



The Yukon Legislative Assembly

Number 31

4th Session

25th Legislature

HANSARD

Monday, May 14, 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 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, Recreation and Culture
Hon. Clarke Ashley	Klondike	Minister responsible for Justice; Yukon Liquor Corporation; Yukon Housing Corporation; and, Workers' Compensation Board
Hon. Andy Philipsen	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, May 14, 1984 - 1:30 p.m.

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

Prayers

DAILY ROUTINE

Mr. Speaker: We will proceed with the Order Paper.
 Are there any returns or documents for tabling?

TABLING RETURNS AND DOCUMENTS

Hon. Mrs. Firth: I have for tabling the Department of Education's Annual Report, 1982-83.

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

INTRODUCTION OF BILLS

Bill No. 33 - First Reading

Hon. Mr. Pearson: I move that Bill No. 33, entitled *Third Appropriation Act, 1984-85*, be now introduced and read a first time.

Mr. Speaker: It has been moved by the hon. government leader that a bill, entitled *Third Appropriation Act, 1984-85*, 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?
 Oral questions?

QUESTION PERIOD

Question re: Cash payments to government

Mr. Penikett: I have a question to the government leader in his capacity as Minister of Finance. Could the government leader explain why it is the policy of some departments of this government to refuse cash payments for application fees? What exactly is it about Canada's legal tender that renders it inadequate from this government's point of view?

Hon. Mr. Pearson: I think I would have to ask the leader of the opposition to be much more specific about what he is getting at, or else come and deal with me on it at a break. I am sorry, there is no policy that I am aware of that would be applicable in this particular case.

Mr. Penikett: I have in my hand an application for a permit hunt authorization. The instructions say that a remittance of \$20 in the form of a money order or certified cheque made payable to the territorial government must be enclosed with the application. Could I ask the government leader: is it on the instructions of the Department of Finance or is this a policy exclusively to the Department of Renewable Resources that there is no cash policy in respect to such applications?

Hon. Mr. Pearson: If the person is there and presents the cash, I am sure that it would be illegal not to accept it.

Mr. Penikett: The government leader should know I have a complaint specifically from a constituent to the effect that he made such an effort and was refused his cash. Will the government leader investigate such circumstances and ensure that it is the policy of his government to accept cash in its government departments?

Hon. Mr. Pearson: By all means.

Question re: Beaufort Sea exploration

Mr. Byblow: I have a question for the government leader, also, on the subject of Beaufort.

Recent reports of reduced frontier oil exploration activity, particularly by Dome Canada, has given rise to some concern about our employment, business and revenue prospects off the north coast. What information does the government leader have in respect to the impact on Yukon of this reduced exploration activity?

Hon. Mr. Pearson: I am sure that the member opposite has heard the same newscasts that we have here. In fact, our information is exactly the opposite. Rather than there being reduced exploration, there is going to be more exploration. Certainly, from a Yukon point of view, we have been assured by all three major proponents on the North Slope that Yukon participation in that exploration will increase, not decrease, over the next two years.

It is true that Dome has made an announcement that they have a battle — as they usually do, as most people usually do — with the federal government, at the present time, over PIP grants. They are threatening to reduce their exploration, as a result of that. There has been no decision made. The battle has just been joined, I understand. I am quite confident that, in the final analysis, everything will be worked out and the exploration programs that have been put forward by the three major proponents will, in fact, go ahead.

Mr. Byblow: I do not wish to debate the issue with the government leader, but, distinctly, Dome has cut back, Shell has reduced...

Mr. Speaker: Order, please. The Question Period is to ask questions.

Mr. Penikett: He is not. It is not a question, it is a preamble.

Mr. Speaker: If the hon. member has a question, would he please ask his question.

Mr. Byblow: Certainly. I was giving the preamble sentence to my question.

On the basis of the fact that Dome has cut back, that Shell has reduced, and the Japanese have actually withdrawn financing, I would like to ask the government leader how he can substantiate his optimism about increased oil exploration activity when the reports indicate the opposite?

Hon. Mr. Pearson: I was afraid he was not going to get a chance to ask the question. Shell is not one of the major proponents nor are the Japanese. The three major proponents in the Beaufort are Gulf, Esso and Dome. Gulf has indicated that it is going to have the same workforce as last year. It may be a bit smaller than last year, but for all intents and purposes, it is going to be the same workforce as last year. There will be a larger Yukon proponent to that workforce.

It is in the process of drilling two wells, one off of Yukon's north coast, which I might add they have great hopes for. It has shown some very good promise in preliminary drilling. The other well is off of the Tuk Peninsula. Gulf will also be putting in place, over the course of the summer, its mobile arctic island that has been under construction for the last 18 months or so in Japan. That is what Gulf is up to this summer.

Esso will be spending the summer getting ready to drill two off-shore wells this coming winter. It will be doing the dredging and construction work. It also has a very large on-land exploration program for next winter. This past winter, it had one major off-shore gas discovery and one major on-shore gas discovery. It is very optimistic and has absolutely no intention of cutting back its program.

I am advised that it is prepared to and is planning on continuing work on the four wells, with the four drill shifts that it was using last summer, and to not only maintain its workforce, but to improve the Yukon component of that workforce. I might say that Esso has included Whitehorse in its location schedule of northern communities, for the future. So, that bodes well for us here, as well.

All in all, notwithstanding the problem with the federal government — and, as I said before, any proponent is going to have those kinds of problems with the federal government — the plans for Beaufort, for the next two years, at least, look very, very promising.

Mr. Byblow: I sincerely hope that the government leader's promise and optimism is correct. He raises the question of federal involvement.

Since both John Turner and Brian Mulroney, both prime minister hopefuls, have said that they support incentives to western heavy oil development, as opposed to northern, unknown exploration activity, I would ask the government leader what impact he perceives this to have on Yukon's future oil development prospects?

Hon. Mr. Pearson: If we are to get into a federal government policy discussion, here, in respect to PIP as opposed to tar sands, I would be happy to do it, but I do not think that you, Mr. Speaker, would allow me to answer that question.

Speaker's Ruling

Mr. Speaker: No, the question was out of order, in that it was seeking an opinion.

Question re: Electrical tax refunds

Mr. Porter: I have a question for the government leader.

Under the *Public Utilities Income Tax Transfer Act*, 95 percent of taxes are refunded to the territorial government. In 1980, the figure was \$3,008,000. Can the government leader inform the House as to what is the present level of the public utilities tax transfer fund, paid by the federal government to the Yukon government?

Hon. Mr. Pearson: Ninety-five percent of the taxes paid by Yukon Electrical to the Government of Canada.

Mr. Porter: The boy is sharp, today.

The Yukon government has, in the past, used income earned from the public utilities income tax transfer to subsidize electrical power costs to Yukon consumers. Does the Yukon government provide for subsidized electrical power costs to Yukon consumers, at the present time?

Hon. Mr. Pearson: Yes.

Mr. Porter: I am just as quick as he is.

Can the government leader, very briefly, explain the main components of the electrical power subsidy program?

Mr. Speaker: I would ask the hon. minister to be very brief.

Hon. Mr. Pearson: The subsidy is used to reduce the electrical costs on an equal basis to all consumers in the territory, no matter whether they are customers of Yukon Electrical or not.

Question re: Stealing in the schools

Mrs. Joe: I have a question for the minister responsible for education.

I have received reports from students who have had articles stolen from them during school hours. Once these incidents are reported, there does not appear to be a followup to the complaint. Can the minister tell us if it is the responsibility of the school to notify the police in order to conduct an investigation?

Hon. Mrs. Firth: It is the responsibility of the principal to notify the parents of the student and, where appropriate, the RCMP.

Mrs. Joe: Can the minister tell us if her department has statistics on the number of students suspended from school for stealing?

Hon. Mrs. Firth: Not that I am aware of. We do not keep statistics on crime in the schools.

Mrs. Joe: Would the minister consider looking into the possibility of conducting those statistics for the sake of improving the crime in schools?

Speaker's Ruling

Mr. Speaker: The hon. member is now making a representation in asking for a service rather than information.

Question re: French immersion program move

Mr. McDonald: I have a question for the Minister of Education as well. A parentally-conducted survey of a dozen parents and students in the French immersion program found no parent support for a move of the French immersion program from Whitehorse Elementary School to Porter Creek and Riverdale. Has the Department of Education conducted any surveys of the parents of these French immersion students to determine independently if the

parents support the move?

Hon. Mrs. Firth: We have not conducted an official survey. We have met with the school committees of the three schools affected: Whitehorse Elementary, Selkirk and Jack Hulland. The school committees are having some meetings in their particular areas. Some have asked us for questions to be answered, so that they can answer some questions of the parents involved. We have not been keeping any official record of how many are for or how many are against the move.

Mr. McDonald: Does the government intend to come to a decision regarding the move of the French immersion program to some other schools in the city prior to the beginning of the next education year?

Hon. Mrs. Firth: Yes.

Mr. McDonald: Is it the position of the government that a division of the French immersion program into two or more schools will not in any way dilute or diminish the effectiveness of the program?

Hon. Mrs. Firth: Yes.

Question re: Government work positions for handicapped

Mr. Penikett: I have a question concerning the handicapped for the government leader. For people with certain kinds of handicaps there is, as we all know, little in the way of rewarding work available in the Yukon Territory. Other than the custodial jobs, which this government is now contracting out, what positions, if any, has the YTG made available for handicapped persons?

Hon. Mr. Pearson: I would have to have that checked into. I question whether, in fact, there have been any with respect to the custodial workers. I can recall when there was one working in the Queen's Printer shop. I am not sure whether there is still someone working there at the present time. I will find out and get back to the leader of the opposition.

Mr. Penikett: On the same subject of handicapped persons, a supplementary to the Minister of Health and Human Resources. Last year when the minister changed the definition of the family in relation to medicare premiums, was any thought given to the effect on handicapped adults who reside with their parents, who can find little work in the territory and who were, as a result of this policy, recently billed significant sums of money for unpaid medicare premiums?

Hon. Mr. Philipsen: I am not sure of that, but I would suggest that if the hon. leader of the opposition knows of someone who cannot find work and is disabled or handicapped they should be taken to the vocation rehabilitation centre, which we do fund, and for which we have increased the funding. They are presently finding jobs and teaching people how to apply for jobs if they are handicapped. I believe that 25 jobs were found last year for handicapped persons and six of those jobs have been taken back this year on those jobs and they hope to have the same number working again this year.

Mr. Penikett: Perhaps the minister would take an opportunity to look at *Hansard* in respect to my question about medicare premiums and get back to me.

My final supplementary on this subject is to the Minister of Education. With respect to handicapped people, under what terms of departmental regulations, what right if any, does a Yukon College instructor enjoy to bar admission to his or her class by a handicapped person who is qualified to enter it?

Hon. Mrs. Firth: I do not think an instructor would make that decision by himself. They would be in consultation with the counsellors and with the department if a decision like that had to be made.

Question re: Letter to Minister re French

Mr. Byblow: I have a question for the Minister of Education also, on French language. I was advised by the Secretary of State's office on Friday that the federal minister had not received any correspondence from Yukon's Minister of Education this year, neither about program cadre funding, or a response to the January 19th letter. Yet, the minister led me and the House to believe that communication on all these matters was taking place. Very bluntly:

what is the truth of the matter in terms of communication with the federal minister?

Hon. Mrs. Firth: We have sent a letter to them. If they have not received it yet, maybe the member should make an enquiry into the postal service.

Mr. Byblow: When did the minister respond to the federal minister responsible on this subject?

Hon. Mrs. Firth: I am not sure whether it was two weeks ago but it has been within the past while.

Mr. Byblow: I find it peculiar that the response the minister provided two weeks ago is to a letter that was sent to this minister on January 19th, nearly three months ago. Has the minister established what additional funds would be required to institute program cadre and has this been transmitted to the federal minister?

Hon. Mrs. Firth: These discussions have been taking place between the officials, at the official level. I do not communicate every week with Serge Joyal, asking him for money for the program cadre and so on. When we negotiated our language education agreement, all of those questions were raised then and addressed then. We have signed that agreement. A letter of understanding went first, because the federal government indicated to us that there was some urgency to have this all in place before March 31st. That has all been taken care of. I indicated to the House that we had sent a letter to Serge Joyal asking for a further commitment for funding for French language programs; the program cadre to be specific. I believe I went into great detail in the House and told the opposition what some of the questions were that we addressed in that letter. If Mr. Joyal has not received that letter yet, I am sure it is in the works and he will be getting it, because one has been sent.

Question re: Aboriginal hunting rights

Mr. Porter: A question to the Minister of Renewable Resources. On Tuesday, May 8, the member for Hootalinqua, who rarely gives a hoot about anything, raised a question concerning aboriginal hunting rights on the Dempster. He stated that aboriginal people from the NWT were only taking the front and hindquarters from the animals they killed. Did the conservation officers, dispatched to the Dempster, view any evidence supporting the charges brought forward by the member for Hootalinqua?

Hon. Mr. Tracey: No.

Mr. Porter: In a *Yukon News* article, dated May 9, 1984, the member for Hootalinqua was quoted as stating, "He was aware there are blood and guts and carcasses all along the road." Did the conservation officers dispatched to the Dempster see any blood, guts or carcasses on the highway?

Hon. Mr. Tracey: No. They were already taken away.

Mr. Porter: Obviously, the question would be: were they ever there? In that same article, the member for Hootalinqua stated that the hunters were using Windy Pass on the Dempster Highway as an ambush site. Did the conservation officers, who did the investigation on the Dempster, obtain any evidence that Windy Pass was being used as an ambush site by the hunters?

Hon. Mr. Tracey: No.

Question re: Victims of crime study

Mrs. Joe: I have a question for the Minister of Justice. On April 18, this year, the federal government issued a press release entitled "Federal Government Launches Victims Initiative". It announces a coordinated effort to improve and increase services to victims of crime in Canada. Can the minister tell us if his department received this information and is his committee using it in their study for a Yukon victims of crime program?

Hon. Mr. Ashley: I am not aware if the department has received it or not. I have a whole bunch of new staff in there just recently, just within the last week. They are getting it organized now. We have just moved the department, as well, to another building. We will be looking at it. If they have not received it yet, we will ask for it and look into it.

Mrs. Joe: Where did the minister send all these new staff members from?

Hon. Mr. Ashley: We did not send any new staff members, we just filled the solicitor positions.

Mrs. Joe: Will the study, that is being done on the victims of crime that is being done by the minister's committee, be finalized before the next session?

Hon. Mr. Ashley: We will have to wait and see.

Question re: Custodial worker layoffs

Mr. Penikett: I have a question for the government leader, in his capacity as minister responsible for the Public Service Commission.

I understand that some custodial workers have already received their layoff notices, effective August 1st, which raises questions about who will benefit from the custodial contract. Does this government have any rule to prevent a former government supervisor of this service from bidding on the contract?

Hon. Mr. Pearson: I am informed — and have been informed, previously — that the layoff notices are effective September 1st, not August 1st. I do not know that anyone can be disqualified from bidding on the job if they meet the criteria that is set up in government regulations.

Mr. Penikett: The government leader will know that, in some parts of the government, such as Yukon Housing Corporation, and many branches of the federal government, former employees are specifically forbidden from taking government business from those departments for a certain specified period after leaving the government.

In light of the government leader's previous answer, does the government have any objection, in principle, to an employee or group of employees bidding on the custodial contract for this building when it is tendered?

Hon. Mr. Philipsen: No, we have no problem with that, if the people who are bidding meet the specifications and have a business licence.

Mr. Penikett: To the same minister: in Britain, where right-wing governments have contracted out government services, the local unions representing the laid-off employees have successfully, in some cases, bid on the contracts, thus retaining the jobs of the workers involved, does the territorial government, in principle, have any objection to an employee organization doing the same here?

Hon. Mr. Philipsen: The specifications will go out in tender form and tenders will be bid on. If people meet the specifications, then they will be eligible to take the contract.

Question re: Dempster highway caribou slaughter

Mr. Porter: I have a question for the government leader.

A CBC news program, this morning, quoted the member for Hootalinqua as stating that aboriginal people of the NWT were rounding up a herd of caribou and slaughtering them. Was the member for Hootalinqua stating this government's position when he made that statement?

Speaker's Ruling

Mr. Speaker: That question would be out of order. The question is asking an opinion that is certainly contrary to the rules. If the hon. member has another question, we will hear it at this time.

Mr. Porter: Clearly, I disagree with Mr. Speaker's ruling. I asked: was the member stating the government's position? It was not asking an opinion.

Mr. Speaker: I am afraid that that is a question that I would not expect the minister could answer.

Mr. Porter: In that same news story, the member for Hootalinqua was quoted as saying that the aboriginal people were not hunting for subsistence, but were hunting only for the pleasure of the hunt. Was the member for Hootalinqua stating this government's policy when he made that statement?

Speaker's Ruling

Mr. Speaker: I would raise that question as being out of order, as well. The hon. member is using as a preamble to his question a quotation from the press, which all members in doing must be sure

of and attest to the House for the accuracy of the statement they are quoting from. Again, you are asking an opinion of the House of something that was said outside the House by someone who is not involved in the House. That question would properly be out of order. I have to rule as such.

Mr. Porter: What can I do, he is the Speaker.

The third and final supplementary question is: has the member for Hootalinqua produced any concrete evidence for the government leader, which support his charges concerning native hunting on the Dempster?

Hon. Mr. Pearson: The member for Hootalinqua did not make any charges against anyone. I am sure if the member for Campbell would have been here and heard the question at the time that it was put, he advised this House and the minister for renewable resources that it had been reported to him that certain things had happened. The minister for renewable resources has since reported to the public that he has sent officials of his department up the Dempster. They have made an investigation and it is clear that the report was either erroneous or whatever evidence there was, was taken away. They could not find any evidence of the things that the member for Hootalinqua had said that he had been advised of. I think it is very clear.

Question re: Women's Bureau

Mrs. Joe: I have another question for the minister responsible for the Women's Bureau. Past evidence has indicated that our victims of crime rate is very high in Yukon. Since many victims will have suffered abuse while your study is going on, can I ask the minister if it is his intention to finish this study and have a report before next session?

Hon. Mr. Ashley: The committee will be studying it as I have advised the House and as soon as it has completed the study we will be looking at it and seeing what we can implement, what we have in place, and what else can be done about it.

Mrs. Joe: I have already received all those answers that the minister has given me. I asked the minister: can we expect a report on your victims of crime study before next session?

Hon. Mr. Ashley: I have already advised the member opposite that as soon as I have it, it will be dealt with. More than that I cannot tell the member opposite.

Question re: French Program Cadre

Mr. Byblow: Moments earlier, the minister told me that she is seeking a commitment from the federal minister with regard to the level of funding for program cadre. In what terms is the minister seeking that commitment, if this government has not established costs of the program?

Hon. Mrs. Firth: I hate to disappoint the member for Faro and tell him that I cannot be his minister alone; he will have to share me with the rest of the Yukon Territory. We have written in the letter asking for additional costs, and more than a commitment to just assist us with the costs. We have simply asked how much they are prepared to assist us and if they will continue to assist us if we allow certain other people to enter the program cadre. We have done some basic cost analysis as to what it is going to involve. They are not figures that we have finalized yet.

Mr. Byblow: The minister tells me that she is seeking a level of commitment for additional costs related to program cadre. Is it still a position of this government to consider program cadre in conjunction with the other programs or are they now looked at it separately and on its own?

Hon. Mrs. Firth: Any new program that is established within the Department of Education, as I am sure in other departments, is treated on its own merit, and also the impact that that program will have on existing programs, particularly if there is some potential of it having an overlap with programs that are already delivered in Yukon, keeping in mind the impact that it could have on the French immersion program. As opposed to the government just going ahead and saying that we are going to proceed with this program, part of our decision and one of the points that we would like clarified further, is the fact of how much funding the Government

of Canada is prepared to give us if we have the program cadre.

When we get some kind of commitment from the federal government, other than the commitment to assist us, we will then be able to make the decision, taking into account all other facts. Whether we will proceed with the program cadre or not, we will also have to look at what other options may be available.

Mr. Byblow: Has the minister communicated her government's developments on this French language question to Franco Yukonais Association since March 29th?

Hon. Mrs. Firth: I have had some informal conversations with the president of the association and we received a formal letter last week indicating to us who the next executive is. I have a letter in the process of being drafted to respond to the association, at which time, we will be requesting that they meet with us at their earliest convenience. We will discuss the stage that we are presently at.

Question re: Electrical power subsidy program

Mr. Porter: I have a final question for the government leader.

How much money has the Yukon government made available to fund the electrical power subsidy program this year?

Hon. Mr. Pearson: It would take some considerable amount of research to find that out. What happens is the money is given to this government, by the Government of Canada, and it is based on the taxes that the Yukon Electrical paid in the previous year. Ninety-five percent of that money rebated to this government is to spend however we might wish. We chose, some time ago, to put it into a rebate system. As to the actual amount, I would have to do some research in order to find that out.

Mr. Porter: Is the electrical power subsidy program structured to subsidize rural consumers to a base rate for electrical power paid by Whitehorse consumers?

Hon. Mr. Pearson: No. It is, primarily, a case of making sure that we give everybody in the territory an equal rebate.

Mr. Porter: Is there a maximum on the amount of refunds available to Yukon consumers under the electrical power subsidy program and, if so, what is that amount?

Hon. Mr. Pearson: I would have to check that to be positive, but I do not believe that there is a maximum, no. You must understand that it is only based on domestic electrical use.

Mr. Speaker: We will now proceed to Orders of the Day, under government bills.

GOVERNMENT BILLS

Bill No. 34: Second Reading

Mr. Clerk: Second reading, Bill No. 34, standing in the name of the hon. Mr. Pearson.

Hon. Mr. Pearson: I move that Bill No. 34, entitled *Legislative Assembly Retirement Allowances Act*, be now read a second time.

Mr. Speaker: It has been moved by the hon. government leader that Bill No. 34 be now read a second time.

Hon. Mr. Pearson: The bill before you is the result of a lengthy period of discussion and consideration. The issue of an MLA pension plan has been considered by the Standing Committee on Rules, Elections and Privileges of the 23rd, 24th and 25th Legislative Assemblies. Two of these committees have made reports to the Assembly that recommended the government bring forward enabling legislation.

The first of these reports was tabled on April 7th, 1981 and contained the following recommendations:

"(1) That the Assembly support the concept of a pension plan for members of the Yukon Legislative Assembly;

(2) That the Government of Yukon undertake to develop a pension plan for members, which would be submitted to the Assembly in legislative form".

On April 14th, 1981, that report was concurred in by motion of this House. During debate on the concurrence motion, the current leader of the official opposition made a couple of very important points in his conclusion.

He said, and I agree with him on this, that, "It is not short

political careers we are considering, it is the long careers. A person who has served for a long time, who did not go into it planning it that way, but who got involved and gave up a life's work for the community, and unlike any public servant or anybody employed in a large private concern, has no pension to fall back on."

Following on the direction of the committee, I had the former public service commissioner prepare a proposal that I subsequently forwarded to the standing committee for its input. The calling of the 1982 general election intervened before the committee was able to respond to that initiative. After the general election, the issue was again placed before the same standing committee and I took the liberty of forwarding my earlier proposal to the committee as a basis for discussion.

The committee was also requested to review the separate issue of a severance allowance plan as a result of a recent decision that members of the assembly are not eligible to receive benefits from the Unemployment Insurance Commission.

We have seen the results of the committee's deliberations in its recently tabled third report. The recommendations made in that report are as follows:

"(1) That the Assembly support the concept of a pension plan and a severance allowance plan for members of the Yukon Legislative Assembly.

"(2) That the government undertake to introduce in the Legislative Assembly a bill, based on this report, establishing a pension plan and a severance allowance plan for members of the Yukon Legislative Assembly."

The bill now before us follows these recommendations to the letter. The specifics of both the pension plan and the severance allowance plan are exactly those set out by the committee in the body of its report. I trust that that action on our part will meet with the approval of all members, and that this bill will receive support from both sides of this House.

Mr. McDonald: In responding in second reading to this bill, I would like to say as well that the bill itself was the culmination of many years of discussion. It has not been in the forefront of the business of the Rules, Elections, and Privileges Committee in the last couple of years, but it certainly has been a significant issue before them.

As has been mentioned in the past, the Yukon Legislative Assembly is the only legislature in the country not to have a pension plan for its members. There has been some question in the public recently that this perhaps providing ourselves with a pension plan constitutes lining our pockets.

Nevertheless, I think that the pension plan is quite justified in and of itself. It is no less justified for members of the Legislative Assembly than it is for members of the public.

The pension plan itself, as will become clear in committee debate, is an average pension plan. It is a non-contributory pension plan, meaning that members do not specifically pay into it.

The contributions are, in essence, paid on their behalf in total by their employer, the public or the government.

There are two aspects of this bill: one is a severance plan; the other is the pension plan itself.

The severance plan was meant to be an insurance system in lieu of unemployment insurance. It became clear, after the last election, that some defeated members were not entitled to unemployment insurance and would, therefore, have no income security for the period directly after the election. It was at this point that it was decided that we must be cognizant of the difficulties that members, who are defeated, face. We set ourselves the task of investigating the viability of a plan in lieu of unemployment insurance.

Obviously, we are not debating or reviewing the committee action specifically, but the decision of the committee was that the severance plan, while not a perfect replica of unemployment insurance, was the easiest plan, perhaps, to administer. Nevertheless, there are, in our opinion, problems with a severance plan that is not a replica of unemployment insurance. That too will become clear in committee debate.

The one other point that I would like to make is the issue of pensions themselves. This side of the House has made it clear to

other members of the Rules, Elections and Privileges Committee that we felt that, while pension plans were justified in principle, we must understand the economic reality in the territory. We must understand that while other employees, other workers in the territory, are equally entitled to a pension plan, they cannot reasonably request of their employers that a pension plan be given to them.

For that reason, we would like to propose that the cost of the pension plan, at least in part, be borne by us through a wage freeze for the fiscal year 1984-85.

We feel that this salary loss for all time will, in essence, make up, at least in part, for the cost of the pension plan. We feel that this is, in part, a minor sacrifice to make but nevertheless a necessary one, because we, too, believe in a pension plan for MLAs.

So, I believe that during committee stage, perhaps we can elaborate on our position a little more fully. We would like to support the concept of the pension plan, once again, and we would also like to support, in essence, a plan that is a reflection of an unemployment insurance plan. If we can improve the severance plan, to that extent, then we will be doing ourselves and the public a favour.

Motion agreed to

Bill No. 29: Third Reading

Mr. Clerk: Third reading, Bill No. 29, standing in the name of the hon. Mr. Ashley.

Hon. Mr. Ashley: I move that Bill No. 29, *An Act to Amend the Liquor Act*, be now read a third time.

Mr. Speaker: It has been moved by the hon. Minister of Justice that Bill No. 29 be now read a third time.

Motion agreed to

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

Hon. Mr. Ashley: Yes, I move that Bill No. 29, *An Act to Amend the Liquor Act*, do now pass and that the title be as on the Order Paper.

Mr. Speaker: It has been moved by the hon. Minister of Justice that Bill No. 29 do now pass and that the title be as on the Order Paper.

Motion agreed to

Mr. Speaker: I will declare the motion as carried and that Bill No. 29 has passed this House.

May I have your further pleasure?

Hon. Mrs. Firth: I move that 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 Education 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: Committee will come to order. After our recess, we will continue debate on Bill No. 3.

Recess

Mr. Chairman: Committee will come to order.

We will go to Bill No. 3, *Employment Standards Act*, Clause 1, open for general debate.

Bill No. 3: Employment Standards Act

On Clause 1

Hon. Mr. Tracey: I was under the impression that general debate was almost completed. The member across the floor may have some things to say.

Mr. McDonald: There are few questions I would like to put to the minister, which may take a few minutes.

As the minister is aware, I flagged some issues, which were of some concern to the opposition side, during second reading debate. Those issues included the minimum wage, equal pay for equal value, the provision for maternity leave, the government's excursion into the employment relationship, the issue of exempting employers from provisions of the act, whether it be by the minister or by the director.

¹⁷ I flagged the issue regarding the right to be sick to a limited extent, and the exemption pertaining to all government employees. I flagged some issues regarding the employment standards board and the issue regarding the right to refuse overtime.

Prior to the second reading speech, it came to my attention that the government had provided some background notes to government members and the press. They failed to provide those same notes to the opposition. It would have meant that other members on this side of the House who are not the critic would have a better understanding of the bill as we went through it. Luckily we managed to secure a copy of the briefing notes and the members of the opposition who may not be directly involved in the debate can keep abreast of things by reading through the explanatory provisions.

I would like to discuss briefly first the issue regarding the minimum wage. The bill we have before us essentially passes the buck of determining what the minimum wage is to be.

¹⁸ The board would then recommend it to the minister — to the government or to the Cabinet — who would then ratify it through regulation.

We have some problems about establishing a minimum wage through a non-elected, fully appointed body. There seems to be a desire in Yukon, that we can detect, that the minimum wage should be increased substantially over current levels. We feel that, whereas a board may, reasonably review annual increases, the initial setting of the rate ought to be done in legislation by the House.

There is considerably good reason to increasing the minimum wage. The reasons were stated in a number of briefs submitted to the select Committee on Employment Standards. The committee on Employment Standards reflected the mood of the Yukon public by recommending that the minimum wage be increased to \$6.00 per hour and, subsequently, the desire in the Yukon public has been for the most part to increase the minimum wage to more acceptable levels.

For other members' information, and I am sure the minister is aware of this, there have been various reasons why the minimum wage was set in the first place and why it is increased.

¹⁹ It is increased in other jurisdictions. The minimum wage itself actually originated in Australia around the turn of the century, as a result of what they called a very fierce anti-sweating campaign.

Sweating is a term that usually defines the practice of depleting the stock of human capital through overwork and underpayment, usually involved around the turn of the century in low wages, long hours of work, and unsafe working conditions. Since that time, society has progressed considerably, and there have been other arguments put forward to establish various levels of minimum wages: all significant arguments in and of themselves.

The extent to which we accept the arguments behind minimum wage will determine the level of the minimum wage. If we call the minimum wage a living wage, therefore we should accept the fact that a minimum wage should reflect in some way, a level of support for people who work that would permit them to live in a civilized fashion without public assistance. The reasons why we accept minimum wage are crucial in determining the extent to which we will set the rate.

Essentially there are a number of reasons for promoting the minimum wage, one of them being the assurance of a living wage. If we determine what is a reasonable standard of living in Yukon, for a person who is working then we should accept that a minimum wage for a person who works full time should be sufficient to meet the needs of working people.

Another reason for supporting the concept of minimum wage is the suggestion that it prevents unfair competition amongst employers to force employees to compete for lower wages. There is such a high unemployment rate in Yukon at the moment — I am

sure that you are aware that at least 2,500 are registered with the Unemployment Insurance Commission — that a very low minimum wage or no minimum wage encourages employers to reduce the minimum wage and forces employees to compete for the few jobs available.

²⁰ Another reason, too, that has been put forward to support minimum wage is to protect those people who are essentially in job ghettos — those people who reside in the world of lousy wages. Those people generally tend to be women and, in Yukon at least, generally tend to be working in the service sector. So we attempt to set a rate that will ensure that people who work are given a measure of protection. Another argument has been that a minimum wage stabilizes a recessionary society. If you have a wage rate, then it reduces the likelihood that there will be great fluctuations in the level of wage rates when recession comes around.

The other arguments include the fact that it perhaps narrows the gap between organized and unorganized workers, that it reduces poverty, and that it, in essence, increases productivity and efficiency. The reason for that is that where employers are paying the same wage rates to employees in, say, the service sector in Yukon, they are encouraged to promote efficiency in productivity not at the expense of wages but by improving work processes. Essentially, it does the opposite of what some people believe: it does, in essence, increase productivity and increase efficiency in the workplace.

There is also the very real problem — a sort of ironic problem — that a minimum wage at a certain level will provide an inducement to work. We have certain social programs in Yukon and in this country — whether it be social welfare or unemployment insurance — that pay the minimum — some people might suggest a sub-minimum — wage to maintain a certain standard of living. This wage, in essence, is very much the same rate as the minimum wage rate in Yukon. The inducement to work would involve a raising of the minimum wage to encourage people to work, encourage people to find work in order to support themselves and, at the same time, pay for family costs, pay for their babysitter, pay for their daycare and maintain a much greater degree of self-respect.

²¹ I would like to ask the minister why the government has decided to pass the issue over to a board, why it has not decided to reflect the increased cost of living in Yukon through a higher minimum wage rate and why, in essence, they have ignored the issue, substantially, by providing little or no accommodation to the recommendation made by the Select Committee on Employment Standards?

Hon. Mr. Tracey: The member, when he first stood up, said that we are passing this judgment on to an appointed body. I would just like to say that if we were to do it in the government, it would be done by appointed people: government employees.

The member goes on — and I am glad my department provided him with all the information that he was quoting from — to mention many different things that have to be taken into consideration when you are dealing with a minimum wage. That is exactly the reason why we made the decision that we should pass this on to a body that is set up to deal specifically with labour, so that they could do all the investigation. They would have the expertise at their fingertips, especially after they have dealt with it once or twice, to be able to make a wise and rational proposal to government for minimum wage. That is exactly why we passed it on.

It is easy to sit here, anyone of us, and say, "Yes, the minimum wage should be \$6 an hour, or it should be \$5 or it should be \$7". We want those people to look at all ramifications of the actions that the government would have to consider when they set a minimum wage. That is exactly the reason why we passed it on to the Employment Standards Board.

Mr. McDonald: I think the minister should know that the department did not provide this side of the House with any information. I thought I made my point clear before.

The minister mentioned that the reason they were passing the issue off to the Employment Standards Board is that it is a complex question, involving many factors and the ramifications of the decision would be quite extensive. However, the fact remains that many difficult, complicated decisions this government takes, are

not the basis of board decisions.

22 This is one, I would submit, issue that is a politically sensitive issue and that is one reason why the government is interested in giving the option to set the minimum wage to a board. We feel that, yes the issue is rather complicated. There is a wide body in the territory that feels that the rate ought to be increased substantially. We feel that the legislature should make this decision.

If the decision itself is a very complicated one, then perhaps we should be making proposals allowing people to review those proposals and setting the standard in the legislature. We have had a considerable amount of time in the past years to understand and to ascertain the ramifications of raising the minimum wage. We could have been doing this for years. We know that the review of labour standards has been going on since 1977. Why cannot the government have suggested an increase base rate upon which a board or someone might review annual increases. I think it is absolutely mandatory that we immediately increase the minimum wage to a more acceptable level in the territory. If we leave it to a board, it may not be significant if they have no direction from the legislature as to what the base ought to be. It may not be a decision that reflects reality in the territory. They may use the old minimum wage base on which to make its decision as to percentage increase.

It may be that the old minimum wage was not realistic and never has been realistic. Perhaps the base ought to more reflect reality in Yukon. That is why we are suggesting that perhaps the extensive work done by the Select Committee on Employment Standards, of which there is at least one member still in the House, not all go for naught, and that we at least accept this recommendation to increase the minimum wage to that extent. If a board is charged with the duty of reviewing annual increases, then that perhaps, because it is a complicated issue, is something that the board can handle. We feel, however, that the base rate ought to be established in legislation, and that the issue is not so complicated that politicians cannot handle it. That we should follow the recommendations of the select committee on this issue. I am wondering why the minister would not accept that reasoning?

23 **Hon. Mr. Tracey:** We put our policy forward in the bill and that is the policy that we are intending to proceed with. The board does not set the rate; the board recommends to the government, who then sets the rate. The member across the floor is talking about reviewing it every year and adding an increment. That is not what we are considering. What we are considering is that the board study the whole situation and recommend to us what our rate should be. As I said earlier, we could sit here, we could say yes, it should be \$5.00 an hour so we will put \$5.00 an hour in the bill. That is about as much consideration as would go into it. To consider the question of minimum wages and what it should be and how it should be set is a very complicated procedure that would take up more time than we have in this House to deal with. So that is why we want to put it to the board, so that they can develop the expertise and we will then have it to call on for any future increases we want to make in minimum wages.

I think we have made a lot of consideration of it. As the member said, for seven years labour legislation has been dealt with and considered. A lot of forethought went into this bill, and that is why we have decided that the minimum wage should be something that an expert body deals with and makes recommendations to the government about.

Mr. McDonald: What I do not really understand is why complicated decisions such as the minimum wage might be something that the legislators are not trusted with handling. By legislators I mean the legislature rather than Cabinet. There are a number of issues that the legislature deals with that are tremendously complicated, and decisions for which there are serious ramifications that we deal with on a regular basis. Admittedly they are not as politically sensitive as altering the rate of the minimum wage. As I said, this issue has been dealt with by a couple of committees of this House over a very long period of time. It is the sort of decision that you would think a select committee could reasonably gain the expertise to handle and could understand the ramifications. It is perhaps something that a board in the future may be charged with reviewing, because obviously it may not be in our best interest to

always review the rate every year and to go through the same sort of work that the select committees has done in the past. The select committees have been charged, among other things, with determining what is a sufficient minimum wage in the territory and they have suggested that the minimum wage be increased to \$6.00 per hour.

24 Now, if, in the past, there was such a problem with \$6 an hour, from the government's point of view, then, perhaps over the last year we could have seen some effort expended by the government to determine the ramifications of the \$6 per hour minimum wage — a \$2 and something increase.

The argument that the board would acquire the expertise, I do not think is relevant for this case, because what we are talking about is setting the initial base rate upon which other increases would be determined. There is considerable belief in the territory that the current minimum wage does not reflect the reality in the territory. It is not, by any stretch of the imagination, a living wage in the territory. The point, of course, is that if the wage is set in legislation as a base rate, then the board would not be making a political decision as to whether or not the old rate was acceptable, it would be basing its determination on such fixed factors as cost of living increases, which would, in effect, be factors on which an increase could reasonably be based.

I think that there is going to have to be a political decision in the territory as to whether or not we are going to be accepting a living wage as a minimum wage, or whether we are going to be accepting some arbitrary figure — well below the living wage — as our minimum wage. The bill lacks that kind of direction. In fact, there is no direction, there is no direction at all. The minister says that they have addressed minimum wages in the legislation. All we have is part three, subtitled "Minimum Wages" and there is absolutely no direction, of any kind, as to what will constitute a minimum wage or what sort of direction they would like to give the board as to what a minimum wage ought to be or ought to reflect. The act is absolutely silent on that very, very critical issue.

So, that is one reason. It is, in essence, a political decision as to what you base your minimum wage on. That is a political decision and you cannot leave that for a board to decide. We must decide that, ourselves, and then direct the board as to what we expect from a minimum wage.

25 From my reading of the various submissions that have been put forward to the select committee — both the previous select committee and the select committee from the legislature prior to 1978 — it was suggested that an increase in minimum wage was justified, that it did not reflect a minimum standard of civilized living in Yukon and, therefore, it had to be increased.

No actuarial work was done on it, that I am familiar with. Nevertheless, that is something that the government could have done between the time that the select committee completed its work and the tabling of the bill in this House. I think that is the kind of support work that we should have seen coming from the government.

The minister mentioned that the board only recommends to the government that the minimum wage should be altered. It does not say whether it should go up or down. The wording of the act, without being specific, suggests that the board is going to fix the minimum hourly rate and the minister must sanction it — either say yes or no to such a rate. This gives the board considerable power to, at least, set the standard, and initiate the discussion altogether as to whether or not there will be an increase in the minimum wage.

The minister mentioned that there is no justification for a minimum wage. I would like to know whether or not he could just elaborate on his comments, if he believes, in fact, that there is no justification for the minimum wage, or that he felt that the Select Committee on Employment Standards provided no justification for an increase in the minimum wage?

Hon. Mr. Tracey: There is no justification for a minimum wage unless you make some arbitrary decisions, such as people should have a living wage, or no one should be allowed to pay less than so many dollars an hour. It is all value judgment; there is no actual justification for a minimum wage.

The policy of having a minimum wage is something that

governments have accepted over a period of time. Arithmetically, and every other way, dealing with labour, there is no justification for a minimum wage. It has to be an arbitrary decision made by a government.

Mr. McDonald: I thank the minister for, essentially, supporting the argument that I have made all along.

The fact that the minimum wage is an arbitrary decision and that it reflects value judgments on the part of somebody or other suggests to me that those value judgments constitute political decisions, which the politicians have to decide.

Hon. Mr. Tracey: Yes, that we will have a minimum wage.

Mr. McDonald: If the only decision that the politicians are going to be harbour, or the only decision that they are going to make is that there should be a minimum wage in the first place and not that the minimum wage should reflect any sort of reality in Yukon or should reflect a decent standard of living or a minimum standard of living or a civilized standard of living then we are not doing the Yukon taxpayer or the Yukon worker any service.

It involves deciding how you are going to set that minimum wage. That is what we should be doing in this legislature. That is what the bill itself ignores. That is why we are suggesting that, yes, this is an arbitrary decision and, yes, there are value judgments that involve more than just determining on an actuarial basis what it costs to purchase a loaf of bread.

If you want to ignore the cost of living in Yukon, if you want to ignore civilized standards and just say that we have a minimum wage, then you are not completing the political decision-making. A complete political decision would establish that, yes, we do in Yukon want a minimum wage, that we want the minimum wage to reflect a civilized standard of living, we want it to be a living wage, and that we want the board to consider increases in the minimum wage based on certain factors. Then the board itself can review the actuarial analysis and recommend increases to the legislature. However, the value judgments and the political judgments have to be made by the politicians. That is the kind of decision we should be making now. Once we have made that initial decision, we can decide how we want to review the various ramifications of any particular decision we may make.

Mr. Chairman: Is there any more general debate?

Mr. McDonald: Yes, there is some more general debate.

The minister did not want to respond, I guess, to my last remarks on the minimum wage. Perhaps if I ask the minister a direct question, it might goad him to speak.

Can the minister say that if there is no justification for a minimum wage, why is it that we have had one for the past many years and can he give us some indication as to whether or not there was any sort of policy decision to support the minimum wage at the levels of the past, whether they felt that in the past a minimum wage has in fact been a living wage and has in fact been sufficient. Perhaps from that position we might be able to establish whether or not conditions have changed to the extent that perhaps we ought to be considering an increase?

Hon. Mr. Tracey: The government has made a policy decision: there will be a minimum wage. It is written in the act and I have stated as much as I am going to state about minimum wages.

Our policy is expressed in the bill. We will have a minimum wage. We will have expert people who can help develop the expertise on minimum wage and provide them with all of the information we can possibly dig up on minimum wages, so that they can develop the expertise and make a recommendation to us. I know that the member across the floor and, perhaps, some of his colleagues, would like to sit down and make an arbitrary decision about the minimum wage. We are not prepared to do that. That is our policy: it is expressed in the bill. As for any further discussion, we are just spinning our wheels here, this afternoon.

Mr. McDonald: All right, then, let us take a slightly different tack on this issue. The minister does not want to discuss a specific minimum wage. He feels that that would be far to arbitrary and that the generalists in the House would not be in a position to make such an intelligent decision credibly.

Does the minister believe that a minimum wage ought to be a living wage for Yukoners? If we can discuss what the minister feels

what ought to be the proper wage, perhaps we will be able to determine more closely what we might expect from a particular board that the minister may be appointing.

Hon. Mr. Tracey: No, I am not going to answer those types of questions, either. That is exactly why we are referring it to a board.

Mr. McDonald: For heaven's sake, there are certain political decisions that politicians ought to be making. We should not be forgiving our authority, our delegated authority by the Yukon electorate, to some appointed body.

I could understand the minister's opinion if the appointed body were going to be sifting through an actuarial analysis of Yukon economy and then recommending increases based on certain fixed factors. However, when it comes to something as fundamental as a minimum wage as a living wage, then that is the sort of question that the minister does not want to answer.

Some of the fiercest political battles over the past 100 years have been over just these issues. Nowhere else have the politicians said, "Well, look, let's pass over the issue of sweatshops. Let's pass over the issue of minimum wage and job ghettos to some board to decide". That does not wash. This is, essentially, a political judgment — a political decision — and I cannot understand the minister's refusal to answer.

The political factors in determining a minimum wage ought to be set by the legislature. Do we believe in a minimum wage that is a living wage? Do we believe in that? This side of the House has expressed itself that it does believe in that: does the government side believe the same?

The government leader seems to be willing to enter the discussion. I am thankful for that because of the silence from the minister responsible for labour services.

The government leader said, I believe, that the existing minimum wage is a living wage. The government leader now says that —

Hon. Mr. Pearson: I did not. No, I did not. I was sitting in my seat and I said nothing.

Mr. Chairman: Order please. Order.

Mr. McDonald: I think the government leader has learned a lesson about kibitzing.

Can I ask the minister responsible for the legislation one more time whether or not he believes a minimum wage ought to be a living wage, and whether or not he believes the current minimum wage is in fact a living wage?

Hon. Mr. Tracey: I will not say whether it should be a minimum wage or whether it should not. I said I wanted it referred to the board. I want the board to make recommendation to me and to my colleagues. In regard to whether the present wage is a minimum wage, I guess all I can say is that obviously people are living under it.

Mr. McDonald: The minister is surely aware, too, that in the 19th century people lived under very cruel working conditions, very cruel and inhuman living conditions. I think that that particular argument reflects the insensitivity to those people who have to live, pay their bills, get the work, come home and feed their families, on \$3.60 an hour.

The act itself leaves a great deal of the initial decision-making power before it goes to Cabinet, to the board. Is the minister suggesting that the minimum wage could be reduced to some lower level. If there is no direction given to the board as to what we believe the minimum wage should reflect, is it not conceivable that perhaps the board may, given the fact that they may not believe in a minimum wage at all, or perhaps they do not believe in a minimum wage that reflects a civilized standard of living?

Perhaps this fully appointed board, appointed by the government, does not believe that workers at the lower end of the wage scale — as does the President of the United States — should compete with each other for the existing job, thereby, putting downward pressure on the minimum wage itself.

If there is no political direction whatsoever from the legislature as to what we expect from a minimum wage, conceivably we could be faced with recommendations from the board that would suggest perhaps that a downward movement of the minimum wage would be acceptable. Then the minister would have to make a political decision that he wants to avoid. Why cannot the minister provide

some direction to the board as to what we expect from a minimum wage?

Hon. Mr. Tracey: We expect the minimum wage to go up but I would be very surprised if the business representatives who will be appointed to the Employment Standards Board would consider lowering the minimum wage. I cannot speak for what the employee representatives are going to say, but I can certainly say, as a businessman in this territory and speaking with a great many businessmen in this territory, I know very, very, very few that pay the minimum wage now; in fact they pay a great deal more than minimum wage. But we also have to consider that perhaps, if we increase the minimum wage and we increase it too significantly, we might also put people out of work. That is something else that has to be considered by that board.

Mr. McDonald: I see I am goading the minister into some semblance of discussion on the issue.

The minister suggested that businessmen would not accept a decrease in the minimum wage. I am sure that most reasonable business people in the territory would not accept such a thing. There are those who ideologically do not believe in a minimum wage in the first place. There are those in the United States, significant elements in the political environment of the States, who believe there ought to be no minimum wage and that market factors ought to determine completely the rate at which a person works for an employer, or that there should be no government participation whatsoever in that decision-making.

Conceivably, we could get people appointed to the board who believe just that very thing. We can say that it will never happen here but it is certainly happening in the United States. Amongst the power brokers it is happening in the United States.

So, there is some cause for concern that perhaps the people will not believe in a minimum wage in the first place and secondly believe that a minimum wage ought to be a living wage. The minister mentioned that a large number of employers do pay their employees a good deal more than the minimum wage and that I do accept; I think that is quite true. There are those, however, who still work and support themselves and their families on the minimum wage. They are forced to work much longer than the 40-hour week, and they work a number of jobs in order to make ends meet. For those people, I would suggest that we direct an increase in the minimum wage.

I am not satisfied that the minister has given enough justification for not dealing with the issue to the extent that we ought to be dealing with the issue as politicians. There is nothing here that suggests that the minimum wage is going to be increased, whether it is going to be decreased or whether it is going to be increased substantially or only partially. I think we do realize that there are ramifications to increasing it substantially. One suggestion has been that it is going to put people out of work.

Another suggestion is that it is going to be inflationary. That was not a comment that the minister made, but that is one that I have heard and I am willing to put it on the record.

The argument that it is going to put people out of work has been an argument that many people, in the past, have put forward for no minimum wage at all: that you can have full employment only if you pay fifty cents an hour. It would change the nature and the character of the economy, but you would have full employment.

We want to encourage employers to provide a living wage to their employees, to those people who are going to make their investment in a particular business and operation. That is why we are stating our position on the record: that we would like something that would better reflect a living wage.

As far as the issue of an increase in the minimum wage being inflationary, I do not put a lot of credence in that argument, currently, for a variety of reasons, one of the more important ones being that, as the minister stated, few employers in the territory pay their employees the minimum wage. Let me put it this way: the \$6 an hour minimum wage would better reflect the lower end of the wage scale in the territory, today. So, in that sense, it would not be a significant change in the Yukon economy.

The fact that, perhaps, it may be inflationary or may be perceived to be inflationary or contribute to inflation in the territory,

psychologically, is to ignore the fact that the economy is in a significant recession, at the moment. There are all sorts of downward psychological pressures on wage increases and real downward pressure on any sort of wage increase. Therefore, this would be a prime time, this would be an ideal time, to set a very unfair situation straight and to elevate those people who live in the world of lousy wages to a standard of living that better reflects the civilized standard of living we would like all Yukoners to enjoy.

It would also result in a small measure of redistribution of wealth in the territory. I think that that is something that we can all accept, those of us who are better paid, and that is something that we can and should accept. This is a statement of political principle. I would like to see the minister state his political principles or agree with what we have suggested and perhaps we will be able and should consider providing that kind of direction to the employment centre's board.

Hon. Mr. Tracey: I will make sure the board has a copy of *Hansard* so that they know the member's position when they are dealing with it.

Mr. McDonald: That is very generous of the minister. However, the Employment Centre's board may not consider that the backbench opposition member has a great deal of clout in the territory and, for that reason, may not take the direction that I have proposed, or that this side has proposed, as the direction that it ought to take. If we had at least a *Hansard* record of what the minister believes is the direction the board ought to take, then that might be a little better insurance than merely my stating it.

What would be ideal insurance would be if we put that kind of direction in the act. That way, Yukon workers can be quite assured that the minimum wage is going to better reflect reality in the territory. Surely, those people who have been involved in this issue in the select committee in the past could elucidate what sort of decision-making that led to the \$6-an-hour minimum wage two or three years ago. This is a recommendation that was made in June, 1982, two years ago. The \$6-an-hour minimum wage is not an increase over a two year period, but is merely a re-statement of past conditions.

The minister does not want to elaborate or expand on his remarks. That is unfortunate. I would have like to have seen a healthy discussion on the issue. Perhaps we might have been able to get through the minister's statements, or through the legislation, and might have been able to give the drafters of new minimum wages some sort of direction in some way or other.

Mr. Penikett: I am sure my colleague was referring to Mr. Falle, the member for Hootalinqua, when he was asking for members of the committee who continued to be members of this House to speak to the question of the \$6-an-hour minimum wage.

The proposal that he has reiterated was a proposal made a couple of years ago. The proposition, I think, that the committee supported was a very simple one. The question, in the end, after going around and around and around on the question, was whether or not a person could keep body and soul together, could rent accommodation, could feed themselves, clothe themselves and transport themselves to and from work on less than \$6 an hour. It was concluded by the members of the committee, at the time, that a person could not.

Now, it may be, even though the minister has not said so today — and, perhaps, he is just being coy and playing his cards close to his chest — perhaps it is that the committee that he is going to appoint is going to propose something much more generous than that and, perhaps, he is going to do that because he has in mind to appoint, from the employers' side, a couple of people who are well known as generous and fair-minded employers and, perhaps he has in mind to appoint, from the employee's side, people who are nothing less than militant and vigilant in their defense of working people's rights. Perhaps they might even be in the vanguard of those who would push for justice for ordinary working people.

Nonetheless, because I cannot speak for the member for Hootalinqua who, I am sure, would speak much more passionately than I on the merit of the \$6-an-hour minimum wage, I cannot but agree with my colleague from Mayo that I think it would be useful if the minister or some ministers or, perhaps, all the ministers opposite would commit themselves on what they thought was an

adequate minimum wage. I think, particularly so, since the minister has said that they will, in the end, make the decision, anyway.

We will have some kind of recommendations from the board and the board will be studying all sorts of expert advice, but I submit that the one piece of expert advice that should not be ignored and must be obtained, if the process is to be valuable, is the views of the people who have to live on such a minimum wage. Whatever actuarial, economic or objective process we go through, I think it is absolutely essential that the views of those people, whether they are chambermaids or servers in restaurants or kitchen help or part-time or occasional or casual workers for one small business or another, should have an opportunity to express very clearly the kind of income that is necessary for them to maintain the actual bare necessities of life. My guess is that I would be surprised that many of them would argue that they could do it on less than \$6 an hour: if they did, I would be very interested in hearing from them.

Hon. Mr. Tracey: The leader of the opposition mentioned waitresses and chambermaids and people such as that. I would be interested in having any one of the members across the floor tell me of any business in this territory that is paying the minimum wage to these people. There may be some that are paying a minimum wage, which I feel is very unlikely, but they are probably getting free room and board and such other incidentals as that that raise their wages to probably in excess of \$6.00 an hour.

Mr. Penikett: The minister has given me an interesting challenge. Could I just clarify what it is he is proposing though, because I intend to respond. Is he asking me whether or not there are any businesses at the moment paying \$3.60 an hour or is he asking me if any business is paying less than the \$6.00 an hour that I proposed? If he is suggesting the latter, I am sure I could find a great many.

Hon. Mr. Tracey: The member knows full well what my question was.

Mr. Penikett: I am afraid I do not, but that may be a failing in my mental processes, not the member's articulation. The minister has still not, though, responded in the way I would like. Is he in fact challenging us to find the number of businesses that are paying less than \$6.00 an hour, or is he in fact asking us if there are and how many employees there are who are still getting the wholly inadequate \$3.60 an hour?

Hon. Mr. Tracey: No. What I said was — and I mentioned people who he spoke about earlier in his earlier comment about chambermaids and waitresses in this territory — that I would like to know if he knows of any specific one, because I would be interested in knowing if there is anyone and who they are, if there are those types of people. I also added perhaps there may be the odd one, although I do not know of any, who are paying \$3.60 but are probably also giving free room and board and such incidentals that raise their wages to significantly more than \$3.60.

Mr. Penikett: If I can find a number of people who are getting less than \$3.60 and who are not getting their free room and board, as the minister suggests, since the minister says he would be interested in finding out, can I take it from him that if we can produce this evidence for him then he will change his policy and in fact make the government put a position on the record as to what they think would be an adequate minimum wage?

Hon. Mr. Tracey: No.

Mr. Penikett: Then clearly there is no point in going out and doing all this work unless the minister is prepared to change his policy on the production of the evidence.

Hon. Mr. Tracey: Except, that he is making accusations.

Mr. Penikett: No, my statements were in respect to the situation of people who might be earning the \$6.00 an hour minimum wage, not the people who are earning the poverty wages of \$3.60 an hour.

Mr. McDonald: The minister stated that he thought that those people lucky enough to be receiving the minimum wage probably had benefits that brought their minimum wage well beyond the rate of \$6 per hour. I would just like to put on record that I know of absolutely no one who is receiving the minimum wage and receives such an extensive benefit plan that would bring the composite minimum wage to greater than \$6 per hour.

There are other arguments to encourage the government to raise the minimum wage to a much higher level than it is currently. One of them is that students who take advantage of various federal and territorial make work programs and summer employment schemes are able in a very short period of time to be able to acquire the funds to put them through school. Obviously a minimum wage that would better reflect that reality might be a good thing for the territory. These are reasons why this side suggests that we ought to increase the minimum wage and that we also should be providing a kind of direction to the board that the board should require in order to make the minimum wage higher.

My feeling is that perhaps the board will look at factors such as the relative change in the cost of living over the past few years, or since the last increase, and will apply that increase to the minimum wage rather than resetting the minimum wage according to political factors that the legislature ought to be establishing.

What I foresee is that the minister will tell the Yukon public that that board, given its vast fund of knowledge and newly gained expertise in determining minimum wages, has weighed all the factors and have come up with a minimum wage that is 20 cents beyond what it was before, and plead ignorance as to the way in which the decision was made. The employment population in Yukon will not be snowed by that. This side certainly will not be. There are good political reasons why the minimum wage ought to be substantially changed and I see no direction either in the bill or in the minister's statements that the minimum wage will be changed to the extent that it ought to be.

« The minister refuses to really respond substantively to any of those statements.

The next area that I would like to deal with involves the issue of equal pay for work of equal value, or equal pay for men and women. Perhaps I could start by asking the minister a question as to why they opted for the position that the legislation should read "equal pay for similar work in the same establishment", rather than "equal pay for work of equal value"?

Hon. Mr. Tracey: We went for equal pay for similar work in order to make sure that women get equal pay with men. That is the specific reason why it is there. It is strictly to the advantage of the woman, so that she can get paid comparable to men.

The concept of equal pay for work of equal value was a totally different concept, altogether, and it is something that there is only one government in Canada — in fact, it is the federal government — that has adopted that principle. No other government in Canada has adopted it. It is a radical change and, in fact, it is a radical new proposed way of considering how a person should get paid. It is a concept that we are not prepared to accept — at least, this side of the floor is not prepared to accept — at this time.

Mr. Penikett: Could the minister explain, then, since the time when the House passed unanimously a motion on this subject — a proposal that all members voted for, including the minister opposite — what has caused him to change his position on that? Was he ignorant of the position, the philosophy that he now articulates at the time, or was there some other reason why he voted for the measure, right before the last election, and does not want to implement it now?

Hon. Mr. Tracey: No, the motion that we voted for was to refer it back to the select committee. That is exactly the motion that was put forward by the member for Whitehorse South Centre.

Mr. Penikett: With instructions to introduce into the report the concept of equal pay for work of equal value. The minister cannot equivocate or wiggle out of it. That was the specific instruction to the committee: to install that principle in the report. Why did the minister vote for that principle, then, and why does he reject it now?

Hon. Mr. Tracey: I would like it qualified very much. I did not vote for that principle. I have never have agreed with that principle. We passed the motion to refer it back to the select committee and they should consider that proposal, that principle, along with the others. That does not mean that I support equal pay for work of equal value.

Mr. Penikett: I think the minister is equivocating. It is quite clear that what we debated, at that time, were the instructions to the

committee. The instructions were quite clear: to enshrine the principle of equal pay for work of equal value into the report. The report was recommitted for that purpose and it was that which the minister voted for, not simply referring it back to the committee. If the minister was opposed to equal pay for work of equal value, why did he not vote against it on that occasion?

Hon. Mr. Tracey: It was not a policy that this government had accepted at that time. It was a proposal made by members across the floor. We agreed to allow that proposal to stand to be considered by the select committee and for them to review it to see whether they should make the recommendation that that is what we should have in our legislation. However, that does not mean that I or any one of my colleagues supported that proposal or that radical change in the way people work in this society.

Mr. Penikett: It is very interesting when you get people voting for things they do not support. Since it has been accepted by the federal government — and the minister is wrong when he says it is the only government that has accepted that principle — what is it about the equality for men and women in respect of the income they should derive from their work which he objects to?

Hon. Mr. Tracey: Equal pay for work of equal value has nothing to do with men and women.

Mr. Penikett: With respect, the minister's answer is nonsense. Of course it does. What it is is the best articulation yet of the principle that men and women, whatever their work, if the work is of equal value — and there are all sorts of ways of establishing the value of that work, with various criteria — should be paid the same rate. Does he object to that?

Hon. Mr. Tracey: No. I think our side of the floor has made our position very clear in that women should get paid the same as men. That is not the proposal in equal pay for work of equal value. In equal pay for work of equal value, everything has to be given a point system; it has to be all worked out, and it does not matter if you are a man or a woman, a ditch digger or a lawyer, everything is given a point system and you all have to be paid equally. It is the biggest socialist idea that has ever hit this country.

Mr. Penikett: I would be very interested to know why the federal leader of the conservative party supported such a socialist proposition, then. Could the minister explain that?

Hon. Mr. Tracey: No, I cannot explain it.

Mr. McDonald: The minister has given a very interesting adjective to equal pay for work of equal value — that it is a socialist theory. I am sure he means by socialist not what the government leader meant by socialist when he was referring to legislation in general. I want that on record if at all possible: the minister said that he felt that equal pay for work of equal value was equalization of the masses, which means, I suppose, that we all live in a sort of communal style, and we all get paid exactly the same, no matter what we do and no matter where we work and no matter what the conditions are under which we work: everybody gets paid the same. It does not matter how hard you work, everybody gets paid the same. And this is supposed to be a reflection of what they consider to be the socialist mentality.

³⁸ The issue has absolutely nothing to do with equalization of the masses. That is a gross simplification of this proposal. The member for Hootalinqua would like to get into the bed and I would encourage him too, he is heard so infrequently by his constituents.

The minister made a couple of points. I would like to deal with this in a sort of an incremental way. He suggested that perhaps equal pay for equal value was not workable. At the same time he said that he did not agree with the equal pay for equal value in principle. Is he suggesting that there is no reasonable effective way of applying the concept of equal pay for equal value?

Hon. Mr. Tracey: No, obviously it is workable. If you want to make a value judgment and put a point system on what everything a person does is worth, then you want to add up those points and say that is worth \$25 dollars, that is worth \$10; certainly it is workable. What I am saying, and what our party says, is that we do not believe it is what we want to see in our territory. It is not the policy of our government.

Mr. Penikett: That is interesting. It is not the policy of this government. It is the principle, I understand, that the public service

commission of this Tory government uses to establish rates of pay between different classes of work. As far as I understand it, I believe they are on record as supporting it in respect to the employees of this government that they are paid equally according to the work of equal value.

Just to understand the minister's position, I wonder if I could ask him, so we can be clear on what his meaning is when he says this is a socialist proposal: does the minister in his view, believe that Santa Claus is a Socialist? How about Jesus Christ? Perhaps he can help us understand and we could establish where he is coming from on that?

Mr. McDonald: The minister does not wish to elaborate on his interpretation of political philosophy.

The purpose behind equal pay for work of equal value, if I can be so bold as to state it — and I hope I am eloquent enough to say it adequately — is that it is meant to address those women who work in so-called traditional jobs that are traditional in that they are low paid work. The situation is maintained in the face of other traditional jobs that are primarily populated by men, in the face of those jobs that are being paid at a much higher rate. There can be a situation where a person working in the same operation, but not performing similar work, is being paid less than they deserve because they are a member of a traditional job class.

³⁹ For example, there could be a person who works in sales in a particular retail establishment, has considerable responsibility, deals in high pressure situations, deals with the public on a regular basis, who may be paid much less than a person who is a delivery pick-up driver, who delivers goods to other establishments, who has a job that requires much less skill, much less effort and much less responsibility. So, the obvious reason for equal pay for work of equal value is not to make everyone the same, and is to not, as the minister suggests, to equalize the masses, but it is, instead, to equalize the pay rates of those jobs that have the same skill, effort and responsibility.

There is no question but that jobs differ in the levels of skill, effort and responsibility and working conditions. I think working conditions is included in the definition of the federal *Human Rights Code*. There are differences between jobs. The point, however, is that when you have jobs that have the same skill, effort and responsibility, that you pay the people the same rate and, thereby, hopefully eliminating the job ghettos that some women find themselves and which, in essence, preclude them from the kind of advancement that they may desire and maintain a discriminatory situation between men and women's work.

So, far from being a socialist principle, I would say it is a fair principle. The minister suggests that he does not believe that it is unworkable, that, in principle, it could be quite workable. Would the minister mind elaborating just a little bit further on why he believes that his party or this section of his party, the territorial section of this party, is so much opposed to the principle?

Hon. Mr. Tracey: I would just like to deal with one instance. The member across the floor says it is for men and women — at least, that is the argument that has been put forward, now — it is for men and women, to equalize women's work to men's. I suggest to you that it goes a great deal further than that; it goes to equalizing everybody who is working at a certain class of work or who comes up with the same points to get the same salary.

I am also suggesting that it is going to do away with unions, as well, because all it is going to be is that the government is going to set so many points for this job and so many points for that job, or this type of work, and, when you add them all up, this is what the salary is going to be. So, all you will have to negotiate, then, on is what a point is worth.

⁴⁰ So, also, it is going to get rid of unions.

Now, I would like to point out one thing: a bus driver might be getting \$20 an hour, right now, and he might be sitting doing nothing for seven of the eight hours a day that he is supposedly working — and I have seen it happen a great many times, on many jobs that I worked on. I also know that there are people working right here in this government, for example, who work very hard and make about one-quarter of the salary of a bus driver. Does the member across the floor suggest that, perhaps, a bus driver should

be getting about \$6 or \$7 an hour or \$10 an hour and the person working in the government should get the bus driver's salary?

These are all the questions that you have to answer. Sure, the concept starts out as equalization between men and women, but it goes a great deal further than that, and anyone who wants to think about it for a little while can see exactly where it is going to go.

Mr. Chairman: Order, please. We shall recess until 4:00.

Recess

Mr. Chairman: I will call Committee back to order. We are now on general debate, *Employment Standards Act*.

Mr. McDonald: The minister, prior to the break, mentioned that he felt that the provision calling for equal pay for work of equal value would be a provision that equalizes the masses, equalizes everybody and in effect will also eliminate unions in the country. I think it is necessary to say that this concept, equal pay for work of equal value, is not a national incomes policy. It is not a policy that states that every sales clerk in the country should be paid the same rate or that every job in the country with the same skill effort and responsibility will be paid the same rate. It refers to the jobs within a particular operation. There are differences between the affluence of various employers reflected in the wage scales that those employers provide their employees. That goes without question.

There are mines in the country, for example, that pay \$16 an hour for journeyman tradesman, and there are other mines in the country - in the east - that pay \$8-\$9 an hour for journeyman tradesman. This provision, equal pay for work of equal value, would not provide a national incomes policy for the country or for the territory. It merely addresses the relative wages of employees in a particular operation. It is not unknown to take place in unionized operations.

There are, for example, in some mines in the north, what is called a cooperative wage study, which is in essence a job evaluation system. This is a system that has been promoted by the union and has been accepted by the company, which provides a point system to various jobs, et cetera. It is not meant to equalize everybody or to equalize the masses. It is meant to equalize jobs within a particular employer's operation. It will not eliminate unions. If the wage issue was forever and a day settled between employees and employers, there would still be cause for unions.

There are unions in this country who have members who are paid the minimum rate: the textile unions, for example, in Quebec. The wage issue depends highly on what the government determines is going to be the minimum wage in those operations. Nevertheless, they still call for a union for other reasons, for other good reasons, such as the due process laws, grievance procedures, et cetera. There are many reasons why people may want unions.

⁴¹ This is not going to eliminate unions. Even if this policy was so all-encompassing that it dealt with all of unions' problems, that in itself would not be troublesome to union people because the issue is not whether or not they can protect an organization but whether or not they can address the issues that they face in the workplace.

This is a very modest proposal in comparison to all the issues that employees face in dealing with their employer. This deals only with one. It deals with the relative wage rates between men and women in a particular operation. What they are saying is not that all men should be paid the same as all women, but for those specific jobs that have the same skill, effort and responsibility, the wage rates should be the same. It is kind of a cooperative wage study; it is a system of evaluating work. As the minister said, in principle it is not unworkable. It in fact takes place even in Yukon — at Cyprus Anvil mine they have a system of evaluating jobs.

So, in order to eliminate the old traditional job ghettos, we propose that this policy be given serious consideration. It is not a socialist policy, necessarily. It should not be a policy that the government feels it should reject merely because it wants to tag a misnomer on it. The federal leader of the Progressive Conservative Party has indicated that equal pay for work of equal value is something that he could perhaps support. It is something that is already established and enshrined in the human rights legislation for the Government of Canada. I do not understand why the minister

feels this is a radical change that he cannot support, or that the government cannot support, because, as I said, it is not a national incomes policy, it is not a territorial incomes policy; it is an incomes policy for a particular operation that has decided that it is going to discriminate between men and women.

I wish the minister would at least comment on that, and if he has other good arguments perhaps we can respond to those?

Hon. Mr. Tracey: I think I would like to respond to it. As the member across the floor says, the idea is coming out now to equalize women's work to men's. If they are working at an equal job, they should get an equal salary. I do not think anyone disagrees with that concept in principle. But let us follow it through. The next thing is, it is not men equal with women on the job, it is men equal to men on the job and then it is men equal to men or people equal to people on various jobs. Let us go back to the union movement. Originally, the union movement was to bargain as a group with your employer. It has come a lot farther than that. Right now we have international unions that have millions of members. They are not bargaining on a one-to-one basis with an employer. What it is now is that some little employer is bargaining with a million-member union.

⁴² That is exactly the concept that can be carried on with this concept of equal pay for work of equal value. You start out on this little job here and the union negotiates equal pay for work of equal value on this job, then it goes to the next one and pretty soon, you start bringing them all together. The next thing you know, the whole country is equal pay for work of equal value and you say, "Well, then, okay, each point is worth fifty cents. So, you have 100 points you are going to get \$50 an hour. If you have got 75 points, you are going to get \$37.50 an hour". That is the kind of thing that this radical new idea has the potential of becoming.

So, as I said, it is equally as possible that unions could also become a thing of the past and the governments will set how much each point is worth and everybody works under that. So, it is equalization of the masses.

Mr. McDonald: I would like to reiterate, one last time, that this policy, equal pay for work of equal value, will set a standard for all jobs of a single employer. It sets a standard that says that men and women who work for an employer and who have jobs that have the same skill, effort and responsibility, shall be paid the same rate. Now, the minister says that he does not believe that, that he disagrees, necessarily, with that general fairness concept and I would like to expand upon that for a moment.

But first, the arguments that the minister made about not wishing to see the demise of the union movement, I find sort of hollow, but if he truly does support the continued existence of the union movement, then I will accept his remarks for what they are worth; however, I am not entirely clear as to the minister's point. The minister made mention of an employer who was bargaining with a union that has a million members, thereby implicitly stating that the employer is going to have to provide justice for a million-member union. That, of course, is ludicrous. Perhaps the minister would just like to elaborate on his point, because I simply do not understand it.

Hon. Mr. Tracey: Certainly, I will. I said that, originally, the original concept of the union movement was for the employees of a company to bargain as a unit with the business so that they were on equal footing. What has happened, today, is that unions, as more and more locals of unions have been formed, have banded together and the union, which might be a million-member union, is now negotiating with a company with maybe 25 or 30 employees.

So, it has gone from the employer being the strongman to the union being the strongman, nowadays. Exactly the same principle can happen with equal pay for work of equal value: it spreads and it spreads until, I am telling you, that the possibility is there for it to become national and, if it ever did, there is no requirement for a union because all the employees would do would be to bargain with the government to set the rate per point.

⁴³ **Mr. Penikett:** Could I take it then that the minister who has just spoken would disagree with the former Conservative Prime Minister of Great Britain, Mr. Edward Heath, when he said that the problem with the union movement is not that it is too strong but that it is too weak?

Hon. Mr. Tracey: No, I do not think the union movement is too weak.

Mr. McDonald: I have attempted to deal with the claim that the minister has made about big unions being so much more powerful than employers. I think that argument I would like to save for the industrial relations debate. I hope we will get involved in the fall.

In my opinion, the relative strength between the employer and the employee has not changed a great deal since the time that the union movement was founded. There is a great deal of residual power still in the hands of the employer, which the employer still recognizes and which is recognized in law, as far as property rights accorded the owner of a particular plant or business. Those rights are very extensive. No matter the size of the union, those rights are accorded an employer and the size of the union has absolutely nothing to do with changing that basic fundamental relationship and the power structure within that relationship.

We can witness in our town this very day that there is a union that is striking a particular employer and the bill - the minister says who is paying the bill - the bill is being funded collectively by the members, of course. The people who are on the picket line, if there are any people left on the picket line, seem to suggest to me that perhaps the situation is not as the minister might suggest. Here is a situation where there is an employer with 40 employees, if the minister's analysis of the situation is correct, taking on a million-member union. Yet, the million-member union is not providing the assistance to provide the people with the kind of wage they need in order to deal effectively in this strike situation. The minister's claim is rather falacious. Perhaps we will get to that when we discuss the labour relations legislation.

⁴⁵ The minister attempted to draw an analogy between unions getting larger, which is some sort of a bogeyman I guess, and destroying the natural balance of society, and he is equating that with the issue of equal pay for work of equal value and that, before you know it, equal pay for work of equal value will turn into a national incomes policy. This proposal has absolutely nothing to do with a national incomes policy. It is considerably different from a national incomes policy. This, in itself, does not accept necessarily that all workers who do the same work in the country should receive the same rate of pay — whether they be men or women. It merely states that workers in a particular operation who are performing work with the same skill, effort and responsibility in the working conditions ought to be paid the same rate.

I know that the members across the floor are quite prone to the old foot-in-the-door paranoia; every time the opposition suggests something or every time there is a suggestion like this made in public — it may be in the private sector or any place — this government feels it is going to lead to something they do not know how to handle, and they do not want to address it. This proposal, I would hope, can elicit from the minister an opinion as to whether or not this in itself is a fair policy. If it is a fair policy in and of itself, irrespective of what sort of direction the minister may feel this may lead, that once you have equal pay for work of equal value, we may have a communist society within a generation, or whatever the paranoia happens to be. I wish the minister could just address specifically whether or not he believes that equal pay for work of equal value is a justified system in and of itself when it deals with a particular operation. Does he believe that those people who work for a single employer and have jobs that have the same skill, effort and responsibility should be paid the same wage? Does he believe that, fundamentally?

⁴⁶ **Hon. Mr. Tracey:** I have put my position forward. I said that I agree that women should get paid equally with men for similar jobs. That is the position that we put forward in our policy. We have introduced it in the bill that, if they have similar jobs, they get similar wages.

Now, that is as far as we are prepared to go. The concept of equal pay for work of equal value, although it has a lot of that concept in it, getting equal pay for similar work, it goes much farther than that and I do not agree with the concept of equal pay for work of equal value.

Mr. McDonald: When the minister talks about similar jobs,

does he agree that those jobs with the same effort, skill and responsibility are, in fact, similar jobs?

Hon. Mr. Tracey: No.

Mr. McDonald: Is the minister, then, willing only to apply the concept of equal pay to those jobs that bear a rough similarity, that they have to be all custodial workers or all service workers or all the same sort of work? I mean, the actual terms of the work has to be, roughly, the same. What does he mean by similar work?

Hon. Mr. Tracey: I suggest the member across the floor gets the Oxford Dictionary and has a look at the word "similar". That is exactly what it means — similar — you are doing work that is comparable.

Mr. McDonald: The board is going to have to deal with this issue, eventually, because one person could say, for example, that a job that has certain characteristics, such as a job that is an office worker's job, is a similar job to another person who works in an office but, in fact, their responsibilities are quite different. Is the government anticipating providing the qualifications that the jobs contain the same skill, effort and responsibility, within a similar job, in order to be similar?

Hon. Mr. Tracey: No.

Mr. McDonald: So, what we have, in essence, is a very restrictive — very restrictive — definition of what similar has to be. I assume that the job has to be substantially similar or has to be almost equivalent in order for men and women to receive the same pay. Is that correct?

⁴⁷ **Hon. Mr. Tracey:** Yes.

Mr. McDonald: Well, obviously, we disagree fundamentally on the issue. Our concept of fairness does not restrict itself merely to jobs which are the same, but in fact, we propose that equal pay ought to be given to those persons who perform the same work that bears equal value. I applaud the minister for at least stating his position unequivocally that he is opposed to the concept of equal pay for work of equal value.

The next issue that I would like to deal with briefly is the issue of maternity leave. The bill, *The Employment Standards Act*, calls for a certain number of weeks of unpaid leave of absence for women who bear children. Can the minister elaborate as to the reasons for the time limits that are provided for in the act and the reasons why the maternity provision is as rigid as is stated in the act?

Hon. Mr. Tracey: I think I should be relatively easy for someone to understand what the maternity sections are in the act. We have agreed that women should get maternity leave. We agreed that it should be 17 weeks. The only caveat that we put on it was that the employer has the right as to decide when this leave shall start and they have the option of up to six weeks before the birth of asking the person to start her maternity leave. Other than that, it is up to the person who is having the baby when she wants to start her maternity leave and when she wants to finish it. She does not have to take 17 weeks. There is nothing in there that is rigid at all. I think it is fairly flexible.

Mr. McDonald: I can understand the policy reasons for a 17-week maximum being that it bears similarity to the *Unemployment Insurance Act*. It is roughly equivalent to the provisions that already exist in the *Canada Labour Code* and to provisions in collective agreements around the territory. I can understand that aspect of it.

There is, however, one other factor which is not included and that is that women who suffer pregnancy-related illness are often given the opportunity to take a sickness leave beyond 17 weeks. I was wondering if the minister has considered that proposal, and why that proposal was rejected in the final analysis?

Hon. Mr. Tracey: The sickness provision was considered and was rejected. The 17 weeks, we feel, is ample time for a person to have a baby and come back to work.

⁴⁸ If, after that, they want to take more time off, then it should be up to the employer whether he wants to have them back on the job or not. We are putting the employer in an awful position here as well. He has to replace this person for that length of time with a part-time employee, who may be very hard to find, especially in Yukon Territory here where a lot of people are doing more than one job; they have various expertise in their jobs with small employers

and to replace them is very costly for employers. We are putting this cost on the employers. If it is going to run over the 17 weeks, then we feel that the employers have some rights as well, and one of those rights is that they should be able to replace this person rather than go through an ongoing process of never knowing whether the person is going to return to work or not. I will also state that in places where the maternity leave factor is in place, you will often find that women take their 17 weeks and then, the day before or the day after they come back to work, they decide they do not want to work any more and they end up quitting, which also puts a big onus on the employer.

We are dealing with small employers in the territory; very small employers. Almost 90 percent of employers in the territory hire less than 10 people. So, I think when you take those numbers into account, you can see what 17 weeks out of an employer's workforce is going to do to that employer. We try to be as fair as possible with maternity leave and we think we have done so.

Mr. McDonald: I suppose it goes without saying that the provision for maternity leave is a provision that calls for unpaid leave of absence and there is no cost to the employer directly to the person who is taking the leave. The cost to the employer would be the training of an alternate for a short period of time, and that is obviously not a cost we can ignore. It should also be mentioned, however, that the provision for maternity leave is quite extensive around the country; it is not uncommon in any other jurisdiction to find such leave of absence applicable to all businesses in any particular jurisdiction.

⁴⁹ This is not a radical move, by any stretch of the imagination. It is, in fact, a move that reflects the fact that society is now becoming more accustomed to accepting that women work in society and that, at the same time, while they are working, they will produce children, and it merely reflects a kind of working reality. So, I am sure that the minister would agree that the government has, obviously, inserted this provision in the act.

The minister suggested that the employer should retain the right, if a person is sick beyond the 17 weeks, to replace that person or, rather, to fire that employee. It is the case, in many jurisdictions, in many collective agreement jurisdictions, that that is not the case, and provision is given for pregnancy-related illness: exceptions can be made, given approval by the employee's medical doctor.

Did the minister, in determining this particular policy, foresee that, perhaps, the provision allowing for a pregnancy-related illness would, in some way, lead to abuse of the system? Or, did he feel that leave beyond 17 weeks was so onerous on an employer that he could not possibly extend it to any greater length of time?

Hon. Mr. Tracey: I would like to clarify one thing: we are not writing a union agreement here. The member raises union agreements; we are not writing union agreements, we are setting basic minimum standards that the people of this territory have to operate under. If they can get a better deal through a union agreement, that is all well and good, but that is not what we are writing here.

The only thing I would like to state, on top of what I have stated earlier, is the problem to employers is that, after 17 weeks — that is four months, in excess of four months — if this person still has a pregnancy-related illness, perhaps another six weeks is not going to do any good. We have decided that 17 weeks, we feel, is ample. It is the standard in the industry and to add another six weeks on to it is even more detrimental to the employer in the Yukon Territory.

As I have stated, 87 percent of employers in the territory hire less than 10 people and one person out of the staff can cost them dearly. Contrary to what the member across the floor says, you just do not train somebody for no cost. It costs money to train people and when they are only going to be there for a short period of time it is very expensive to train them.

⁵⁰ **Mr. McDonald:** The minister said, "contrary to what the member across the floor said". I repeat that that cost of training somebody is a cost that we cannot ignore. Obviously the minister should take a little bit more time to understand what is actually being said.

I think it goes without saying that we are not writing a union agreement here. The provisions in this act are certainly not those that would be accepted in most union agreements. Most union

agreements have civilized working standards that are better than the provisions of the act.

The minister mentioned that if the members of the public can get better standards from union agreements, so much the better. I take that as an encouragement from the minister for members to bargain collectively with their employers so they can get the best deal possible with any particular employer. I am sure the minister would want the public to take his remarks in that light, as well.

The minister mentioned that if you added six weeks sickness leave on to the existing maternity leave, then it may not be effective in that if you cannot get back in 17 weeks, you cannot get back in 23 weeks, and you cannot get back in 25 weeks, or whatever. I think the six weeks for a person who is ill may be quite significant to the person. If that is the kind of time required for the person to overcome her illness and get back to work, it would mean the difference between having a job and not having a job. That provision in itself may be considerably significant to the people affected.

The maternity provision in the act ignored the issue of adoptive leave for persons in the territory. I wonder if the minister could tell us whether or not adoptive leave was considered and if so, why was no provision inserted in the act to allow for this eventuality?

Hon. Mr. Tracey: Adoptive leave was considered and rejected. It was rejected for the reason that maternity leave to have a baby is a biological function that perhaps the person cannot overcome. It might have been an accident, or anything else, but it is a biological function. Adoption is something that the person makes his own decision about. To require an employer to replace that person for six weeks, or whatever, for adoptive leave just because you feel that you want to adopt a baby is not something that an employer should be responsible for.

⁵¹ **Mr. McDonald:** I do not know whether this has to be said, but I think it is rather obvious that people who adopt children do not make a frivolous light-hearted decision to do so. Adopting a child is as onerous, beyond the pregnancy of course, on the parents — if you can call it a burden, certainly a financial burden — as is a natural child. There is a need in society to adopt children now and again, a very great need to adopt children. The parents take on the responsibility, the financial burden, the emotional burden of adopting those children, the same as a natural parent takes on the financial and emotional burden of having a natural child. It is accepted elsewhere that there be provision in the maternity leave employment standards to allow for people who adopt children not to be paid for adopting children but to allow them to take care of the child in the formative months or weeks and then to have the right to return to their job. There seems to be a disincentive to adopt if you do not have the right to retain your job.

I am wondering if the minister has canvassed southern jurisdictions to discover whether or not it is an accepted practice to include adoptive leave in maternity leave provisions in the employment standards legislation?

Hon. Mr. Tracey: Yes, they do have adoptive leave in a couple of other places. Not very many in Canada, though, but probably in Sweden or Denmark, or places like that. But those people who are adopting that child have the option of making the decision of whether they want to adopt a child or whether they do not. They do not have the right to ask that an employer has to pay out of his pocket because they want to adopt a child. It is up to them. If they want to adopt a child, they have to accept that responsibility. It is not the employer's responsibility to incur costs because they want to adopt a child.

⁵² **Mr. McDonald:** I thought I illustrated, adequately, that adopting of children is not a decision that is made frivolously. It is a decision that, in essence, does society a service, by providing parental guidance, a family situation to children without parents. It certainly does society a service in that they reduce the burden on the government, on the state, and on society to support a child. It does more than just financially support a child. They, obviously, provide an emotional commitment to the child and they provide a family setting to the child. So, not only are they assuming a financial burden and an emotional burden, they are doing society a service by adopting a child. So, perhaps, that may be a situation that we would

like to promote or encourage.

The minister suggests that this is a burden that they would not like to foist off on employers. It is certainly no less a burden than of providing maternity leave for natural children — the children who are born naturally to parents — who are going to be taking care of them. It is no less a burden. It is as much a service to society, because a child is going to be cared for, privately, by citizens.

I am not quite accepting of the minister's argument. Perhaps I do not understand it clearly enough, but the minister, I think, seems to believe that people are going to be adopting children frivolously, they are going to be adopting children so that they can get 17 weeks off them employer, without pay, or some such ridiculous notion.

I think that those people who do adopt children take on a considerable responsibility and to assume that the employer is more burdened than the employer would be if a person was taking maternity leave under the provisions of this act, I think, is ludicrous. There are needs that must be met. The needs of small children must be met. We attempt to meet them with natural children and we should equally attempt to meet them with adopted children. We should encourage those people in society, who would like to adopt children, to do so and to not be penalized by doing so with a threat, perhaps, of losing their job.

⁵³ Perhaps the minister would like to elaborate just a bit more so I can better understand his position?

Hon. Mr. Tracey: I made my position quite clear. I think he understands it very well. His philosophy is perhaps that everyone should pay for everyone else; that is not necessarily the philosophy of the people on this side of the floor.

Mr. McDonald: Perhaps we should get one thing straight right now, and that is perhaps a difference in personal philosophies. I know the minister and I have discussed this in the past and we have differed strongly in the past about who pays for what. In my opinion, a working person in this territory who works for an employer generates a share of wealth to that employer. The employer does not do the working person a favour by paying him wages. It is a benefit that is earned. And, equally, maternity is an earned benefit; it is not a largesse or charity given by an employer who wishes to do good works. It is an earned benefit by a person who invests her life, or invests her time, or invests her energy and effort, and who contributes to the generating of affluence in any particular business. Wages are not charity. Benefits such as this are not charity. They are earned benefits. And if they are at all affordable then they ought to be accorded to employees. I know the minister and I disagree on this point, but I think we ought to state quite clearly that, in a situation such as this where there is a perceived need in society to allow for civilized standards such as maternity leave or, perhaps, maternity leave for adopted children, we should not consider this a provision of charity accorded on the employee by the employer. It is no such thing.

The minister does not seem to want to respond, so perhaps we should review another provision of the act and that is the provision dealing with exemptions. There are a number of clauses in the act that provide for either the director of employment standards or the minister himself to exclude employers and employees from various provisions of the act. The director has considerable provisions when dealing with hours of work. The minister has considerable latitude to exempt any employer or whole classes of employers from any or all provisions of the act.

⁵⁴ There is a provision here that allows him to exclude all employers from all provisions of the act. That is how wide it actually gets. What policy decision encouraged the minister to provide such wide, sweeping powers to exempt employees and employers from the very necessary, yet minimum, standards that this legislation sets forth?

Hon. Mr. Tracey: There are great many reasons why we should have an exemption such as this. Incidentally, it is in every other piece of labour legislation in Canada. Every piece of labour legislation has exactly the same provision in it.

For example, we may want to exempt the outfitting industry from the hours of work because the outfitting industry works on a very short season. The person is out in the bush and he is there. I suppose you could make the argument that he is on the job, but he is not working. So, there are reasons for exempting him, maybe

climatic reasons. There are various reasons why, in certain circumstances, you might want to exempt someone from one provision or maybe all of the act, for a certain period of time.

As I said, every legislation has it. It is used very seldom, but the provision has to be there to be able to use it.

Mr. McDonald: What were the policy reasons behind these rather wide and obvious exemptive powers, and not to provide exemptions in the act for certain exemptions? If certain industries, if certain employers require exemptions from, say, the maximum hours of work, for example, why did the minister not write these rare situations into the act?

Hon. Mr. Tracey: It has been a long time since I have heard such a statement. I would like the member across the floor to explain to me how we are going to take all of these things into consideration and write them in the act. We have done that; we have written them into the act by saying the minister can exempt industries or classes of industries from all or part of the provisions of the act.

That is the only possible way you can do it, because everything that comes before the government is there in a different context or deals with a different part of the act. If the member across the floor can tell me how we are going to deal with all these specifics in the act, I would be interested in knowing.

Mr. McDonald: In our opinion, the powers to exempt are extremely wide. The minister has brought up the issue of exemptions for the maximum hours of work. That, to my knowledge, is one of the very few situations where exemptions may be warranted.

⁵⁵ Both employers and employees desire that someone be given the power of authority to exempt them from the provision that prevents them from working greater than 60 hours a week. There are various industries — the placer industry is one, outfitting is another, exploration in the bush where people work long hours — that would be affected by the provision which would allow exemptions.

The power to exempt does not stop with the hours of work. It allows the minister to personally exempt any number of employers from all provisions in the act. There is no provision that is safe from the minister's pen. I am wondering why the minister has accorded himself that latitude of exemptive power to allow him to exempt employers from all provisions of the act, barring none?

Hon. Mr. Tracey: I think I have explained that. I would like to read from the BC act. BC is probably the most unionized part of Canada and it also has probably the strongest labour legislation in Canada.

In section 105 of the BC act it says: "Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations: (b) exempting a person or class of persons from all or part of this act or the regulations."

It is the same in every other jurisdiction in Canada. There are reasons why you have to exempt certain industries and certain classes of people from the regulations or the act at certain times.

Mr. McDonald: Is the minister saying then that there are certain provisions or that all the provisions of this act could be such that they would limit the free flow of work in the territory and that they would be so restrictive that they would not permit the employer to operate freely. The minister gave us an example where hours of work ought to be a section where we may expect exemptions. There are other provisions of the act that call for vacation pay, that call for vacation time when a certain number of weeks or or a certain number of months are put in, dealing with the collection wages, and are all kinds of provisions in this act which the minister has not given any indication that he should have the right or the authority to exempt employers. The provision to allow the minister to exempt all employers from all provisions of the act defeats the purpose of the minimum standards.

⁵⁶ Not only is that the case, but there is no procedure stipulated in the act — no clearly defined, fair, open, public procedure — whereby people apply for exemptions. There is no procedure that encourages the director of labour standards to investigate or to canvass the workers as to their opinions and beliefs on a particular motion by an employer to exempt himself from various provisions or standards of the act. Why would such a procedure not be

incorporated into the act to ensure that at least the employees are canvassed to ensure that each and every employer has to prove that he or she was requiring of exemptions. There are powers here to exempt classes of employers, all at once, without any sort of provision that would require an employer to prove that he or she in fact needed the exemption. Why was no procedure instituted as well?

Hon. Mr. Tracey: Contrary to that statement, there is a procedure in there. You have to apply to the board, and the board makes a recommendation to the minister. And the reason why you would want to exempt one class rather than just one specific business is just as I said, such as the outfitting industry. They are out there in the bush. An argument could be made, I suppose a legal argument, that they were on the payroll, that they were working, and they should be getting paid and they should be getting overtime and everything else. So we exempt that class of people. That is one reason why you would exempt a class of people. I can look at another situation. Perhaps there is a business coming in here from, let us say, Ontario, and they have a union agreement and that union agreement, although in total it is much better than our legislation. There may be certain parts of that union agreement that are in contradiction with our *Labour Act*, so maybe we want to exempt them from certain provisions of this act in order for their union agreement to carry on and do whatever they are doing. So, there are many reasons why you might want to exempt businesses or industries from the act, and that provision is in there for expressly that purpose. As I have stated previously, it is in every other act.

Mr. McDonald: The minister mentioned that there was a procedure to apply for exemptions to the employment standards legislation, and that that procedure was an application made to the board. The procedure, I guess, in a rudimentary form can be equated with a mere application to the board, but it does not include the canvassing of workers. It does not permit the use of advocates before the board. It does not permit any sort of public input. The procedure itself is, to say the least, very rudimentary. Perhaps the minister would like to comment on that before we get back to his other points?

Hon. Mr. Tracey: I am surprised that member across the floor thinks so little of the board. There are two labour representatives on the board, two industry representatives on the board and an impartial chairman. I am surprised that he gives the board such a small amount of credibility.

Mr. McDonald: When we get to the board, we will discuss this issue a little more carefully, but the point to make that, in the past, I have asked questions in this House about the current workings of a board, which, supposedly, has employer and employee representatives. There is no provision to canvass workers for exemptions so, currently, with the current board, with current employee and employer representatives, there is no procedure to canvass the workers as to whether or not they agree or would accept exemption provisions in the act. So, that is the basis of my concern.

Another basis of my concern might happen to be who the minister actually appoints to either the position of employee or employer representatives. Is there any guarantee that these people would actually reflect the opinions of employers and employees? These are people who the minister is going to appoint. Would the minister like to elaborate on his previous statements?

I would appreciate it, but I believe that there is sufficient cause to worry that, perhaps, the procedures, as laid out by the board, are not going to be sufficient to really do justice to the intent of the act.

Hon. Mr. Tracey: All I can say is that, from my own experience and from the six years that I have been a member of the government, that I have never seen one exemption from any provision of the *Labour Standards Act* that has not had the concurrence of the employees working on that job. The labour board has required that the employees agree with it and, usually, it comes in the form of a letter from the employees, or the employer provides a letter with the employee's signature on it.

I cannot recall one instance where employees were not in agreement with being exempted by the board. I would certainly expect and hope, and I know that that is exactly the position that would be taken by any other board, that they certainly are not going

to just grant blanket exemptions without knowing both sides of it. That is their job. The job of the labour board, employment standards board, is to make wise decisions for everyone's benefit, not for one side's benefit or the other.

As I said, there are employee representatives and there are employer representatives and they are out there to try to make something that is workable, in the territory, for the benefit of everyone.

Mr. McDonald: There may be good reason to discuss just how the minister regards the provisions for canvassing workers. I know of cases where workers have not been canvassed, so, perhaps, the minister and I can get together sometime to discuss those issues.

The minister suggested that procedures for canvassing include a letter from the workers, from the employees, perhaps suggesting that the workers deal with the government or deal with their employers in sort of a collective situation. This is a serious issue. Obviously, how you canvass workers in a non-union environment is of significant concern to the employees in that environment.

« There are no provisions in the act, again, to suggest that the board must canvass workers as to whether or not they agree with an exemption. The level of public input or the use of that public advocates at board hearings is not a guarantee either.

There is some question as to whether or not the board ministerial appointees would be insensitive to employee or perhaps employer concerns, depending on the minister. If the provisions are not stated in the act, then perhaps they may not be as fair and impartial as the minister suggests.

There are provisions in the act that allow the minister himself to grant exemptions for all employers from all provisions in the act. That is rather wide sweeping power. There may be some concern, sometime, that charges of favouritism, one employer over another, may be leveled at the minister in the instance where he may grant exemptions to one and not to another.

There are other issues as well. It has been reported to me that perhaps in bidding on government contracts the successful bidder applies to the Employment Standards Board for exemptions in order to make his bid acceptable or in order to allow the person to successfully perform the call of the tender. That is another concern that has been expressed regarding the issue of exemptions all together.

The fact that there is no proper specific procedure to canvass employers and to establish a need for exemption I think is a shortcoming in this act. It is too bad that the minister does not feel that it has to be instituted in the act. He trusts the board to make those decisions itself. I am a little more skeptical of what the board may or may not do. It may fulfill our every expectation, however, on the other hand it may not fulfill our expectations and it may cause considerable hardship on some people.

It is unfortunate that the minister has taken the view he has. If he would like to respond or comment in any way, I am prepared to let him do that now. If not, perhaps we can deal with the next issue.

« On the exemption of government employees, can the minister give us policy reasons for wanting to exempt all the employees of the Commissioner?

Hon. Mr. Tracey: Yes, the employees of the Public Service Commission already have a union agreement that is in excess of what we have here. They have the *Public Service Commission Act*, which they actually work under. That is the law that governs the public service.

Mr. McDonald: If the members of the public service have a union agreement, which has provisions that are better than this act, why feel the need to exempt them from the provisions of the act? I do not understand.

Hon. Mr. Tracey: They are operating under the *Public Service Commission Act*, not the *Employment Standards Act*. They have their own act, specifically for them.

Mr. McDonald: The *Public Service Commission Act* and the union's collective agreement may make provisions for better terms and conditions of employment than does the *Minimum Standards Act*. Why is there the need to exempt them from the *Employment Standards Act* if, in fact, in any case they are going to be living and working under conditions much better than that provided in the

Employment Standards Act?

There is the other issue, of course, too, that the minister might want to respond to, and that is the issue of casual employees who are not members of the union. If those employees are not covered under the collective agreement, perhaps they may be able to take advantage of the provisions of the *Employment Standards Act*, in order to ensure that they are receiving civilized treatment from their employer, who happens to be government.

Hon. Mr. Tracey: I wonder if the member across the floor would suggest that we repeal the *Public Service Commission Act* and just have our employees work under the *Employment Standards Act*? The *Public Service Commission Act* is the one that the public service works under. That is their law, exactly the same as the *Medical Profession Act* is the act that the medical profession works under, like the dental profession works under the *Dental Profession Act*. These employees of the government work under the *Public Service Commission Act* and, unless we want to repeal the *Public Service Commission Act*, then they should not be required to work under two acts. That is their bible that they work under; this is the bible for the rest of the people.

Mr. McDonald: We can leave it at that. It seems to me, however, that if the *Employment Standards Act* provides for certain terms and conditions that are good for the private sector, then, perhaps these basic minimum terms and conditions ought to be good for the public sector. If there are other acts and collective agreements that provide for better working conditions, so be it so much the better for the government employees.

⁶⁰ I think it would be a worthwhile signal to the private sector to have this act apply to everyone to take precedence, as a minimum standard, over other legislation and collective agreements.

The minister suggested that one reason to allow for the wide powers of exemptions was so that union employers from outside who have collective agreements that do not correspond with the provisions of the *Employment Standards Act* could apply for exemptions, I assume, so that the employer or the employees could operate under the terms and conditions that they bargained for themselves. Is it the position of the government that, even in a collective situation, an employer and his employees can bargain for terms and conditions that are less than provided for in this act?

Hon. Mr. Tracey: No, in fact it is very specific that they cannot do it. I did not say that it was so other unions could come in here with that. I just used that as an example. Perhaps on the whole their whole package is much better than what we have although they may be contravening perhaps one or two sections of our act, so we would just exempt them from the provisions of the act in order to not cause any problems with the business or union or whatever it is that is working. I used that as an example. I did not say that that was what it was for.

Mr. McDonald: Yes, I understood the minister's intention there to use the issue of outside union agreements as an example to demonstrate the necessity for exemptions — or his perceived necessity for exemptions. The issue is rather a different one, though, I think, in this case. The issue is one where workers and employers have the right to bargain for terms and conditions of employment that provide for less protection than does the act. First of all, could I ask the minister whether or not they have determined that the terms and conditions of this *Employment Standards Act* do not breach the terms and conditions established in collective agreements in the territory right now?

Hon. Mr. Tracey: I am not aware of any that they do breach, but if they do breach some, the collective agreement will have to be amended to conform with the act.

⁶¹ **Mr. McDonald:** There are a couple of areas that I will give notice of to the minister as we are passing through clause-by-clause, where the terms and conditions of this act are preferable to the industry standards, let me say. For example, the notice required for layoff is considerably better than most collective agreements.

I would like to get back to the issue of bargaining for, or allowing employees to bargain for, terms and conditions of employment that are less than that in the act. The minister made mention that perhaps, in elaborating on another point, outside operators may come in with their own collective agreement that may require an

exemption because the terms and conditions of their agreement are less protection than that what is provided for in the act.

If employers can enter Yukon with a collective agreement and find exemptions, where does the search for exemptions begin and end? I ask again: are employers and employees permitted to bargain for terms and conditions that are less than that which is allowed in the act?

Hon. Mr. Tracey: I answered no, that they were not allowed to bargain for less. I should also state that the member across the floor made mention of layoff notice and that it is better than most unions have. Both the unions involved are exempted from that section of the act. They are not covered. They have the right to negotiate their agreements and layoff notice in most unions — or a great many of the unions — of one week would be impossible for them to fulfill. We have exempted specific industries where that provision would be detrimental to not only the business but the employees. The employees in a great many cases would be laid off when they could be working. The trade unions are specifically exempted from it. Any area in that act where they are exempted is stated specifically.

⁶² **Mr. McDonald:** I did not want to get specifically into this issue of exemptions for notification of layoff, but, for information, this part of the act does not provide for exemptions for union workers or for workers who work under a collective agreement. It allows for exemptions for an industry, kinds of seasonal work, et cetera. The mining industry, for example, is not exempted, at all, and there are collective agreements that are applicable to the mining industry that should provide for exemptions that are not as good as the act.

Now, I am not arguing that the provisions in the act should not be allowed. I am just merely mentioning the fact that the act does not necessarily correspond to what is established as industry standard, in certain provisions. I would like to ask, again: is it possible for situations where, say, an outside construction firm comes into Yukon, bids on a government contract, wins the contract and then applies for exemption to certain provisions of the act in order to make his bid or that construction firm's bid successful or reasonable or profitable? Does the minister have that sort of situation in mind when he is talking about exemptions from union agreements?

Hon. Mr. Tracey: All I can say is that I think that is a ridiculous argument. No one is going to allow an outside company to come in here — especially this side of the floor — and bid on a contract and then exempt it from the employment standards in order for it to fulfill the contract.

The reason we are writing it is because we want the people to work under those rules and regulations. Exemptions are only for specific reasons that become necessary for the benefit of everyone. Certainly, that is not something that would be beneficial to everyone and I am sure that the employment standards board would not even consider it.

Mr. McDonald: I have received complaints from a number of employers in the territory — three employers in the territory — who claim that, in the past, they have competed, with the employment standards legislation as their bible, as their considered basis of doing business, with outside firms who have been successful in their bid and who have, subsequently, made application for exemption in order to make their bid more profitable. They have, in fact, been successful in receiving exemption. Is the minister prepared to state unequivocally that this sort of practice will not be premitted by this government?

Hon. Mr. Tracey: No. I would like to know the specific instances, because, obviously, if the employment standards board exempted anyone, they did it for a very good reason, a justifiable reason. I do not like those kinds of innuendoes passed across the floor, here, because what he is doing is giving a black eye to the employment standards board without us knowing, and their knowing, what the justification is for it.

⁶³ **Mr. McDonald:** I am asking the government for a statement of policy on certain things so I would appreciate at least that the government would provide statements of policy, because they are not. These policies are not stated in this act. We are taking a lot for granted when we are dealing with this particular act. A lot is going to be given up to the board. A lot of power and a lot of jurisdiction is going to be provided to the board. So I would like a statement

from the government as to how they feel the board ought to operate. I think that is a legitimate line of questioning.

Because we are giving so much authority to the board, we ought to receive from the government at least some verbal commitment as to how it believes the board should operate. As I have said, there are instances where employees have not been canvassed, and I would be perfectly happy to go through my files, through my casework, and discover and state publicly those particular instances. What we are dealing with here, of course, again, is a board that is going to be appointed by the government, by the minister. And the employee representatives are going to be ministerial appointments. The employer representatives are going to be ministerial appointments, whom the minister considers to be representative — or perhaps non-representative — of the employee/employer classes.

From my experience in Yukon, I believe I have a right to be somewhat skeptical about the whole process, especially as there is so much left out of the act and there is so much power and authority being given to an appointed board. I think it is rather a serious issue.

If we want to debate the pros and cons of various individual exemptions granted by the board, then I would be prepared to. If the minister is in fact asking for that, I would be in fact prepared to debate exemptions on the floor of the House. I am asking for statements of policy from the minister. If the minister will be prepared to provide those statements of policy, then I would be appreciative of that.

I think we have stated our position fairly clearly on the issue of exemptions. We feel that there is not a proper comprehensive procedure to apply for exemptions, either to canvass the people involved or to establish the need for an exemption. There are considerable powers being accorded the minister to provide exemptions from all provisions of the act for all employers. That, especially without proper procedure, is rather an onerous provision for us, and a provision that we reject.

There are instances of exemption powers that we will be addressing as we go through clause-by-clause debate. Specifically, I would like to address the issue of exemptions for the provisions pertaining to hours of work.

Before we involve ourselves with that discussion, perhaps the minister would care to elaborate on the policy decision to stipulate a specific cap on the maximum hours allowed to work. Why did the government provide a provision in the act that stated that no work, without exception, would be permitted after 60 hours per week? That, as the minister may know, is not a provision that most collective agreements have for dealing with hours of work. Generally, collective agreements deal with the issue of overtime pay, either time and a half or double time, or whatever, after so many hours worked. They deal with the issue of the right to refuse overtime. Why did the government opt for a provision that dealt with the capping of the number of hours that could be worked in a particular week?

Hon. Mr. Tracey: I would like the member across the floor to clarify that. Is he saying that we put a cap on the hours of work in this act?

Mr. McDonald: I am not going to read from the act itself, I would just like to ask the minister to explain the policy decision that altered the existing act regarding hours of work to the provisions that are stipulated in the act today, without dealing with specific provisions that we get into in Committee debate.

Hon. Mr. Tracey: If the member across the floor read the new act, he would see in there that we have not put a cap on hours. What we have done is remove a cap on hours. Under the old act you were not allowed to work more than 60 hours without applying to the labour board to get an exemption. We have removed that provision.

Mr. McDonald: Perhaps it would be wise to deal with this issue in the clause-by-clause. The point that I am trying to make is perhaps a little more complicated one and that is the issue of the decision to promote penalty payment for overtime work as opposed to the right to refuse overtime work. I am wondering if the minister can explain why no provision permitting the right to refuse overtime

except in emergency conditions or extraordinary circumstances was not provided in the act?

As I understand from the background notes that it was considered but not permitted. I wonder if the minister could explain why they did not permit that particular provision?

Hon. Mr. Tracey: Because I think a great many jurisdictions in this country feel that employees and employers have a contract that works. They work by so much an hour or so much a month or whatever. They are there working for the employer and the employer has a right to ask them to work overtime. If they do not want to work the hours that the employer is asking them to work, they have the option of terminating their employment. We do not want to see the employees put in a position where they are asked to work constantly, so we have to put in provisions. Under the old act, it was a maximum hours of work; under the new one it was a disincentive of double time pay. As the members across the floor are aware, I have now given them a new amendment to that section of the act that we will be dealing with when we get to the act. It has not been introduced so we cannot discuss it now but we will be discussing it then.

The right to refuse overtime is a concept that we do not believe would be beneficial to either employees or employers in this territory. We are working on a very short season and employers have to be in a position where they can ask their employees to work. I think, at common law, you will find that whenever this has been taken to common law, to the best of my knowledge, the employer has the right to ask the employee to work and the employee does not have the right to refuse.

Mr. McDonald: So, the eight hours in a day, forty hours in a week, are not considered to be all that significant in the minister's mind, accepting that hopefully the disincentive to work, the overtime provisions, will provide the proper check on an employer from overworking his employees.

There is a provision in the act that permits the director to reduce the rest periods from eight hours to six hours. Is that part and parcel with the consideration that the minister has given to what is a civilized work day working arrangement in the territory? There is somebody of the opinion that perhaps the disincentive to work is not in fact a disincentive for those industries who work long hours in a short season.

The only protection that the employees would have would be the eight hour rest period. What circumstances does the minister foresee that would justify the shortening of a rest period after a 16 hour shift?

Hon. Mr. Tracey: I can see one very recently that comes to mind. Perhaps you are rotating a shift. If you are working a number of hours in a day, and if you rotate the shift, there is no way that you are going to have an eight hour break. We said that the director has the option, if they apply to him, to reduce that to as little as six hours. I think that if you rotate a shift once in a while it is to the employees' benefit as much as the employer's. Perhaps there will not be an eight hour break but it may be beneficial for the director to say, yes, with a six hour break you can rotate the shift.

Mr. McDonald: The minister will know that generally speaking, in rotating shifts is to hire a sling man to provide the difference in hours. Surely the minister is not suggesting that the shifts we are talking about here are 16 hours long.

The issue is a safety issue. If human beings could work 24 hours a day, then that would handle a lot of administrative problems that many employers face. There would not need to be the necessity of bringing other employees into the work place. You could have one person doing the job 24 hours a day. However, we are dealing here with people who become fatigued after a long period of time. It is absolutely necessary that these people have a reasonable, civilized, rest period.

I would have thought that an eight hour minimum might be sufficient after a 16 hour shift. The minister may not know that working 16 hour shifts is a very onerous, very difficult thing to do. To work that 16 hour shift and then come back within six hours to work another shift seems to me to be unreasonably unsafe. If the minister has any comments or if the minister would like to elaborate, I invite him to.

Hon. Mr. Tracey: I certainly would like to elaborate. I hear these statements quite often and union agreements are negotiated on a 40 hour week and an eight hour day because supposedly no one should have to work more than that. I would ask the position from the member across the floor, for example, of whether he thinks that no one should be allowed to work more than 40 hours? I would like him to make that statement. Just because there is a provision in the act that the director can in certain circumstances reduce the eight hours down to six hours for specific cases does not mean that everyone is working a 16 hour shift. There might be a shift change. That does not necessarily mean working a 16 hour shift. They may be working a 10 hour shift and not be able to make the shift change by having an eight hour break. There may be reasons why you have to reduce the eight hours.

I would like a statement from the member across the floor in regard to hours of work. What he feels the maximum hours of work should be.

Mr. McDonald: I realize time is getting short and I will be brief.

In an ideal situation, I would like to see that any employee in the territory gets a living wage for working 40 hours. I think, ideally, that is the route we should go. We should encourage employees to get a living wage in a 40-hour week. A 40-hour week is an established, civilized work week around the world, around most parts of the world. We should not encourage people to have to supplement their wages, in order to get a civilized wage, by working overtime.

There are a large number of people in the territory who would like to work a great deal of overtime. There are people in the United Keno Hill Mines, for example, who like working overtime a great deal, but there, again, there is a division of opinion, because there are family people who like to work a 40-hour week. There are single people, who have nothing else but their work, who like to work 60 hours. I understand those situations.

The issue here — we can address the issue of hours of work — is a safety issue. We are talking about the hours of rest between shifts and I do not care how many hours a person wants to work. My position is that a person should get eight hours of rest between shifts, especially when they have worked a 16 hour shift. That is my position.

I do not care whether or not the person wants to work 24 hours a day. When they are working after 16 hours, they are more than likely fatigued and they are in no position to work safely and they are in no position to work safely with the other workers in their operation. So, I am saying, as a statement of principle, that six hours is not enough of a rest period and eight hours is. That is my statement of principle.

Hon. Mr. Pearson: I just wanted to ask the member for Mayo if that means that I do not have to come to work until 7:30 tomorrow morning?

Mr. Chairman: Order, please.

We shall recess at this time until 7:30.

Recess

Mr. Chairman: I call Committee to order.

Hon. Mrs. Firth: I move that the Committee of the Whole and the Assembly be empowered to continue to sit from 9:30 p.m. until 11:30 p.m. this evening for the purpose of continuing consideration of the bills before the Committee of the Whole.

Mr. McDonald: I would just like to put on record, of course, that I feel that an extension of the time limit this evening will probably cause debate to deteriorate. I would have thought that it would have been wiser to sit during civilized hours to allow people their proper period of rest and preparation. However, we are clearly outnumbered and I assume that the motion will pass.

Hon. Mrs. Firth: I should clarify, for the public record, that I approached the NDP caucus this morning when they were having their caucus meeting. However, the member for Mayo was absent and, perhaps his colleagues neglected to fill him in. There was some discussion previous to the motion being presented and we anticipated getting a unanimous agreement with this motion.

Motion agreed to

Mr. Chairman: We shall now go back to Bill No. 3, *Employment Standards Act*. We are still on general debate. I believe Mr. McDonald wanted to jump up just before we left.

Mr. McDonald: The debate was so incredibly ragged this afternoon that I cannot quite recall the issue that would have caused me to jump up to refute it.

To clearly refute something the minister has said, many of these issues we will return to, during the clause-by-clause debate, which, it seems, we will be getting into tonight, like it or not.

Perhaps we can deal, briefly, with a few of the other issues, of which I gave the minister notice in second reading debate. One of them was the bill's stipulation that an employee has the right to be sick, so long as he or she is sick for no more than one day a month or no more than six days in six months. I wonder if the minister could explain the policy reasons of why that was introduced, in the first place, and, secondly, why the limits were placed upon the provision?

Hon. Mr. Tracey: Everyone knows that people get sick and the one day a month sick leave is not for getting sick. What we are saying is that if you work on month, you can bank up to six months of one day a month sick leave. So, we are saying that the longer you are there, for up to a six month period, you have right to not only be sick, but you do not even have to answer to your employer — other than to have a doctor's certificate, if he asks for it, to show that you are sick — to take up to six days off for being sick. The days there are not something that we have provided so that you can be sick every month; it is only so that you can have some assurance that you will have some time off.

Mr. McDonald: The minister answered one of the two questions, the question why the provision is there in the first place, and I would like to state for the record the obvious, that we would support a provision that recognizes that people do get sick and should not suffer the penalty of losing their jobs for being sick. I am well aware of the provision in the act and the limitations of the provision. I would ask the minister once again what the policy decisions were that caused the limitation to one day per month or six days in six months?

Hon. Mr. Tracey: I think that should be fairly obvious. In all the years that we have had sick leave in the various union contracts and whatnot, you find that it starts out being a privilege, then it is a right. They want employers to pay for that right. What we are trying to do here is provide a basic minimum so that when employees get sick once in a while, they should have at least some time. We are saying that the minimum standards should be that they should be able to build up six days.

I will reiterate. These are minimum standards and we feel that people should have this right. If they can negotiate any other better conditions, that is all to the better for them. A good employer, if a person is sick, will allow the time off anyway. What we are providing for is cases where maybe the employer is not such a good employer. There are bad ones around.

Mr. McDonald: The minister suggested that in the collective agreements where this privilege or this right is enshrined, I believe the implication is that it is abused.

It, of course, could be abused wherever there are doctors who are not scrupulous about providing medical justification for medical leaves, in any case. Nevertheless, that is no reason to ignore the provision altogether, or to limit it, unreasonably, altogether.

The minister will surely know that in collective agreements the right to be sick without fear of discipline is a right that is enshrined and is carried through, quite extensively, in most agreements and it is the case, in fact, that the right to be sick extends well beyond one day per month or six days in six months, or whatever those minimum arbitrary limits are that the minister is mentioning. People do receive the opportunity to be sick, which is, obviously, against their will, for much longer periods than that.

Perhaps the minister could shed some light on why one day a month and why six days in six months? Why did the government limit itself to that extent? Did it draw from other jurisdictions this provision, which suggests, perhaps, that this might be a legislative standard across the country?

Hon. Mr. Tracey: Obviously, the member was not listening the last time I stood up.

We agree that people get sick and we agree that some provisions should be made. Some minimum standards should be laid out for those people who get sick, in case their employer does not want to give them the time off.

So we have said that the minimum should be one day a month, and you can bank up to six months of that time. Then it stays at six days until that is used up and then you can build it up again.

I can also recall a number of cases in past years where this privilege has become a right until it got to the point where it was even negotiated to buy these things out. Some people had just about a whole year saved up. Employers had to end up buying them out, as if this was some right that they had that these days were now worth something. They had to pay them off. The idea of sick leave is to make sure that if you are sick, you have the time available to be sick. It is not something that the government considers we should be putting in there to a point where employers have to start negotiating to pay sick leave out because it is some perceived right that some people have.

Mr. McDonald: Again, the minister said that I misunderstood his comments. He suggested that we both understood that people do get sick. I recognize that people do get sick. The issue here is why a limit of one day per month and why six days in six months. Why not one day per, or why not six days in six years. What is the reason for the limitation as made clear in the act? Why that kind of limitation? That is the question that I asked. That is the question I would like an answer to.

The minister did mention that it was a minimum standard. Obviously, there are some reasons why these are the minimum standards, so why did the government not go for some other minimum standard? I want to know why this particular minimum standard? The minister, again, stated that this right or privilege to be sick without fear of discipline has been, in a sense, abused in the past; that employees accumulate sick leave. They accumulate it and, supposedly, employers buy them out. If there was no accumulation and no arbitrary limit set on the amount of time that a person could be sick, then there would be accumulation of this time, which might present a problem. If people were just given time off when they are legitimately sick, as determined by their doctor, then we would recognize the fact that people do get sick and they would have the time available to be sick. We also recognize that people do not voluntarily become sick merely because they want time off without pay.

To restate the minister's own claims, yes, why not recognize that people are sick and that they do need the time off to be sick. Why set an arbitrary limit? Why that arbitrary limit?

Hon. Mr. Tracey: We felt that to bank six days of sick leave was a fair figure. While I am on my feet, I would also like to state that I can show you, in this government here, where the sick leave provisions have been abused. People have claimed to be sick and they have not been sick; obviously, it is abused. It is abused everywhere and it becomes a great deal of abuse when it reaches a point where you have a great number of days built up and then start negotiating to get paid for these days, rather than just forego them. It is a privilege.

The idea was there to provide these days where if you work so long and if you build up so many days you could be sick, without fear of any repercussions. But, it is abused. There is ample evidence that it is abused. What we have tried to do is put the minimum standard in here and we felt, on this side of the House, that you should be able to save up to six days without having to worry. After you have used them up, or you have used one day up, then you build one more day back again. But, the maximum that you would be able to build up would be six days.

Mr. McDonald: The minister suggested once again that there is abuse in the system; that people evidently take time off. At least, he knows of incidences in this government. He should get to be rather knowledgeable about the hiring practices and the labour relations practices in the government. There is ample evidence to suggest that people are abusing their position in the government; abusing their right, their privilege, to take off time that they are not

legitimately allowed. There is a provision in the act, and most collective agreements, that calls for doctor's verification.

This has proven to be the only reasonable way of determining whether or not a person is unable to work. There is no better way to determine whether a person is unable to work.

Now, if there is abuse in the system, the answer is not to ensure that you make the restrictions so tight that you penalize those people who are legitimately sick. There are times, of course, that we know of, where employees — I am sure there are classical ones with the employees of this government — who find themselves to be legitimately sick and who may need to take off, maybe, two weeks, in order to survive their illness. I think it is legitimate to say that these people did not make a choice to become sick, thereby putting their job in jeopardy.

I still do not quite understand the reasons for the limit. I do not understand the reasons for this particular limit. Can the minister state whether or not this is standard practice throughout the country? Is the one day a month or six days in six months a standard provision in other legislation? Is that the reason why the government has come to accept this particular limit?

Hon. Mr. Tracey: No. In fact, we are leading the way with this provision in our act. There is no provision in other labour standards act for sick leave. We feel that it is only fair that we should put this provision in here; however, it is not in other acts. I suppose, in a utopian situation, it should not need to be in any act and that if you are legitimately sick your employer should give you time off.

However, it is abused by employers as well as by employees. So, the only alternative we can come up with is to put the sick leave provision in there and give so many days. It is for the employee's benefit, it is not a restriction for the employer's benefit.

Mr. McDonald: I did not suggest for a second that it would be a restriction in favour of an employer. Under ideal conditions, the employer would expect his employee to be there whenever he is called out. We both know, of course, that employees do get sick and, believe it or not, employees do get sick more than one day a month, sometimes, and sometimes they get sick, in a period of six months, for more than six days. It is an unfortunate fact of life.

Some hon. member: *(Inaudible)*

Mr. McDonald: That is irrelevant.

Obviously, the minister has stated the position that he does not know exactly why it is one day in a month and why six days in six months.

I would like to deal with the issue of the government's excursion into the employment relationship: the issue regarding the forfeiture of pay for failing to give notice to an employer.

The provision calls for the employee to forfeit a week of the employee's pay should the employee fail to give one week's notice to an employer. Conversely, the employer should give the employee one week of the employee's pay should the employer fail to give notice to the employee of termination of employment.

This is a rare provision. I wonder if the minister could give us some reasons why they decided to insert this particular provision in the act?

Hon. Mr. Tracey: It is not a rare provision. It is in more than one jurisdiction in Canada. The reason we put it in the act is because the general public and employees are asking to have notice before they are laid off or before they are terminated. I agree that they should know as much as possible ahead of time that they are going to be let go.

Conversely, in order to be fair, it is just as important that employers know that people are going to quit. I know the argument that the member is going to come up with: that the employee has given up his gross income, so the employer should give up his gross income.

There is a contract between the employer and the employee. That contract is that the employee will get paid so much per hour to work. It is a contract and I do not care whether it is one hour, one week or one month. If the employer must give the employee fair notice or pay him what he would have paid him under that contract for the week that he did not give him the notice. Conversely, the employee should also, if he does not give notice, also pay the one

week of the contract that he did not fulfill.

Mr. McDonald: The minister stated that he knew the argument that I was about to make regarding the issue of forfeiture of pay. The argument, to state it a little more clearly, is that when an employee forfeits a week's pay for failure to give notice, he is forfeiting a week of his gross income. When an employer fails to give notice, he forfeits a fraction of his resources. The minister mentioned that this side felt that in order to be fair, the employer should give up a full week of his revenue.

¹⁰ I called both provisions unrealistic and I call the provision regarding the equal penalty unfair. The penalty, as the employee would suffer, is a week of the employee's revenue; a week of his gross revenue. The penalty that the employer would suffer is a fraction of his week's revenue. If you assume that both equally can suffer the same penalty, then you must understand the relative strengths and weaknesses of the two partners in this formulation.

Some Hon. Member: What are you talking about?

Mr. McDonald: We are talking about levying a penalty for failure to give notice. We would like that penalty to be fair. We would like both sides to be equally charged with the necessity of giving the notice. For the employer, with the employer's resources, to give up one week's pay of one employee is not the same incentive to give notice as it is for the employee to suffer a whole week of that employee's revenue. They are different incentives all together. The amounts are different.

The government leader would like to get into the debate. Perhaps, the government leader would stand up and state his case? Perhaps the minister would stand up and state his case?

Hon. Mr. Tracey: I suggest that the member across the floor start talking about oranges and oranges, not oranges and apples. We are talking about a labour contract, for so much an hour, so much a week, so much a month, or whatever it happens to be. That contract is between that employee and that employer and it deals specifically with the amount of wages that that man is going to get paid for the time he works. It has nothing to do with the gross revenue of that business, whatever it happens to be at. It is a contract between two people, the employer and the employee, for a specific amount of money. If the employer is going to be required to give up that specific amount of money, the employee, conversely, should give up exactly the same amount. That is oranges and oranges, not apples and oranges.

Mr. McDonald: This so-called employment contract, which the minister is talking about, is going to suffer an intrusion by the legislature. The intrusion is going to be that the government is suggesting that the employer should suffer exactly the same monetary penalty as the employee.

¹¹ He says that they should suffer the same penalty, should they fail to give notice of the termination of the employment relationship, exactly the same monetary penalty.

Now, the employer is in a better position to suffer that penalty than is the employee. The employer, as I said before, is giving up a fraction of his revenue: a fraction. Let us take an example: there is an employer with 100 employees. If that employer fails to give notice to one employee, then that employer forfeits one-hundredth of his payroll to that employee. If the employee fails to give notice of his termination of the employment relationship, that employee must forfeit 100 percent of his revenue. You cannot treat both partners in the employment relationship equally.

Let us now take the issue of an employer with one employee. When the employer fails to give notice of termination and must give up one week of his one employee's salary, then he is giving up 100 percent of his payroll for the employee — not the business revenue — 100 percent of the payroll for his business operation. It is, obviously, more severe the lesser number of employees. Nevertheless, the situation is still unfair, because the employee still gives up 100 percent of his own personal revenue. Does that not mean anything? Does that not mean anything? Just try being an employee for a while and just find out what it means to lose a whole week's revenue.

Mr. Chairman: Order, please, order, order.

Mr. McDonald: I do not understand, I simply do not understand why people cannot understand that the effect of paying a

penalty, the same penalty, employer and employee, one better able to suffer the sanction than the other, why you cannot see that there is any unfairness here. I cannot understand that.

Hon. Mr. Tracey: It is obvious that the member across the floor has a different concept of what is right and what is wrong than people on this side of the floor. He can go and find out in a great many places what the comparison should be. It is a labour contract and it is no different than if I have a contract regarding any other thing in society. If the onus is going to be on the employer, on one side of the contract for "x" amount of dollars, it is only fair that the same onus has to be on the other side.

¹² He can argue all he wants about what the business is prepared to pay or is capable of paying. It has nothing to do with it. That is the problem. He does not accept the fact that what the business does and what the business gross revenue is has nothing to do with it. Incidentally, the business might be going broke. That still has nothing to do with it. It is the employment contract we are talking about.

Mr. McDonald: I reiterate once again, the question of the ability to suffer a sanction, which is levied by this government. I think that the restriction is absolutely unreasonable. The government leader asked me a question: do I suggest whether or not we should take the provision out? I stated in my second reading speech, if the government leader will remember, that we take the provision out regarding the forfeiture of wages.

Mr. Chairman: Order please. You must address the Chair.

Mr. McDonald: The ability to suffer a penalty of this nature varies with individual and varies with employers. We do accept in society the concept of a progressive tax system that levies greater tax on those who have greater ability to pay. That is something that we accept as a general rule of thumb in society. If we assume that in the employment relationship each individual employee is equal to each individual employer, there are misunderstandings of relative strengths and weaknesses of those two partners. There is no comparison as to who has more authority, who has more resources and who is more affluent, or who has the rights.

It seems that the minister is suggesting that the employee has greater obligation to suffer penalty than the employer because the employee must suffer a greater personal penalty. The minister refuses to acknowledge that, as does his entire caucus, judging by the nodding of heads and the shaking of fingers, et cetera, which we have had to suffer here this evening. I would like to know whether or not the minister or his department has reviewed the issue with Unemployment Insurance officials?

¹³ Has the government had any discussions with Revenue Canada or the Unemployment Insurance Commission regarding this provision in the act?

Hon. Mr. Tracey: I am not sure whether my department has had discussions or not. I have not had any. This is a provision that we put in here. This provision has been put in by other jurisdictions in Canada. If the member across the floor suggests that we take the whole thing out, we are prepared to take it out. We will remove everything. We will remove the need for notice altogether, if that is what he would prefer.

While we are talking about it, perhaps, some small businessman, who has gone into business and has invested every dollar of his life savings in the business and is just barely surviving, and he has one, or two employees, and one of those employees, perhaps, has half a million dollars in the bank, which is a distinct possibility. Maybe one of his employees is much better off than the businessman. Would the member across the floor agree that the employee should still be getting a week's pay and not have to pay the week's pay?

Mr. McDonald: That is a very interesting twist and something that we ought to consider. If we are going to talk about the relative affluence of employers and employees, we should consider a problem such as the minister just mentioned. At least the minister did recognize the principle of the relative affluence of the partners in a particular employer relationship. He suggested that, in certain rare cases, the employer may be less affluent than a particular employee and that we should consider that avenue. Nevertheless, the minister just recognized the fact that the relative affluence in the employment relationship is of some concern.

Hon. Mr. Tracey: On a point of privilege. I never said that I considered relative affluence for any consideration. I pointed out an argument against the argument that he was putting across the floor.

Mr. Chairman: I really do not think that we had a point of privilege. I wish we would proceed with this and get going a little bit on it.

Mr. McDonald: That is a clear abuse of the rules of the House. It is also an understatement. The question that I put to the minister regarding the unemployment insurance commission is a rather significant one. If there was a record of employment for the particular week, but no record of wages paid for that week, who, in the view of the government or federal officials, would be liable for unemployment insurance?

Who would be liable for the payment of the Canada Pension Plan or any other kind of payments, for instance?

Hon. Mr. Tracey: I think that should be fairly obvious. If the employer, for example, had to give up a week's pay, it would be a week's pay minus deductions. It would be exactly the same for the employee.

Mr. McDonald: So, is it the minister's interpretation of events that, in the event of a claim for unemployment insurance, the unpaid week would count as a week of insurable earnings or would not count as a week of insurable earnings?

Hon. Mr. Tracey: Yes, it would be a week of insurable earnings. It would not be any different than if the employee took that week's wages and went and bought a car, or anything else.

Mr. McDonald: It is a rather interesting issue. I do not think it is as trivial as the minister is making out.

The fact that the person would not, in effect, receive wages, would make it somewhat questionable as to whether or not that would be a week of insurable earnings. The employee would not have, in fact, received any remuneration for the time worked.

Hon. Mr. Tracey: On the contrary, he did receive the wages, but he paid those wages for another privilege that he wanted to take, and that was to quit without giving notice. He had to pay for that privilege.

Mr. McDonald: I will have to leave it at that. I am not at all sure that the minister's interpretation of the events is accurate. Perhaps the minister would request that his department review the ramifications of the issue with the Unemployment Insurance Commission, with a view of determining whether or not there is going to be any problem with such a provision.

The minister mentioned that this provision existed in other provincial jurisdictions. I believe Manitoba and Nova Scotia are the two jurisdictions in which it was placed, in 1980 or 1981. It is not a widespread provision in this country, for very, very good reasons. Obviously, they are reasons that are not significant to the minister or to the government.

There is one other aspect about the employer relationship that I found concerned me somewhat, and that was that there was no provision in the act for persons who were fired without just cause to appeal to the board. There was no provision that talked about due process, whereby people who were subject to arbitrary discipline could appeal. Could the minister tell us why no such provision was placed in this act and why they felt there was not need for such a provision?

Hon. Mr. Tracey: I guess we could start out by saying it this way: I believe the members across the floor feel it is everyone's right to quit a job, refuse his labour, that it is everyone's right, whenever they want, to quit. That is fair. We accept that. I think everyone accepts that. If you are going to be that fair, then you also have to consider that it should be every employer's right to terminate that employee when he feels it is fair. If any one of those employees feels that he has been unjustly dismissed, he has the option to go to civil court.

Mr. McDonald: The minister may not realize it, but employers in the territory already do have the right to terminate people and they do have the right to terminate people in questionable circumstances. That is a right that is already accorded to employers in the employment relationship.

If the minister is suggesting that in order for an employer to terminate someone, he should first have to clear that with the

Employment Centre Board, perhaps that is an option we should discuss. I do not think that employers in the territory would go for that at the present time. What I am suggesting is something slightly more modest and rather than go through an expensive and lengthy court process, you could expedite matters by going through an Employment Centre Board, sort of an arbitration hearing, less formal than a court and binding on both parties, to discuss those serious issues of termination without just cause. It is a rather modest point in comparison to what labour organizations have already, which deals with a whole range of discipline without just cause.

I am talking about a more modest point, about termination or firing without just cause. Why does the government not wish to institute an expedited procedure through the Employment Standards Board, with employer and employee representatives on the board, so that we can handle this rather serious situation for some employees, or ex-employees, in a more expeditious and just way.

Hon. Mr. Tracey: I sure wish the member across the floor would start speaking for everybody instead of just employees.

I thought I answered the issue: it is the employee's right to quit whenever he wants. If that is the employee's right, it should also be the employer's right to terminate him whenever he wants. If there is an argument about whether it was done right or whether it was done wrong, that is a civil argument that either side has the option to take to court. It is not the intention of this government to start getting into arbitrating between employers and employees. I notice that he has never mentioned that perhaps the employer was unjustly treated by the employee quitting.

Mr. McDonald: The minister has obviously not spent a great deal of his life as an employee, and neither has the government leader. I am sure. He should realize that there is a great deal of authority already accorded the employer in an employment relationship. I am just trying to address that inequity slightly.

There are situations where employees are terminated without just cause. That is the issue that I am trying to deal with at the moment. If we can work into the employment tribunal or the employment standards board some provision that would prevent arbitrary injustices, where they exist, perpetrated upon employers by ruthless employees, then let us discuss that issue. I am trying to address the issue, right now, of the employee who is terminated without just cause.

Why is there no provision to deal with that? The minister suggested that they can go through the courts. I want to know whether or not the government has considered an appeal through the employment standards board, which would be less costly for all concerned, and more expeditious, to handle the situation more easily and more simply. Why, in this particular instance, is there no provision for that in the act?

Hon. Mr. Tracey: First of all, I would like to state for the record that I have probably spent more time as an employee than the member across the floor has — probably much more — and the government leader probably has, as well — in fact, undoubtedly, he has. So, I speak with a great deal of knowledge about how employees are treated, as well as how employers are. I have been on both sides of the fence and I know exactly what I am talking about.

We discussed this issue and we made a policy decision that this government would not bring in and would not have our employment standards board dealing with complaints between employers and employees. If they had some perceived complaint that they were unjustly dismissed, they have the option to go to court. Everyone has the option to go to court. It happens quite often, and the court makes the decision of how much pay you should get or whether you were justly or unjustly terminated. We feel that is the right and proper place to go. The employment standards board is not the place for us to be dealing with something like that.

Mr. McDonald: The minister has repeated that he would not consider allowing the employment standards board to act as an arbitrator in situations like this. He has not stated why he believes that to be the case. The government, I understand, is quite willing to get into, very deeply, the employment relationship, the relationship between employers and employees, this coming fall. That

is a situation where you largely deal with complaints between the organized employees and the employer.

16 Here we have an act that deals specifically with the unorganized individual employee and the employer. We have already skirted the issue of the employment relationship. I am wondering why they have decided not to provide this ability to the board so that they could arbitrate those situations where employees are unjustly terminated. I wonder why they have not done that. I do not wish another restatement of the fact that they have not done it. I want to know why they have not done it.

Mr. Chairman: Any more general debate?

Mr. McDonald: The minister does not want to answer why they have not done it.

Hon. Mr. Tracey: Because I have answered it a half a dozen times already.

Mr. McDonald: He has not answered it a half a dozen times already.

I would like to briefly deal with the employment standards board: the nature and censure of the board, not so much its duties, but rather its makeup. The provisions for the board do not specifically allow for public access, nor does it specifically allow in the legislation for advocates to go before the board to state the case. Could the minister explain why these provisions are not specifically laid out in the act, or whether or not the government has any intention of allowing for these provisions eventually, at any time?

Hon. Mr. Tracey: No. It is not an arbitration board. The board is set up there to deal with specific cases and to make recommendations to the government and to deal with specific applications. It is not an arbitration board that is there to rule on complaints, except as they are appealed from the decision of the director.

Mr. McDonald: Let me illustrate my concern here. Hypothetically, let us say that there is an application to exempt an employer from a particular hours of work provision in the act. The employer is, perhaps, in favor of it and the employee, perhaps, is in favor of it. There may be good reason for the public to have access, or for employees to have access or for employee advocates to have access to the board to state a case; to state the other side of the cases, in those instances. I am wondering if the minister anticipates that such a situation could ever arise and whether or not the government or the board would be prepared to allow such advocates to state publicly, before the board, a particular side of an issue?

Hon. Mr. Tracey: Certainly, if the board is dealing with an application from an employer and they want to hear both sides of this argument, there is absolutely no reason in the world why an advocate could not be there to put the employee's side forward. The position that the member is asking for is as a public process; it is not a public process. The board is set up for the employee and the employer, and they may wish to appear before the board. The board may wish to listen to them. I certainly do not have any problem with an advocate to be in there for the employee. I do not think the board would, and I do not think the employer would. As far as it being a public process where it is all out in a big court room or something, that is not the idea.

Mr. McDonald: I did not anticipate that we would construct an amphitheatre in Whitehorse to deal with these issues. I suggested that perhaps the issues would be open to the public in the sense that they are open issues. They are issues that may be scrutinized by interested parties.

The minister suggested that he would have no problem allowing an advocate to state a case for either employer or employee. Can I ask the minister why the act does not stipulate that the employee and employer have the right to state their case before the board or that an advocate has the right to state the case on behalf of the employer or employee?

Hon. Mr. Tracey: Because the rules under which the board will be operating will be made by regulation. They are not put in the act. They are going to be made flexible. They will be done by regulation, which is a public document, and everyone will know exactly under what rules the board will be operating.

Mr. McDonald: I would like to know for my own satisfaction whether the rules of the board are going to be operating in a manner that is fair. I would ask the minister whether or not he intends in

regulation to permit an employee or an employer upon request to attend a board hearing, and whether the government will be prepared to permit, upon request, a representative, or advocate, of the employee or employer to attend on their behalf in front of the board hearing. This would be the case universally in all instances where the request is made.

Hon. Mr. Tracey: That is certainly something that we will take into consideration. It is likely that that will happen.

Mr. McDonald: The minister says it is likely that will happen. Can we have any greater assurances that it will, in fact, happen? If we do not see it in the act, as far as I am concerned from an opposition member's point of view, there is absolutely no guarantee that we will see it. I, for one, am not in favour of putting provisions like this in regulation. I believe that something like this could quite conceivably be put in the legislation itself.

18 There is no good reason why it could not be. These could be rules that never need to be changed. There is no reason why they have to be put in regulation; there is every reason why they should be put in legislation to ensure that any changes to those rules will be brought before the legislature, first. Can the minister give us, conclusively, that one way or the other, whether or not that sort of public review process, that sort of right to attend your own hearing, that right to have your advocate attend your own hearing will, in fact, be enshrined in the regulations?

Hon. Mr. Tracey: Yes, certainly, if you are appealing to the employment standards board you have the right to appear before the board to state your position. So, the opposition has the same right. I think it should be fairly elementary.

Mr. McDonald: We will see exactly how elementary it is when the regulations are made public.

I think it is a frightful way of dealing with such an important issue as this. I notice that, in other pieces of legislation, quite often a great deal of direction is given to a board, such as the Workers' Compensation Board, as to how it will operate, as to how much public input is to be provided, what the employee's rights are and what the employer's rights are before the board. These are things that are enshrined in that particular piece of legislation.

I feel that there is no good reason why we cannot have it in legislation. It is an unfortunate thing that the government decided that they are going to do it through regulation. That is just another example of executive fiat. That seems to be a habit with this government.

Mr. Chairman: If there is no more general debate, we will go to clause 2, definitions.

On Clause 2

Mr. McDonald: I would make one slight request: that we go a little bit more slowly through these clauses.

Mr. Chairman: Sorry.

Mr. McDonald: The definition of "court", in this case, is the Supreme Court of the Yukon Territory. I understand that that particular court sits a few times during the year and that the caseload is stacked up, somewhat, in that court. It might be more expeditious to interpret "court" as Supreme Court over the territorial court. Could the minister explain that?

Hon. Mr. Pearson: Ask your legal advisor, down there.

Mr. McDonald: I have a question about "director". I wonder if minister could explain why the employment standards officer would be appointed by the Executive Council member, from time to time? Why is not a fixed term given to the director, in these particular cases?

Hon. Mr. Tracey: Because he is an employee of the government.

19 **Mr. McDonald:** If the director decided to voluntarily resign there would be a job opening and a new director could be appointed. In situations such as the Public Service Commission, we appoint a Public Service Commissioner to sit for a fixed period of time, so that that person has some guarantee of employment and it also suggests that the Commissioner or the director would be less prone to political fiddling than would a regular employee.

I am wondering if the minister does not believe that it would be better for the director to be perceived as being less an employee and be in more of a secure position, such as in a three-year

appointment?

Hon. Mr. Pearson: There is only one employee who works for this government, of the whole 1,500 who are on the payroll, who is appointed for a fixed period of time. That is the Public Service Commissioner, who is appointed by this legislature.

Hon. Mr. Tracey: There is also the Chairman of the Worker's Compensation Board. The reason that they are fixed appointments is because they have to make arbitrary decisions, especially the Public Service Commissioner, that may be detrimental to the government. The director of Labour Standards is doing nothing that is detrimental to the government. He is there to enforce an act that we have written.

Mr. McDonald: Would it not seem, from the point of view of the public, that a director who is given a two-year term would be more impartial and less subject to political fiddling than a mere employee?

Hon. Mr. Tracey: No, there is nothing that he could possibly do that could be impartial. As long as he was enforcing the act as it is written, there is absolutely no reason for him to worry about his job, any more than any other employee has in this government. To give him tenure is not going to increase his ability to administer the job any better.

Mr. McDonald: We will review the situation as time goes on. Obviously, this is a newly revised position and will be of some concern to both employers and employees in the territory. If there is any suggestion or hint that there is political involvement in that person's particular employment, then we will be reviewing this again.

²⁰ Under the definition of "general holiday", I wonder if the minister could explain why these days, and why not heritage day, as well?

Hon. Mr. Tracey: We are not adding to the list of general holidays. We feel that we have as large a list as most other jurisdictions and more than some jurisdictions in Canada. At this time, especially with our economic situation, we are not considering adding another day.

Mr. McDonald: For the record, this may be more than some jurisdictions. It is also less than others.

I understand that the Federation of Labour has submitted alternative wording to the definition of "trade union". Rather than submitting the wording "trade union means an organization of employees formed for purposes that include the regulation of relations between employers and employees", the trade union definition that the Federation of Labour has submitted reads that a trade union means "any organization of employees or any branch or local thereof, the purposes of which include the regulation of relations between employers and employees".

I wonder if the minister has reviewed that particular suggestion to include the branch or local of a particular trade union, because, as the minister knows, a trade union local is the body of employees who generally deal with any one particular employer?

Hon. Mr. Tracey: That does not change the fact that they are still members of that trade union and "trade union" covers all branches or locals of that trade union.

Mr. McDonald: I wonder if the minister could explain exactly why the exceptions are granted to the definition of "wages", nearing the end of the definition itself? The clause stipulates that the definition of wages "does not include gratuities and money that is paid at the discretion of the employer and that is not related to hours of work, production or efficiency, travelling allowances or expenses..." I wonder if the minister could explain why those exceptions were made?

Hon. Mr. Tracey: Because they are not wages. They are monetary allotments that the employer may make to his employees. They are not constituted as wages. They are above and beyond the wages that he may or may not provide for them.

Mr. McDonald: Clearly, the issue of gratuities falls into a different class altogether. It is not remuneration that is paid by an employer to an employee that could include the remuneration paid by a customer to an hotel waiter or an hotel clerk.

²¹ But, that is held in trust by the employer until such time as the bill is finally paid. I wonder if the minister could tell us why

gratuities in that sense are not included in wages?

Hon. Mr. Tracey: Because employers do not hold gratuities in trust. If they do, it is some agreement that is worked out between the employer and the employee. Gratuities are given to the employees when they perform their services. In most instances that I know of, they are paid immediately to the employee; they are not held and given with a paycheque.

Mr. McDonald: I was a waiter for approximately four years and it was quite often the case, when large groups of people would come into a particular establishment, they would - especially when they came in for a period of time - be billed, they would be invoiced and they would pay some months down the road their bill and they would add upon that a gratuity for the people who were working in that particular establishment. That is one case where gratuities can be held by an employer, or it can be held back by the customer until such time as the final accounting for a bill is made. There were other cases, too, where people who pay by credit card add a tip or gratuity at the bottom of the bill that is reimbursed in some cases, and in my case was reimbursed when the employer actually received the money for that particular Visa bill, or that particular Chargex bill, or credit card bill. That money would be held until such time as it was actually paid.

That is a gratuity. Both of those are instances where there was a gratuity. I am wondering if the minister has that in mind when he is talking about not including gratuities as wages?

Hon. Mr. Tracey: Those are not wages. Wages are what the contract between the employee and the employer calls for. They have absolutely nothing to do with that contract. Gratuities or tips are monies that are made available to that employee for good service, or for whatever reason they want to give the tip, or gratuity, and they are not wages. They have nothing to do with the employment contract between the employee and the employer. They are not considered wages. If they were considered wages, they would have all the deductions taken from them, income tax paid on them and everything else.

Mr. McDonald: Surely the minister is aware that there are operations in town that pay the minimum wage because the feel the employee is going to receive a certain amount in gratuities, or tips, which would supplement their income to a higher level.

²² There are places in the country, for example, where people receive absolutely no wages, but receive nothing but gratuities, because the business or the particular operation is so lucrative. Obviously, if the minister is not talking about tips and gratuities, in the traditional sense in which the words are used, perhaps that is all right, in the sense that the employee could go to civil court to reclaim anything that is unjustly or unfairly held back from him and the act would not effect him.

Hon. Mr. Tracey: That is exactly true. If an employer is holding the gratuities of any employees and they are not getting them, they should certainly be complaining. However, there is no way that anyone can work in this territory only for gratuities, because of the minimum wage. If they are working, they have to work for the minimum wage; either that or they are self-employed contractors.

I think it would be very unwise for the members across the floor to push to have gratuities added into wages because, once that is done, there is a great nightmare of paperwork to become involved in. Also, a lot of these employees may end up losing a heck of a lot more than they are gaining.

Mr. McDonald: I have absolutely no idea what the minister was talking about, but if my reading of what the word "gratuities" is what the minister is actually saying, then we can leave it at that.

Clause 2 agreed to

On Clause 3

Clause 3 agreed to

On Clause 4

Clause 4 agreed to

On Clause 5

Hon. Mr. Tracey: I was standing up to have you note that, in 5(e), the word "designated" is spelled wrong; it is a typo.

Mr. McDonald: I wonder if the minister could explain, perhaps through the entire part, why the exemptions, apart from those which

have to do with managerial or of a supervisory nature, are included as exemptions?

Hon. Mr. Tracey: Because managers and travelling salesmen, or people such as that, although they may be on the job for many hours, they may not be working all of that time, so, they are exempted from the hours of work. Managers, for example, may be on the job at any time in a 16 or 18 hour period, which does not necessarily mean that they are working all of those hours.

Mr. McDonald: I assume that this part may not apply to people of a managerial or supervisory character. I wanted to know, specifically, about members of employer's families, et cetera, which the act designates as exemptions, out of hand. Does an employer's family mean the employer's immediate family or does it mean a family of a general character?

Hon. Mr. Tracey: We just went over the definition of a family, members of an employee's family, in the definitions. That is who it applies to and, as all members are aware, there are a great many family businesses in the territory. In fact, in most jurisdictions or all jurisdictions, members of the family are exempted from the hours of work and the overtime provisions, because they are working in a family business.

Mr. McDonald: Purely a technical question: why section (e)

Mr. Chairman: Would you repeat that? We did not hear you.

Mr. McDonald: Why is there provision here, 5(1)(e), which calls for the part not applying to "such persons and classes of persons as may be designated by the regulations as persons or classes or persons to which this Part does not apply". Why is that provision there? There are other sleeping provisions that allow for exemptions of various types.

Hon. Mr. Tracey: This is exactly the position of what I proposed earlier. Perhaps, outfitters, for example, or big game guides, would be exempted from hours of work as specific classes of people or business, because of the nature of their work and the nature of the way that the people work in them. A legal argument could be made that those people are actually on the job, however, we all know that regardless of whether they are there or whether they are or are not working all those hours, so there has to be some provision made to handle that situation.

Mr. Chairman: There is a typo in (e): "designed" should be "designated". It is a typo. Cleared?

Some hon. members: Clear.

Clause 5 agreed to

On Clause 6

Clause 6 agreed to

On Clause 7

Clause 7 agreed to

On Clause 8

Clause 8 agreed to

On Clause 9

Amendment proposed

Hon. Mr. Tracey: I move that Bill No. 3, entitled the *Employment Standards Act*, be amended in clause 9 at page 4 by substituting the following for subclause 1:

"(1) Where an employer requires or permits an employee to work in excess of standard hours of work, he shall pay to the employee one and one-half times his regular wages for all hours worked in excess of

(a) eight in a day, or

(b) 40 in a week, but excluding from this calculation hours worked in excess of eight in one day."

Mr. Chairman: You have heard the amendment.

Mr. McDonald: I wonder if the minister would mind explaining the reasons for the amendment?

Hon. Mr. Tracey: It will become even more clear when we get to page 6. We brought this provision in because after this act being out in excess of a month - month and a half - we have had a great deal of feedback from businesses and from labour as well, expressing the fact that if we left the section as it is, we would not be able to have people working in the industry such as diamond drilling or oil exploration industries. In fact, it would be very detrimental to people who are trying to become a centre for the Beaufort Sea work.

There are a great many people in the territory — a great many employees not just employers — who want to work in excess of 10 hours in a day. They go out into the bush for a month or so before they come back in. They work seven 12-hour days. Employers have said to us that if we have to pay double time after 10 hours a day, we will have to quit working the seven 12-hour days. Employees have also said that they are quite satisfied with time and a half, want to continue working and want to put as much money away as possible during our short season.

Also, we have been provided with union agreements with unions such as IBW in the Northwest Territories that have taken the double time provision out of their union agreements along with other concessions they made to the industry in order to spur the oil development in the Northwest Territories. If we do anything detrimental to the industry and stop them from taking people into the Yukon Territory and working under the same conditions, we are going to be very detrimental to the exploration industry.

This has been given a great deal of thought. We have had a great many representations. I think every member of our caucus has certainly had representations made to them by employers and by employees. I have, myself, in a great many instances. I know the members across the floor have also had representations made to them. Taking all in all the considerations of employees, as well as the employers, it was felt that it would be most detrimental for us to force employers to pay double time after 10 hours in a day and, in fact, it would reduce the number of hours that employees would be allowed to work.

Mr. McDonald: Did the minister say double time after 10 hours of double time after 12 hours?

Hon. Mr. Tracey: No. The existing act, until this amendment passes, says double time after 60 hours a week, which is 10 hours in a day.

Mr. McDonald: In a six-day week. Is the minister saying that the provision allowing for double time after 12 in a day or 60 in a week is a provision that has been eliminated for all time or that it will be instituted once again sometime in the next year?

Hon. Mr. Tracey: No. That section is coming right out of the act and if, at any future time, it is considered that it should be back in again, there would have to be an amendment brought forward to the legislatures.

Mr. McDonald: So, essentially, the minister has said that employer groups and employees have rejected the concept of double time after 12 hours. The argument that the minister made was that the oil and gas industry had requested that this provision not apply to them because they had made a conscious decision, both the employers and employees through the collective bargaining process, to spur development in that area. Would that not constitute grounds for an exemption to the general standards, rather than a blanket exemption to all employers in all situations around the territory?

Hon. Mr. Tracey: It is not a blanket exemption, as you will see in the other amendment that I will propose to you. We propose to control it in another manner. That is the way that it has been recommended to us. In fact, I will state, for the member's benefit across the floor, yesterday, when I was in Carmacks, I had some employees, the labour people, come and talk to me and say that even the provision that I was proposing would be very onerous on them. A lot of them want to go out in the bush and want to stay there and want to work. They do not want any interference at all in their ability to work. They are quite satisfied with time-and-a-half. The other amendment that will be coming is coming because we felt that it is necessary to have some restriction for safety purposes, if nothing else. The amendment that I propose to you here is an amendment that has only been brought forward after a great deal of consultation with various groups in the territory.

Mr. McDonald: I would just like to state for the record that, for those employees who currently enjoy the double time after 12 hours, I do not believe it is a provision that will be an acceptable change for them.

Of course, the whole idea of overtime rates is that it encourages employers to keep the hours in a day down. It encourages fuller employment. Obviously, it would mean less overtime and it encourages fuller employment. I am not convinced that the

provision that the minister is submitting is as widely accepted as he may give us to believe. We may hear something more from employees as they understand the true nature of the minister's intent.

Hon. Mr. Tracey: I would like to correct the member across the floor. There is no provision in the existing act to pay double time. Anyone who gets double time today, gets that under another agreement, a different agreement with the employer. There is nothing stopping the employer and employee from still getting that exact same thing, double time, if that is what they are getting. There is nothing in this act that restricts anyone from getting something better than it says in this act.

What we are saying is that, under the existing situation and in consultation with employees and employers, they are satisfied, and they want us, in fact, to not restrict their hours of work and they are quite satisfied to work for time and a half. So, taking all that into consideration and only considering the safety factor, which is something that we feel we should consider, we have proposed the next amendment, which will be coming in three more pages.

Mr. McDonald: I am pleased to see that the minister acknowledged that giving double time after 12 hours is something better than the provisions in this act. I would agree with that.

I did not say that double time was in previous legislation. I mentioned that it was in current agreements between employers and employees and that they do not regard a change to time and a half for all hours worked and no provision for double time as an increased benefit for them. I am confident of that.

Amendment agreed to

Clause 9 agreed to as amended

On Clause 10

Clause 10 agreed to

On Clause 11

Mr. McDonald: I understand that the Federation of Labour suggested to the minister that rather than use a majority as a determining factor as to whether or not the provision in the act will be changed, that an 80 percent majority be provided as a standard. I wonder if the minister would like to comment on that?

Hon. Mr. Tracey: They put that position to us and we have rejected it. We feel that the majority is the rule. If the majority of employees want to join a union, for example, they have that right. If the majority of people want to work whatever arrangements they make, that is their right. To demand that an 80 percent majority make that choice is something that we do not consider is necessary.

Mr. McDonald: I make the case for the other side very briefly. It is common practice in constitutional changes where you change the rules of the game, that greater than the simple majority is often the rule. Quite often, it is two-thirds and sometimes it is 80 percent. The suggestion that 80 percent may be necessary to change the rules of the game may be necessary to protect the minority rights.

Hon. Mr. Tracey: I wonder if the member across the floor would also say, for example, it should be 80 percent majority before he can certify a union. It is the same thing. They are changing their constitution under which they are working.

Mr. McDonald: I would regard the issue as being a different one. We are talking about the rules of the game, once established in either legislation or in a collective agreement. The situation I would believe is quite common when determining the rules for changing the constitution of a society, even a curling club society, is that it often requires that a greater than majority vote be required. It is a simple provision. It is applied elsewhere.

Clause 11 agreed to

On Clause 12

Clause 12 agreed to

Amendment proposed

Hon. Mr. Tracey: I move that Bill No. 3, entitled the Employment Standards Act, be amended in clause 12 at page six by adding the following subclauses:

"(2) Notwithstanding subsection (1), where the employer requires or permits the employee to work regularly in excess of the daily standard hours of work, the employer

(a) may require the employee to work up to 28 continuous days without a day of rest, and

(b) may require the employee to work up to seven more days continuous with the period of 28 days described in paragraph (a), where the additional work is necessary in order to complete the project upon which the employee was employed during those 28 days."

"(3) An employee who is required or permitted to work a work schedule under subsection (2) is entitled

(a) at least one day of rest for each continuous seven days of work, and

(b) to take his accrued days of rest continuously with each other."

Mr. McDonald: I wonder if the minister would mind explaining this amendment to the House? Of course, the provision would mean that, conceivably, a person could work 35 days and then get five days off or could conceivably work 35 days, get five days off and get another 35 days work and then be laid off. So, essentially, a person could work 70 days on and five days off. Is this what the minister regards as an acceptable standard?

Hon. Mr. Tracey: No, he could only work 35 days maximum and then have at least five days off, not 70 days. If he is laid off, he has lots more than five days off after the second 35 days. The member should quit trying to make those kinds of statements, which are totally and absolutely inaccurate.

What we are trying to do here is to address the problem that a lot of employees feel that they want to go into the bush and they want to work and they want to work day after day and they want to bank their money and then come out and have a few days off, and then go back into the bush again. Employers want to work exactly the same way.

As I stated when we made the first amendment, this is the cap that we feel has to be put on there for safety's sake. We feel that you should not be working more than a month without having time off. The only time we will allow you to work more than a month without time off is if the job is winding up and there are only two or three days more work.

Mr. McDonald: This allows for up to seven more days work, not two or three more days work. A situation could, conceivably, be this: a person could work the 28 days, plus the seven days, for a total of 35 days. The person is then entitled to one day of rest for every continuous seven days of work. That means the person would get five days off. Then, starting from time zero, again, a person could conceivably work another 35 days, another 28 days and another seven days beyond that, where additional work is necessary in order to complete a project.

Now, that means — and it is not erroneous — it means a person could work 35 days, get five days off, work another 35 days and then be laid off because the season ends or because the job is finished. So, that does, in essence, say 70 days with five days off in the middle. There are provisions in the act that permit the person to be working long hours.

So conceivably we could be talking about 10 12-hour shifts for 70 days with five days off. This is the kind of acceptable standard that the government is promoting?

Hon. Mr. Tracey: I will say it again, the member is trying to cast aspersions that are not there. After the 70 days, if the member is laid off, he has a lot more than five days off. What we are saying is that the maximum that you can work on a project, and only if that project is winding up, is 35 days. It would mean that he could not go back to that project, because it would have to be finished, otherwise he would have to leave after 28 days and go to a different project. Maybe he would be laid off in the meantime, who knows. The thing is that it is 35 days maximum he can work and he has to have at least five days off thereafter.

Mr. McDonald: The minister is absolutely wrong. The issue is that a person may have to work long hours for 35 solid days. This is a standard that is allowed in legislation. This is not an exception. This is a standard that is allowed in legislation.

The Minister of Education says that it is for the benefit of the worker. The worker is not given a choice here. The worker does not determine whether or not this is what they want. There is no need to canvass, there is no need to go to the board for approval. This is a stipulation that is allowed in the act. This is not a situation where an

exception may have to be made.

The minister for labour services has said that the person can get 28 days plus seven days, and get five days off. This is a minimum standard. There is no provision here to canvass employees as to whether or not they would accept working 35 days on and five days off. If those same employees are working very long shifts, I do not understand where the minister is suggesting that the five days off are going to provide the necessary safety period required to ensure that safe practices are adhered to. This, I believe, truly does reflect the kind of minimum standards this government wants to promote.

Hon. Mr. Tracey: This was done only after a lot of negotiation with the employers and after a lot of employees have spoken to all of us as members of the government. I would just like to read you the quotation out of the agreement between the International Brotherhood of Electrical Workers and a company in town, M & R Mechanical: "All employees, seven calendar days leave after each 42 calendar days of employment on the job". That is a union agreement, 42 days. What we are saying is 28 days is what we feel the maximum should be. You can only go to 35 if the job is going to wind down and it would be senseless to bring the people into town and take another crew out there for three, four, or five days work, or whatever is necessary.

³⁰ The maximum you can work on one project is 35 days and that only if the project is winding up.

Mr. McDonald: There is a fundamental difference between legislating such a broad standard as this and the negotiating of it with your employer. There is absolutely no sense that this sort of provision here will be negotiated with employees or even that employees will be canvassed.

If the employees decide, of their own free will, that they will work to the extent to which a collective agreement says they will, then they have been canvassed; their rights have been adhered to, their opinions have been solicited and they have taken part in making that decision. This is a case where the government is saying, "You do not have to canvass the employees and you do not have come to the employment standards board. You may work the employees for 35 days, essentially for as long as you want to work them, so long as you pay them the overtime rate. You can work them 16 hours a day, so long as you pay them the overtime rate. You can work them for 35 days in a row, so long as you give them five days afterwards, if you want them back". That is the minimum standard the government is promoting.

Mr. Chairman: Before we carry the —

Hon. Mrs. Firth: (Inaudible)

Mr. Chairman: Order, please, the Chairman is talking.

Before we carry the amendment, there are two typos. In subclause 3(a), it has "or" and I believe that should be "of". In (b), "continuously" is spelled the wrong way. Is that agreeable to everybody?

Some hon. members: Agreed.

Amendment agreed to

Clause 12 agreed to as amended

On Clause 13

Clause 13 agreed to

On Clause 14

Mr. McDonald: Clause 14(2) is the clause that permits the employer to request an exemption to the period stipulating the number of hours necessary for a rest period. It states that the director may provide that exemption on the application of the employer.

The provision, in our opinion, is considered to be unsafe. Eight hours is better than six hours and a shift that lasts 18 hours is long enough.

³¹ If the minister would care to comment on our remarks, he may feel free.

Hon. Mr. Tracey: I do not know how many times I have to say it and I do not know when it is going to sink through the head of the member across the floor. We are not talking about working 16 or 18 hours a day here. We have already said what our position is; there should be eight hours between shifts and we maintain that. There may be specific circumstances or specific days in a period of time when, because of shift changes or other reasons that I do not

comprehend now, there may be a necessity to not have eight hours between a shift every day. Maybe once in a payday it is six hours instead of eight. Who knows? The thing is that this provision is here in order to provide for that if it ever does become necessary. I am certain sure that the director of employment standards, who knows what our position is — that it should be eight hours between shifts — is not going to allow six hours between shifts without a very good reason.

Mr. McDonald: The wording in this particular clause is extremely broad. It says, "where the director is satisfied that a rest period of eight hours would impose an unreasonable hardship on the employer because of the specific circumstances surrounding a specific project or piece of work". That could be interpreted in a variety of ways. The minister has just said that he is not sure of even specific circumstances where that would be case. I would admit that there may be the very, very rare case where, in a small establishment, a certain emergency exists and the eight-hour rest period could be reduced. But, that is not exactly what the provision reads. The provision allows a very broad scope for the director. The minister is again suggesting that the director will know what the government wants. Well, through osmosis or something, the chairman will know what the government's wishes are. Therefore, we have no need to worry. Considering the nature of the board and the nature of the procedures that are applied to determine whether or not exemptions are going to take place, I have reason to worry about this provision.

Clause 14 agreed to

On Clause 15

Clause 15 agreed to

On Clause 16

Clause 16 agreed to

On Clause 17

³² **Mr. McDonald:** Could the minister explain what 17(1) means?

Hon. Mr. Tracey: Yes, it means that anyone over the age of 17 years of age must get the minimum wage and they must get paid that for all of the hours worked. Under 17 years of age, we do not regulate the minimum wages.

Mr. McDonald: Would it not be simpler to state, in this part, in (1), that an employer shall pay to each employee the minimum wage for the time worked by him? This legalese may be possible to be interpreted by people with a facility for the legal language, but it certainly is not something that I easily comprehend.

Clause 17 agreed to

On Clause 18

Mr. McDonald: In 18(2)(f), I wonder, in this entire part, if the minister could explain how the board would set such things as room and board, when a standard cannot be specifically established throughout the territory? Certainly, room and board would be a different cost in a bush camp than it would be in places such as Elsa, or that it would be in a place such as Whitehorse, where there may be room and board provisions in that particular agreement or an individual contract? I wonder how the government would be prepared to establish such things as a set fee for both room and board?

Hon. Mr. Tracey: There are a lot of variables that enter into it. One would be how much the employee was getting paid. If he was getting paid the minimum wage, for example, and the employer wanted to charge you \$5 a day for room and board or \$8 a day, or whatever, it would be one thing. However, if you were getting \$15 an hour or \$18 an hour, it would be a different situation altogether for the board to consider. So, the board has to consider all of the aspects of it before it would come down with a maximum of how much you would be charged.

³³ It is there for the protection of the employee so that there is no way he can get overcharged in comparison to the wages that he is being paid.

Mr. McDonald: I understand the reason for the provision. I am wondering how the board is going to set a rate for room and board throughout the territory if the rate varies so greatly from one operation to the next.

Hon. Mr. Tracey: It does not say in here that they are fixing the rate for the territory. It says they are fixing it for employer and

employee. They may deal with an industry such as a service industry, or part of that industry. They may deal with placer mining in a different sense. It does not say there that they are setting a maximum charge for room and board flatly across the territory.

Clause 18 agreed to

Mr. Chairman: We shall now recess until 9:30.

Recess

Mr. Chairman: I will call the Committee of the Whole to order. We shall now go on to clause 19.

On Clause 19

Clause 19 agreed to

On Clause 20

Clause 20 agreed to

On Clause 21

Clause 21 agreed to

On Clause 22

Clause 22 agreed to

On Clause 23

Mr. McDonald: This whole clause deals with the deferring of annual vacation. I am wondering if the minister could explain some of the reasons why this provision was written in this manner. He will note from the Federation of Labour brief a number of changes. One change in Section 23(1) was to change the words in the second line from "will not take" to "may defer", which allows the employee to defer annual vacation entitlement for a period not to exceed one year. I wonder if the minister can explain why that particular recommendation was not followed?

Hon. Mr. Tracey: It does not make any difference whether you say "deferred" or "will not take". It amounts to the same thing. The position of the Federation of Labour on this, in the opinion of the government, is that there is nothing substantial in the part that says the employee should be able to get his holiday pay. That is a better provision than what we have in here, and if the employer and the employee want to make that kind of an agreement, that is up to them.

Mr. McDonald: I wonder if the minister could explain why, in (2), the employee may not be entitled to receive his vacation pay at the time that the employee takes his holiday. I wonder why there is a 10-month leeway in allowing the employer to pay the employee his due?

Hon. Mr. Tracey: Because the employee may want to take his vacation at some other time than within the 12-month period. He has up to 10 months after that to take that holiday and the employer has the same period of time in which he has to pay him. After 10 months you are already due for your second annual holiday, so it is required that it be paid.

Mr. McDonald: Why is it not preferable for the employee to receive his due as soon as the employee is entitled, so that the employee may do with the money as he wishes, rather than to wait for some period down the road before he is entitled to receive it? I thought I had already stated that if the employer and the employee want to make arrangements to pay it earlier, that that is better than the provision that is made in the act. What we are saying is that, under no circumstances, can the employer hold it any longer than 10 months afterwards.

Clause 23 agreed to

On Clause 24

Clause 24 agreed to

On Clause 25

Clause 25 agreed to

On Clause 26

Clause 26 agreed to

On Clause 27

Mr. McDonald: In 27(1), there may be times, of course, when the employee does not wish to take his vacation at a time that is convenient to the Commissioner in Executive Council. I am wondering if better wording would not be to allow the employee to take a time that accommodates more the employee schedule than otherwise?

Hon. Mr. Tracey: All I can state is that this provision was in

the old act, that there never was any necessity for regulation ever being made under the act, which tells me that it is very unlikely that there will ever be the necessity for any under this act, although we have provided the provision that, if it is necessary, the Commissioner in Executive Council can make regulations regarding the notices by employees. There has never been a complaint and never the necessity for a regulation, to this date.

Mr. McDonald: I wonder if the minister could just give us an example of a situation where the Commissioner or the Cabinet may ask to make regulations proscribing that notices be given by employees for times when the vacations may be taken? Why do we have to have this provision in the act at all, in that case?

Hon. Mr. Tracey: There may be an instance, for example, when some employer decides that everyone is going to take their holidays in December. Maybe the employees do not all want to take their holidays in December and there is maybe the odd one of them who wants to take it in June, or whatever. If it ever becomes a necessity, this provides the government with the provision to review the situation and make a regulation to deal with the situation.

Also, you will see the defining of absences from employment. There may be some argument, at some time, as to whether a person's absence from employment is a continuous break in his employment, or whether it should be considered work time. We have also made the provision, although we do not expect to have to use it, to address that situation if it ever arises.

Mr. McDonald: I certainly hope that the first provision, 27(1)(a), is not used very often, given the kind of explanation we have received.

Clause 27 agreed to

On Clause 28

Clause 28 agreed to

On Clause 29

Clause 29 agreed to

On Clause 30

Clause 30 agreed to

On Clause 31

Mr. McDonald: This provision states that an employee who works for less than the standard hours of work, or who works the regular hours should be paid at least the equivalent of wages he would have earned by the average number of hours he worked on each working day during the two-week period immediately preceding the week in which the general holiday falls. It seems to me to be a situation in some operations where the employee may work three weeks on, two weeks off, or some such arrangement such as that, in which case the employee may be in a situation where there is no two-week average immediately preceding the holiday. I wonder if the minister could comment on that?

Hon. Mr. Tracey: I do not understand the argument. What this says is that if there is a holiday there, an employee is not to be required to work on what otherwise would be a non-working day in lieu of that holiday, without receiving the pay that he would receive for the holiday. There is provision in the act for an arrangement between the employer and the employee that the holiday will be observed on a different day. It does not absolve the employer from paying the time and a half provision plus the straight time provision for the general holiday, which amounts to double time and a half for working on that day.

What this section here makes sure of is that the employee is going to get that double time and a half if he works on the day that would ordinarily be the holiday.

Mr. McDonald: I understand the intent of the provision in the legislation. I am merely stating that perhaps it may be a problem that the two weeks prior to the holiday may not have been worked at all in any case because of the way that some operations operate.

Often people may work four weeks on and two or three weeks off. It is not uncommon in certain oil and gas industries, for example. In those circumstances, a rate cannot be defined for the two-week period immediately preceding the general holiday. I am just stating that as, perhaps, a problem. Certainly, it is not a significant problem. If the minister can elaborate, perhaps he would know better.

Hon. Mr. Tracey: I am somewhat confused. However, if the holiday were to fall in that two-week period, the person would be

getting paid for it on straight time and, if it was following the period when he would be working, what this section deals with is the fact that he could not be given a day off that would ordinarily be a day off anyway and not get paid for it. What we are trying to do is protect the employee in all circumstances here. I really cannot understand the argument being put forward by the member across the floor. I am sorry.

Mr. McDonald: The argument is not a significant one. I did not think that we had to deal with it at such great length. The issue is that perhaps there may be times when the employee may not be working in the preceding two weeks prior to the general holiday. He may not have to work on the general holiday either. He may have a three-week period off. Therefore, if there is no work experience or no wage experience in the weeks preceding the holiday, then, perhaps, it may be very difficult to determine what the person is due for his wages for the holiday. It is just a minor problem; a minor issue.

Hon. Mr. Tracey: No. That would not be a problem because, if the employee was working, if that was his regular time off, that is part of his regular working time. If you are to deal with getting paid for the two weeks, you are averaging your two-week working period — we are talking about part-time workers — and if they did not work the previous two weeks, there certainly is a problem because he is not eligible for his statutory holiday. Anyone who is working in, say, a remote camp where they are working two weeks in, two weeks out, would be eligible, certainly. The only people who would be missed on this would be part-time workers who have not worked for the previous two weeks and they are not eligible.

Mr. McDonald: I understand the point that the minister is making. However, let me give an instance to illustrate the minor concern that I have. A person works four weeks on and three weeks off. In the third week of the person's week off, a general holiday falls. There is no work experience for the previous two weeks to determine what the average number of hours the person has worked in order to determine how many hours he will be paid for on the general holiday. It may have been for the four weeks that he is working that he has worked 12-16 hours a day. That may be the case, and so, the average may be 13 hours per day.

“This stipulates that the person will be paid to the equivalent of wages he would have earned for the average number of hours he worked on each working day, during the two-week period immediately preceding the week in which the general holiday falls. So, if a person had been working in a two-week period prior to the holiday, he would be working an average of 13 hours a day and he would be paid 13 hours for his holidays, as the wording here states. If there is no work experienced, then there is no way of determining what the average would be.

Hon. Mr. Tracey: I suggest the member go back and read it again. This deals with people who work less than the standard hours of work. The maximum you can get paid is eight hours.

Now, anyone who is working four weeks on and three weeks off is going to get paid eight hours a day, because that is his regular employment. He is working an eight-hour day and, if he is working less than eight hours and his is a regular employee working four weeks on and four weeks off, he would get paid whatever his regular agreement was. There is no way that a circumstance arise where he would get paid more than eight hours for the statutory holiday.

Mr. McDonald: I do not want to spend a heck of a lot of time with this provision but, with all due respect, it says that an employee who works less than the standard hours of work or — or — who works irregular hours — meaning eight hours, 10 hours, 12 hours, 14 hours — shall be paid at least the equivalent of the wages he would have earned for the average number of hours he worked on each working day during the two-week period immediately preceding the week in which the holiday falls.

So, if a person is working irregular hours — it says the person may be working irregular hours, greater than the maximum hours of work, or greater than the eight-hour day — the person will be paid the average of those hours for a two-week period proceeding the holiday. Now, if the person had not worked at all, for two weeks proceeding the holiday, there would be no way of determining what

exactly the holiday would be worth, in terms of the hours of work and the remuneration to be paid for those hours of work.

Hon. Mr. Tracey: I do not want to prolong the argument, either, but the irregular hours may be working 11 hours one day and five hours the next, and things like that. That is what it is to deal with, but there are no circumstances going to arise where a person is going to get paid for more than eight hours. Eight hours is the standard work day and that is the maximum that anyone is going to get paid for a statutory holiday.

It could be anything up to eight hours, depending on what his averages are. Eight hours is the maximum that he can be paid.

Mr. McDonald: Could the minister just point to the provision that says that a person would not be eligible for more than eight hours?

Hon. Mr. Tracey: Employee's wages are calculated and his general holidays will be paid for the standard hours of works, which is eight hours.

Mr. McDonald: I still believe that there is a problem with this particular provision. The minister does not anticipate any problems. I guess that experience will bear one or the other out as to who is right and who is wrong.

Hon. Mr. Tracey: If I am wrong, we will have to address it at that time. I do not believe that we have made that mistake in here. However, if we do, we will address it at that time because it is certainly not the intention of the government to have anyone be getting paid more than eight hours. The standard hours for a general holiday is what we feel is right and proper. I think everyone else does.

Clause 31 agreed to

On Clause 32

Clause 32 agreed to

On Clause 33

Clause 33 agreed to

On Clause 34

Mr. McDonald: In 34(1)(a), the minister is aware that the brief called on the reducing of the 30 days to 10 days. Could he explain the reasons for maintaining it at 30?

Hon. Mr. Tracey: It is felt that a person should be working 30 days before he is eligible for a general holiday. We are not in the giveaway business here. Just because a general holiday happens to fall when the person first starts to work is no justification for him getting paid for it. It is supposed to be a payment to an employee who has been with you for a period of time as a kind of a bonus to him for working with you. We feel that he should have to work 30 days before he is eligible.

Mr. McDonald: In 34(1)(b), the provision states that no employee is entitled to be paid in respect of a general holiday in which he does not work where he did not report for work on the day after having been called to work on that day. This seems to suggest that there is encouragement to employees to be required to work on a general holiday. Could the minister elaborate on the reasons for this provision?

Hon. Mr. Tracey: It is the same provision that we have in the existing act. It has been a provision in this territory for a good number of years. We spoke earlier, in general debate, about whether an employer had the right to call an employee to work. What we were saying is, yes, at common law, the employer has a right to call him to work and we believe that, in certain circumstances, the employer may need to put that person to work. If he calls him to work, he should come to work.

Mr. McDonald: The minister stated quite clearly yet another provision of protection that the employer has in a body of common law, as to the rights of employers and the obligations of employees.

Hon. Mr. Tracey: I think this bill deals with an awful lot of obligations of employers. To be fair, employers also have some rights, not just employees. We are trying to be fair to everyone here.

Mr. McDonald: The rights of employers and the duties of employees are something that have been stipulated in common law for a good deal of time. This particular act deals with only a very few instances of where employers and employees have a relationship. The relationship, itself, is much, much — many times —

more broad than this act stipulates. So, when dealing with this act and dealing with provisions of this act, we have to bear that in mind.

Clause 34 agreed to

On Clause 35

Clause 35 agreed to

On Clause 36

Mr. McDonald: I wonder if the minister could explain why no provision requiring the posting of notice of a change is called for in 36(1)?

Hon. Mr. Tracey: We are talking about an agreement between the employer and the trade union. I do not see where it should be required that a notice be posted. Certainly, I would think that every employee in the establishment is going to know that there has been a change.

Mr. McDonald: This is an issue of minority rights, of course. If there is no provision calling for at least a two-week notice, then, certainly, those individuals who may have their own personal schedules unreasonably altered may be working under some hardship? It may be beneficial that there be some agreement as to a notice period and the posting of notice, so that it can be assured that all persons can be made fully aware of any changes that are made.

Hon. Mr. Tracey: There is certainly nothing stopping the notice being placed. We are talking about a signed agreement between employers and employees. Certainly, in order to get a signed agreement, employees have to be made aware of what it is and they have to either agree to it or disagree with it. They certainly are aware of whether it is agreed to or disagreed with.

Clause 36 agreed to

On Clause 37

Mr. McDonald: On 37(1)(b), the issue here, as suggested in general debate, has to do with the instance of premature birth. When birth is given prematurely, of course, the notice period to an employer to request maternity leave cannot be given. I wonder, in this particular instance, whether it would be reasonable to suggest that we should lessen the period of notice for those people who have to have the period lessened for medical reasons? Would the minister care to elaborate or comment on that?

Hon. Mr. Tracey: I think clause 4 deals with this. However, I think it is only fair that if a person is going to be leaving employment, that the employer has to have time in order to recruit someone to take the person's position. Perhaps, they might even have to train that person in conjunction with the help of the person who they are replacing. There certainly has to be adequate notice given to an employer that the situation is arising and when they hope to commence their leave. It is different when the employer wants to tell the employee that she is going to have to start her leave any time up to six weeks beforehand. Certainly, if the employee wants to start her maternity leave, it should be obligatory that she tell the employer when she is going to leave, because the employer is under an awful lot of pressure to try to replace her in her job.

Mr. McDonald: Clause 37(4) brings us to the issue of the premature birth, the termination of the pregnancy. The clause stipulates that where the employee either gives birth or whether the pregnancy is terminated, the employer should give the employee six consecutive weeks of leave. In such instances where the pregnancy is terminated and birth is not given, there is recovery period. That I understand. However, on the other side, where there has been birth, it only permits the mother six weeks past the birth in order to care for the child in that formative stage. The clause regarding the normal situation, where the birth is not premature, where the woman can give proper notice or where the baby arrives at the expected due date, the woman has a few weeks before birth and then has the balance, the majority of weeks, 12-13 weeks after the birth in order to care for her child. I am wondering why, in the case of premature birth, the mother is only allowed six weeks in that case.

Hon. Mr. Tracey: Because it would be almost impossible for the employer to get someone to replace that person on immediate notice. All the pregnant woman has to do in order to overcome this situation is to give the employer enough advance notice so that he

knows something is happening. If the employee has the baby prematurely, it is almost physically impossible for the employer to immediately get a replacement and still give the woman 17 weeks. Part of the 17 weeks, and perhaps as much as half of it even, could be previous to the birth as well as after the birth.

Mr. McDonald: As the clause suggests, the employee could receive leave four weeks prior to the date of the birth of the child and then is given the balance, say 13 weeks, to care for the child. Here, in this provision, if the birth is premature, and if birth is caused beyond the woman's control, she is only permitted six weeks.

Hon. Mr. Tracey: Part of the maternity leave is before the birth. The employer can ask for at least six weeks if he feels it is necessary. I know women who take a couple of months before the baby is born, as much as eight weeks out of 17 weeks. We are not talking about a significant number of weeks. I see that the members across the floor feel that because a woman had a premature birth, the employer should provide 17 weeks. However, the employer did not have time, either, to find a replacement for the woman.

Mr. McDonald: The minister must realize that a woman is able to plan the birth of a child and is able to work until the time of birth, so she could conceivably work up to within one week of birth and receive 16 weeks afterwards. In those instances where she is unlucky enough not to be able to plan the birth because premature birth, which is no fault of her own, she cannot give the kind of notice that we may want to arbitrarily impose by legislation, she therefore cannot take advantage of a large portion of the 17 weeks. She can only take six weeks.

I would submit that in most pregnancies, the greater part of the leave is taken after the birth of the child, for the period of breastfeeding, or whatever. The minister suggests that this is a provision where the employer, because he could not plan for the birth any more than the mother could, may demand the mother back in six weeks.

That does not solve the mother's problem, and it does not even solve the employer's problem, because the employer still has to get someone to work for him for the six-week period. So, whether the employer gets someone to work for him for the six week period or the twelve week period, the situation is going to remain constant for the employer.

The situation is going to be radically altered for the employee, the mother. It might make more sense to increase the six-week period or to give the mother a larger portion of the allotted 17-week leave, so that the mother can properly take care of the child after birth.

Hon. Mr. Tracey: Subsection one says that the employer must receive the request at least four weeks before she intends to take her period of maternity leave. Now, section four deals with when they have not made that request. It should be somewhat incumbent on the woman to provide the employer with notice that she is going to be taking maternity leave. If she does not provide the employer with that notice, then I think that the employer has the right to say, "Look, I just cannot off the bat give you that time. You have not allowed me any time. You have not even told me you are pregnant.", perhaps. "You have not allowed me the time to provide for your absence". And, then all of a sudden to have it dropped in your lap that the woman has a baby and now should be given 17 weeks or 13 weeks or whatever, is a little much to ask. It is not too much to ask that the woman, who is pregnant, notify her employer long enough ahead.

Mr. McDonald: There are instances, of course, where the woman may not be able to inform her employer of the impending date of the arrival of the baby or the time that she would like to take her leave of absence. If the woman is planning to take her leave of absence one week prior to the day of the birth, she knows she is supposed to give four weeks notice, which means that five weeks prior to the date of the birth she is to give notice of the birth. If then the baby is born prematurely six or seven weeks prior to what she had thought was the date of the birth, then she certainly meets the legislative requirements of this act, yet she is only permitted six weeks, whereas a person who has been able to predict the birth of the child accurately, would be entitled to a full 17 weeks.

Hon. Mr. Pearson: I still believe very strongly that that

pregnant lady has a responsibility to her employer. It would be, I think, very unfair and a greedy act on her part to think that she could get away without notifying her employer until five weeks before the expected date of birth.

45 I believe that that is unfair and unrealistic. If she wants to run that risk, then it is going to cost her some of her leave. That is what the act says. It is very, very clear on that. If she wants a guarantee of her 17-weeks leave, all she has to do is make sure that she advises the employer, gives him notice, in enough time so that he cannot evoke this particular section, so that she has given him notice at least a month before the baby is born. I do not think it is unrealistic at all.

Mr. McDonald: The point, however, is that the mother can conceivably adhere to the letter of this legislation and still not be entitled to a full 17 weeks. She may plan to give notice well before the birth of the child, or well before the time that she plans to take the leave, and she may plan to give that notice but, perhaps, biological necessity may demand that she cannot. And, when she does not, she is only entitled to the six weeks and not the full amount that would better allow her to provide for the care of her child. At the time, I think it is important to note, too, that the fact that woman had not given notice and the fact that she will be gone for six weeks is a burden on the employer. However, to force her back after six weeks is not any answer for the employer either because the employer is going to have to put up with an absence for a six-week period. Why not a 10-week period or more to allow the woman the time to take care of the child? I do not understand why the issue is so significant that we do not allow a woman who, for a biological reason, has not been able to give notice, a more reasonable time to care for her own child.

Hon. Mr. Tracey: There may be instances where a baby is born before the seventh month of pregnancy, where they have remained alive, but I doubt that very much. Certainly, with a woman being almost seven months pregnant, it is long past time that she told her employer that she is pregnant. If she has not told her employer, then she has to accept some of the responsibility. What we are saying is: employees should be giving the employer notice.

If the pregnancy is terminated and it is a still-birth, there is no necessity for the woman to have more than six weeks leave because it is more a health matter than anything else. The employee has to accept some of the responsibility for her actions.

46 You cannot expect the employer give everything, and suggest that the employee should not even have the obligation to tell the employer.

Mr. Penikett: I think the minister should be a little careful with his assertion of medical facts. He made the statement a moment ago that he doubted that there were babies born before seven months, or many of them who live. I want to stand here before him and tell him that as a baby who was born before seven months and was three pounds at birth, I am very much alive today. I suggest that the frequency with which premature children live and grow to be happy, healthy and productive members of the society has increased considerably. It is not that unusual, and perhaps Mrs. Firth could give you more accurate statistics to show that it is fairly common: premature births, and multiple pregnancies, particularly.

I think that the minister is not taking seriously the problem being identified by my colleague. It is, I am sure we will admit, not a frequently common occurrence — and in this territory it may be a rare occurrence, only a few cases a year — but it is exactly this kind of problem that real people get caught in.

I share the view of the government leader that it is going to be the rare employer in a small business who does not notice that his employee is pregnant and has not had some discussion with the employee about when the baby is due and when time is going to be taken off, but I would be concerned about a medium-sized enterprise where there is a necessity, because of the nature of the business to give some formal notice, and that notice may not have been given, and you do have an premature birth that could put some employee, who may not be well off, afoul of this provision, and caught in it. There may not be very many of them, but it is still a problem.

47 *Clause 37 agreed to*

On Clause 38

Mr. McDonald: There is some reason to believe that, perhaps, there should be some caveat put on this 38(1). As far as 38(2) is concerned, there seems to me that there may be some desire that the employer who may request that an employee commence a leave of absence, therefore, using up the 17-week period, that the employer may have to receive the consent of the woman's doctor as to the medical requirements of temporarily terminating her work. It says here that the employer may, at any time, with the consent of the director, require an employee to commence a leave of absence under section 37. Now, when the employer does so request, the time starts ticking on the employee's leave of absence. The 17 weeks begins to be used up. If the employer suggests that the woman, say two months prior to the birth of the child, but showing considerably, should start using her leave, it may not be the opinion of the woman's medical doctor that she begin her leave. Nevertheless, it may mean that she may use up some of what little leave she has. This may not be her decision. It certainly seems to be the employer's decision. Would the minister care to comment?

Hon. Mr. Tracey: I do not know where the member across the floor is reading where, because the employer makes the request, that the time starts ticking. That is not what it says at all. What this deals with here is anything over the six-week period that the employee has the option on. If he feels that there are reasons why that employee should not be working, or cannot perform her job, and she should be taking more time than six weeks before the pregnancy, he has to then apply to the director, who will review the whole situation and, perhaps, require a medical certificate or whatever else he needs. The director, knowing that six weeks is the maximum that the employer can voluntarily ask for, will take the information into consideration and make a decision on it. It is only after that decision is made that the time starts ticking. If the director said yes, you have a valid complaint and she should be taking leave, that is only when the time starts ticking; not when he makes a request.

48 **Mr. McDonald:** I do not believe that I suggested that, when the employer makes a request, the time starts ticking. Obviously, as I said, when I read word for word the clause in the act, with the consent of the director, when the director's consent is given, the time would start ticking. There is no provision here that suggests there ought to be any medical agreement by the woman's family doctor to suggest that she, in fact, cannot perform work reasonably.

If the employer and the director decide that an employee cannot perform such work, whether the employee likes it or not and whether the employee's doctor has any say in the matter, the time does start ticking. The 17 weeks do start to take off and the woman has no choice.

Hon. Mr. Tracey: Yes, but I would question whether the family doctor would be competent to say whether the woman should or should not be able to work. It depends on the type of work that she is doing. The woman may be perfectly healthy in many other ways and, yet, may not be able to do the job that is required. The doctor may not even enter into it. There may be other circumstances that are involved. The doctor is not the end-all and the be-all. He does not know everything.

Mr. McDonald: I am the first to admit that. However, there are four players in this equation. There is the employer, the director, the employee, who is the pregnant employee, and there is the employee's doctor. Here we have two of the players making a decision that will affect a third player, the employee herself. What I am suggesting is, perhaps, the decision ought to be commonly made by three, or perhaps, all four of those players in order to make the decision fair.

Hon. Mr. Tracey: No. It is not a case of being fair. It is a case of where the employer maintains that the employee cannot do the job properly and should be taking her leave. If that is what he is maintaining and it is more than six weeks prior to the expected date of birth, then he has to get justification for that. There has to be justification made to the director that the person should be taking that time. It has nothing to do with the employee or the doctor until it reaches that stage where the employer goes to the director and

says "that person should take more time off". Now, the doctor may never enter into it and it is not a case of whether the employee wants to take the time off or not. It is a case of the employer requesting that she take the time off, regardless of whether she wants to or not.

Mr. McDonald: For a decision that is going to affect the employee greatly, I am rather surprised that that person's opinions on the matter are not given any sort of credence at all.

³⁰ It may be the opinion of the medical doctor that the employer may be entirely mistaken about the ability of the employee to perform the work. The employee is the person who performs the work. The employer is a factor in the equation, but not the only factor in the equation.

The suggestion is that the employee should not have any say in the matter, nor should the doctor. That demonstrates in my mind a bias, and it is not a bias that is uncommon to the minister's remarks throughout this act. I am familiar with them.

Hon. Mr. Tracey: I object to that kind of remarks, and the reason I object is because I do not feel that way, and I am sure that if I wanted one of my employees to take more than six weeks off, I would be talking to her first. I am also sure that if the director were ever to allow that to happen, he would be talking to her and probably to her doctor. That does not necessarily mean that the director must do that, or that the employer must do that. Employers also have some rights. I am beginning to wonder if the members across the floor have any rights at all.

The employees are working for wages. The employer is trying to get a job done. He is paying for the labour being produced, and if they cannot produce that labour, the employer has a right to ask the person to either begin her time off or, if she refuses, to go to the director, in the same way that the employee has a right to appeal to the director or the board.

Mr. Penikett: The minister wonders if employers have any rights. He is asking this side if we can answer that question. Let me suggest that if he were to read Bill 3, *Employment Standards Act*, I believe that the minister would discover that under this act, employers would have more rights than employees. I think he would have his question answered for him.

Mr. McDonald: I am also, to use the minister's expression, "certain-sure" that if the employee had any residual rights that were to be modified by the act, we would stipulate the processes by which they would be modified right down to the very last detail. Here, we are suggesting that perhaps the employee should have some rights. We are suggesting that we should leave the rights up to the discretion of an all-knowing, all-accepting director, who is the embodiment of fairness, that we should leave the interpretation of those rights up to the kindness and goodness of a particular employer, and I am certain-sure that if we wanted to stipulate employer's rights in this legislation, specifically, we would be dealing right down to the last letter as to what the employers are entitled to to ensure that they get their fair share.

³⁰ They will see that every last "t" is crossed every last "i" is dotted, to ensure that fairness is exercised by this government when it is dealing with employers in situations like that where there is no employee involved. When it comes to employee rights, we always talk about leaving it up to the goodwill of the employer, or we talk about the fact that, perhaps, the director is so fair, so knowledgeable, that he will always deal fairly with an employee. I think that that, in itself, demonstrates a bias. We have not ever suggested that the employers do not have rights and obligations and the employees have rights and obligations. What I am saying is that this act demonstrates a bias and I think that the bias is clear.

Hon. Mr. Tracey: It is a wasted argument because, obviously, the man's philosophy is that this government and the people on this side think about nothing except employers. Certainly, no employer is going to go to the director and put the director through all of this without first asking the woman if she would agree to take her leave starting before the six-week period. It would only be after the woman had refused to take that time and the employer felt very strongly that the person was not doing the job and should not be there or could not be there or could not earn the money, or whatever other reason, that he would go to the director.

I fail to comprehend why the members across the floor continuously forget about the fact that employers are not hobgoblins and they just do not go out there and try to lay a heavy on their employees. Those people work for them and that woman has worked for for over 12 months. If that person has worked for an employer for over 12 months, I suggest to you that there has to be a pretty good relationship there or she would not have been there for that long. So, there have to be specific reasons and disagreement from the employee before the employer would ever go to the director. I know that the members across the floor have a different philosophy. They always think that the Conservative Party is on the side of employers. That is not true. We are just as concerned about employees as they are and we are trying to be fair to everyone.

Mr. McDonald: The minister said, once again, that the employer is always reasonable and that the employer will always consult with the employee and there will always some sort of an "across the kitchen table" discussion as to what is best for the employee, et cetera. The minister suggested that if an employer felt that the employee could not reasonably do the job and knew that to be the case then, therefore, that must be the case. On the other hand, the pregnant employee is taking advantage of her position as a pregnant employee and wants to, perhaps, do work that she cannot reasonably do and, therefore, we have to give protection to the employer.

³¹ If that is not a bias, what is? There is an obvious bias.

Some hon. member: Oh, sit down Piers, sit down.

Mr. McDonald: It is absolutely clear where the bias is. This government claims that it is always on the side of employees. This government is belabouring too many extraneous points. This government is the government that does not know how to bargain with its employees. This government is the government that initiates 6 & 5 wage controls. This government is the government that was charged with bargaining in bad faith in 1982. This government is the government that does not know how to deal with employees.

Hon. Mr. Tracey: Be careful, Piers, we did not have a nine-month strike.

Mr. McDonald: There is definitely, in my opinion, a bias. I will not back down from that. I think it is absolutely clear. The minister, in his comments, has consistently brought up the fact that, perhaps, the employer is always reasonable and the employee is always prepared to take advantage of what little rights they get in a piece of legislation such as this. That demonstrates a bias. Certainly it does.

Hon. Mr. Tracey: Nine months.

Clause 38 agreed to

Mr. Chairman: We shall recess for 15 minutes.

Recess

³² **Mr. Chairman:** I will call Committee back to order. We are on clause 39.

On Clause 39

Mr. McDonald: Has the government ever given consideration to the clause allowing fraternity leave, either for a day, two days, or for any days?

Hon. Mr. Tracey: No.

Clause 39 agreed to

On Clause 40

Clause 40 agreed to

On Clause 41

Clause 41 agreed to

On Clause 42

Mr. McDonald: This clause seems to suggest that if there has been a contravention of the provisions of the act, the director does not have to reinstate the employee, necessarily, but may pay the employee only compensation for wages lost by reason of the contravention. It seems to me that if the employer has contravened the act, that it ought to be up to the employee as to whether the employee wants to return to the place of business. If the employee wants to resign, and perhaps the employee may do so, and if a contravention has been proven, this seems to suggest that may

allow the employee's employment to be terminated and the only compensation being the wages lost as a result of the contravention, and nothing else. I wonder if the minister could explain why this provision is allowed in the act?

Hon. Mr. Tracey: To protect employees. The reason for this provision is that the argument may have continued for so long that the employee and employer will find it impossible to work after the situation has been resolved by the director. Rather than put the employee back into the position where the employer may attempt to get retribution, the director can say he does not have to go back and the employer is not required to take him back, but can pay compensation for the time he should have been working. For the benefit of everyone, he is probably better off to look for a new job.

Mr. McDonald: I would have thought that (c), allowing the director to reinstate the employee and pay any wages lost by reason of the contravention, would be sufficient protection for the employee. If the employee, herself, wishes to resign from employment, that ought to be a decision that the employee, herself alone, makes.

If a contravention has been proven, the employee, herself, should make the decision as to whether she will stay with the employer. I do not understand why the director would make that decision for her. It seems to me that (c) would be sufficient, and if the employee decided she could not, under the circumstances, continue with the employer — if relations had soured to that extent — she would have the option to resign, as is her right. But, she ought properly to have the option, no matter what, to be reinstated, and if she decides at that point to resign, then she may.

Clause 42 agreed to

On Clause 43

Mr. McDonald: This clause, 43(1)(c), is one of the major problems for us, as I stated in second reading and general debate this afternoon. I believe the minister stated his position rather conclusively that he is simply not in favour of equal pay for work of equal value.

As I do not hold out any hope of changing the minister's or the government's mind, I wonder if the minister could explain what is referred to in (c), "a system that measures earnings by quality or quantity of production"?

Hon. Mr. Tracey: That would be piece-work, for example.

Mr. McDonald: The minister stated this afternoon, too, that in his opinion, similar work would mean the same work, or substantially similar work, and also would require that the working conditions would be the same, or substantially similar.

Could the minister tell us, in the phrase, "the performance of which requires similar skills, efforts and responsibility", who determines how that is determined?

Hon. Mr. Tracey: Initially, it is determined by the employer. If the employee disagrees with it, he has an option to go to the director and then the Employment Standards Board.

Clause 43 agreed to

On Clause 44

Clause 44 agreed to

On Clause 45

Clause 45 agreed to

On Clause 46

Mr. Chairman: There is a typo here: the word "monies" is inconsistent with the rest of the act where it is spelled "moneys". Is it agreed to change it?

Some hon. Members: Agreed.

Hon. Mr. Tracey: At least one submission suggested that the government change the wording in the second line from "may" to "shall". Could the minister explain why that recommendation was not accommodated?

Hon. Mr. Tracey: As a comment, I am a little surprised that the only questions the member across the floor raises relate to the position put forward by the Yukon Federation of Labour, which represents two unions in the territory and not a significant amount of labour that will be governed by this act.

If an employer has not complied with 43 and a person applies to the director for a decision, it is up to the director, then, to make a decision as to whether the person has been fairly treated. If he has

been unfairly treated, he may have some money owed to him. It may be a situation where no blame can be placed on the employer, because the employer was paying wages in good faith, understanding that he felt that there was a difference.

Just because the director decides that an employee should have been on a different pay scale does not necessarily mean that the employer was deliberately trying to beat the employee and should have to pay back wages. It is a decision that will be made by the director, so it is "may" rather than "shall".

Mr. McDonald: The only part of the minister's comments that I would like to comment on are the comments regarding the Yukon Federation of Labour.

The minister is surely aware that expressions of ignorance of that sort will merely prolong debate this evening. The Federation of Labour, for the minister's education, represents more than two unions in the territory. It represents many unions in the territory.

The issue is not how many unions the federation represents, but is whether or not the proposals stated in the Federation of Labour's brief are legitimate ones.

Mr. McDonald: I believe that many of the proposals made in the federation's brief do have some merit. That is the reason I bring them forward, and the reason I use the federation's brief, which I have before me, as I have other briefs before me. The minister is welcome to come over and see my work space. He will notice that I have other briefs here. I have the same collective agreement that was delivered by M&R Electrical sitting before me as well. I have many briefs before me, and I include the Federation of Labour's brief. I notice that the federation's suggested recommendations for changes have not been accommodated, almost

~~enforce~~ new legislation, and I would like to ask, on their behalf, as well as on behalf of other people, why those changes have not been accommodated?

The minister recognizes that the unions in the territory may not be greatly affected by this legislation, yet they show a concern for their fellow employees. I think that is admirable. I think that is necessary. It is not whether the Federation of Labour is doing something to better itself; it is doing something to benefit all the workers in the territory, and that is a goal of mine as well. I am proud of that goal.

I would be willing to provide the Minister of Labour a listing of the affiliates of the Yukon Federation of Labour so he can know, once and for all, that the federation represents more than just YGEU and the United Steelworkers of America, but also includes many other unions that are represented in the territory.

I would like to add, as a postscript, that the minister's comments about the Federation of Labour will bode well for many of us on this side of the House when it comes to election campaigns in the future.

Clause 46 agreed to

On Clause 47

Clause 47 agreed to

On Clause 48

Clause 48 agreed to

On Clause 49

Clause 49 agreed to

On Clause 50

Clause 50 agreed to

On Clause 51

Clause 51 agreed to

On Clause 52

Mr. McDonald: There is a suggestion that after the words "with leave of the Board" in subclause (2) there should be added "where the Board shall consult with representatives of the employees affected". Would the minister mind commenting on that proposal?

Hon. Mr. Tracey: I do not agree with that proposal. The employer is asking to extend the period of temporary layoff because of outside circumstances that he usually is not in control of, and it is not a case of whether the employees want the extension or not. It is a case between the employer and the government regarding temporary leave. It is the government that is setting up this provision in order to protect the employees and it is the government

that wants to know about the temporary layoff, not so much the employees.

The employee has a right to terminate his employment any time that he wants. If he does not want to be on temporary layoff he can terminate his employment.

Mr. McDonald: I have a general question, regarding notice of layoff to the government. Is it the intention of the government that notice given by an employer to the government should be considered public notice?

Hon. Mr. Tracey: No, the notice given to the government is for the benefit of the government.

Clause 52 agreed to

On Clause 53

Clause 53 agreed to

On Clause 54

Clause 54 agreed to

On Clause 55

Clause 55 agreed to

On Clause 56

Clause 56 agreed to

On Clause 57

Clause 57 agreed to

On Clause 58

Mr. Chairman: In subclause (3), Mr. Tracey, is that, "An employer may request 'the'..", or is it "that"?

Hon. Mr. Tracey: It should read "that an employee".

Mr. Chairman: Will you accept that as a typing error?

Some hon. members: Agreed.

Clause 58 agreed to

On Clause 59

Clause 59 agreed to

On Clause 60

Mr. McDonald: Concerning subclause (1)(c), where the director is empowered to, rather than reinstating an employee, merely charge that the employee should receive compensation in respect of wages lost by reason of the contravention of the act, in our opinion, it ought to be left up to the employee as to whether or not the employee wants to terminate his employment. It was not his doing that caused the contravention. The employer in this particular instance contravened the act. The employee should have the right to decide whether or not he would like to maintain his employment with the employer. If the employee decides that he does not wish to maintain his employment, then that should be the employee's decision and the employee's decision alone.

Clause 60 agreed to

On Clause 61

Clause 61 agreed to

On Clause 62

Clause 62 agreed to

On Clause 63

Clause 63 agreed to

On Clause 64

Clause 64 agreed to

On Clause 65

Clause 65 agreed to

On Clause 66

Clause 66 agreed to

On Clause 67

Amendment proposed

Hon. Mr. Tracey: I move that Bill no. 3 entitled *Employment Standards Act* be amended in clause 67 at page 24 by substituting the following subclauses (3) and (4):

"(3) For the purposes of enforcing this Act, the regulations, or any order made under this Act or the regulations, an Employment Standards Officer shall conduct such investigations as may be necessary and may

(a) at any reasonable time enter any place to which the public is customarily admitted;

(b) with the consent of an occupant apparently in charge of the premises, enter any other place;

(c) for his examination, request the production of documents or things that are or may be relevant to his investigation; and

(d) upon giving a receipt therefor, remove from any place documents produced in response to a request under paragraph (c) for the purpose of making copies of them or extracts from them.

(4) An Employment Standards Officer who removes documents pursuant to paragraph (3)(c) shall return these documents within 72 hours of the time he removes them."

Mr. McDonald: We have no problem with this amendment. I cannot help but notice the old wording said that the Employment Standards Officer may conduct an investigation without prior consent. I am wondering what the reasons were for not including that particular provision in the act?

Hon. Mr. Tracey: I am surprised to hear the members across the floor. When they were dealing with *The Childrens Act*, it was totally the opposite question they were asking. What we have tried to do is make it very clear that the Employment Standards Officer cannot walk into any place without customarily being admitted, and if he is refused entrance, he is going to have to take some other measure.

Mr. McDonald: Let me reiterate once again for the gentlemen and ladies across the floor. The intent of this amendment we support. Yet, as I said, the previous wording said that the Employment Standards Officer may conduct investigations without prior consent. I am wondering why the government left out that particular wording, the old wording, from the new wording. Why the change.

Some hon. Member: For the same reason you asked (inaudible)

Amendment agreed to

Clause 67 agreed to as amended

On Clause 68

Clause 68 agreed to

On Clause 69

Clause 69 agreed to

On Clause 70

Clause 70 agreed to

On Clause 71

Clause 71 agreed to

On Clause 72

Mr. McDonald: Before we clear subclause (2), I wonder if it might not be wise to provide a person who has been denied any sort of investigation of a complaint with the reasons for the refusal to investigate a complaint, in writing?

Hon. Mr. Tracey: I do not understand why he should have to give it in writing. He is certainly going to tell the person that he does not think it is a complaint that needs investigation, and certainly, if the person has gone to the Employment Standards Officer or the director and has been told that, then if that person is in disagreement with it he can go to the board. I see no benefit in having to have a written reason why you have not dealt with it.

Mr. McDonald: It is a courtesy that you extend to someone who has taken the trouble to complain before the director. The person I think at least wants to know the reasons why his complaint has been turned down. Otherwise, they end up in my office. I wonder if the minister would consider providing some sort of clause here that would require that the director may give the reasons, either in writing or to the complainant, so that the complainant can know exactly where he stands?

Hon. Mr. Tracey: Let us put it this way: the person is not going to be in his office until the director has told the person why he is not making the investigation. If it is frivolous or vexatious or trivial, I do not think it deserves having a written response.

Mr. McDonald: That sort of value judgment is something that is considerably important to some people, and I think that giving the reasons is a minimum requirement from a civil servant. I think that is a reasonable request. I do not understand why a simple provision requiring the director to give reasons for refusal to investigate a complaint cannot be provided to a complainant.

It seems to me to be a minor courtesy. Obviously, the person is not going to show up in an opposition MLA's office before he has received some sort of denial from the director. The issue is whether or not he receives the reasons for his denial, not just the fact that he

has been denied. I think that if the director makes a value judgment as to whether or not a complaint is frivolous, vexatious or trivial it is something that ought to be challengeable, and you want to understand the reasons why you would want to challenge a director's opinion. That is why the act ought to stipulate that the director show a courtesy to every complainant, and to at least tell the complainant why he has refused to even investigate the complaint.

Clause 72 agreed to

On Clause 73

Clause 73 agreed to

On Clause 74

Mr. McDonald: Can the minister say whether or not there are any reasons for the two-week period or 14-day period set out in subclause (2), as opposed to any other period of notice?

Hon. Mr. Tracey: If the director has made a decision and someone wants to appeal it, it should be done immediately. There is no reason for waiting more than two weeks. It is to clear a matter up that may be held in abeyance between the employer and the director. Certainly, if someone feels he has a complaint, it should be made within two weeks.

Mr. McDonald: What I glean from the minister's answer is that this is an arbitrary decision. Two weeks is, in the minister's terms, immediate; seven days may be immediate, 21 days may be immediate. There is still no indication of why it is 14 days, and the minister obviously is not going to provide the answer.

Clause 74 agreed to

On Clause 75

Clause 75 agreed to

On Clause 76

Clause 76 agreed to

On Clause 77

Clause 77 agreed to

On Clause 78

Clause 78 agreed to

On Clause 79

Mr. McDonald: Can the minister state why the liability that directors of corporations are liable for is limited to the extent that it is limited in this provision?

Hon. Mr. Tracey: It is felt that the employee has some onus placed upon him. If he is working in excess of two months without getting paid, then he has to accept some of the responsibility for working that long without getting paid.

Mr. McDonald: When compensatory remuneration at the end of a working season are promised to an employee as an incentive geared to production, perhaps a person may not expect this form or wages for a three or four month period. It might be reasonable to extend the two months to a longer period. Certainly, if the person has been working, has been fulfilling the work contract, and has been investing his time, however long, the person ought to be paid for that, and the people who have been charged with the responsibility of paying him and have not paid him have to be liable for payment, no matter how much it is.

Mr. Hon. Mr. Tracey: Seasonal bonuses are wages, but a person is not working only for a bonus; he has to be working for wages. If it is toward the end of the season and the seasonal bonus is due within two months, they will be liable for payment. If it is not the end of the season, the employee has not yet become entitled to the bonus. I think that is covered under this provision of the act. A seasonal bonus is for completing the work for the season, and if one has not worked the season, one is not eligible for it.

Mr. McDonald: The minister will know that quite often a seasonal bonus will depend on the amount of time actually worked during the season. A person who enters a placer operation half way through the season is not entitled to the full bonus for the season.

⁶² The placer season lasts, say, four months. In this case the directors of the corporation would only be liable to half the seasonal bonus that a person may expect. It seems that the limit here is not sufficient to meet the needs of, say, the large mining sector in the territory, namely, the placer sector.

Hon. Mr. Tracey: I guess the only thing I can say is that we cannot write the piece of legislation to cover every possible little

thing that may or may not happen. We have tried to make it so it covers all of those instances and I would find it very unlikely if it ever happened that someone was going to lose his wages because of this provision in the act.

As I stated earlier, I think the seasonal bonuses are covered. If they have not worked, they are not eligible for the seasonal bonus. If they have worked, the two-month period is enough to cover them.

Mr. McDonald: Suffice it to say that we disagree.

Clause 79 agreed to

On Clause 80 to 85

Mr. McDonald: To expedite matters, I will move that sections 80, 81, 82, 83, 84 and 85 be deemed to have been read. Who says I am not a nice guy?

Clauses 80 to 85 deemed read and agreed to

On Clause 86

Mr. McDonald: In subclause (2), the government has obviously decided on a five-person board. I wonder if the minister could suggest why five members? Why not less, or why not more?

Hon. Mr. Tracey: Because we wanted enough representation from both business and from labour, and a small board that can function properly. If you start getting into small numbers, you have to add them two at a time and you soon have a board that is very unwieldy and is harder to reach a consensus with.

⁶³ **Mr. McDonald:** There is a board in the territory, the water board, which calls on the legislative assembly to approve appointments. This seems to be a little board of some significant importance to the territory. Is it obviously going to be a board that is going to be determining such political decisions as fixing the minimum wage or recommending the fixing of a minimum wage; it is going to do a variety of things, including act as a step in the appeal procedure for a large number of exemptions from the act. It simply has greatly expanded powers. I am wondering if the minister is amenable to ensuring that the legislative assembly ratify the appointments of all the members of the board?

Hon. Mr. Tracey: No. I think we have expressed our policy here. We believe that the government of the day should be the one to choose the board. We will try to get as much representation as possible. We do not feel it is necessary that it be done by a ratification of the assembly. I am fairly confident that any person in government, any minister responsible for labour, will try to get as much representation in it as he possibly can. It is to no advantage of his to appoint people to the board who he believes have any specific philosophy because the board is dealing with employees and employers and their problems, and the government wants the board to handle the cases as fairly as possible. We do not see the necessity of having it ratified by the assembly.

Mr. McDonald: On subclause (6), the practice as I understand it, amongst various boards and committees, is that they not only determine who the chairman is going to be but they also determine their own procedures and vice-chairman. In this case we have a chairman who will be named in the act; presumably the impartial member in a five-member board.

⁶⁴ I am wondering if it is not reasonable to expect that the board itself determine who might act as vice-chairman under the circumstances?

Hon. Mr. Tracey: Certainly, I think it should be fairly obvious that the executive council member is not just going to pick one member of the board; he is going to be consulting with the board before he makes the decision as to who will be the vice-chairman.

Clause 86 agreed to

Hon. Mr. Tracey: I move that you report progress on Bill no. 3.

Motion agreed to

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

Motion agreed to

Mr. Speaker resumes the Chair

Mr. Speaker: May we have a report from the Chairman of

Committee?

Mr. Brewster: The Committee of the Whole passed the following motion: "That the Committee of the Whole and the assembly be empowered to continue to sit from 9:30 p.m. until 11:30 p.m. this evening for the purpose of continuing consideration of the bills before the Committee of the Whole." Further, the committee considered Bill no. 3, *Employment Standards Act*, and directed me to report progress on same.

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

Some Members: Agreed.

Mr. Speaker: May I have your further pleasure?

Hon. Mrs. Firth: I move 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 11:30 p.m.

The following Sessional paper was tabled May 13, 1984:

84-4-25

Department of Education Annual Report 1982/83 (Firth)