable, there can be a nominee, and there should be, and all that is required is that the relevant parties, or their nominees, be notified. The only possibility of any real emergency is for judicial misconduct and the initial step is taken by the supreme court judge acting. There is no requirement for a full council meeting; the council will almost certainly never meet in an emergency sense and even if it does, all it requires is that if a person is unavailable he leaves a nominee, and that is a good practice in any event.

Hon. Mr. Lang: I was not going to rise on this one but I think the member opposite did get a little bit to me this time. I just want to point out that Section 8.2(3) says the judicial council may make rules of procedure governing the calling of this meeting and the conduct of business at it's meetings. It would seem to me that we are dealing with very learned people. Perhaps the member opposite would argue that, but I think that we are, and the intent is to be dealing with, in most part, professionals, and the lay people who would be appointed would also have public credibility and various backgrounds in respect to being able to conduct business. It would seem to me that that particular section is going to permit them to say that three days or four days notice is required, or whatever; one could argue for seven days notice, five days notice, or whatever the case may be. It also gives them the ability to either name a Chairman in the absence of the chief justice, or for that matter, they could obviously, through this particular section, have an annual review and annually elect a vice-chairman to call meetings. I do not accept the member's point of view in respect to that because I think it is covered.

I think they are quite responsible and they can govern the conduct of their business accordingly, and I do not think it has to be spelled out as seven days notice in legislation, or five days notice, or whatever the case may be, because there may be incidences that arise that may require a three days notice because maybe the one lay person who is on the committee is from outside of town. He may be from Watson Lake and happen to be in town for that weekend, and he does not know he will until four days or three days prior to coming into town, and then asks that perhaps the meeting could be rescheduled. I think we are arguing about semantics, as far as I am concerned. I have enough trust that the chief justice and the people who will be on the council will govern themselves accordingly. 35 Mr. Kimmerly: Once again, the minister is simply wrong. What could happen is that the judicial council could make a rule requiring notice and it could be followed until the fateful meeting where an abuse occurs. A majority of the members could meet, not inform the minority, and change the rules. They would have the power to change the rules there, at that meeting, and then do their dirty work.

The amendment covers that loophole and the minister, in his previous statements, is simply and clearly wrong.

Hon. Mr. Lang: I do not want to leave that on the record. I would say to the member opposite that he is wrong.

All I am saying is that if he feels that these abuses are going to happen in the judicial council, perhaps we should be recommending that we should not have a judicial council. It is, in effect, an independent body, in part appointed independently of government; the majority of members. I do not understand the point of view that is being put forward.

I want to submit to the member opposite, and I am sure that he would agree with me, that the mandate of the council is not to put itself in the position of doing dirty deeds, or anything of this kind. It would seem to me that they simply have some business to do and it is very fairly clear. They will go ahead and do their business.

Mr. Brewster: I have to get in here. I am getting a little confused by the hon. member across the floor.

First, he does not want us to pass any of these laws because we are acting politically; then, when we decide that the committee can make its own decision, he does not want to trust the judge. I am not just quite sure which way we are supposed to go to satisfy this

individual.

Amendment defeated

Hon. Mr. Lang: I would move that you report progress on Bill Number 4 and beg leave to sit again.

Motion agreed to

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

Motion agreed to

Mr. Speaker resumes the Chair.

Mr. Speaker: I will now call the House to order.

May we have a report from the Chairman of Committees?

Mr. Philipsen: The Committee of the Whole has considered Bill Number 4, An Act to Amend the Territorial Court Act, and directed me to report progress on same.

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

Some Members: Agreed.

Mr. Speaker: May I have your further pleasure?

Hon. Mr. Ashley: I move, seconded by the hon. Minister of Education, that the House do now adjourn.

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

Motion agreed to

83.3.9

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

The House adjourned at 5:23 p.m.

The following Sessional Paper was tabled Thursday, April 7, 1983:

Memo from Chairman of Committee of the Whole to all Members regarding a request to the Government Leader from the Council for Yukon Indians to appear before Committee of the Whole (Philipsen)