



# The Yukon Legislative Assembly

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Number 8

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25th Legislature

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## **HANSARD**

**Monday, April 2, 1984 — 1:30 p.m.**

Speaker: The Honourable Donald Taylor

# Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake

DEPUTY SPEAKER — Bill Brewster, MLA, Kluane

## CABINET MINISTERS

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

## GOVERNMENT MEMBERS

(Progressive Conservative)

Bill Brewster	Kluane
Al Falle	Hootalinqua
Kathie Nukon	Old Crow

## OPPOSITION MEMBERS

(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	Mayo
Dave Porter	Campbell

(Independent)

Don Taylor	Watson Lake
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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

**Whitehorse, Yukon**  
**Monday, April 2, 1984 — 1:30 p.m.**

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

*Prayers*

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

#### TABLING RETURNS & DOCUMENTS

**Hon. Mr. Pearson:** I have the Territorial Accounts for 1982-83 for tabling today. We received the Auditor's Report for that fiscal year after the session last rose. As a consequence, copies have been made available to all members of the House.

**Mr. McDonald:** In response to statements made by the Minister of Highways on Wednesday, March 28, I have for tabling copies of letters sent between the Ministers of Highways and Tourism and myself pertaining to the placing of highway signs at highway junctions.

**Mr. Speaker:** Are there any reports of committees? Petitions?

#### PETITIONS

**Mr. Kimmerly:** I have two petitions dated the 28th of March, 1984, and circulated over the weekend. They contain slightly different wording, but are on the general subject of *The Children's Act*. The number of signatures is slightly over 920.

**Mr. Speaker:** Are there any further petitions? Introduction of bills?

#### INTRODUCTION OF BILLS

##### Bill No. 14: First reading

**Hon. Mr. Pearson:** I move that Bill Number 14, *Fifth Appropriation Act, 1982-83*, be now introduced and read a first time.

**Mr. Speaker:** It has been moved by the hon. government leader that a bill, entitled *Fifth Appropriation Act, 1982-83*, be now introduced and read a first time.

*Motion agreed to*

##### Bill No. 21: First reading

**Hon. Mr. Pearson:** I move that Bill No. 21, entitled *An Act to Amend the Financial Administration Act*, be now introduced and read a first time.

**Mr. Speaker:** It has been moved by the hon. government leader that a bill, entitled *An Act to Amend the Financial Administration Act*, be now introduced and read a first time.

*Motion agreed to*

##### Bill No. 22: First reading

**Hon. Mr. Pearson:** I move that Bill No. 22, entitled *Government Employees' Unemployment Insurance Agreement Act*, be now introduced and read a first time.

**Mr. Speaker:** It has been moved by the hon. government leader that a bill, entitled *Government Employees' Unemployment Insurance Agreement Act*, be now introduced and read a first time.

*Motion agreed to*

**Mr. Speaker:** Are there any notices of motion for the production of papers?

Notices of motion?

Ministerial statements?

This then brings us to the Question Period.

#### QUESTION PERIOD

**Hon. Mr. Philipsen:** I rise today in order to correct, for the record, a statement I made to this House last Wednesday, concerning the number of cases of child abuse being investigated by the Department of Health and Human Resources.

<sup>11</sup> On March 28th, in *Hansard* on page 101, in response to a question from one of the hon. members opposite, I stated that 28 cases of child abuse were brought before the department during the first 14 working days of this calander year.

I have since been advised that the 28 cases I referred to related to new investigations under the *Child Protection Act* and do not necessarily relate specifically to child abuse.

As a result of my unfortunate use of the wrong term in relation to this socially sensitive issue, which I can assure you was in no way an attempt to mislead the hon. members opposite, I have been charged by one of the members of the local media with having misled both this House and the general public with erroneous information with respect to the issue of child abuse.

Because of the importance of *The Children's Act* to our society, I feel that it is most important that I clarify certain statements and allegations that have been made respecting my integrity and the integrity of my department with regard to this issue. At no time, have I or any of my departmental officials, deliberately tried to manipulate or mislead the public with erroneous information on the frequency and the rise in child abuse cases. With specific regard to the 28 investigations I mentioned earlier, the reference to them being child abuse cases was simply an honest misinterpretation of information by a staff member within the department, which in turn was passed on to me as minister. I, therefore, used that information in the belief that it was indeed accurate.

<sup>12</sup> I have since found out that those figures, in that context, were not completely accurate. I must add that the fact remains; from all indications, child abuse and neglect are on the increase in Yukon.

If the member of the media who reported this error last week, and the member opposite with whom he has spoken, continue to feel that there is some conspiracy in misleading the public, they are sorely mistaken.

My integrity and intentions will continue to stand before the court of public opinion. That is a court I am not afraid to face at any time on any issue.

Thank you.

#### Question re: French program in Yukon schools

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

The Association Franco Yukonais has requested a French program in the Yukon schools. For the record, could I ask the minister, what is the position of the Government of Yukon on this question?

**Hon. Mrs. Firth:** The Association has requested a French school, not just a French program. We are presently going through the French language services that we deliver to the Yukon students and adults, and the Association is aware of this. I met with them just some weeks ago to discuss it again, and Cabinet will be making a decision regarding this government's policy with French language education.

**Mr. Penikett:** I thank the minister for her answer, but there appears to be some confusion at this point, since the Association insists to me that it is a program that they are looking for, not the bricks and mortar of a school. For that reason, I would like to ask a supplementary of the government leader.

Since the Constitution appears to require that French language schooling be available where numbers warrant it, could I ask the government leader: does this government believe that there is sufficient demand by way of numbers for French language education in Yukon at the moment, such that would create a Constitutional obligation on the territory?

<sup>13</sup> **Hon. Mr. Pearson:** The answer given by my colleague must make the answer to that question self-evident. We all believe that the numbers do not yet warrant it. However, it is a matter that we do have under very, very serious consideration all of the time now.

**Mr. Penikett:** A supplementary to the same minister. There has been a suggestion that there might be a plebescite or referendum on the French language education question. Might I ask the govern-

ment leader, who, as a parliamentarian, would know how devious and inconclusive such referendums can be, if it is the position of this government that issues such as this on minority rights should be subject to the tests of the majority will by such instruments as referendums?

**Hon. Mr. Pearson:** It is, in fact, I can truthfully say, the first suggestion I have heard that there be a referendum on this subject.

**Question re: Bill C-12**

**Mr. Byblow:** I have a question for the Minister of Education. However, the government leader, in his capacity as Minister of Finance, may wish to answer the question.

As the government is aware, the federal government is currently dealing with Bill C-12, an act that, in part, restricts EPF payments for post-secondary education. Very simply put: will this bill, when passed, effect EPFs for Yukon towards post-secondary education?

**Hon. Mr. Pearson:** To the best of our knowledge, the answer is no.

**Mr. Byblow:** What implications will reduced financing under the six and five guidelines, as provided for under this act, have on Yukon?

**Hon. Mr. Pearson:** We are living under six and five guidelines, we are in the second year of that now. It is going to be four percent next year, or whatever it might be. We will be forced to live under those circumstances. What we have to do, therefore, is make sure that we do not overspend, with respect to those funds.

**Mr. Byblow:** You may consider this a hypothetical question, but I believe it is legitimate: would the government be making up any deficit requirements in post-secondary education, should the formula of financing not be enough to meet current costs?

**Mr. Speaker:** I must say that the question is, indeed, hypothetical. If the minister wishes to answer the question, proceed.

**Hon. Mr. Pearson:** Thank you, Mr. Speaker, I appreciate the opportunity to answer, in spite of the fact that it is a bit hypothetical.

We make up the difference every year. We pay out more than we get, with respect to these kinds of funds, every year now, and those are territorial monies that make up those differences.

**Question re: Child abuse**

**Mr. Kimmerly:** About child abuse complaints and the recent clarification, is the minister now able to tell us, of the 28 investigations in the first 14 days of this year, how many of those investigations proved to reveal child abuse?

**Hon. Mr. Philipsen:** I am sorry, unfortunately, a detailed breakdown of these 28 cases is not available, at this time, but I will try and get the breakdown as soon as possible.

**Mr. Speaker:** I take it the minister will take notice. This is, really, a question that would properly belong in the category of written questions.

**Mr. Kimmerly:** Is the information available as to the number of child abuse cases last year, for example?

**Hon. Mr. Philipsen:** Yes, I have some information for between the period of October and December, 1983.

**Mr. Kimmerly:** Is the child abuse registry now computerized and operational?

**Hon. Mr. Philipsen:** The figures that I have are based on computer printouts and intake log books, so, yes, they are available to the end of December, 1983.

**Question re: Women's Bureau**

**Mrs. Joe:** I have a question for the minister responsible for the Women's Bureau.

The minister has stated that the study, "Women in the Labour Force", has been shelved for more than a year, due to lack of funds. Could he tell us if his department intends to complete the study in the near future?

**Hon. Mr. Ashley:** As I have advised the member opposite, it has been shelved for lack of funds and, as I also advised the member, it will be discussed at budget time. I am sure.

**Mrs. Joe:** Can I ask the minister if he could tell us what amount of money would be required to complete the study that was

shelved?

**Hon. Mr. Ashley:** I have no idea of that at this time.

**Mrs. Joe:** This government spent \$30 million more in O&M dollars than it budgeted for in 1983-84 fiscal year, yet the study was dropped for lack of funding. Does this fact indicate that it is the policy of this government to give very low priority to issues that concern women?

**Mr. Speaker:** I would think the question sounds almost argumentative, but the minister may wish to answer it.

**Question re: Agricultural produce marketing**

**Mr. McDonald:** I have a question for the minister for municipal and community affairs. As the minister knows, the activity in the agricultural community is increasing rapidly of late and the subject receiving greater attention concerns the marketing of agricultural produce. Last year, I believe in early November, the minister stated that he would be prepared to speak to municipalities about the provision of farmers markets around the territory. Can the minister state whether any such discussions have taken place?

**Hon. Mr. Lang:** Not as yet.

**Mr. McDonald:** Has the government analyzed market conditions around the territory for locally grown produce for the purposes of establishing things such as farmers markets and also to assist farmers in determining what is best to produce to meet consumer demands?

**Hon. Mr. Lang:** The advice that is being given to those people who are going into this area has largely been from the technical point of view of what could be grown here and in a volume that could quite conceivably reach part of the present market, which is served from outside sources at the present time. No, we have not done any market surveys. When the people involved become interested, we would be prepared to sit down with them and see how we could help as a government. It will primarily be the producer and the consumer that is going to dictate what is going to be purchased.

**Mr. McDonald:** The minister is, of course, aware that many farmers around the territory would feel much more comfortable selling produce such as poultry and certain dairy products if there were adequate and safe health inspection services. Has any progress been made to date to provide those services?

**Hon. Mr. Lang:** The member opposite was at the same meeting I was when I indicated we were going to have to look to some degree at our health standards. We are going to review them to see what is appropriate at this time. I have to express a concern here that we do not start increasing the bureaucracy for the purposes of strictly any application that comes forward. We are going to be proceeding cautiously, which I am sure all people within the particular industry would encourage us to do.

**Question re: Paving equipment**

**Mr. Penikett:** I have a question for the minister of highways. Could the minister explain why government is currently advertising for a paving plant in newspapers outside this territory, when I understand such equipment is available locally?

**Hon. Mr. Pearson:** I do not know why we would be advertising outside for a paving plant. There was a tender out for supply of a paving plant here three or four weeks ago. I think the tenders have already closed on that.

**Mr. Penikett:** In as much as this tender the government has issued, as the minister has referred to, may have a bearing on the government's plans, could the minister explain whether the government is going to be doing a new paving program, or whether the paving that this machine is going to do is going to be stuff that was formerly done by small contractors? What is the situation in that respect?

**Hon. Mr. Tracey:** It is not being advertised for as a paving plant. It was advertised for as an asphalt plant. The reason for it was to make cold mix, which is used in BST.

**Mr. Penikett:** Nonetheless, I take it that the government will be doing this itself. Can I ask the minister if he has knowledge about a brush clearing machine which may have been acquired by

the territory, and the reason for its location in Dawson City?

**Hon. Mr. Tracey:** No, I am not aware of it.

**Question re: Highway signs**

**Mr. Byblow:** Given the tabling today of correspondence relating to highway signs policy, I have a question on that policy that I would first direct to the government leader.

Which minister is responsible for the development of a highway signs policy?

**Hon. Mr. Pearson:** I would think that it is self-evident. The Minister of Highways, of course, is the minister who must be firstly responsible for highway signs.

**Mr. Byblow:** Given that the Minister of Highways is firstly responsible, I would be curious about who is secondly responsible.

Given the confusion that exists currently over the policy within municipalities, I would like to then ask the Minister of Highways: what is the procedure to be followed for the erection of highway signs within municipal jurisdictions, currently?

**Hon. Mr. Tracey:** If the member wants to wait for about a week or so, he will see the regulations that will be coming out, probably next week.

**Mr. Byblow:** Is the minister advising me that his government will be putting in place regulations that will place highway sign policy under the complete jurisdiction of this government, and not communities?

**Hon. Mr. Tracey:** The jurisdiction of highway signs has always been under the jurisdiction of this government. The title to highways belongs to the Government of Yukon Territory. The Government of Yukon is responsible for the highway maintenance.

**Question re: Child abuse**

**Mr. Kimmerly:** About child abuse statistics, the minister talked about available information about the last quarter of 1983. What is the number of proven child abuse cases arising in Yukon in that period?

**Hon. Mr. Philipson:** It is exactly as I said when we discussed this in debate before: for physical abuse, 13; sexual abuse, 8; physical and sexual abuse, 1; for a total of 22 in the last three months of 1983.

**Mr. Kimmerly:** Are the first available child abuse statistics — as child abuse statistics, in fact — the last quarter of 1983?

**Hon. Mr. Philipson:** I am sorry, I misunderstood the question. Did the member opposite say, are the figures I quoted? If he said that, yes, they are the figures I quoted.

**Mr. Kimmerly:** By a legislative return dated March 24, 1983, the department said it had no figures. When are the first available figures for? What time period?

**Hon. Mr. Philipson:** As I said, the figures I have here are from October to December, 1983.

**Question re: Video display terminals**

**Mrs. Joe:** I have a question for the government leader with regard to VDTs. The government leader, in his lengthy answer to my question on that study on health hazards of VDTs last week, indicated that the study was strictly internal. Could he tell us why the study was limited to internal information only?

**Hon. Mr. Pearson:** Because our primary concern is for the employees of this government.

**Mrs. Joe:** The Canadian Labour Congress has recently asked for tough new federal regulations to shield workers from the radiation of VDTs. Does the government support this type of regulation, which is based on well-founded studies in other parts of the country?

**Hon. Mr. Pearson:** With all due respect, I have not seen any of the so-called well-founded studies yet.

**Mrs. Joe:** The minister responsible for occupational health and safety stated in this House that there is absolutely no evidence to show that video terminals create any hazard to the operator. Could I ask the government leader if this is the government's position based on the study done by this government?

**Hon. Mr. Pearson:** That is, in fact, the best information that we have been able to receive. As I stated in the last answer, we

have not received any results from studies done by anyone and we have solicited the results of other studies from all across Canada. We cannot find any factual information that says that use of this equipment is, in fact, harmful.

**Question re: Safety inspection services**

**Mr. McDonald:** I have a question for the Minister of Consumer and Corporate Affairs. The Elfstrom Occupational Health and Safety Report commissioned by the government some three years ago was mildly critical of safety inspection services in the territory, calling it "unacceptable token coverage". Can the minister state what efforts the government has made since this report was written to ensure adequate coverage for all Yukon workers?

**Hon. Mr. Tracey:** Yes. We have advertised for a second occupational health and safety officer. In fact, there was no successful applicant from the Yukon Territory. We are now advertising outside to get that second occupational health and safety officer.

**Mr. McDonald:** It is not bad for three year's work.

The report said, "Logistical problems have been so great that, for instance, two of the three placer fatalities in the period 1978 to 1980, were never investigated". As the placer industry is so scattered and so active over the peak summer period, can the minister state how the government will ensure that this high risk industry is covered adequately?

**Hon. Mr. Tracey:** The placer industry is no more than an earth-moving operation, as construction is. They are covered the same as any other organization.

I would also like to say that it is our intention to bring in an occupational health and safety act for this fall and we hope to cover all of the industries in the territory, including placer mining and hard rock mining.

**Mr. McDonald:** I hope the minister will give me leave to ask questions.

The report mentions that the utilization of bigger equipment in poorly lit, confined areas of the mining industry will increase the risk of accidents. What effort has the government made to investigate the extent of the problem and institute remedial measures?

**Hon. Mr. Tracey:** The regulation of poorly lit equipment in the mining areas is to do with underground mining, and that is inspected by the federal mines inspector office.

**Mr. Speaker:** There being no further questions, we will proceed to government bills.

**GOVERNMENT BILLS**

**Bill No. 19: Second reading**

**Mr. Clerk:** Second reading, Bill No. 19, standing in the name of the hon. Mr. Philipson.

**Hon. Mr. Philipson:** It is my privilege to rise today.

**Mr. Speaker:** Order, please. Could we have the intention of the hon. minister as to if he wishes to proceed with Bill No. 19?

**Hon. Mr. Philipson:** Yes, Mr. Speaker.

I would like to move second reading of Bill No. 19, *The Children's Act*.

**Mr. Speaker:** It has been moved by the hon. Minister of Health and Human Resources that Bill No. 19 be now read a second time.

**Hon. Mr. Philipson:** It is my privilege to rise today to move the second reading of Bill No. 19, *The Children's Act*. All of us in this House, particularly on this side, are familiar with the legislation to which I will be addressing my comments.

I wish to take a little time to review with you some of what has transpired in bringing the bill to this stage. While *The Children's Act* goes considerably beyond replacing the existing *Child Welfare Act*, it is important to recall that the *Child Welfare Act* has been in place since 1970.

While that act was certainly adequate at the time, and was, indeed, hailed by some, then, as a progressive piece of legislation, it no longer completely addresses all of the needs of children. It does not, as *The Children's Act* that is before you does, address the

equal status of all children, the custody and guardianship of children, nor adequately deals with the adoption and protection of children.

Because of these inadequacies in the existing act and also because of the federal government, which is to have passed its *Young Offender's Act*, implementation of which was pending at the time that my colleague put forward the earlier version of *The Children's Act*, as Bill No. 8, it was imperative that we, as a government, move rather expeditiously in bringing forward a children's act last spring.

The preparation of *The Children's Act* dates back to 1982, when through the cooperation of the Department of Justice and Dalhousie University, the Department of Health and Human Resources was able to obtain the services of a well-known professor of family and children's law, Dr. Alistair Bissett Johnston, to assist in the drafting of our new children's legislation.

In August of 1982, the department solicited comments from the public by way of public advertisements requesting the Yukon residents' comments on aspects they felt should be covered in a piece of law of this type. Response at that time was low.

Because of the impending proclamation of the *Young Offenders Act* on April 1, 1983, there was, at that time, insufficient time to conduct community meetings to obtain public comment on the proposed legislation. The federal government delayed proclamation of the *Young Offenders Act*, first to October 1, 1983, and then to October 1 of this year. Fortunately, this delay enabled us to conduct public meetings in communities throughout Yukon.

Prior to conducting the community meetings, my senior staff and I met with the Council for Yukon Indians to go over their recommendations on the changes in Bill No. 8. I, as well as representatives of my department, met with other groups and private individuals to discuss with them their suggestions for changes in Bill No. 8. After completion of consultations with the Council for Yukon Indians, my deputy minister and I conducted community meetings throughout the Yukon. We visited virtually every community in Yukon, and in some of them held two meetings: one open general meeting and, where the bands requested it, separate meetings with the band members. In total, we conducted 24 meetings in the communities besides the meetings that I, and/or my staff held with interest groups and private individuals who wished to express their concern to us.

I would like to take this opportunity to thank everyone who took the time to come to the meetings and express their concerns, to give us advice on ways of improving the act and who, by doing so, have demonstrated their concern for the welfare of children and families of which they are members.

I would also like to take the opportunity to thank those who participated in the community meetings in the capacity of chairmen. These included some of my colleagues and some of the members of the opposition. The meetings were frequently lively, and it was often due largely to the chairmen that the meetings went as smoothly as they did.

These community meetings provided ample opportunity for members of the public to address this government on concerns that they have with the proposed children's legislation.

It has been suggested that it would have been more appropriate for this subject to have been dealt with by a select committee. I am confident, however, that the public is satisfied that it has had an opportunity to speak personally with me as the minister responsible for this bill. Not only did it provide an opportunity for Yukoners to address this particular subject, it gave both me and my deputy an opportunity to meet with residents in the communities who had specific concerns in the area of child welfare and to talk to them personally about it.

I would like to assure all those who spoke to us on individual matters that they are being looked into and they will be dealt with appropriately.

I would now like to focus more on *The Children's Act*, which I have tabled. The act contains revisions which stem from the concerns which were expressed to us either in a formal manner of written documents, as the Council for Yukon Indians did, or verbally, as many individuals had the opportunity to do during the

course of the community meetings. As I tabled this act some two weeks ago, it has been gratifying to me to see the Council for Yukon Indians, one of the strongest opponents to the earlier version of this act, give their support to the changes they see we have made as a result of our discussions. Support from the Council for Yukon Indians, whose representative attended virtually all of our community meetings, is an indication that we have satisfied not only the bulk of their concerns, but the bulk of the concerns expressed to us by individual bands as well.

As I indicated earlier, this new *Children's Act* addresses such important areas as the equal status of all children and the establishment of parentage, custody, access, and guardianship of children; the adoption of children and the welfare and protection of children.

The intention of this act is to clarify and update the laws affecting children. Throughout the legislation there has been the objective of supporting the unity of the families while focusing particularly on the rights of children.

The section on equal status of children will remove the legal stigma of illegitimacy. The rights of all children will be equal and will no longer be dependent on marital status of their parents. This part of *The Children's Act* is based on recommendations of the Uniformed Law of the Commissioner's of Canada.

Part two of this bill deals with the matters of custody and access to children, as well as the question of guardianship with respect to children's properties. There have previously been no Yukon statutes dealing with this area, although the federal *Divorce Act* has provided a partial solution in the past.

Members of this House will be aware of the considerable concerns expressed by the Council for Yukon Indians as the spokesman for all Yukon natives about present adoption not being adequately addressed in the earlier version of this act. I am pleased to draw your attention in the custody part of this bill, under section 33, there now will exist provisions for the native customs adoptions process to continue. I may add, that what is commonly referred to as native custom adoption is, in legal terms, defined as custody. This section addresses that frequently voiced concern.

Part two also includes the Hague Convention on International Child Abduction. This convention is an international agreement to protect children from a parent who would abduct a child and attempt to seek refuge in another country with that child. It has been included in this act to meet the objective of bringing together in one act, all relevant children's legislation. This approach is also being taken in Ontario in its children's legislation. Inclusion of the convention in this act has added significantly to the length of the bill, but I believe it to be wisely included here with other matters relating to the custody of children.

Part 3 of this act was modernized and clarified the adoption laws of Yukon.

This part provides clear procedures for consent to adoption and relinquishment of parental rights. Concern frequently expressed to us during our community meetings was the process for establishing contact between a person who was adopted as a child and that person's natural parents. I would like to point out, at this time, that on achieving the age of majority, an adopted person may make application to contact his or her natural parents. This contact would be governed by the regulations, which would be put in place pursuant to Section 98 of this act.

Another important feature of this act, in the area of adoption, is that it would enable my department to subsidize adopting parents, if this were necessary in a given case. This might be deemed necessary where in an effort to keep a sibling group together a family might have to be subsidized in order for them to be able to afford the additional numbers of children. This part of the act deals with adoptions based, in part, on existing Yukon laws, as well as developments in Saskatchewan, Nova Scotia and England.

The part of the act that deals with child protection, Part 4, came under close scrutiny when *The Children's Act* was tabled as Bill No. 8, a year ago. It is also that part of the act that received the bulk of attention, during our community meetings, earlier this year. I am satisfied that the revisions that have been made in this area should address most of the concerns raised concerning the

protection of children.

I would like to think the concerns that were expressed to us were raised because of a desire on the part of those expressing them to protect the children. Frequently, however, the point was made that children were being offered protection at the expense of the rights of parents. I would like to say, categorically, this is not the case.

In fact, in part of the act, under Section 107, it states that it will be my policy and that of the director of the Family and Children's Services to provide such services, as far as reasonably practical, to promote family units and to diminish the need to take children into care or to keep them in care. Section 120 will enable us to leave a child with his family when it is felt, on reasonable and probable grounds, that a child might be in need of protection but not in any immediate danger, and require the parents to appear before a family court judge. The current legislation would require us now, under some circumstances, to take a child into care.

This section is a further example of this government's desire to keep families together. I would like to reiterate, however, that this a children's act: this act is designed to protect children and to look after their best interests. My department will continue to do its utmost to ensure that a child remains where he is most naturally and best provided for, in most cases: that being within his own family unit.

I would like to point out, at this time, that it will be required under the act that, wherever practical, a child shall be placed with a family of his own cultural background and lifestyle, preferably in his home community if it becomes necessary to remove him from his own home in order to provide the necessary protection for that child.

Part 4 of the legislation clearly aims at keeping children in their own families, or at least in their own communities, but it makes it clear that a child cannot be left adrift in legal limbo. Matters have to be dealt with quickly in a way that respects the child's sense of time. Six weeks for an adult may be a pleasant vacation break, but for an eight-week-old baby, that is almost all the life it has ever had. This legislation strictly limits the time available to the department and the courts to deal with matters affecting the welfare of children. These lengths of time are reduced from those now available in the *Child Welfare Act*.

Much has been made of the perception that the director of Family and Children's Services has enhanced powers under this legislation. The opposite, in fact, is the case, with the authority of the director or the department to take children into care being reduced from that which exists under the *Child Welfare Act* at the present.

A matter that was frequently raised as a concern in the communities was that of entry into a home by a social worker or peace officer without a warrant in child protection investigations. The bill that is tabled now will permit entry without a warrant only in those circumstances where there is a reasonable and probable ground to believe that a child was in immediate danger of life, health and safety. I feel confident that this should put at ease the fears that existed that this right of entry might be misused.

Part 4 also provides for the involvement of community groups for the wellbeing of children. During the course of our community meetings, the question was frequently put to us by natives and representatives as to whether or not they would be able to have delegated to them some power of the director. I would like to emphasize at this time that this is indeed the case and is provided for under section 111 of the act. The director's authority may be delegated to a community group where it is demonstrated that that community group can provide an appropriate level of service.

I might mention that, at present, representatives of my department are engaged in discussion with the Council for Yukon Indians and some native bands for the view to delegating some aspects of the director's responsibilities to the bands.

Part 4 also establishes methods for the effective implementation of the *Young Offenders Act*, which is the federal legislation to which I referred earlier.

The federal legislator requires the establishment of an approved body to encourage and implement diversion schemes throughout the Yukon. Diversion schemes will be implemented by committees established in local communities to provide children with an

alternative to the existing jail and fine option schemes.

Part 5 concludes with the procedural and evidential matters, ensuring that as far as practicable, all those involved have their right to due process respected while, at the same time, preserving a measure of flexibility.

This is a lengthy piece of legislation, which affects our most precious resource, our children. As a government, it is incumbent upon us to support the family unit and the children within it.

By virtue of unfortunate circumstance, it may sometimes be necessary for government to intervene to protect the children from abuse and neglect. This legislation will enable us to do just that.

This legislation has stirred Yukoners and made us all aware that even in our northern society there are children who suffer at the hands of adults whose responsibility it is to provide them with care. *The Children's Act* will enable our government, through my department, to discharge its responsibilities entrusted to it by the public: the responsibility to do what is in the best interests of children.

Most Yukoners will, after this act has been passed, hardly be aware of its existence. This act, however, is essential to enable us — all of us — to ensure that all the children of Yukon receive the care and nurturance which is their right. I am pleased to be able to move reading of Bill No. 19, *The Children's Act*.

**Mr. Kimmerly:** I intend to be fairly lengthy so I am going to identify the various sections or categories in which my remarks will follow. This is, of course, the time of the general principle of the bill, and not the specifics. I will confine myself to that.

I wish to first of all make comments about what the bill is and the scope of the bill. Secondly, I will make comments concerning the process that has been followed so far in the preparation and the introduction of this proposed law. Thirdly, I will talk about the various principles contained in the bill and express positions on those particular principles. My remarks, of necessity, are going to be lengthy because it is a very large bill. The process has been very long and the principles contained in the bill are very many and very controversial.

First of all, it is obvious that there are four major sections to the bill. The one section that has received the most public attention has been part 4, commonly called Child Welfare. The other sections could be fairly controversial as well, however, the media and public opinion seem to be able to deal with issues only one at a time, in a general sense.

There are many controversial principles contained in the other parts of the bill and I will identify one or two of them. One of them that should be extremely controversial is the rights of the fetus, or the unborn child, which is clearly spoken about, in principle, in this bill.

The bill is an omnibus bill. It clarifies and codifies some of the existing children's law, although not all of it. It replaces the old child welfare legislation and it replaces the Hague Convention, in one section of the bill.

It is interesting that the language of the bill is worded in such a way that the language is common language, or commonly understood language. There has obviously been a genuine effort to write the bill with words that would make it as understandable as possible, to lay people and not only the legal profession.

In very large measure, though, the sentence structure and the structure of the various sections and of the bill is deceptively simple. I use that term advisably because, in the way it is worded, there is a very major and very substantial change in the existing law, which is not clearly identified by a statement of principle in a sentence or two of the bill. For example, if you extract the principle that you find contained in both Section 2 and Section 110, and you combine those and interpret them to extract a principle, it is quite clear that the principle contained in the *Judicature Act* presently, about the law of equity, is changed in a very, very major, and very substantial way, in this act. Those kinds of changes, clearly, are not simple and are not commonly understood by lay people.

Much as the legal profession is confused over the real meaning or the real import of those changes. It is also clear that when the present case law concerning children, especially child abuse, is

codified here, the principles contained in the case law are changed somewhat, and the law, if passed, would substantially change some time-honoured principles contained in the case law. Also, the legal process whereby some of these cases would go through the courts is substantially changed, and the most obvious principle is about hearsay and opinion evidence, which is codified here, but in the process of the codification, it is changed. It is unfortunate that the statements in the new bill, Bill No. 19, I am absolutely certain, will be the subject of confusion for some time in the courts if the bill is passed with the present wording.

The present law, indeed, was in place in 1970. I am going to speak about the principle in the present law, and especially those principles that are changed in Bill No. 19, because it clarifies the real extent of the changes in Bill No. 19.

Present law was passed when, in Yukon, we were going through what social workers have called "the sixties scoop". That is a vernacular phrase that refers to a phenomena that occurred among the Canadian Indian people. The situation in Yukon is very generally this: that there came into being residential schools that were largely run by the churches with government funding. A great number of status Indian children attended those schools and it is clear now, in retrospect, that the schools were really vehicles of assimilation and were designed to assimilate the Indian culture into the non-Indian culture.

The schools were closed and immediately afterwards the number of child apprehensions increased drastically and it continued on at a very high rate for quite a long time. Indeed, some Yukon Indian children are now in Australia, if they are still alive.

<sup>18</sup> As a result of this process, especially, Indian children were apprehended under the child welfare laws, generally under the neglect sections and largely because of the disease, especially alcoholism, of the parents. It is clear that the social service network was almost exclusively non-Indian and that the clientele was largely Indian — indeed, in excess of 70 percent Indian when the population was approximately 30 percent or less status Indian.

It is largely accepted now that that process was also a vehicle of racial assimilation. Today, the practical effect of the current law is virtually the same as it was in the 1960's, during the time of the '60's, although the numbers are smaller; thank heaven for small mercies.

The present law contains the genesis or the real reason for a very destructive process that is going on today. The destructive process that I am referring to can be described as follows: the individual social workers, who, by and large, are dedicated, hard-working, sincere people as individuals, are supervised by bureaucrats in the department and, ultimately, by the minister responsible. Practically, it is obvious and it is clearly the case today, that as to the decisions regarding individual cases, the decisions are made at case conferences involving various professionals and under the supervision of the director of child welfare. It is clear that the minister is not a part of that process and the policy direction that is taken. It is not, at least in present day terms, determined according to any political philosophy of the minister's; it is determined by the director and his advisors.

<sup>19</sup> The director of child welfare is largely autonomous and he supervises the line workers or the individual social workers who investigate and occasionally apprehend children.

The constitutional process in the present law is clearly that the director may make a decision to apply for court authority where he feels a child is in need of protection and the individual case goes before a court. There, a judicial decision is made and it is clear that the judicial decision involves, to a very important extent and a very great extent, a supervision of the individual case. So, what occurs is that the courts are supervising the activities of the civil servants who carry out the law and the administrators, specifically the director of child welfare, who are supervising the same process using very different methods and who are perceiving the process very differently.

There is a tension that arises. It arises universally in these situations and it is especially bad in the Yukon. It has been bad for six or seven years. It is an uncontroversial statement, I believe, among the social workers who go to court that they intensely dislike

the experience and have very, very mixed feelings about the wisdom of the court process. I can also say that it is an uncontroversial statement that within the legal profession there is a profound disappointment and concern about the activity of the social workers supervised by the director in the court system. The situation is quite unhealthy and it needs to be clarified.

<sup>20</sup> This law goes some way to clarifying that situation. It comes down, unfortunately, in every case on the side of bureaucrats. It is law for bureaucrats, written by bureaucrats. They have obviously gone their way and convinced the members on the other side that they need the increased power that this law would afford them.

I also wish to mention that in other jurisdictions the situation is dealt with differently in different places, obviously. In Ontario there are Children's Aid Societies operated under virtually independent or quasi-independent citizen boards. It is interesting that in Manitoba they are presently increasing the participation of citizen boards. In Yukon there are proposals to increase citizen participation. Bill 19 does not accommodate that. It is reported that in the present land claims agreement in principle that will very soon be made public completely there is a provision for an advisory board for services in this area to guarantee native participation and obviously this bill does not accommodate that agreement; at least for these services.

I am going to go on about the process that this bill has so far followed. The minister gave an outline of the process, however, he left out a few important items. Indeed in August, 1982, there was an ad in the local newspapers calling for submissions in writing. I, as an MLA, responded and I made the response public at the time.

<sup>21</sup> I will table a copy of the letter as previously made public, but I wish to identify the principles that were identified way back in August of 1982.

Firstly, I identified that the interests of the community concerning children who were suspected to be in need of protection or where the parent needed protection should be recognized, and I specifically referred to Indian bands. In my opinion, the underlying principles of the bill are very clear. What the bill does is gather all of the authority in the director, and it clearly implies, and in some specific sections it clearly states, that the interests of the community is to be expressed by the director. We argue with that. It is our opinion that to take away the authority, moral and legal, of community groups, for example Indian bands, is fundamentally wrong and should not occur.

We also identified the constitutional check on the director's activities; that is, the tension between the managers in the child welfare department and the judiciary. In some cases it is a healthy tension. In Yukon, today, it is extremely unhealthy, and I identify that as a matter of extreme concern.

Thirdly, I identified that there needs to be something like a children's bill of rights: a statement of what children's rights are. It is unfortunate that that concern has not been addressed.

Fourthly, I identified the efficiency that could come about by the establishment of the family court insofar as it is constitutionally possible in Yukon. It is absolutely clear that the bill has simply refused or has clearly come down on the side of the existing fragmented approach in existing courts, and that is extremely unfortunate. Because of that alone, it is not progressive legislation.

<sup>22</sup> I also identified the need to have a citizen or a political control over the policy direction of the services administered by the director of child welfare. It is clear that the bill has come down on exactly the other side of that issue.

I specifically identified that in Alaska and BC recent changes in the law have required a minimum of notice to Indian bands, where children — members of a particular band — are apprehended. That is not in Bill No. 19. I also identified the need for clearer direction to supervise the attention between the courts and the managers of the child welfare system, and I have previously spoken about that.

I identified, specifically, the issue of fetal alcohol syndrome and the rights of a fetus. I will address this later, under principles, but let me, at this time, simply say that there is a common understanding that all of these issues are really federal and they amount to abortion and the law concerning abortion is federal. That opinion exists widely in the community.



Really, the opposite is true. The rights of a fetus, or an unborn child, whatever they are, are of a provincial jurisdiction and it is an area of great uncertainty in the law. It is an area, of course, of substantial political sensitivity, but it is necessary. It is our duty, in this House, to supervise, legislatively, all of those issues.

Now, the bill does address some of those issues, briefly. It is interesting that, in Bill 8, there were more specific sections. The section that was found particularly objectionable by the pro-life interests was removed; however, it was not replaced with a legislative statement as to what the rights are and the law will continue to be very confused in this area.

<sup>23</sup> For that reason, as well, this bill is not progressive. I identify also the questions concerning the *Young Offender's Act* and the jurisdictional problems implicit in a unified family court.

It is interesting that the minister now says that the reception of briefs or the response was low, in the minister's words. I am not surprised at that, but it is interesting that that process occurred at all. We fully support public input in the general sense. The way this public input occurred was deficient and it was deficient for various reasons. One of the reasons is that it is only semi-public, in that it is of importance and it is desirable that there be a public debate and that citizens know what other citizens are saying about these issues. In this process, everybody submits a statement and the government has all the information and the people have virtually none of the information. By this process, the government controls, in a much greater way than they should, the public debate. It is not a legislative process in the traditional sense; it is an executive process whereby citizens are asked to petition the powers that be about what they want. There is nothing wrong with citizens availing themselves of that opportunity, but the legislative traditions in the Commonwealth and in this country here, in the long term past, were different and it should have been a more public process. I have previously spoken about that issue, when I raised a motion in the last session about the process followed in this particular bill.

<sup>24</sup> It is especially interesting that in the first few sentences that the minister addressed to us in the previous statement he said members are familiar with this bill and he used the phrase "particularly on this side". Well that is certainly a true statement. But, if we look at that, and I know when Yukoners analyze that statement, they are upset. I know that, because they have told me that, a good number of them.

This bill, after the semi-public input, was drafted by a committee of people with one or two individuals being prominent. It was drafted in a secret process. I use the word secret on purpose. Obviously, the group of people, which was a very small group, drafted a bill that suited them. They received the submissions. They obviously ignored mine because they did not follow my suggestions. They drafted a bill which suited them. It became a bureaucrats bill. It is written by bureaucrats, for bureaucrats, in order to give the bureaucrats the maximum possible power. It then went through a process whereby the members on the other side became aware of it, especially Cabinet. It went through the Conservative Cabinet and it went through the Conservative caucus. The result was Bill 8 in the last Spring sitting.

What happened then was — there was no legislative activity — there was a public outcry. There was an extra-legislative and extra-parliamentary procedure going on and the public balked at it. They said "no way, we cannot live with this", and the government was forced to withdraw the bill.

It is interesting to analyze the situation at that point. Many conservatives have asked me: why would a conservative government propose this bill? It is not a Conservative bill, in a philosophical sense. There has been public discussion about: is it a socialist bill, is it a fascist bill, is it a Conservative bill, what kind of bill is it? I feel that those labels are largely useless. I think I have a better understanding now as to what happened. This is clearly not a socialist bill. We on the left of the political spectrum who have repeatedly called for children's rights, who have repeatedly asked for progressive modernizations of the bill; who have clearly articulated our policy about children, do not adopt this bill. In one sense, and in only one sense, the label "socialist" does apply if you accept the proposition, which some socialists do, that the

government, or the state, should be the controllers of the actions of the individuals. In that sense, and in that sense alone, there is some justification for the label "socialist", although implicit in this bill is the principle of the state control. It is not a socialist bill.

<sup>25</sup> I have searched the policies, as they are available to me, of the Progressive Conservative Party and of the New Democratic Party and the closest I can find, from the information available to me — it is not all public information on the Conservative side — that there is a policy that is related in the Tory party and I believe it was passed in the April 1982 convention. It states, "Whereas it is fundamental to the philosophy of this Party that governments should interfere as little as possible in the rights of individuals, now therefore be it resolved that the Government of Yukon implement a program to review existing legislation and regulations with a view to reducing or eliminating them where they are unjustified". That is the closest that I could find.

In our policy, there is a clear policy about child apprehension, "Whereas apprehension of children by directors of the child welfare is both disruptive to the family and expensive to the taxpayer, be it resolved that, rather than apprehending children, that family support services, for example homemaker, parent aid, et cetera, be expanded so that qualified individuals be provided for families in need of support to assist those families in developing as a unit".

<sup>26</sup> That is the policy that I could find. The political approach to these questions has not been well-defined or has not received very much media attention in the past. Indeed, I know of no election in Yukon where child welfare was a significant issue. It is clear to us on this side that child welfare need not be a partisan issue. It should not be a partisan issue; however, as virtually everything in this House is a partisan issue, it has become one, and that is an unfortunate symptom of this House. In general, it is unfortunate for *The Children's Act* specifically.

At the time of the public outcry, several things occurred. There were editorials in the paper. There were statements by the Council for Yukon Indians. There were petitions that I presented in this Assembly, letters to the editor and public meetings. In some of the public meetings, feelings ran so high that some media people labelled them as near hysterical. Indeed, I attended meetings where people were in tears, where people were angrily shouting. I attended two meetings where children came forward and told an individual story as an illustration of what they thought was a past abuse. There was a very large demonstration sponsored by Indian people and large public meetings.

The government put out a letter dated April 22, 1983 describing *The Children's Act* as it then was, that is Bill No. 8. It is clearly a public relations letter and it stated, in the second last paragraph, — I will table the letter; I have a copy of it.

<sup>27</sup> The government stated, "Much clearer and stronger protections are built into this legislation for the parents of children believed to be in need of protection". I do not know who wrote that, but it was signed by the then-responsible minister. That statement is clearly wrong: that is an inaccurate statement.

Also, shortly after that, the Council for Yukon Indians made a presentation to the parliamentary committee on Indian self-government. This was May 10th, 1983, and was presented by Marilyn VanBibber. I will table a written copy of the presentation that she presented to the parliamentary committee.

I would like to read a small part of the presentation: "Death rates from suicide, violence and alcohol are soaring. Indian children are 70 percent of child care cases, despite the fact we are 30 percent of the population". Also, on page two: "CYI worked long hours with representatives from all the bands to prepare 32 detailed recommendations, which were presented in good faith to the Yukon territorial government. The result: Indian people have been completely ignored in the legislation. That must be what they mean by assimilation".

The submission also talks about specific recommendations that were ignored and it calls for a Yukon Indian Health and Social Development Commission to take exclusive control of Indian child welfare out of the hands of the territorial government and to put it in the hands of this Indian community, represented by an Indian commission. It was stated that that presentation was the position of

the CYI, adopted by their chiefs.

Also, on February 28th, 1983, the chairman of the Council for Yukon Indians identified these points, these 32 recommendations, and he sent them to Mr. Bisset-Johnson, with a carbon copy to all MLAs.

28 The letter stated, "these recommendations have been endorsed by both the executive of the Council and by the board of directors composed of the chiefs of the 12 bands in Yukon. We do not make these recommendations lightly. Much work and thought have gone into them. We consider this the minimum necessary to ensure the protection of Yukon Indian children."

He also talks about submissions from individual bands, which were also received. The minister today made much of the fact that he says the CYI is supporting Bill 19. Well, the CYI can speak for itself, I am sure, however, the points raised, those 32 recommendations passed by the executive and the board of directors, are not met in Bill 19 and, according to the official communications that the CYI has seen fit to make me aware of, there would be no revocation or no change from those 32 recommendations, and they are clearly not met.

It is my understanding that the CYI is very interested in establishing contractual relations with the territorial government in order to deliver child welfare services themselves, under contract with the director. I certainly support that initiative, but this bill does not guarantee that. If that is to occur, this bill gives all the real power to the director and, under this bill, if that were to occur, that kind of arrangement could only be an assimilative arrangement, in that it could only be that the present policies would be followed but administered by different individuals. I am quite sure that the executive and the board of directors want a little more than that.

The minister went on a public relations exercise to sell the bill in the communities. The fact of touring the Yukon and holding public meetings in itself is to be applauded and the member for Campbell has already complimented the minister for doing this.

29 I attended the Porter Creek meeting and it was absolutely clear to me that where a person criticized the bill, the minister or the deputy minister tried to point out where that person was wrong — tried to persuade the person — and where the person praised the bill, the minister said, "Aw, the sweet voice of reason. I am so glad you came here to praise us". They were public relations exercises intended to sell the bill. It is now very clear that some information given by the minister, specifically about child abuse cases, was wrong information.

Also, there was another document published by the government, which was distributed along with copies of the bill. It was called a position paper and that was called "The Children's Act, A Policy Paper". That document is clearly a public relations document and is important solely for what it does not say rather than what it does say.

The debate at the public meetings, as reported in the media and as reported to me from people attending, and from what I saw, was very much a political and emotional debate and, in many cases, was quite uninformed. The debate, in my opinion, was unhealthy, although the minister has stated it was healthy.

Certainly, the meetings with bands were excellent initiatives. It is unfortunate that the government did not see fit, as was urged upon them, to start the legislative process last year, and to have a legislative committee study the principle of *The Children's Act*, because it is only now that the legislative process is starting. It is only now that this very important constitutional stage of discussion of the bill is occurring.

30 It could have been virtually complete by now, if the minister had seen fit. Now, the bill will be properly scrutinized in a legislative forum, and that is long overdue.

I am going to go on to the third section of my remarks, that is, considering the principles in the bill. The most important comment I have, I have previously identified, is the principle contained in the combination of Section 2 and Section 110, and if you consider the law of equity, as it relates to children, and consider the present law.

I recently stated that this Bill 19 is not the worst children's act presented in the British Commonwealth. It is probably the second worst: the worst was Bill 8. What has occurred is that the bill is

attempting to supercede the inherent jurisdiction of the courts to supervise the affairs of children and to replace that inherent jurisdiction with the director of child welfare: that is, a bureaucrat.

It has long been recognized that the courts have a general supervisory jurisdiction over the affairs of infants: lawyers and judges use a Latin phrase, *parens patriae*. That principle of law is recognized in the present *Judicature Act* and it simply says that, in all matters relating to children or the welfare of children, the laws of equity will prevail. It is implicit in that, and in the common law, that if a child brings a matter to the attention of the court, the court will exercise jurisdiction in order to protect the interests of the child.

In this bill it is quite clear that the major principle is that the director of child welfare is to take over that function. He is to have general superintendence over children and child welfare matters and that section supercedes the law of equity and the inherent jurisdiction of the court. Section 2 clearly says it supercedes that.

What this Conservative government has done is put before us a bill where a civil servant has general superintendence over the welfare of children. The principle that we believe to be right, which we follow, is that children, themselves have individual rights that should not be superintended in all cases by the director, that the parents have individual rights relating to children that should not be supervised by the director, that the definition of the rights, responsibilities and duties of children and parents must be defined in relation to each other, that it is impossible to say, "this is a children's act not a parents act or a parents rights act".

One must define the rights, duties, and responsibilities of children and parents together, because they are intimately related exactly as in the landlord tenant situation. For every tenant there is a landlord and for every landlord there is a tenant and defining the rights and responsibilities of one of them, of necessity, defines the responsibilities of the other. In the family groupings that we find in society, parents and children have the right to exist in individual freedom without superintendence by a bureaucrat. There should be a superintendence by a bureaucrat only when a minimal standard, which is defined politically, is not met.

32 And, that it is clear that if the parents of a child are killed, for example, or are incapacitated by accident or injury, that the young child dependent on the parent must be looked after in some way and somebody must step in. We believe that to define the rights of the director in the way that they are defined here undermines the authority, the responsibility and the duty of other community groups, for example: extended families, Indian bands, churches and communities.

It is wrong to give that kind of general superintendence over children to a bureaucrat. An example of this is the very difficult and thorny question of the duty to report suspected child abuse. I am going to try to outline the policy or the principle that we believe is the right policy. We will be advocating this position at later stages.

It is very difficult to argue against the proposition that there should be some kind of a duty on a neighbour or a friend to look after another person's child when they seriously believe the child is in danger, and we do not do that. We believe that citizens in Yukon are virtually unanimous, and generally the vast majority of them are very, very concerned about the welfare of even one single individual child. We believe that if an ordinary person saw a child being abused, if it was serious enough in the individual's mind, he would intervene. He would stop the abuse from occurring. There are obviously practical considerations, in that if a group of strong young people were abusing a child and an observer was physically weaker, he may not intervene.

33 They may not, but they may report the problem to the police, probably, or to the director of child welfare or some other person.

We believe that there is a moral duty or responsibility that Yukoners accept and that adults here accept and will abide by. We believe what should happen is, if a person is acting genuinely as a good neighbour, as a good samaritan, as a protector of any child, that that action should be protected. That is, if I see a child being beaten, I can enter into the situation and stop it and, as long as I am acting responsibly and reasonably, that I should be protected from doing that.

Now that principle is not here; that principle is not in the bill. What the bill says is, if a person is aware of a suspected child abuse, the

person must report it to a bureaucrat. It takes away the responsibility of individuals to police themselves and it imposes a legal duty on individuals to tell big brother, to tell the government and the government will look after it. Well, we do not accept that; that is wrong.

There is a principle here that, regardless of a solicitor-client privilege — which is not a privilege of the lawyer, it is a privilege of the client — the lawyer involved must report information that is privileged, although he does not report the source of it. Well, that is a sheer trick; that is impossible to define and enforce and abide by. There is a conflict in the laws here: *The Children's Act* and the laws governing a solicitor-client privilege.

Also, under ecclesiastical law, there is the same provision, that if a citizen gives information to a father confessor — for example, the Roman Catholic Church — the confessor must report it to the government, although he does not report the source. Well, that is contrary to ecclesiastical law and there is a very clear problem here. The changes from Bill No. 8 to Bill No. 19 simply muddy the waters and create confusion.

14 We believe that the principle of the moral duty of citizens to report suspected child abuse should be supported in law so that if a person is genuinely concerned and makes a complaint, that person should be protected in law from any future action against them for so doing unless it is a malicious reporting. That is the proper principle. That is a principle consistent with our traditions of more than one thousand years.

It is interesting that in the criminal law, we have refused to accept the principle that we must snitch on our neighbour. If you see a murder occurring, there is no legal duty on you to report it. If you see a theft occurring, there is no legal duty on you to report it. You need not get involved. That is the law of the land.

The good honest citizens of the Yukon frequently report the crimes that they see. That is good. The police need that kind of community support and we should support those people for so doing by giving them legal protection for doing that as long as it is not malicious. That is the proper principle.

If the principle here is adopted, if the government policy continues to reflect the principle here, what can occur — and this has been demonstrated — is that it has exactly the opposite effect. That is, if a child is abused, and is in need of medical attention, there have been cases where the parents of the child or the guardians, or whatever, have been afraid of taking the child to the doctor because the doctor will report it as child abuse and consequently the child does not get needed medical attention. That is to be avoided.

The policy that we support is a policy that has been entrenched in our law for generations and generations and that is that there are moral duties outside of the legal duties, and that there should not be a duty on one citizen to snitch on the other citizen. That is not a part of our tradition or our concept of democratic justice and freedom and individual rights.

15 I said I would speak about the principle of the rights of the fetus; that is, the rights of an unborn child. There is clearly a principle here that allows an unborn child to sue, in a court of law, its parent for anything that occurs while it is *in utero*. There is a principle addressing the problem of fetal alcohol abuse requiring a parent to undergo involuntary alcohol treatment, if necessary, while pregnant. Those two examples are examples where the existing law is changed and is clarified, but this is a very, very difficult area. It involves much, much more than the abortion question and it is virtually ignored here. The rights of a fetus should be spelled out and a legislative decision made in a political context to define those rights.

Concerning adoption, there is a principle here that when an adopted child is adult and wishes to know the biological parentage, if the child makes application for that information, a professional social worker will research the question and will approach the parents, if they can be found, and ask if they consent to be made known to their biological child.

The decision that was reached on this issue is that if the parent and the child both consent, the introduction will be made or the information will be made available; however, if the parent does not

consent, the child will be denied that information.

My position is different. The English law is far better. I believe that the right of the child, in this case, to information, should be superior to the right of the parent's secrecy, or to deny the child information as to his or her own parentage.

16 I believe that the assistance and the counselling of social workers in this process is desirable and helpful; however, the right of the child to know the parentage after becoming adult should be recognized in the law.

I have previously made available to the media some criticisms of specific points on the child welfare issues that are unacceptable to members on this side. I would like to go through and explain, very briefly, some of the major points.

There is provision defining what a judge should look at, what tests that a judge should follow, what his considerations should be in coming to a decision concerning what kind of order the court should make after a finding is made that a child is in need of protection. Missing from that list is a direction that the court must consider the cultural background of the child. In most cases, in Yukon, that involves a consideration of an Indian or a non-Indian status or parentage and the cultural traditions of the child.

I know that could not have been inadvertently left out, because it was a submission made by the Council for Yukon Indians. However, it is left out and it is an interesting question as to what the courts should do about that consideration, or would do if this bill were passed in its present form. The list of considerations is not exhaustive, I suppose, although it is certainly a legislative direction to the courts as to what the legislature has determined are the primary interests or the primary tests that the court must follow.

17 It amazes me why a consideration of the culture of the child is not in that section. It simply amazes me. That, I say loud and clear, is unacceptable to members on this side. The provisions concerning warrants — that is, the principle that if a child is immediately in need of protection there are rights to apprehend and take the child into care — are generally a very substantial improvement over Bill 8, and they are also a very substantial improvement over the existing law, which does not provide for that. However, the provision concerning what happens if a warrant is improperly obtained is very deficient. The control over the process is so deficient that it is possible that the process could be virtually meaningless. I will address very, very strongly those concerns at a later stage.

What occurs when a child is taken into care? What provisions are made for the court determination of the justifiability of that decision as to the child being in need of protection is deficient. It is clearly not in the child's interest that the principle expressed in the bill — that there at least in a general sense, not be visits with the parent or that the court have no jurisdiction to consider that question — is clearly wrong. It is a principle that would work hardship or not be in the best interest of a child in some cases.

The cumulative affect of the sections under the child welfare section, practically speaking, addresses the general question of the supervision of individual workers in the child welfare area. The clear policy is that the director shall have supervision.

18 The courts shall not have supervision, except in order to make several decisions along the way. They are crucial decisions, that is true, but the supervision is clearly put in the hands of the director and the jurisdiction of the court, even superior courts, is curtailed under this legislation.

I have questioned the minister about his ability to justify expenses in the child welfare area, in the last week. It is quite clear, it is abundantly clear, that the director has virtual autonomy in individual decisions concerning cases of suspected child abuse.

I have practiced in the Yukon courts; I have been a territorial court judge in this process and have made the judicial decisions necessary; and I presently practice in the courts and am aware of individual cases that are extremely recent. It is very, very clear that the sections in the new bill, which the minister refers to, that describe the policy of the director are, in individual, specific, cases, being violated. That policy is obviously not the policy that has been applied in many individual cases, recently, and if the directors say it is, somewhere along the line it is getting misinterpreted, because

it is clear that the position the department frequently takes is that, where a problem exists, the procedure that it follows is to apprehend the children and then try and work with the parents; generally stating to the parents, or forcing the court to implicitly or directly state to the parents, "If you do this, you will get your children back".

<sup>39</sup> That, of course, is an extremely powerful motive. It gives extreme power to individuals, power that must be checked in a constitutional and judicial way.

The sections in the bill, which purport to state the policy of the director, are well and good, and we generally agree with those statements of policy. However, the specific powers given to the director work against those policy statements, are counterproductive to that policy and are inconsistent with that policy. Frequently, the practice in the courts is inconsistent with that policy.

The proper approach is to look at the record of the real objective results of taking children into care and to study what happens when children are taken into care. Those in the profession know very, very well that the treatment that children receive, after being brought into care — although it is very well-meaning, although we spend untold amounts of money on it, although we try our best — does not make for productive and contributing adults in society, in the vast majority of cases.

We seem to make an assumption that if there is a child in need of protection we should apprehend the child and place the child in some other situation and the child will be better off. That assumption should be looked at very, very closely because, frequently, the child is no better off. Frequently, the child is actually harmed because of the interference that has occurred. There is no objective, scientific study that can say that children who are brought into care are the better for it when they are adults. I challenge the minister to show us, in committee, any studies to that effect.

There is an assumption that private facilities should be supervised and licensed by the government, but that government facilities need not be. The director will run and supervise the government-run facilities and there is no need for any citizen involvement or any political supervision over those facilities.

<sup>40</sup> We all know that historically there has been a tremendous child abuse in government run facilities. The residential schools are a prime example of that. If you are ever talking with a group of Indian people who have gone through the residential school experience and talk about it, they will universally complain of abuse in those facilities.

I know of a case, and I will bring it up in Committee, where at the Wolf Creek Centre, which was only recently closed, very, very serious child abuse occurred to a government ward there. There are examples occasionally brought forward in the media in all the provinces. It is interesting that the Kavanaugh Report in Alberta makes recommendations about supervision of facilities, and the import of those recommendations is totally ignored here in this legislation. It is completely unjustified to make an assumption that a bureaucrat can run institutions for the welfare of children and all that occurs inside is for the benefit of children. Our experience has not been that way. Our experience has been that every now and again there is a shocking story. Indeed, there is substantial complaint about the receiving home in Watson Lake; that is an example. Child care facilities should be supervised by some form of a citizen board or citizen group. There is a very real and substantial danger in allowing a bureaucrat, however competent and well-meaning the individual concerned is, to supervise government run facilities of these kinds.

<sup>41</sup> Our experience has, or should have, taught us that there needs to be citizen control, the layperson's perspective from time to time, and a control that recognizes the cultural diversity of the children who actually reside in any centre. The assumption that is made here, that the government can do no wrong, is just simply unjustified.

Another principle is the principle that lawyers call "child advocates". The courts has established, through decisions in Yukon, that in cases where the director is asking for a permanent wardship order, there should be a child advocate; that is, lawyers

speaking for the child alone. It implies that the lawyer for the parents cannot be relied on, always, to speak in the best interests of the child because that lawyer has a duty to the interests of the parents. More importantly, and more controversially, it implies that the lawyer for the director of child welfare has different interests than the lawyer representing only the child, or may very well have different interests.

That direction or development in the process of family law has been progressive and has been incremental in the various provinces in Canada in the last, and in excess of, 10 years. This bill takes the jurisdiction or the power that is now enforced in Yukon by the courts away from the courts and gives to the bureaucrat, the official guardian. There appears to be a principle recognized that there needs to be another person involved aside from the director. The power to decide if there should, or should not be, a child advocate is taken from the courts and is given to a bureaucrat.

<sup>42</sup> The reason why it is given to the official guardian and not the director or other bureaucrats has been explained to me, but is the result of very fuzzy thinking. There is only one proper place for that decision and that is with the judge. It has long been accepted that it is only appropriate and it is necessary that the courts have control over their own process, in these kinds of questions: that is, questions as to the representation that the child deserves or should have. This bill is extremely regressive in that area.

The provision about hearsay evidence and opinion evidence is simply appalling. I have listened to explanations as to why this principle is in the bill and I understand what was said. What I do not understand is how it is possible for this government to allow itself to be persuaded by those kinds of arguments, by arguments coming from people with no real practical experience in the courts on this kind of question. I seriously challenge the minister and his colleagues to defend the hearsay and opinion rule principles in the bill, because they simply will not wash.

It opens to the door to an abuse that is tremendously important and tremendously risky. What could very well happen is that somebody observes what they feel is child abuse — for example, they observe a mother spanking her young child — and they phone the director or his representative and report that. That message is conveyed to a social worker, who investigates the case; the case comes to court and the social worker gives evidence and says, "Well, I was told that the mother beat the child on that occasion. Now, I am not going to tell you who told me that" — as a matter of fact, the social worker may not, and probably will not, know — "I do not know the exact words, but I know it was abuse because it was reported as abuse, and in my opinion it was abuse."

<sup>43</sup> What is the court faced with? You have hearsay evidence and opinion evidence. According to this act, it would be relevant, therefore, it must be accepted by the court; not, it could be, but it must be, accepted by the court. The court has no way to question the person who actually saw it. That situation can and will exist if this is passed, though everybody knows that eyewitnesses to something give unreliable accounts about what actually occurred. What I mean by that is if four people see an event, especially an event which arouses emotion or generally arouses emotion, like an accident, a fight or a beating, and if you ask those four people individually what happened, alone, they will give you four different accounts about what occurred. They will know generally what occurred and that it was an accident or that there was a fight — they are reliable about that — but you will get different accounts. We also know, and it is very well documented, that if a person tells somebody else something and the receiver of the information tells a third person the same information, it is almost always not exactly the same information. It is slightly different. That is the reason against hearsay. In this case, the courts are directed to accept hearsay evidence.

The law currently in force today is that if evidence is hearsay, and if it is relevant in a child welfare court a judge can hear it and the judge determines if receiving the evidence is in the best interest of the child, ultimately, and in the best interest of a fair hearing. If there is better evidence easily available or if it would be prejudicial to one of the parties to receive it, such that the prejudice outweighs the possible benefit, then the judge would rule it inadmissible.

44 It is a judicial decision. That rule has evolved over a very long time, and it is working very well. It is not a problem that hearsay evidence that should be accepted in the courts, is kept out of child welfare courts. That is simply not a problem. Under this legislation, that rule of law, that very important control over its own process that a court has, is simply denied it, and they are forced to adhere to a rigid rule like a clerk does, and the interest of justice will be clearly reduced, or it will suffer.

There is another principle and that is as to the test or the burden of proof that the courts must apply. The burden of proof that is outlined here is not the burden of proof test that the courts now use. That burden of proof has been established through many cases. It has gone to the Supreme Court of Canada. The Supreme Court of Canada has weighed the various interests, the various principles involved, and has laid down workable and practical guidelines. What is proposed here is that the legislature, acting on some legal advice — and obviously the government members accept it — is going to change that in one fell swoop and make the burden very very much less; that is, the burden of proof generally used in a civil case or a property law suit, although even then, the burden is misstated in this act from the way judges, over the centuries, have stated it, and stated exceptions and necessary explanations to it.

45 In this case, if we pass this, we are substantially changing the law and are saying that we can sever the legal relationship and sever the bond between a mother and a child, practically: we can take a child away from a mother or a father on a very, very easy test. That is, on the basis of what evidence is available to the court — which is opinion and hearsay, at least, in part — they can sever the bond, if it is more likely the case than not that one of the tests of the need of protection is met.

That is a very, very alarming principle, indeed, and that is not the case now. In order to sever the bond between a parent and a child, to take a child away, one should establish a case on a reasonable preponderance of evidence. One should be able to say that it is substantially more probable that the best interests of the child will be served this way.

In addition, the test should clearly reflect a duty on the deciding judge to look at not only the past, not only the situation as it had existed, but the deciding judge should assess the plan of the director and the plan of the parent and the plan of any other party and should make a decision, based on all the knowledge that is available, as to which plan is most probably in the best interest of the child. That test should only be applied if it is established, beyond a reasonable preponderance, that a minimum standard of care is not afforded to the child.

46 It is not the case at all. If you can establish some child abuse, even if it is established that there is abuse, or that one of the criteria as laid out in the bill is met, it is always best to remove the child. The bill seems to accept that principle reluctantly, but it should clearly establish that the test is a test beyond a mere likelihood on the basis of some evidence, but is a test on the probability on the basis of all available evidence, and that the future plan is clearly in the best interests of the child.

This is a very long bill, and there are many more principles. I have not mentioned some of them, and I want to make it abundantly clear that because I have not mentioned some of the principles contained in the bill it does not mean that I support them. As we go through it in later stages, if we do, I will raise other concerns. I have only raised the very, very important ones or, I should say, the most important ones here at this stage.

It is our position that Bill No. 19 is an improvement over Bill No. 8, that the very, very objectionable language was removed and some improvements were made, but it is our position then that the bill is not solvable by minor amendments in Committee. It is not solvable; the underlying principles in the bill are wrong.

In conclusion, I wish to precisely state that the real issue here is not who is in favour of protecting children and avoiding child abuse. You will find nobody who disagrees with that principle. We are all in favour of protecting children and preventing abuse. The real issue is: how do we best achieve it? When we interfere with the bonds between parents and children, we should only interfere, in our judgment, when minimal standards, defined with attention to

cultural diversity, are not met.

We do not support the principle that a bureaucrat has general superintendence over our children.

47 We will not allow that principle to go through this legislature without doing whatever we can inside the legislature, and outside, to stop it with everything we can do within the law.

I presented a petition this afternoon with almost 1,000 signatures on it: I believe there are more than 1,000 signatures on that petition, but the other pages are still being circulated; they will become available later. This government should accept that it is the overwhelming opinion of Yukoners that this is a bad bill. This government must accept that Yukoners are against this bill. We will fight this bill tooth and nail. In my life in this legislature as an individual, I have never seen such a bad piece of legislation and I will do whatever I can to stop it and if I am forced to, to try to improve it; although it is our position it is not salvable. The principle is wrong and it must be defeated. We will be calling for division at the conclusion of debate.

**Mr. Penikett:** I wish to say a few words about this bill. Unfortunately, I will not be as long as my colleague because my knowledge of the matters that he had discussed in this second reading debate is much greater than mine and I admit that frankly.

I will be speaking in this debate simply as a constituency MLA. I do not enjoy my colleague's experience as a lawyer in these matters or as a judge. I am, to say the least, a parent. I may or may not be able to represent the views of other parents. I have no certainty on that score. As I listened to my colleague, the member for Whitehorse-South Centre, and as I listen to the minister earlier speaking, I was reminded again, and reinforced in my original view, that the process we went through in developing this legislation was flawed.

48 I believe it to be true that the consequent legislation will, as a result, be flawed. I think the structural problems in this bill, the problems in the principle of this bill, are embodied as a result of a bad process.

I want to say something here about this, very briefly, to my opposite number in the House — and I say this not in a partisan way, but with great sincerity — there are great issues that we face, which we will be divided about along philosophical lines. There are other areas that we will be divided about on simply party lines, on the basis of party policy, upon the particulars of party policies. But there are other issues where the divisions in this House will not be so easy.

Because of the nature of the electorate in this territory — even though the majority of citizens live in Whitehorse — the majority in this House are rural members. On both sides of the House there is a majority of rural members. There may be, for example, legitimate debates, legitimate differences in points of view between rural and urban members, and it would do, I suspect, a great disservice to both the parties — the party in government and the party in opposition — if we were forced, in a situation where such an issue was before us, to take either the side of the city or the side of the country. It would be silly. The intelligent way to resolve a dispute, in such a case, would be to use instruments such as the committees that are available to us.

I think there is a somewhat similar problem here. Many legislatures that have discussed measures like this in the last few years, have been forced — or the individual members in those legislatures have been forced — to take sides between parents and children. There have, as my colleague said, been debates in which there have been the advocates of children's rights and the advocates of parents' rights or parents' responsibilities.

I suspect that whatever quick and easy ideological conclusions can draw about that situation, that there has been no party, in any legislature in this country, that has been prepared to make a quick and easy decision that they wanted to represent children's interests, as opposed to parents' interests, or the parents' interests, as opposed to the children's. I think, for that reason, again because of the complex nature of the issue before us, a committee process very early in the development of this legislation would have been a wise route.

I do not want to go on *ad nauseum* about the process, because I have spoken about it before and I did begin by saying that I wanted to speak today as a constituency MLA. I want to tell you that my experience as a constituency MLA on this bill has, I think, been a little different from some of my colleagues'. I have discussed this with them and some of them have had an awful lot of input from their constituents; some of them have had a great many representations from their constituents; and some have heard from organized groups in the communities about it. I have not.

<sup>30</sup> I made an effort, when this bill was first tabled, to solicit some opinion from my constituency. I can say that I had very little. Not surprisingly, I did not hear from the children. It would have been a miracle had I. I did hear from a few parents, but most of those parents' views were, I think, distilled from what they had heard through the news media. To speak honestly, I think if those people who expressed opinions to me about the bill were pushed, few of them had read it.

Nonetheless, I have heard from one group of people in my constituency who I am inclined to listen to very carefully on these matters. I want to tell you, I have heard from more than one lawyer on this question. These lawyers happen to be parents. That does not equip them in any special way to discuss this measure, but these are people who have some experience in dealing with these problems: the problems of child abuse, custody and adoption as they come before the courts.

I want to tell you, among these professionals there is some considerable alarm about this measure. This is not, I think, a matter about which they are going to join a political party; it is not something that is going to cause them to stand for public office. This is perhaps not something that is going to cause them to join demonstrations in the streets, but it is an issue, as professionals and as persons knowledgeable about our legal traditions and our judicial institutions, that has caused them considerable worry.

Let me explain. Throughout this bill, there is an effort by the drafters — and I assume the two principal drafters were both lawyers, but neither of them, I submit, were barristers or people experienced in the courts, and I know that from friends at Dalhousie to be the case — to take away powers from the courts and from parents and put it in the hands of officials of the Department of Health and Human Resources.

If you accept the main principle of this bill, the unifying idea that the director has general responsibility, a residual power, a residual authority over the welfare of children in the territory, and if you think that is a good idea, that will not trouble you. But if you are a person such as I, who thinks that the problem is not that simple, nor the solution, I believe you will be troubled by this principle.

I believe that even in families of great difficulty, even in families where the children are abused, that the solution is not so simple as to take those children out of that home and put them in the care of the government. I do not believe that a child is necessarily better off in a foster home or a group home or a reform school or any other institution of that kind, than they are with their own family.

<sup>31</sup> I also believe that a family in trouble — and a family may be in trouble for economic reasons as much as anything else — will not have those problems solved by the removal of one of the members of the family. There is nothing about the logic of that step that recommends itself immediately to me. Because these issues are complicated, and because we are dealing with a profoundly human question — a question in which the interests of parents, and the interests of children, and the interests of society may be in conflict — it is important, I think, that the institutions that our society and civilization has developed to deal with these conflicts, namely the courts, should be held in proper regard. That is not the case with this bill.

Throughout this bill — and the government leader challenges me to read it, and I have read it — there is a conscious, explicit, and direct effort to take away powers from the courts and turn them over to the bureaucrats. It is quite clear in the bill that officials of the Department of Health and Human Resources believe themselves more competent to resolve issues where the child's interests, and the parents' interests and society's interests may be in conflict, rather than the courts.

Right at the outset of the bill it talks about dispensing with the rules of equity. To the extent to which I understand the rules of equity, these were some principles and some ideas that were developed in the courts many, many years ago when the common law was found to be wanting. As I understand it now, the rules of equity and common law have become so entwined that they represent a kind of foundation of legal processes in our society that has become very important.

There are in this act sections that quite clearly invade the jurisdiction of the courts. There are sections in this act that are clearly redundant. There are sections in this act that may be *ultra vires* and there are sections in this act that may even be unconstitutional. Throughout this act, you will read sections that talk about various people "shall do this, the courts shall do this, parents shall do this, other people shall do this", but everywhere you read the language that the director "may". The director may, other people shall. I found some parts where people are required to do things immediately or forthwith, I think the legal word is, and the director is given 48 hours. In other cases the director is left to decide whether or not he wants to do what he has been ordered to do.

<sup>32</sup> There are very peculiar concepts in this bill that the courts, who have many, many years of experience dealing with these questions, would have trouble dealing with. There is discussion in this bill about obtaining the views of the child, where the abuse of the child can be reasonably ascertained: a layman might find that language peculiar.

I would guess — and it does not surprise me since I have heard this from lawyers — that is very peculiar in its meaning; that if you are dealing with a custody battle, for example, the best way to represent the interests of a child would be if the child has an advocate. Not if the child has an advocate if the director of someone else permits, but if the child has an advocate. I suspect that it is extremely difficult for the courts, when you put a young child in a court with all that goes on there, to ascertain the views of the child: that even if you did ascertain the views of the child, to know, in any particular case, whether they were relevant.

There is other language here talking about having regard for the child's sense of time. Well, this is a peculiar idea and I understand what it would mean anthropologically, I understand what it means culturally, but, I understand from talking to lawyers, that it has no meaning whatsoever. There is no case law, there is no precedent you can refer to. There is also language in this bill that talks of the past conduct of persons being not relevant. Well, I understand that that may be redundant because this is already the law. I think we should, as reasonable people, as democrats, have real concerns about the powers that are to be given to the director under this bill.

It is incredible to me that you have sections in here that talk about the courts — the courts that have traditionally resolved family disputes; disputes to which the director may be a party; courts having to request, to use the language of the bill in some sections, the director to do something. Then, you have another section's language, following on that, which says the director shall have no obligation to do something that the court may request them to do.

It is quite an incredible situation where you have now a hierarchy of authority, with respect to dealing with these matters, where, for the first time, perhaps, anywhere — certainly, probably anywhere in the English speaking world — the director has greater authority than the Supreme Court.

The government leader shakes his head, but I have consulted with people on this particular point and I am advised by people considerably more learned in the law than the government leader opposite or, dare I even to say, my colleague here, that nowhere else in the British Commonwealth is there any law, in this field, which encroaches so expressly on the sovereignty of the Supreme courts.

<sup>33</sup> I think it is very important, when we are talking about the interests of children and the interests of their parents — in other words, the interests of the family — to understand that the interests of all of those parties, or any one of those parties, can conceivably conflict with the interests of a government department or official.

I mentioned that there may be some parts of this bill that are *ultra*



veres or in violation of the *Charter of Rights* and I believe that to be the case, when you are talking about taking people into custody. This one section of this bill is a great problem here because I think it violates the principle of *habeas corpus*. There is another section that is positively, in my view, Kafkaesque. It talks about an official of this government, essentially, having the right to decide whether a child requires, or does not require, the services of a legal aid lawyer.

This is quite horrifying to me, because even though the Crown should have a proper regard for the expenditure of public funds — and I would hope in our governments that public servants would be rewarded for saving public money and for avoiding public expenditures — it seems to me that a public servant in that position is in a very difficult conflict of interest between his duties to the Crown with respect to saving public money, and his responsibility for the child who may be involved in a court case. It seems to me that it is a very very tricky question to put such a provision in the bill.

My colleague has talked about hearsay evidence. I believe he used the word "appalling". Stronger language has been used by people who have spoken to me about this. It is interesting, in this part of the bill, that there is a clause that talks about the power of the judge to decide what weight to give to different kinds of evidence; however, that power of the judge does not apply to the section concerning hearsay evidence, but I am advised that any self-respecting judge will give proper regard to hearsay evidence. So, too, will the lawyers before the courts. It is nonsense to have this provision in here, because what is likely to happen — and I understand this happens right now in courts in Ontario, or other more mature jurisdictions — is if someone tried to introduce hearsay evidence, the judge is quite likely to say, "Well, I am not inclined to take any account of it whatsoever". So what is the point of introducing it?

<sup>53</sup> It talks in this act about evidence that is not admissible, is only admissible if it is relevant. I understand that it is a well-founded legal principle that no evidence is admissible unless it is relevant.

We can say one more thing about hearsay evidence. Let us ask ourselves: in our lives, should we ever be so unfortunate just to be involved, entangled in the net the web this bill produces? Is there in our lives ever likely to be any more important an issue than whether we would be able to keep custody of our children? Yet, in the deliberations and the processes to decide that issue, this government proposes to admit hearsay evidence, evidence that would not be admissible in even the most trivial of issues before the courts.

As I understand constitutional history, even during times of tyranny in the English speaking world, the courts were beginning to develop what they call their inherent jurisdiction to protect certain liberties and what they believed were the individual rights of the citizens. That, in addition to the inherent jurisdiction of the courts, is a very long one, much older than this government, much older than Yukon society is, as we know it. It is really quite incredible, quite unwarranted and quite amazing that officials in the Department of Human Resources, officials of this government, would want to tamper with that tradition without any idea of what they are doing.

There is no lawyer in this government's ranks. The Minister of Justice is not a lawyer. I have talked to colleagues about this principle in other jurisdictions and they have told me in clear terms — and I harp back to the point I made at the beginning — that in no legislature where there is a significant number of lawyers would this bill have got past first reading, because the lawyers, who understand the importance of the inherent jurisdiction of the courts, would not have permitted it. Lawyers from all parties in the House would have banded together in another party for the purpose of trying to explain to their lay colleagues, as obviously has not been done here, the importance of these principles and the sanctity of certain traditions in our judicial processes that should not be surrendered to the convenience of senior bureaucrats simply because they do not understand the values and the importance of those traditions.

<sup>54</sup> The only thing from which I receive any kind of satisfaction on this point, or reassurance, is that, I am told by political friends —

not political friends in this territory, but I am told by political friends — that it is quite likely that, should any case where this became an issue go to a court of appeal or go to superior courts, those superior courts would uphold the decision of a court, not this legislation.

I think it is probably awful enough, for families involved in this kind of action, to have to go to the courts even once. I would not want to see such a family embarrassed, or even this territory, embarrassed by having to see a matter go to the Supreme Court, to be heard by the highest judges in this land and represented at that court, at great expense, by learned legal counsel, because well-meaning, but essentially ignorant, officials of this government were wanting to tamper with institutions that they did not understand.

I cannot speak as eloquently, or as well, as my colleague from Whitehorse South Centre about the principles of this bill as it affects children but, even though I am not a lawyer, I have tried to represent the views of some earnest, non-partisan, concerned citizens in my constituency about this particular measure. I hope and pray that the government will respond thoughtfully and consider my remarks in the spirit that they were intended and respond in a non-partisan, constructive way to the problems that I have identified.

**Mrs. Joe:** I am going to be very brief in my comments to this bill, but I wanted to get something on record: it was something that was stated at a meeting of the Kwanlin Dun Band with the minister.

I was at that meeting and there were some concerns brought up, at that time, by some members of the band, some very good, valid concerns that were brought up at that time, and I am sorry that the minister is not here to hear these. What happened, while I was there, is that, during one dialogue between the minister and a member of the band, the person voiced some concerns. I suppose the minister, at that time, had just finished a round of meetings with communities and, possibly, could have been very tired but he said, in some very strong words to the member, that he should have known exactly what was in the bill because it had been circulated for months, that there had been many meetings.

However, the member did not understand everything that was in it and I felt very, very frustrated because I knew that the member did not understand. Not only did I feel frustrated because of that, but other members came up to me after that and said, "Is he allowed to do that? Can he do that? Can he yell and scream and holler at us like that?" I said, "Well, I guess he can, if he feels that is his way of getting things across."

<sup>55</sup> It was in relation to this bill before it was amended, but one of the very serious things that the Council for Yukon Indians was concerned about in the last bill was the fact that custom adoptions have been allowed as part of their culture forever. They had voiced very strongly that they wanted this to be included in this bill.

The minister has said over, and over, and over again that this was included in this bill, but I have looked through it and I do not understand the bill entirely. I do not understand a lot of things in there, but one of the things I do not see in here is anything on Indian custom adoption. The minister has said that it is in there and he would abide by the CYI's concerns of Indian custom adoption. I do not know what he told the Council for Yukon Indians. It has indicated through the newspaper that they are pleased with the changes that were made.

I can look at this forever. Apparently it is supposed to be in section 33, and there is nothing in that section that says that. I want to go on record as saying that this bill does not meet the needs and concerns of the Indian people with regard to custom adoption. Not only that, but section 120, in regard to notifying the bands regarding the apprehension of a child from that band, was stressed very strongly in some of the concerns of the Council for Yukon Indians.

It says in here that they will notify schools and that they will notify community groups. I do not see anything there that says they are going to notify the Indian bands. For some reason or other, the minister feels that he has met the concerns of those people by putting "community groups" in there. A community group could be anybody. I would like to know how those community groups are

established. I do not think, in regard to those two areas, that this bill meets those concerns. I do not think the Council for Yukon Indians should be assured, at this point in time, that those things are in this bill. The minister has not convinced me, and I know that he has not convinced other people from the Council for Yukon Indians, that those concerns are met in here, because they are not.

I have spoken to a large number of people from the Council for Yukon Indians who are not pleased with this bill and they will not be pleased until it is included in here.

I notice in the bill that the diversion council and the diversion committee to deal with problems with these children is included in this bill. I am a member of the juvenile diversion committee at present and I have been for a number of years, since its inception. I could only hope that when this bill is passed in the House — if it is — that the diversion council and diversion committee will take a lot of things into consideration when they are trying to establish that council and, through the council, establish the committees in the communities, because I think they are a very important part of the justice system with regard to dealing with juveniles.

I think we have a very concerned group of people right now who are on the existing committee in Whitehorse and I am glad that they will be going into the communities, but there appears to be a bureaucratic clause in here stating that this council will decide who can be a part of the diversion committee and I would like to give the minister notice that I will be looking further into this area of the bill as we go through it in committee.

<sup>56</sup> I would like to mention at this time that this bill needs a lot of changes, but most of all I would like the minister and other members from the other side of the House to know that those two concerns regarding the Indian people, very big concerns, are not in this bill and they have convinced a lot of people that they are.

**Mr. Speaker:** Question has been called. Are you agreed?

**Some Hon. Members:** Division.

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

**Hon. Mr. Pearson:** Agree

**Hon. Mr. Lang:** Agree

**Hon. Mrs. Firth:** Agree

**Hon. Mr. Ashley:** Agree

**Hon. Mr. Tracey:** Agree

**Mr. Falle:** Agree

**Mrs. Nukon:** Agree

**Mr. Brewster:** Agree

**Mr. Penikett:** Disagree

**Mr. Byblow:** Disagree

**Mr. Kimmerly:** Disagree

**Mrs. Joe:** Disagree

**Mr. McDonald:** Disagree

**Mr. Clerk:** The results are: 8 yea; 5 nay.

**Mr. Speaker:** I declare that the motion has carried.

*Motion agreed to*

#### **Bill No 4: Second reading**

**Mr. Clerk:** Second reading, Bill No. 4, stading in the name of the hon. Mr. Tracey.

**Hon. Mr. Tracey:** I move that Bill No. 4, *Legal Profession Act*, be now read a second time.

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 4 be now read a second time.

**Hon. Mr. Tracey:** The legal profession in Canada is largely self-regulating and this act will establish the Yukon legal profession as a self-regulating professional body. Through this act the government confirms the exclusive right of lawyers to carry on the practice and profession of a barrister and solicitor within Yukon. The act consists of seven parts. Part 1 recognizes and establishes the law society of Yukon, whose executive shall have the power to make regulations governing both policy matters and the administrative affairs of the society.

The two fundamental powers of the society will be: the power to control admission to the bar; and the power to regulate the conduct or discipline of its members, including the power to disbar or

suspend. Through its rules, the society will be able to set and enforce admission standards and procedures. It would also be responsible for understanding the considerable task of setting and maintaining standards of conduct and competence for its members.

The executive of this society shall be composed of not less than six persons, four elected from the active members of the society and two laypersons appointed by the government.

The appointment of laypersons to self-regulating professional bodies is not a new concept. Several provincial jurisdictions have adopted this practice in relation to the legal profession. For example, Ontario, Manitoba, and Nova Scotia. The draft act prepared by the law society of British Columbia also proposes that laypersons be appointed to their society. In British Columbia, lay representatives have been appointed to the complaint committees of both the College of Physicians and Surgeons and the College of Pharmacists. In Yukon, we have appointed lay members to the medical council. Lay members have the same executive rights and privileges as the elected members from the society, except that the chairman of the executive must be a lawyer.

<sup>57</sup> Part Two defines membership and enrolment requirements and procedures that must be satisfied in order to become a member of this society. Part three, discipline of members, provides for the appointment of a discipline committee and a committee of inquiry and establishes the procedure for receiving and handling complaints and ensures that disciplinary proceedings observe the laws of natural justice.

Due to the limited number of resident Yukon lawyers, concern has been expressed regarding the area of self-regulating authority. This legislation addresses this concern, ensuring that the discipline committee will be a panel consisting of at least nine persons, appointed from the members of the society, of whom no less than three must be active members resident in Yukon and no less than three shall be members of the profession residing outside of Yukon. The government will appoint three lay people to this panel and, from amongst the members of the discipline committee, committees of inquiry will be appointed as the need arises.

I should also inform the members of the House that I have sent a letter to the Law Society regarding the concern of some of the lawyers, who I have talked to, who think outside members should always be on the discipline committee and they should not use local members. I have put the position to the Law Society that the proclamation of this act will depend on the membership that their bylaws say will sit on the committee of inquiry. These committees are empowered to convene hearings, compel the attendance of witnesses, the production of evidence and, at the conclusion of the hearings, issue the necessary orders.

Part Four, Protection of Clients, consists of five divisions. Divisions one and two relate to the establishment of an assurance fund and a professional liability claims fund. The purpose of the assurance fund is to reimburse persons who may sustain pecuniary losses by reasons of misappropriation or conversion of money or property entrusted to or received by a member of the legal profession. An example of when a person would have a claim against the assurance fund is where a lawyer absconds with the fund from his trust account.

The professional liability claim fund relates to the amount of compensation a lawyer is legally obligated to pay his client for damages arising out of negligence or error in the performance of professional services. For example, a lawyer fails to register a land transaction in the required timeframe. The establishment of this fund is at the discretion of the society. In the absence of a fund, every member will be required to maintain a liability insurance policy to cover professional liability claims. This class of insurance is often referred to as errors and omissions insurance.

Divisions three, four and five relate to the seizure and custody of property, books, records and accounts and fees and reviews of fees, respectively. The seizure and custody of property sets out the procedure whereby the court can make sure that the law practice of a deceased member or a lawyer who has left his practice can be wound up in an orderly manner. The sections dealing with books, records and accounts outline the procedures a lawyer must follow with respect to receiving, maintaining, distributing and accounting



for funds held in trust.

The final division in this part, Fees and Reviews of Fees, sets out the mechanism whereby a lawyer may bail his client, outlines the information that must be contained in the bill and establishes the procedure for a review of the bill by a reviewing officer of the court.

Part 5 of the act establishes the Yukon Law Foundation for the purposes of maintaining and managing a fund which shall be used for a variety of projects relating to the legal profession. The foundation's fund consists mainly of monies derived from interest earned on lawyer's trust accounts. The board of directors, consisting of six persons, three appointed by the executive of the society, and three persons appointed by the government shall be responsible for managing the affairs of the foundation.

There is provision in the act authorizing the directors of the foundation to transfer up to \$50,000 annually to the society's assurance fund. We consider this provision to be in the public interest, as the fund has been established to cover pecuniary losses that clients may suffer by reason of wrongful misappropriations of money or property by a lawyer.

Part 6 of the act relates to professional corporations. The practice of law may be carried on through professional corporations. Corporate status does not provide an escape from personal liability for professional negligence. The provisions are similar to those contained in the *Medical Profession Act*.

The last part of the act, Miscellaneous Offences and Appeals, deals mainly with the administration and enforcement provisions. A section has been included in this part that guarantees any person the right of audience before the courts. This means that a company, if it so wishes, may be represented in court by an employee who is not a lawyer.

The request for a new *Legal Profession Act* came from the Yukon Law Society who desired that its profession be established as a self-regulating body. To ensure that the consumers' interests would be represented, we requested and received a submission from the Consumers Association of Canada, Whitehorse Branch.

In summary, this act establishes the Law Society of Yukon as a self-regulating body responsible for its policy in administrative affairs, to set and enforce admission standards and procedures and to discipline those who fail to meet the standards of the profession.

To ensure that the public interest is represented, lay members shall sit with the executive of the Law Society and will be appointed to its committees and boards.

This legislation not only meets the Law Society's requests, but the interests of the public are better represented in this act than in the existing legislation.

Thank you.

**Mr. McDonald:** I intend to speak only briefly to this bill, and speak first only to give my colleague from Whitehorse South Centre a much-deserved break.

We have before us an act that permits a group of professional people to regulate its own conduct, admission to its own society and, to a certain extent, determine the economic livelihoods of its members through control of such things as the ability to advertise services.

We have an act that establishes a society for some well-heeled professionals, for relatively affluent citizens who are engaged in work that is of critical importance to our society. It makes profession or trade a self-regulating profession where there is a possibility for training, admission and discipline, among other things.

The society, with its ability to self-regulate, sounds as though it will undoubtedly be a very distinguished organization with respected and well-educated members. Its executive will be expected to act prudently and judiciously when it deals with such weighty matters as determining who will be permitted to practice law in Yukon.

The society and their duties bring to mind the vision of stolid deliberations conducted in stuffy chambers, where nothing is said that is not an expression of selfless devotion to the impartial judiciary or a selfish protection for the laws of the land.

Let us not be fooled by the terminology wrapped around what is essentially and ultimately a very effective union. The trade is law and the society is a union shop. It makes no difference that these people work the courts, that they have attended respected post-secondary educational institutions, that they espouse, generally speaking, upper middle class values or even that they are among the few who have healthy plants in their offices. These people are about to be members of their own trade union with a union executive, which has considerable authority to do many things. Because they are the judiciary it is of such importance to our society, and because legal activity increasingly permeates every aspect of life in our society, this proposed union is of great importance to the whole society.

The fact that this society will be a union shop, is not a fact that will be missed by the striking employees of a certain business in this very city. This massive support for affirmation of the principle of the union shop will be much appreciated by those picketers, and all union members alike in the whole territory. Having said that, I must express some negative doubts about this initiative, which are really two-fold.

The first is the nature and extent to which this union will have a measure of leverage in our society. It is unparalleled by any other working man's union in existence. And the second doubt involves allowing one trade union such extensive powers to self-regulate, without allowing other working professions or trades an equal allowance to self-regulate.

Let me illustrate my second concern only very briefly. Now that we permit and encourage this level of self-regulation in the lawyering trade, can we fail to allow or encourage other trades to become self-regulating as well. For example, will we permit all electricians in the territory to make rules affecting the terms and conditions by which a person may practice electrical work in Yukon? Will we allow the electricians' society to determine who has the right to be a student electrician, the electricians equivalent to the lawyer's apprentice. Will we allow them to determine their own code of discipline, their own code of professional ethics and conduct? I think this is an interesting concept and we should certainly investigate it further.

I only intended to speak to this one aspect of the bill for second reading. We cannot pretend we are not dealing with anything other than a significant trade union with a very influential position in society; the breeding of individual members, the affluence of members, the work activity of members will not change that fact. If we permit a union for lawyers, we must permit a self-regulating union for other, no less worthy, workers in our society.

The minister who introduced this bill is minister of labour services, and this is a good first administrative step in the process. It certainly does deserve further investigation.

**Mr. Kimmerly:** The first thing I will do is declare an interest. I am a lawyer and I, therefore, have an interest in this legislation as an individual. More importantly, I feel it is appropriate and, in fact, as a member of a self-governing profession — or, which will soon be truly or almost truly a self-governing profession — I will define my own duty, as lawyer's do. As I define my duty as the only lawyer who sits in this House, I deem that it is necessary — to use good lawyer language — to make a statement or two of explanation as to why the lawyer's union is self-governing, for the edification of the member for Mayo and, perhaps, other members.

It is appropriate, at this time and as this legislation goes through the legislature, that these principles are identified. In the previous debate, we talked about legal principles and legal expertise on many issues and it is especially appropriate that, on this bill, some explanation be given to all members and the public, and reaffirmed as to why it is that the legal profession, whether it is a union or not — and, in large measure, it is my belief it is — demands the right to be self-governing, and why the government or the legislature, as is about to be the case, allows that to occur.

I wish to explain a very important principle of the profession of law and the practice of law. It is presently the case that I, as a lawyer, practise by virtue of a license. I have a license from this

government, in order to call myself a barrister and solicitor and to accept that work and to represent people for a fee before the courts, which other members of the society do not — although, incidentally, all members of the Legislative Assembly do have, by virtue of their membership here.

That system of government licencing is unacceptable to lawyers because, frequently, lawyers must advocate cases for their clients, which is a representation of an argument or a dispute with the government itself.

<sup>61</sup> That is, sometimes people take on the government, and it is a very important tradition in our democratic life that we know, as individuals, we can take the government to court, or go to court even if the government clearly states that they believe that it is against the public's interest or the government's interest.

When lawyers do that, they are subject to substantial pressure. They must be independent so that they can, without fear and without fear of influence, represent clients against the government's interests. It is fairly easy to explain in general terms, but in specific terms where the fine lines are drawn — not between black and white, but the various shades of gray — it becomes extremely difficult.

For example, tabled in this House last week by a minister of the Crown, albeit at my request, there was a letter from a representative of the Medical Council criticizing me when I was acting as a lawyer. That is a clear example that when lawyers represent their client's interest, they must be able to act without fear because there clearly are instances of pressure of various kinds.

**Mr. Speaker:** I am afraid I am going to have to interrupt the hon. member to recess until 7:30 p.m., at which time the hon. member for Whitehorse South Centre will resume the floor.

*Recess*

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

**Mr. Kimmerly:** I was explaining, before the dinner break, the reason why the lawyers' union has a particular privilege and that is the privilege of being self-governing.

What goes with that privilege are very important duties. I would like to explain another principle that comes out of the criminal law, and that is that if a lawyer does do criminal law and if a client comes to him or her and asks that lawyer to represent the client, there is a duty for the lawyer to do so. That is, he or she does not choose his clients in the criminal area; the clients choose him or her.

In the labour analogy or the union analogy, it may be said that, in some areas, lawyers can go on strike whenever they want to; they can refuse to take particular work or a particular client.

<sup>62</sup> In the criminal area there is a strong tradition of legal ethic, as it would be described by some, that there is no right to strike, in labour union language.

The duty that a lawyer has, which goes along with the privilege of the profession being self-governing, that the lawyer's duty is to the client. The right or the privilege really belongs to the client, not to the lawyer, and that is a very important principle that all members should understand. That is, we fully recognize, in our society, that going through the courts and in dealings with government, there is a technical knowledge necessary in terms of knowledge of the law and where to find the law and the experience necessary in terms of the ability to know how to deal with the courts and government officials, both elected and non-elected.

<sup>63</sup> It is impossible for an ordinary citizen to be able to effectively deal with those very technical and complicated laws and institutions in our society. It is a privilege of the client, or it is a constitutional principle of individual freedom, that a citizen has a right to be represented by a professional in the area; a person who understands the courts and governments. That person represent the client's interests and not his own interest.

Frequently, the public perceives what a lawyer is advocating in his professional capacity as the arguments of the lawyer; it is not so. It is the statements of the client, and the client in a free and democratic society has a right to an independent lawyer who will

act for him without fear of influence.

<sup>64</sup> A good example in the criminal area is where a sensational crime is committed and the person is accused of the crime — for example, a serious child molestation, or something of that nature — and there is a public outcry against the person accused. The lawyer who represents that person frequently gets the brunt of that public outcry himself, and the lawyer must be in a position of independence and professional freedom to exercise his duty without fear of influence or harm from other bodies. It is the duty of the lawyer; it is the privilege of the client.

Another concept or principle that should be explained is the solicitor-client privilege and I feel it my duty to explain that here and now because it is misunderstood by this government in other legislation.

<sup>65</sup> That is the privilege of the client, not the privilege of the lawyer, and it is the duty of the lawyer to protect the privilege of the client, so that the client may feel free to freely discuss his affairs with his legal representative so they can be properly represented in a court or before the government or some other forum. It is because those duties are borne by lawyers, or members of the legal profession, that they also demand the right to be self-governing.

There are, obviously, other issues. I spoke about the lawyers' union and, in one respect — and it is a fairly major one — the Law Society can be compared to a union. The protections, in some areas, that unions give their members are analogous to law societies, in some respects.

<sup>66</sup> The law society is a special kind of union because the members of the society have constitutional duties that other tradespeople do not have. They are part of what I would call our unwritten constitution, or that part of the constitution that is unwritten.

I wish to go on to some specific issues or principles in the *Legal Profession Act*. One of them, in the general sense, is the right of the professional lawyer to be self-governing, or the duty, as opposed to the consumer interest, which is obviously present and should be considered regulating those aspects of the legal profession where there is no constitutional duty.

One of the very important aspects, of course, is regulation of lawyers' trust funds, which all legal profession acts do. Another is regulations concerning the kinds of ways lawyers can charge fees to their clients.

The advertising issue, of course, is important. The advertising issue is, I believe, largely a non-issue in southern Canada now that it is generally accepted. Fee schedule advertising in a discrete or a professional way is a service to the public and is in no way demeaning to the profession; it in fact enhances the profession in the public mind.

The protection for that kind of consumer interest in this legislation is lacking. We will deal with that in committee.

<sup>67</sup> The largest or most important criticism that I have of the bill is around the right to discipline members. I have very grave concerns about the definition of the kind of conduct that can be defined as conduct deserving of censor. There is the phrase "contrary to the public interest" that is an extremely general phrase describing the test. There is a phrase that conduct of a member outside the practice of law can be conduct deserving of censor and that is simply far too wide, in my view, and in the view of several members of the profession here. More importantly, there is a discipline committee and a peculiar procedure whereby the executive is able to make a second decision; that is, to reverse or change the decision of the discipline committee.

Even though this occurs in some other legislation in other jurisdictions, in my view, it is inappropriate. The executive is an elected body of the law society and in the particular circumstances that we find ourselves here, it is inappropriate. There is a concern, especially among members of the profession who do not practice with the three largest firms, that the executive is not representative of the entire profession. Indeed, because of the democratic process, the minority interests in the profession are not protected. A disciplinary committee acting judicially, or quasi-judicially, is quite acceptable, in principle, to virtually all lawyers.

<sup>68</sup> A decision about conduct unbecoming of a barrister and solicitor in the hands of the executive of a reasonably small group of just

under 50 people here is dangerous and takes the decision out of the quasi-judicial category, and puts it into the small "p" political category, in that it is an elected body and the guidelines that they follow are not as clearly set out in the case law and traditions of the profession as is that of a discipline committee. It is also important to consider whether or not the members of the discipline committee are local residents or not. The profession here, being as small as it is and as interconnected as it is in terms of economic association, with three major firms is, in my view, very dangerous and it is indeed inappropriate to put the disciplinary power in a discipline committee that is gathered from such a small number of obviously interested individuals.

I also wish to talk about the process whereby this act comes before us, and to say yet again that in this act there is a opportunity for a better legislative process for better public input if it were to go to a select committee. I see the government leader smiling.

I have previously made public here information concerning the negotiations, which I will say was a private, non-public deal between the drafters of the legislation and the executive of the law society.

I made that public for specific reasons. Those kinds of deals can be made, if the process is largely private. Those kinds of deals are abhorrent to the general public.

The general public has a healthy scepticism about lawyers, in general and, perhaps specifically in Yukon. It is not only lawyers who should be consulted about these kinds of acts, it is the consumer interest as well. Lawyers considering the matter professionally will welcome that kind of consumer input, because the privileges, or the unusual privileges, that lawyers ask for are fundamentally protection for clients, not for the legal profession. Intelligent consumers recognize that and would advocate that.

The minister proposing the bill says "garbage". In the committee process, I will consider it my duty to convince him it is not garbage, it is a very important tradition in a free and democratic country.

This bill, if passed, will make the legal profession self-governing, for all practical purposes. We are the last jurisdiction in Canada to pass such legislation and it is appropriate and it is a good step that we do pass legislation. However, the bill is substantially flawed. I am running out of my allotted time, but I will assure the minister that, in the committee stage, I will debate the bill until I convince him of the wisdom of the principles that I have identified and, indeed, a few other more minor principles that I will make known at the committee stage.

*Motion agreed to*

#### Bill No. 16: Second reading

**Mr. Clerk:** Second reading, Bill No. 16, standing in the name of the hon. Mr. Tracey.

**Hon. Mr. Tracey:** I move that Bill No. 16, *An Act to Amend the Real Estate Agents' Licensing Act*, be now read a second time.

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 16 be now read a second time.

**Hon. Mr. Tracey:** This legislation is being introduced for three reasons: one to make it clear that time-sharing agreements, as in the case where one purchases the rights to use a condominium in Hawaii for a specified time each year, are included within the definition of real estate for the purposes of the act; two, to exclude gratuitous property managers from the scope of the act; and three, to substitute "real estate" for "land, tenements and hereditaments" in section 24, to make use of the phraseology referring to real estate consistent throughout the act.

The amendments affecting time-sharing agreements on the definition of real estate in section 24 are incidental and are being made due to the fact that the act is open at this time.

The main reason for proceeding with this legislation is to rationalize the rules and regulations that apply to property managers. Under the current legislation, the definition of trading and real estate encompasses the activities of property managers where such persons advertise property for lease. Thus, a person who looks after a house for a friend or a relative and who advertises a house for rent in the absence of the owner is subject to regulation

under this act. This is an activity that does not need to be regulated and the amendments will take them outside of the scope of the act.

In addition, the interaction of the definition of "trade" and "real estate" and the current regulations require those who engage in property management to be licenced as real estate agents or salesmen. Two of the prerequisites to obtaining a real estate agent's licence are that applicants successfully complete the real estate agents' prelicensing course offered by the University of British Columbia, and they be licenced as a real estate salesman for one year prior to making their application. These two requirements have little, if anything, to do with the business of property management. As a result, the regulations to the *Real Estate Agents' Licensing Act* will be changed concurrently with the act to reflect more rational licensing requirements.

Once the changes to the regulations are made, property managers will be eligible for licensing providing they have been resident in Yukon for three months, maintain a permanent residence in Yukon and be of good character and obtain a bond.

Due to the fact that the property managers are entrusted with care of real estate that, in many cases, is a personal residence, it is felt desirable that the government maintain some form of control on persons engaged in this business activity, and that the field not be totally deregulated.

By continuing to require the property managers, who are engaged in that business, to meet certain requirements, we are ensuring, at least to some degree, that those who enter the business do so with some commitment. The requirement that property managers be bonded in the same manner as real estate agents and that they be subject to audit and maintain trust accounts if they hold such money will mean that fly-by-night operations will be kept to a minimum.

Those who are leaving the territory for an extended period of time and who are entrusting their house to a business for care in their absence can be reasonably assured that those with whom they are dealing are reputable.

The regulations to the act are also being amended to double the bond, which must be posted by a person prior to being licenced as a real estate agent. This is being done as Yukon has fallen behind requirements of other western provinces since last reviewing its bonding requirements in 1977.

**Mr. Kimmerly:** It gives me great pleasure, great personal pleasure to be able to say that we are not aware of any real controversy about this act. We do not oppose it; we look forward to its speedy passage.

*Motion agreed to*

#### Bill No. 17: Second reading

**Mr. Clerk:** Bill No. 17, standing in the name of the hon. Mr. Tracey.

**Hon. Mr. Tracey:** I move that Bill No. 17, *An Act to Amend the Securities Act*, be now read a second time.

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources, that Bill No. 17 be now read a second time.

**Hon. Mr. Tracey:** The reason for amending *The Securities Act* at this time is to clarify the rules that regulate those who engage in the business of mineral claim agent. This, however, is not apparent on the face of the bill before the House. This amendment to the act affects only the definition of "security". The proposed change, once adopted will make it plain that a mineral claim or lease is within that definition. This is being done as we are of the opinion that the current definition may be deficient.

At the present time, licencing requirements that apply to mineral claim agents are found in *The Securities Act Regulations*. Such agents are governed in the same manner as securities brokers. Many of the prerequisites, which apply to persons seeking to be so licenced, do not accomplish any worthwhile purpose. As a result, we have decided to rationalize these restrictions and prerequisites. Thus, we will change the regulations so that the following will be the conditions that attach to the licence of mineral claim agents:

- A. They must be a resident of the Yukon for six months.
- B. They must maintain a permanent residence in Yukon.
- C. They must be of good character.

D. They must not accept money in trust.

E. They must not draft any binding agreements which are signed by the parties to a mineral claim transaction.

The reason for prohibiting mineral claim agents from handling trust money is to do away with the requirement for a bond. The reason for prohibiting mineral claim agents from drafting agreements is that, in our opinion, mineral claim transactions are usually complex and unique. Therefore, it is in the best interest of all parties involved that lawyers and other professionals be consulted prior to the point in time when binding contractual obligations are entered into.

Of course, if persons believe they have the expertise to draft their own contracts, they are perfectly at liberty to do so.

I would like to point out that *The Securities Act* applies to mineral claims only in the situation where an agent is involved in the marketing of the claim. There is a specific exemption in the act, which allows owners of claims to sell their claims without governmental regulation or involvement. That is, they are free to advertise and dispose of them in the same manner as an individual who owns a house and wishes to sell it privately.

12 **Mr. Kimmerly:** This, also, is an uncontroversial act and we support it.

*Motion agreed to*

#### **Bill No. 18: Second reading**

**Mr. Clerk:** Second reading, Bill No. 18, standing in the name of the hon. Mr. Tracey.

**Hon. Mr. Tracey:** I move that Bill No. 18, *An Act to Amend the Transport Public Utilities Act*, be now read a second time.

**Mr. Speaker:** It has been moved by the hon. Minister of Renewable Resources that Bill No. 18 be now read a second time.

**Hon. Mr. Tracey:** As the explanatory note accompanying the bill states, the main proposals are to remove the responsibility for enforcement of the act from the board; to enable the Commissioner and Executive Council to proscribe policy criteria that the board must follow when dealing with applications; and to allow temporary certificates.

There are also a number of lesser proposals before you and I will just touch briefly on them before getting back to the main items. Changing the name to the *Motor Transport Act* and the Motor Transport Board should reduce some confusion in the public mind and more accurately describe the function of the act and the board; the term "public utilities" is easily confused with "public utilities", such as electrical power companies; references to identification plates are being deleted, since the plates are no longer required because restrictions on the number of vehicles the holder of an operating authority may use have been removed by the Transport Public Utilities Board; the right of a person to make a last minute objection to the board concerning the issuance of a certificate is being modified to allow the board to hear objections at its discretion. This is simply to prevent abuses of the hearing process, which causes unwarranted delays. The right to a bona fide intervention is in no way being curtailed.

The annual review of every certificate is a very time consuming task and not the most productive approach to regulating the industry. The bill proposes a review of all certificates every three years and would allow the board to review any certificate at any time, which we feel is a more realistic approach than the current annual review that causes a strain on the industry members.

On occasion, transport services are required that Yukon carriers with operating authority cannot provide. This situation may arise either because not enough equipment is available or because specialized equipment is required. This bill, then, proposes to allow the board to issue temporary certificates of operating authority, without the usual hearing process, when certified carriers cannot provide the required services.

The board's current primary function is economic regulation of the motor transport industry. It performs its function by judging the merits of various applications for operating authority through a public hearing process. Government is responsible for ensuring that Yukon has an efficient transportation system and is also responsible for enforcing the provisions of the act.

The board ensures that individual applications or disputes are dealt with at arm's length from government. It is not meant to be an administrative or enforcement agency; that is the role of the government.

The act presently gives the board a blank cheque to launch an inquiry into any matter related to transportation. There are none of the necessary budgetary controls built in and this provision could result in a great deal of expense to the government, if the board chose to launch a major inquiry.

13 This bill will place responsibility for launching an inquiry with the Executive Council member.

It is proposed that the Commissioner in Executive Council will have the right to prescribe policy criteria that the board must follow when considering applications.

I am sure that members will see that nothing unusual is in this provision. Regulations are commonly issued to expand upon enactments and serve as guidelines or directives for public servants, committees and courts of law.

What is proposed here is that the board policy be prescribed by regulation where it will be clear in writing and available for all to see. This will ensure that all who come before the board will have their case weighed against the same criteria, and that those criteria are known by all concerned in advance.

The provisions proposed will not affect the ability of the board to act at arm's length from the government when considering individual cases. We are not breaking any new ground with these proposals. British Columbia and Ontario, for example, have similar provisions.

In summary, government will have responsibility for general policy direction. The board will continue to make individual rulings free of government interference. I trust I have convinced the members of this House of the merits of this bill and it will receive your unanimous consent.

Thank you.

**Mr. Byblow:** It has been a long time since Question Period.

As the minister notes on this bill, there are a number of significant changes that are being introduced and certainly there is significant shift in policy with respect to the licensing of public transport. The way I perceive the most significant change brought about is the ministerial authority being provided over the board. There is distinctly an increase in this responsibility.

I believe it is clear in the amendments that the minister will, through regulation and what appears to be through direct instruction, be able to virtually dictate who can and cannot receive operating authority. That may not be harmful in and of itself, given that the policy is clear and that there is no preferential abuse taking place, if, at the same time, the public interest is being protected and served.

If the minister will be assuming responsibility for the regulatory policy that is yet to be put into regulation, then what we have is a developing accountability, politically, to this House, for the board. If the minister is clearly saying that he is undertaking the responsibility for the board, then there is very little difficulty in accepting these changes, but certainly, we will have some questions about the implications of this shift in policy.

At the same time, we will have some questions relating to the practical implications that these amendments will have with respect to interprovincial jurisdictions in matters of transport of goods. No doubt there will be some questions relating to the policing change that is taking place. I must express some concern about the appeal process that the minister touched on. Quite clearly in the amendments, there is an appeal process, but it has limitations. It is limited, for example, to be made within 14 days of a licensing issuance. Quite clearly, one has to simply not publicize that issuance, and any opportunity to appeal is waived as a result. We will certainly want to explore that further.

14 I think, though, at this time, we will be extending to the government a cautious support of these amendments, in order that we can examine in more detail, in Committee, the full implications of the changes.

*Motion agreed to*

**Mr. Speaker:** May I have your further pleasure?

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

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

*Motion agreed to*

*Mr. Speaker leaves the Chair*

## COMMITTEE OF THE WHOLE

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

We will now take a short recess, after which we will proceed with Bill No. 5, *An Act to Amend the Landlord and Tenant Act*.

*Recess*

**Mr. Chairman:** I will now call Committee to order.

We will go on with the *An Act to Amend the Landlord and Tenant Act* and go to clause 1.

### *An Act to Amend the Landlord and Tenant Act*

*On Clause 1*

**Hon. Mr. Tracey:** To start with, I would like to read to you what the member across the floor said at the second reading speech. He said, "The amendment proposed here provides a gaping loophole in the law in favour of landlords. To use the vernacular, it is a loophole you could drive a truck through. It really means that a tenancy for a term other than a month-to-month tenancy can be terminated through what most people would call legal trickery at the landlord's will".

He goes on further, "if he signs a one-year tenancy agreement and rents go up, he can sell the property to some other company, a family member or something like that, and terminate the tenancy". He said that it is a landlord's amendment.

It was obvious to me, when the member was standing up speaking, that he had not even read the bill. If he had, he had not read the referrals that it made to the *Landlord and Tenant Act*. It says in the act that subject to 5(c), (d) and (e), he may terminate the agreement. I would like to read you the 5(c), (d) and (e): 5(c) says, "A trustee in bankruptcy, liquidator, receiver or committee appointed by any court or bylaw in respect of the property of a landlord"; (d) says, "the purchaser, at a judicial sale of a residential premises of a landlord"; and, (e) says, "a mortgagee of a residential premises of a landlord acquires title to them by foreclosure pursuant to a judicial sale of them or who enters into possession of a said residential premises and the assigns of such a mortgagee".

<sup>17</sup> So, I suggest that the member across the floor did not read the act and the statement that I made in the second reading speech was wholly and totally accurate. What we are doing here is to make it possible for someone who acquires a piece of real estate under that situation to be able to terminate a rental agreement that was made contrary to the best interests of the mortgagee.

**Mr. Kimmerly:** I appreciate the rebuttal that the minister's department provided for him.

There is still a loophole here: it is still possible that the legal change of ownership can occur and that a legitimate tenant for a term certain, or periods longer than year-to-year, can be dispossessed from a reasonable tenancy after the change of ownership, referred to in Section 5(c), (d) or (e).

<sup>18</sup> What the minister stated concerning Section 5 (c), (d), or (e) is, of course, right. However, the proper response to that, or a fair response to that would recognize the fair rights of both landlords and tenants, would be to provide for the termination of tenancies entered into fraudulently or in contemplation of the bankruptcy or foreclosure. Under this section, it is still possible for a landlord to change the ownership of a property via foreclosure or even

bankruptcy, for example, of a small holding company to dispossess a tenant.

The comments that I made still apply and I make them again. It is entirely possible to arrange a mortgage and a foreclosure and it is a simple procedure and it can be used as a landlord's loophole. I would ask the minister why he did not draft an amendment that would cover the situation only where there is an intention to carry out a fraudulent transaction?

<sup>19</sup> **Hon. Mr. Tracey:** I suggest that the member across the floor is grasping at straws now. He is trying to cover up the statement that he made the other day before he did read the legislation.

If a landlord goes broke and the mortgagee has to take back the property — or the trustee in a bankruptcy or a liquidator has to take back the property — obviously, there was something the matter: there was not enough rent coming in or some other reason. For the member across the floor to suggest that the landlord is going to go through all of that in order to get rid of a tenant is totally beyond my comprehension.

I certainly would not see a landlord having to go through that in order to get rid of a tenant, but I could certainly see the justification for a mortgagee, if he had to take the property back, to want to give three months' notice, and he is required to give at least three months' notice to the tenant before he can move in. As far as whether it is fraudulent or not, that is taken care of under other laws. It does not have to be taken care of under the *Landlord and Tenant Act*.

<sup>20</sup> **Mr. Penikett:** I have listened to the minister just now, and I listened to him the other day, and I must confess to a lingering concern about our willingness to respond to representation from lending institutions in this regard. I would submit that already *The Landlord and Tenant Act* of this territory is too weak in respect to its protection to tenants. I will say that the banks are not charitable institutions. There is no reason why we should feel obligated to do them any favours. They are not citizens of this territory in the same sense that the tenants are citizens of this territory. The tenants, I suspect, are the people who are closer to being the public who we are born to protect.

It concerns me that whatever the circumstances the minister has described by which these amendments would come into effect, the tenants are nonetheless profoundly disadvantaged. The minister talks about some injustice being done to the banks. Well, I suspect that you might see a newspaper story sometimes about a man who robs a bank. I think, probably the more common practice is the reverse.

Banks are not people in great need of protection from this government. I do not suspect. The minister talks about something going wrong. That is true. Something may go wrong with a business — whether it is an apartment building that someone may own — but it may go wrong, not because the tenants are paying too little rent in the sense of the fair unit price for the rental property, but it may be because of other economic situations in the territory that there are too few units rented.

Another more likely reason why something may have gone wrong is the interest rates may have been too high. The landlord or the person who developed the property may be paying literally too much in interest rates; way too much. They may have been paying an usurious rate and they may have found themselves at some point, because of other business problems totally unrelated to this property, in difficulty.

All these are understandable situations. We can understand how, in the current political environment, there may be landlords who have run into problems with the banks. I suspect it may not be that unusual where banks and lending institutions have taken back the property.

It concerns me that we, as a government, seem to be expressing more concern or interest in the welfare of banks than we do in the welfare of the tenants who may be resident in those properties.

<sup>21</sup> **Hon. Mr. Tracey:** I think we know where the members across the floor come from. They have never changed their opinion. As far as they are concerned, the tenant has all the rights and the person who has invested the money and built the property does not have any rights at all. The actual situation could arise where the banks

could refuse to provide mortgage money because they do not have any protection. If someone wanted to sign a five-year lease, or whatever, the bank is stuck with it, so I can understand why a bank would not want to give mortgage money. But there are a lot of other people who are mortgagors besides banks.

I know the members across the floor would like to put everything in black and white so that the tenant, once he is in the place, could never be removed. There are times when there are legitimate reasons for someone to be moved out of a piece of property. If they are paying a fair rent, the mortgager would not want to evict them anyway; he would want to keep them there.

**Mr. Penikett:** It is very interesting that the minister, rather than dealing with the arguments presented by members on this side, wants to set up a straw man. Instead of dealing with the points that are raised, he then sets up some absurd proposition that we never made and then attacks that. It is a very old and juvenile debating tactic, but it does not deal with the issues I raised.

The fact of the matter is that this side has never advocated some kind of hegemony of tenant's rights. We have argued from the beginning in terms of an inequity situation, of a balance between landlords' rights and tenants' rights.

The minister talks about the person who invests in the development of property, and of course there is an appropriate concern for those, but in fact the people who eventually pay for the property that the minister talks about are the tenants. They are the people who not only pay the original price of the property, but if the developer is going to make a profit, they also pay that profit, too, so they have a stake in these things. They have an investment in these things, and we are, after all, talking about these people's homes.

So, when I express the concerns to the minister that he responds readily to the concerns of the banks, all I am asking for, and all we are asking for, is that they show some equal concern for the tenants. I will put the question to the minister again: why is there not in these amendments, to deal with the specific cases he talks about, some equivalent and appropriate and commensurate protection for tenants?

The fact of the matter is that the minister has raised the situations that may apply, the bankruptcies and so forth, when an economy is in a decline. Another situation can apply when the economy begins to recover and people pick up properties cheap in a situation such as it is now. Lending institutions can often do that because they have the capital to do that, and where small investors may be losing properties, people with a lot of capital may be picking them up.

I can tell you what happens sometimes in these situations when the economy bottoms out and begins to recover and vacancy rates decline, a provision such as this could be used to clean out a property of people who are paying modest rents and replace them with people who are willing to pay much higher rents. That, I think, is an injustice.

**Mr. Kimmerly:** I will re-ask the same question I asked a moment ago: why is the legislation not worded in such a way to identify fraudulent tenancies and is worded in this way, to create a large loophole?

**Hon. Mr. Tracey:** I am not going to continue the argument: it is obvious we have a great philosophical difference here.

The reason why this is here is only to handle a case where the property is taken in a bankruptcy or it is purchased at a judicial sale or the mortgagee has to foreclose on it. We are trying to protect those people from someone paying rent that is not sufficient to recover the price of their property.

The previous landlord may have thought he was charging a fair rent, until he found out, six months later, that he was broke. That does not justify allowing that tenant to stay there after the mortgagor has to take that land back. The people who own the land also have some rights. We have covered all of the rights of the tenant in the act already: this is one loophole that was not covered, such as someone renting a piece of property at a rent that was not sufficient to recover the cost and the mortgagor, if he had to foreclose, be stuck with it. That is the long and the short of it and that is the reason for the amendment.

**Mr. Kimmerly:** I fully recognize that if a person about to be

foreclosed would sign a very long lease, at a reduced rate, with himself or a family member or something like that, that would be a loophole on the tenant's side. This amendment makes it very possible that there be abuses on the landlord's side.

Let me explain two possible scenarios. One, a landlord has a long lease and he decides that the market will bear a greater rent. He either owns the property in a corporation or he sells the property to a corporation, or to somebody else, and the corporation, for example, mortgages the property, not to a bank, but to a private individual.

<sup>23</sup> There is a default on the mortgage, and there is a foreclosure and the tenant is turned out. It is not a very long, very expensive legal operation if one is a sophisticated landlord.

**Some hon. member:** (inaudible)

**Mr. Kimmerly:** You are right. If you are not a lawyer it is, but lawyers are some of the biggest landlords in town, in fact.

That is one scenario and if it is a long lease and the rents go up and up, it would certainly pay to do that — even if you were not a lawyer — but that is a clear possibility.

Another possibility is if a landlord buys a piece of property and mortgages it, rents the property at then-market rent and interest rates go a way up and rents go a way up. Because of the increase in interest rates, the landlord considers it uneconomic and abandons the property. The new owner, after the foreclosure, is in a position to remove the tenant and no fraudulent transaction, of any kind, occurred. If a tenant and a landlord negotiate a long-term lease, each of them takes an economic risk and the people involved either make a profit or a loss in the free market.

Now, in those two situations, I would say that the tenant is here abused and it is possible to draft an amendment to cover the abuse, without opening a loophole for the landlord.

*Clause 1 agreed to*

*On Clause 2*

*Clause 2 agreed to*

*On Clause 3*

*Clause 3 agreed to*

<sup>24</sup> *On Title*

*Title agreed to*

**Hon. Mr. Tracey:** Mr. Chairman, I move that you report Bill No. 5 out of committee without amendment.

**Mr. Chairman:** Therefore, Bill No. 5, *An Act to Amend the Landlord and Tenant Act*, is passed out of Committee of the Whole without amendments.

#### *On Legal Profession Act*

**Hon. Mr. Tracey:** I think we have had enough debate on it today, we might as well go to Clause 1.

*On Clause 1*

**Mr. Kimmerly:** I raised various concerns at the second reading and I would be interested in the minister's response to those concerns. I would ask for a response.

**Hon. Mr. Tracey:** I will respond to them as we go through the bill.

**Mr. Kimmerly:** In that case, I will ask about the process because the process is not in the bill. Would the minister be amenable to or agreeable to calling in witnesses from the legal profession, if they care to come, to give us advice, especially about the issue of proper terms of reference of the executive and of the disciplinary committee and advise as to what principles should be in the regulating making power, or the power of the law society when it enacts its bylaws in the act? For example, on the advertising issue, advise us as to whether there should be a policy contained in the act or not.

<sup>25</sup> **Hon. Mr. Tracey:** No, I will not be calling witnesses unless I feel that I need one of the government lawyers as a witness. It is not my intention to call witnesses.

As for advertising, that is a policy decision that has been made by the government and by myself in consultation with the legal profession. The decision has been made that we will not go with advertising; that is why you do not see it in the bill.

**Mr. Kimmerly:** That is an interesting statement. I do not

understand it. The minister stated that we will not go with advertising. What does that mean: that the decision is made to not allow advertising, or to allow it, or what?

**Hon. Mr. Tracey:** The decision has been made that we would not allow advertising except to allow advertising to the extent that you can advertise what you do, but you cannot advertise fees and whatnot. It is not covered in the bill.

**Mr. Kimmerly:** May I ask concerning the process as to why that decision was made, or what is the rationale for that decision?

**Hon. Mr. Tracey:** The same rationale that has been used everywhere. The legal profession does not agree with advertising. There is a great deal of argument to be made against advertising. For example, the member across the floor, in the legal profession, may advertise a divorce for \$350. Maybe that is the bottom line, but that does not necessarily mean that that is what it is going to cost, so we feel that it would be impossible for lawyers to advertise a flat rate because of the work they may end up having to do, and the legal profession does not agree with it. I think that we, as a government, have taken the position that we agree with it in that regard.

**Mr. Kimmerly:** I was aware of that and I am glad the minister is candid enough to specifically say that. I must say that I disagree, but I will get into it in the advertising section, which is towards the end of the bill.

I am interested in the process that was followed. I have asked in Question Period about the process and I also referred to it earlier. I am specifically aware that a draft bill was shown to lawyers under a confidentiality embargo, and that discussions occurred with government officials and the executive of the law society and changes were agreed upon. As I said earlier, there was a deal struck and the deal essentially was the government saying, "We will give you this much, or these concessions about what you want, if you agree to not criticize the bill".

25 Did the Consumers Association, or any other consumer interest, get the same consideration? Does the minister consider that that kind of negotiation is fair and proper in these circumstances?

**Hon. Mr. Tracey:** First of all, we give draft legislation to quite a few different organizations to get feedback from them and to get comments from them; there are a great many drafts that go out. They go out on an embargoed basis, as the member across the floor said, and I can assure the member across the floor that I will not be making any more legislation available to him, for the reason that he does not live up to the bargain that has been made by the legal profession: that they would not be commenting publicly on the legislation.

There are other people who were consulted and have been consulted all along, with regard to the *Legal Profession Act*. There was not a draft bill given to the Consumers Association.

I would also like to correct the statement the member made that we were bargaining. We were not bargaining. The legal profession wants this act. It is not the government that wants to bring this act out, it is the legal profession that has been asking for the act. They have been asking for the act for the last four or five years now. So, it is not a case of bargaining, it is not something that we want for something that you are going to give up. This act is written for the benefit of the legal profession to allow them to manage their own affairs.

However, there are certain things in here that, as the government and as the minister responsible, I feel that the consumers and the general public needed some protection from. So, I put my position forward to them and had a discussion on it, back and forth, until we reached a consensus on something that was workable for everybody. That is what we have reached, and that is what is tabled in the House today.

**Mr. Kimmerly:** I really have a question of privilege, but I did not raise it that way, because it would probably be divisive and unconstructive. The minister has clearly said that I did not live up to the embargo or the confidentiality. Now, that is untrue.

27 It is an untrue statement. I did. The minister also misstated what the embargo was. It was certainly not to not publicly comment about the issue, it was to not reveal the contents of the draft bill until a bill was introduced in the legislature. I was very, very

careful as to the exact nature of that embargo. The minister is loose with his words in a dangerous way and it is really a question a privilege. I really do not expect very much from that particular minister.

I asked a question about whether or not the minister agreed with the kind of bargaining that occurred with the Law Society and he did not answer that question. Rather, he said that a consensus was reached, which was not my information from the executive of the Law Society.

Perhaps nothing constructive can come of a further debate about the point, at this time. I do feel it is important to put a comment or two on the record about process, and especially about the process on this kind of a bill.

It is entirely appropriate that the minister consult with lawyers and the Law Society and any individual lawyer he chooses to. That is entirely appropriate and we would criticize him if he did not do so. That is not the issue at all. The issue is: where there are competing interests as there are, for example, with landlords and tenants, and with lawyers and the consumer interest, or any group that can claim a consumer advocacy role in society, that both sides get a fair chance at negotiation with the government officials and advance knowledge of the plans of the government.

28 The Consumers Association made a brief about this bill and it was especially concerning advertising. It concerned other things briefly, but the main point was that it was in favour of allowing advertising of fee structures for lawyers. The position of the government is very clear: they do not wish to allow advertising of lawyers' fee structures.

It would have been fair, in this case, to have given a copy of the proposed bill to the Consumers Association and asked for comment. Probably there would not have been much comment. It is a fairly technical area and it requires a lot of time and effort to go through the bill and read it and understand it. Probably the comment would have been minimal. However, they should have been given the same chance the legal profession was.

Another example is on the *Landlord and Tenant Act*, just passed through the Committee. It is perceived as unfair if one group of people get an inside track to the powerful civil servants and the minister in drafting this kind of legislation. There really is no reason for it.

Another point I raise is that the original drafts were embargoed. That is, they were given to the lawyers but were not given to the public, and it was clear that there was a specific requirement that the lawyer who received it acknowledged that there was an embargo, or a trust condition on receiving it. That is, that they keep it confidential within the members of the legal profession.

I, for one, thought hard, even as a lawyer, before I accepted that, and I did accept it, in fact, as a lawyer, because I wondered about the duties involved in all of that. I say this, which is the most important comment: there really was no reason for secrecy about the various drafts. I cannot think of a good reason why the minister would require it to be secret.

29 It may be that a bill is going to be controversial, it may be it will be non-controversial. If it is non-controversial, there is no problem. If it is controversial, is it not better to get the controversy out and deal with it at the earliest stages, so that a better bill can be produced?

I would ask the minister a question and say that our answer to the question is that there is no reason for secrecy about the preparation of these kinds of acts. Why was it kept secret? What are the policy reasons for that? What, in the minister's view, is the danger if it is not secret? I do not know of any. It is obviously a measure of some public importance and the widest possible public discussion is desirable. Why was it kept secret?

**Hon. Mr. Tracey:** There is the opportunity right now for all the public discussion to deal with the *Legal Profession Act*. The members on the other side, as representatives of the public, and the members on this side, as representatives of the public, can put their positions forward.

The act has been laid on the table. It is available to the public and they can comment to any one of us, at any time. It is not the intention of this government, every time we deal with a piece of



legislation, to send every draft that we work on out into the public to get public feedback, although, in some instances, we feel that it is very necessary to get feedback, and then we do go out into the public.

The act, as is written here, is written mainly for the lawyers so that they can run their own affairs. Now, the member across the floor, obviously, maybe, has a little bit of a problem with us just consulting with lawyers, but I can assure him that we did not just consult with lawyers.

He made comments about the Consumers Association. We consulted with the Consumers Association. The only concern that the Consumers Association had was that there be lay representation on the society; that was their concern. There is lay concern on the society and we have allayed their concerns. It was also a concern of mine and that of my colleagues that we have lay representation on it. In fact, in some instances in Canada, in British Columbia, for example, the legal profession asks for lay representation, itself, in the act.

So, I think we have done the best we can possibly do. The member across the floor is continually talking about his being a lawyer and his being an ex-judge and his being this and that and he is an expert on every piece of legislation that comes in here. Everyone else out there thinks he is an expert, as well.

So, what we did was deal with the so-called experts, the legal profession, and we reached a consensus of what we could put in the House, and that is here today.

**Mr. McDonald:** My line of questioning probably will not parallel my colleague for Whitehorse South Centre. What I would like to do, briefly, is ask the minister if he would like to respond to the suggestion that perhaps this society, in fact, constitutes what is in effect a union, a union that has extremely broad powers to self-regulate; a union that sets its own rates and sets its own fees, without even having to bargain with governmental, or anyone; at least not until we get *judicare* in Yukon. I am wondering if the minister would like to respond to that claim because I am sure that to those of us who are not particularly sensitive to the lawyers' desire to self-regulate to this extent may feel that this is a privilege bestowed on one group and not bestowed on many other trades and professions in Yukon. Perhaps the minister would like to comment on how he feels about the extent to which he is permitting one group in society to regulate itself to this extent?

**Hon. Mr. Tracey:** The opposition members cannot even agree amongst themselves whether it is a union or not. I do not believe it is a union. Mainly, it allows lawyers to form business corporations. That is one of the main reasons for it to be set up. It allows them to form a corporation. It is also the same as a society, which we also regulate. There are a great number of societies around this territory. The bylaws of the legal profession will come to the government exactly the same as the bylaws of any society. I do not view it as being a union. There may be some similarities to a union, but I do not view it as being a union.

**Mr. McDonald:** Whether we call this society a society or whether we call it a union, I think the fact that this union has the right to self-regulate regarding a variety of things, including fixing its own fees and its own fines and operating its own elections — electing its own executive — are all things that unions do, for the same reasons that unions do them.

This is a union that we are calling for some inexplicable reason a society, and we are not willing to define or to label this society a union even though its character in detail resembles a union. We are permitting one group in society, which decides to call itself professionals, the right to self-regulate to the extent that they are regulating. In fact, they are determining who will be members; who will be apprentices; how they will be trained; to what extent they will have to pass examinations of the society's own making; these are all pretty fantastic attributes of a totally self-regulating union.

I do not understand why lawyers should be accorded this privilege and we do not even consider other trades and professions in the territory.

The members on the other side seem to think that there are certain groups in society, including dentists, including the medical profession, and now the lawyers' profession, who have certain

rights that this government would not even dream of according other groups in society and other trades in society who have a very important job to perform, who are as equally responsible and caring about society as any particular profession. Many times they are not quite as articulate as professionals are, nevertheless, they perform a function for society. They care about society as much as any professional, whether it be the medical profession or the lawyers' profession.

The point I was making this afternoon was not a frivolous point. The fact that the lawyers' union is a closed shop has very serious implications on unions as a whole in this country. As we see, even today, there is tremendous public pressure to end the closed shop, to end the union shop.

I hear comments and remarks made by members of this House, none of whom are on this side of the House, about the power the unions have in this country, bemoaning the fact that unions have this perceived power, and here we are according people who call themselves professionals, people who decide that they will call their union a society, all kinds of special rights. I do not understand how you can consistently refer to this society as a society without recognizing the fact that it is essentially a union. How can you be so inconsistent? How can the minister be so inconsistent?

If the minister would like to briefly respond to these points, I would certainly appreciate it, because I think it does have a great deal of importance to unions, as a whole, in this territory. Certainly, the minister's comments might encourage the Yukon Federation of Labour to ask the lawyers' society to become an affiliate. It certainly would set a fine example for the rest of the unions in the territory.

**Hon. Mr. Tracey:** I suggest to the members across the floor that the front bench and the back bench get together and decide whether they are supporting the bill or whether they are not.

There are also a great deal of other laws that regulate lawyers besides the *Legal Profession Act*.

**Hon. Mr. Tracey:** In view of the hour, I move that you report progress on Bill No. 4

*Motion agreed to*

**Hon. Mr. Lang:** I 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. Brewster:** The Committee of the Whole has considered Bill No. 5, *An Act to Amend the Landlord and Tenant Act*, and directed me to report the same without amendment.

Further, the Committee of the Whole has considered Bill No. 4, *Legal Profession 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 hon. members:** Agreed.

**Mr. Speaker:** May I have your further pleasure?

**Hon. Mrs. Firth:** I move that the House do now adjourn.

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

*Motion agreed to*

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

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

**The following Sessional Papers were tabled April 2, 1984:**

84-4-13

Government of Yukon Territorial Accounts 1982/83 (Pearson)

84-4-14

Correspondence regarding highway signs for Keno City Museum (McDonald)