



# The Yukon Legislative Assembly

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Number 44

4th Session

25th Legislature

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## HANSARD

Wednesday, November 28, 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; Public Service Commission; and, Finance.
Hon. Dan Lang	Whitehorse Porter Creek East	Minister responsible for Community and Transportation Services; Education; and, Government Services.
Hon. Howard Tracey	Tatchun	Minister responsible for Economic Development and Tourism; and, Renewable Resources.
Hon. Andy Phillipsen	Whitehorse Porter Creek West	Minister responsible for Justice; and, Health and Human Resources.

## GOVERNMENT MEMBERS

(Progressive Conservative)

Clarke Ashley	Klondike
Bill Brewster	Kluane
Al Falle	Hootalinqua
Bea Firth	Whitehorse Riverdale South
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****Wednesday, November 28, 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:** Are there any returns or documents for tabling?  
Reports of committees?  
Petitions?  
Introduction of bills?

**INTRODUCTION OF BILLS****Bill No. 50: First Reading**

**Hon. Mr. Pearson:** I move that Bill No. 50 entitled *An Act to Amend the Electoral District Boundaries Act* be now introduced and read a first time.

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

*Motion agreed to*

**Mr. Speaker:** Notices of motions for the production of papers?  
Notices of motion?  
Statements by ministers?

**MINISTERIAL STATEMENTS**

**Hon. Mr. Philipsen:** In February of 1984 I instructed the Department of Health and Human Resources to develop urgently required amendments to the *Mental Health Act*, and to bring forward those proposals in time for the spring 1984 session of the Yukon Legislative Assembly. The proposed changes took the form of Bill No. 15, which was assented to on April 18, 1984.

My speech on second reading of Bill No. 15 announced my intention of bringing forward wholly new legislation. I explained to this House that there would be a two stage process: the passage of key amendments to the major issues of immediate concern, followed by the introduction of two new bills, the mental health bill, and a competency bill.

<sup>1</sup> In March, 1984, I made the paper, "Yukon Mental Health Act — A Discussion Paper on the Detention, Involuntary Admission and Treatment of Persons Suffering from Mental Disorders"; available to the public. I also solicited written responses from interested parties on Bill No. 15 and the discussion paper. I also announced my intention to establish a consultative process for the development of the proposed new *Mental Health Act*.

Briefs and commentaries were received by my department from five groups and four individuals between March and July of 1984. Commencing in the late spring, my department began a round of discussions with the Crown Attorney's office, National Health and Welfare, the RCMP and the Law Society. The discussions sought directions on both the new regulations of the *Mental Health Act*, as amended in April, and on direction that should be taken in the new legislation. More recently an official from Health and Human Resources was assigned to participate in the federal-provincial review of mental health legislation and programs and an official from the Department of Justice was assigned to participate in a uniform law conference to review provincial mental health statutes.

In spite of continuing difficulties in administering the *Mental Health Act*, I have decided to postpone introduction of the new act. There are several factors which have led to my decision. Chief amongst them are the following: one, many of the pressing problems are rooted in the lack of appropriate services for patients as opposed to legal difficulties. Priority is thus being given to enhancing in-patient services, establishing daycare and out-patient programs, strengthening mental health services, and working towards non-institutional residential care for chronic patients.

<sup>2</sup> Two, submissions received today reflect competing, and sometimes contradictory principles demonstrating a lack of policy, consensus and the intractability of some of the issues respecting care, treatment, protection of the person, and respect for rights;

Three, receipt of only a preliminary position paper from the Yukon Medical Association and a request for more time to prepare from the Yukon Law Society;

Four, the controversy that has enveloped the *Ontario Mental Health Act*, held up as a model for other provinces as recently as 10 months ago;

Five, the decisions of Alberta, the Northwest Territories, Saskatchewan and Newfoundland to launch major reviews of mental health legislation;

Six, the recent decision to place the whole matter of provincial mental health legislation before a federal-provincial task force and the uniform law conference;

Although I am reluctant to defer the introduction of new statutes, I cannot see a good act being generated, given the state of flux in the mental health area, both from a legal and a program point of view. Thus, I intend to pursue both program development, continued consultations with dialogue on mental health and legal reform, and participate actively in the interprovincial and uniform law conference processes.

For example, my department has commenced negotiations with Alberta and British Columbia respecting provisions of the mental health services to Yukoners. The new regulations are now in final draft form, following protracted consultations with the hospital authorities, the Crown Attorney's office and the private bar. Therefore, there is a high priority being accorded to the mental health issues in spite of the current inability to proceed with a major legislative initiative.

<sup>3</sup> I would like to report that I am pleased with the performance of the mental health review board. I believe that it is making a genuine contribution to both ensuring that the rights of patients are respected and facilitating the administration of the act.

Inquiries into detentions and committals are underway, and new regulations which I expect will come into force by the end of the month require a full report on these inquiries to be provided to me by March 31, 1985. I should note that the report of the Mental Health Review Board will not be made public as it is impossible to release the findings without simultaneously permitting the identification of persons who have been found to be disordered. That would be a gross violation of their rights.

What I will undertake to do, however, is to report to this House on the activities of the Mental Health Review Board.

I would like to conclude by thanking the Law Society for its suggestions on the amendments on the *Mental Health Act*. Regrettably, those suggestions were not received until this House was already sitting. Thus, it was impossible to incorporate them into a bill for this session. Virtually all the issues raised by the Law Society have been addressed in the regulations. Those regulations, as I indicated earlier, are now before cabinet and are expected to come into force by December 1, 1984. The input of the Law Society, both in terms of its recent letter and in terms of its representation on the committee, which worked on the draft regulations, is very much appreciated by my government. I very much look forward to the continuation of meaningful consultation with the legal and medical professions on a new mental health act for Yukon.

**Mr. Kimmerly:** It is unfortunate that I am compelled to draw attention to the fact that the long established practice of giving the opposition notice of ministerial statements was not followed here. <sup>4</sup> We have had absolutely no notice of the statement. It is unfortunate that I start that way.

We on this side are pleased with the attention that this most important issue is receiving. It is closer to the top of the list on the political agenda of everyone in the territory than it has ever been before. That is an achievement that we support.

We said at the time of the introduction of the amendments that last came before the House it was a wrong procedure to present these piecemeal amendments now and promise a substantial bill in the future, because it may never come. Well, it grieves me to say,

and I take no pride or pleasure in saying it, that we were right at the time. It is most unfortunate. We had said at the time, and it is a universal opinion among the lawyers in the legal community in the territory — all of the lawyers I have spoken to, which is a substantial number who are interested in this issue — that it is our opinion that the amendments, if carried out as they have been already, violate Section 12 of the *Constitution*. In several law offices in town, the notices of motion are all prepared and the dates and the names will be filled in in the future, and there will be a constitutional challenge.

To jail a mentally ill person is cruel and unusual punishment. It has always been so and it remains so. The five day period where people can be incarcerated involuntarily is excessive and, we believe, unconstitutional. It is a shame that this remains. It is a tragedy. The Law Society has prepared recommendations, I know. I have been part of that process myself, and I am aware of them. It is unfortunate that those responsible suggestions will not be acted upon. The minister is absolutely correct in saying that continuing difficulties in the administration of the law exist in this area. It is an unfortunate, volatile and tragic situation which exists. It is our duty to legislate humanely about it. It is unfortunate that we will not, in this session of the Legislature.

**Hon. Mr. Philipsen:** I must stand at this time and apologize to the members opposite. It was my fault that they did not get a copy of the ministerial statement beforehand. I do apologize for that oversight and I will try to ensure them that that type of thing never happens again. I am sorry that that happened.

While I am on my feet, I would also like to say that I believe it is the member opposite's opinion on the *Charter of Rights* and only until the charter has been tested in this area will we know for sure. I would like to leave it at that.

## QUESTION PERIOD

### Question re: MLA expense allowances

**Mr. Penikett:** Shortly before the opening of this session, the government raised expense allowances so that all MLAs could travel in the manner to which cabinet ministers have become accustomed. Since, as the government leader knows, the point to our initiative on this side of the House in raising the matter was not to raise everybody else's to the cabinet level, could the minister explain what needs of MLAs have been identified which caused the government to take this initiative, raising the daily expense accounts from \$35 to \$65 a day.

**Hon. Mr. Pearson:** We, travelling as cabinet ministers, found some time ago that the allocation that was made to other government employees just simply was not enough in order for us to meet our expenses, not even to reasonably meet our expenses. During the course of this year, there have been a few occasions when MLAs have been required to travel outside the territory on behalf of this government. On those occasions, I was very much aware of the fact that their expenses were not coming anywhere near being met.

There are a number of reasons for this. Normally, when we attend conferences, we do not have any choice as to what hotels we are going to be staying at. The hotels are picked by the conveners of the conference, the rooms are allocated by the conference and all we get is the bill.

Now, that is a fact. There are also expenses that ministers and MLAs, when they travel, incur that public servants do not normally incur. We were in the process also of doing some cleaning up and some consolidation of the travel regulations. It was brought to our attention by the Department of Finance that we did have this anomaly, that it was a topic of conversation in the House at the last session, and we were asked whether we wanted those regulations amended to make it equitable for all MLAs in the House. We made the decision. It was a corporate decision and we made the decision that it would be fair and equitable if the travel regulations that applied to ministers applied to all members of the House. That was all that was done, Mr. Speaker.

**Mr. Penikett:** The government leader has again claimed that the famous wine and aspirin expense allowance for MLAs would

apply only to travel outside the territory. But a close reading of the new regulations issued indicate that it will apply both within and without. Could the government clearly state what is the government's policy in this respect?

**Hon. Mr. Pearson:** There was little doubt about it. The intention, when we changed the regulations, was not to provide for a change of the travel expenses that MLAs are entitled to when coming into Whitehorse for sessions, for caucus meetings and so on and so forth. It was never intended that we were going to change those particular expenses.

**Mr. Penikett:** The government leader said it was never their intention, but the regulations clearly indicate that all MLAs may now claim the \$60 per day wine and aspirin expense allowance while they are travelling inside the territory. Is it the government leader's intention to rewrite these regulations that gives rise to that belief?

**Hon. Mr. Pearson:** Yes, they have been rewritten already.

### Question re: Elections Act

**Mr. Kimmerly:** Yesterday I asked the Minister of Justice about the mistake in the statutes of Yukon concerning the *Elections Act*. It is a fact that the *Evidence Act* makes these volumes official and these volumes should be relied upon in the courts of Yukon. The question is whether it is the intention of the government to republish the offending volume?

**Hon. Mr. Pearson:** As the Minister of Justice indicated yesterday, this was an error. It may well have occurred a number of times. We think we know how the error occurred. I am not sure what the practice of the court is now, but I do know, in the time that I was the clerk of this Legislature, the courts did not use consolidations of legislation unless they were certified as true copies by myself as clerk.

I do not know whether that is still the practice of the courts. I am confident that if the courts are using certified true copies of the legislation as passed by this House, certified by the clerk, then they would not be using copies with that erroneous section in it.

**Mr. Kimmerly:** The government leader mentioned that he believed he knew the reason for the error. I am not concerned about that particular error. The question is, what steps have been taken up to date to see that that error does not occur in the future?

**Hon. Mr. Pearson:** I thought I made that clear. Obviously if we know the reason, and I have no intention of telling the member opposite the reason, we are going to try to make sure that that does not happen again. That is not to guarantee that the consolidations will be letter perfect again. It is very difficult to do. Errors do creep in. They creep in in the funniest way sometimes, but they do creep in. This was a glaring error. It has not happened very many times. It did happen this time. I am sure that we have that particular problem nailed down.

In respect to what can we do, about all we can do is ask that an errata be published in the next consolidation of the legislation, so that that change can be made, and hopefully, it will be added to all of the consolidations that are out now.

**Mr. Kimmerly:** I understand the comment concerning certified true copies. However, the *Evidence Act* of the territory clearly says that the Queen's Printer's volume is the official law to be relied upon. Is it the intention of the government to notify, in writing, the courts that the published, official law is, in fact, not the real law?

**Hon. Mr. Pearson:** It is possible that the minister, at some point, will be able to answer this. It has not been done already. Once again, I would be surprised if the courts are using, notwithstanding the *Evidence Act*, the published documents without having them certified by the clerk. It would be a departure from what had been normal habit in the past. I am just not sure whether they are doing that. Certainly, there is little doubt about it. The error just lately came to our attention, and it would be derelict on our part if we did not notify the courts immediately of the error.

### Question re: School bus turnaround

**Mr. Porter:** I have a question for the minister responsible for Community Affairs and Transportation Services. It has come to my attention recently that in an area of two miles to two and half miles

from the Watson Lake community, there exist a lack of school bus turnarounds. In view of the fact that this matter was brought to the department's attention by the Watson Lake school committee, what steps has the minister taken to date to investigate the matter? Has he directed his departmental officials to correct this terrible situation?

**Hon. Mr. Lang:** The only lack of turnaround that has been brought to my attention was in Upper Liard. I will have to take that under notice.

**Mr. Porter:** The minister mentioned the fact that there are no turnarounds provided to the community of Upper Liard. Can he inform the House what his department is doing with respect to that question?

**Hon. Mr. Lang:** The lack of a turnaround for a particular bus stop was brought to my attention by an individual who volunteer to put one in if we agreed to stop the bus at that particular intersection. Subsequently, that was not done. The present bus stop is approximately three or four blocks away from where the students homes are and unless actions are taken by the individual in question, I cannot see any reason to change it.

**Mr. Porter:** Has the minister received any complaints from any other rural communities with respect to school bus safety? If so, is it his intention to ask his departmental officials for a review of the question of school bus safety?

**Hon. Mr. Lang:** It has not come to my attention. My understanding is that service is being provided as safely as it can possibly be. Safety is taken into consideration where all stops are designated. I cannot see any reasons for an in depth review, which take a lot of administrative time and cost the taxpayers a lot of money.

#### Question re: Justice ministers' conference

**Mrs. Joe:** I have a question for the Minister of Justice. As a result of attending the provincial federal justice minister's conference last week, can the minister report on the negotiations concerning the implementation of the *Young Offenders Act*?

**Hon. Mr. Philipson:** The *Young Offenders Act* was discussed at fairly great length. It was decided after the meeting that the issues that were raised would be discussed further in the early new year. I brought to that meeting the problems that the territorial government will have with the implementation with respect to not having a secure facility built at the present time. I hope that we will be able to find a way of getting an exemption for a period of time so that the facility can be built and not incur great costs for the people of the territory.

**Mrs. Joe:** As a result of attending the same conference, can the minister tell us whether or not the Yukon law requiring blood samples from impaired drivers will be proclaimed?

**Hon. Mr. Philipson:** That issue was raised and there was not a final consensus on the matter. These were areas that were raised for discussion only and nothing further.

**Mrs. Joe:** At the same conference, the federal government announced its intention to change the law on impaired drivers. Will it be necessary to also change some Yukon laws?

**Hon. Mr. Philipson:** Until those laws have been changed and I have been able to look at the substance of those changes, I could not answer that question.

#### Question re: Contracting-out public service positions

**Mr. McDonald:** In the budget last spring, the government announced its intention not only to contract out public service positions of janitors and court reporters, but also to have service work on new government vehicles performed by private garages rather than government's own mechanical shop. He noted at the time that this practice would not have an impact on the mechanical staff. Could the government leader explain to the House how, as privately serviced vehicles continue to replace older models in the government fleet, staff mechanics will avoid being impacted by the lack of work?

**Hon. Mr. Lang:** It is a matter of time, as the member has indicated because, as we buy new vehicles, we are taking them to the garage for the purpose of servicing them. As time goes on, and other jobs become available in other areas, they will be transferred

to the areas where they wish to go.

**Mr. McDonald:** It is my information that the mechanical shop has begun the practice of farming out transmissions and engines to have the repair work performed elsewhere. Has the government assessed the impact of this decision on the present training program in the shop?

**Hon. Mr. Lang:** I will have to take that under notice.

**Mr. McDonald:** By way of notice, is the government assured that existing apprentices will acquire the necessary experience, and that the future apprentices will not decline as a result of the policy?

#### Question re: NCPC rate application

**Mr. Ashley:** With regard to the national energy board inquiry on the rate application of NCPC, has the Yukon government made an intervention to this inquiry and, if so, how could the average citizen make his or her concerns known? I specifically refer to the recent release from NCPC that some projected rates will double the current rate.

**Mr. Speaker:** The question would appear to be rather broad. Could the minister be brief in his reply please?

**Hon. Mr. Philipson:** The Yukon government is submitting evidence for an intervention to the inquiry which will deal with rate structures, rate design and reasonable expenditures. These are parts of the NCPC projections on revenue and rate base. Most of the evidence and questions that will be posed to NCPC are of a technical nature. The Association of Yukon Communities and the Whitehorse Chamber of Commerce are also making interventions. If we receive concerns from Yukon residents which we can roll into the government's intervention, we will pass these on to the other associations. I feel that these associations would value that input. The date for the permission to place an intervention before the inquiry is passed and the final date for filing those registered interventions is close at hand. The inquiry will be held in January.

#### Question re: Hillcrest-McIntyre subdivision

**Mr. Penikett:** May I say that the member for Klondike read his representation very well and the minister read his ministerial statement very well, too. Can I ask a question, though, since it is Question Period?

To the Minister of Community Affairs: what portion of the cost of the lots in the Hillcrest-McIntyre subdivision will be recovered from the Kwanlin Dun Band, Indian Affairs, and the other parties, under the agreement he recently signed with the band and the City of Whitehorse?

**Hon. Mr. Lang:** The lots are sold at development costs, prorated throughout the cost of the present size of the subdivision and I believe, the total amount we will be receiving will be in the neighbourhood of \$40,000, because they lack pavement and curbs and gutters, as far as services are concerned.

**Mr. Penikett:** For the record, is the minister saying that in the case of these lots, interest charges have been included in the sale price, including all the development costs, including the carrying costs to this date from 1977?

**Hon. Mr. Lang:** That is what I am stating.

**Mr. Penikett:** Earlier in this session, the minister gave an undertaking to the House to table the agreement he signed with the band and the City of Whitehorse and the department. Will he be tabling that document in the life of this sitting?

**Hon. Mr. Lang:** I could table the one that was signed between the city, ourselves and the Indian band. What I was hoping to do was table the one that had been signed as well by the Government of Canada. That is why I was waiting. I leave it to the member opposite; if he wishes to wait I am prepared to table the documentation that all parties have signed, or table the one that just the three parties have signed.

#### Question re: Women's Bureau

**Mr. Kimmerly:** A question to the Minister of Justice, who is also the minister responsible for the Women's Bureau and is keeping an eye on the Canadian *Constitution*: the *Change of Name Ordinance* provides, in section 4(3), that no married woman shall, during the life of her husband, apply for a change in the surname

acquired from him. Is the minister considering this section?

**Hon. Mr. Philipsen:** In reference to the opposition's praise on the way a question was read from a prepared text, I would also like to praise the members opposite for the way they read their prepared text on questions. The answer to the question is that we have been looking at the *Change of Name Act* and there have been no final decisions on that particular question. It is indeed a fact that a woman who takes a man's name upon getting married at the present time may not change that name while she is married.

**Mr. Kimmerly:** The response that the minister is looking at is unfortunately unsatisfactory. The Canadian *Charter of Rights and Freedoms*, which will come into effect on the 18th of April next, will make this completely unconstitutional.

**Mr. Speaker:** Order, please. Is the hon. member giving information to the House, or asking a question?

**Mr. Kimmerly:** The question is: will the minister, prior to April 18, 1985, change this provision?

#### Speaker's Ruling

**Mr. Speaker:** Order, please. I am sorry, I cannot rule that question as being in order. It is clearly a representation, and it is out of order.

**Mr. Penikett:** Mr. Speaker, what are you talking about? He was asking if the government was planning to change a law. That is not a representation.

**Mr. Speaker:** Order, please. Once again, I must remind the all hon. members that Question Period is for asking questions. Clearly, representations asking the minister to do this or to do that are clearly not questions. If members have questions, fine, that is what Question Period is for. I stated again yesterday that the Chair, under the rules we have set down for ourselves, cannot allow representations in Question Period. It is clearly an abuse of the rules, and it is the duty of the Chair to enforce them.

**Mr. Kimmerly:** When will the minister bring in legislation about this issue?

**Hon. Mr. Philipsen:** If ever I had doubt in my mind that what people have said about the *Constitution* enabling members of the legal profession to make a fairly good living on for a number of years debating, this brings it home very well. I do not know how to tell the member opposite that I am going to bring in a piece of legislation before we have had a complete look at it. There are going to be a number of areas that I am sure that the member opposite could stand and ask me about after April the 18th to challenge the *Charter of Rights* on. I am sure we are not going to be able to address each one of those before that time.

**Mr. Kimmerly:** The minister has previously announced an intention to bring in legislation to make the existing law conform to the *Charter* on the issue of sex discrimination. What is the status of that previously announced program?

**Hon. Mr. Philipsen:** At the present time we have been doing an audit of all our legislation to see what legislation will be in contravention of the *Charter*. I believe we have changed five or six pieces of legislation so far. On completion of that *Charter*, we will be addressing areas that do not conform with the *Charter* because we do not want to be in any contravention of the *Charter* on that date.

#### Question re: Road right-of-way

**Mr. Porter:** I have a question for the Minister of Community Affairs and Transportation Services of which I have given him notice. At the present time, an individual living in Ross River on lease 4291 has to cross private property to gain access to his house. In view of the fact that there exists an 80 foot right-of-way between lot 99 and the lot shown on the community plan surveyed as 36278, has the minister directed his officials to give assurance to the lease holder of lease 4291 that he can have access to the right-of-way?

**Hon. Mr. Lang:** No, we have not given that assurance as of yet. We are reviewing the particulars of the matter outlined by the member opposite to double check whether the lot numbers that he provided to the House are accurate, and if the legal descriptions of the properties which the member opposite provided are accurate. It

would be my position that we will have to look at it very seriously. If there is a way that we can help assist the individual in question to seek public access to the area in question, I would be prepared to consider but until I know exactly who owns the land and what the actual situation is from a legal point of view, I cannot make a firm statement.

**Mr. Porter:** A possible final supplementary to the same minister: Ross River, as everyone knows, is an unorganized community and in such communities the Government of Yukon has responsibility ordinarily held by municipal government. Is it policy of this government to adhere to its responsibilities by upgrading all necessary road rights-of-way in unorganized communities, thereby providing the necessary services to the residents of the communities?

**Hon. Mr. Lang:** There is a lot of road maintenance provided by the Government of Yukon. I think that we carry it out fairly well as far as those communities are concerned. If there is a specific area in question that is not being maintained and the member opposite wishes to bring it to my attention, I would be prepared to look at it. There is only so much money and we have to work within those financial limitations.

#### Question re: Ye Sa To Communications bids

**Mrs. Joe:** I have a question for the minister responsible for Consumer and Corporate Affairs. Has the government of Yukon threatened to refuse to accept the Ye Sa To Communications' bids on government contracts?

**Hon. Mr. Philipsen:** No.

**Mrs. Joe:** On March 16th 1984, a letter from Patricia A. Harvey to Ye Sa To Communications says that despite their top notch work, the Government of Yukon should consider no longer accepting bids on competitions with local business. Is this government aware that Ye Sa To Communications is a native-operated enterprise operating separately and without subsidy from the larger society?

**Hon. Mr. Philipsen:** That letter was not intended to be a threat. I am attempting to arrange a meeting with the CYI to obtain an agreement on certain fundamental policy issues. I am hoping to have that meeting in the next week or two. I would hope to have the status changed a little bit. The government will adopt the policy which will preclude nonprofit societies from tendering in competition with private enterprise for government contracts.

**Mrs. Joe:** Apparently the fact that Ye Sa To has received Special ARDA capital and training monies has been a bone of contention. Is it the policy of this government not to do business with enterprises that have been the beneficiaries of Special ARDA grants?

**Hon. Mr. Philipsen:** The only thing at issue here is the business licence.

#### Question re: BC Rail

**Mr. McDonald:** I have a question for the government leader. There have been suggestions in recent months that the governments of Alaska, Yukon, BC, and Canada should coordinate efforts to extend the BC Railway into Alaska through the Yukon. Has the government leader discussed this proposal with other governments, and has it taken a position?

**Hon. Mr. Pearson:** At the last heads of state meeting held in Dawson City some two months ago, this issue was raised by the Governor of Alaska. They have, in the past, and at that meeting, indicated some interest in someday possibly getting some sort of an inter-tie overland to the southern 48 states from Alaska. I guess it was precipitated on the fact that the Alaska government had just bought the Alaska Railway from the United States government. The premier of British Columbia, Premier Bennett, made it abundantly clear that he does not foresee the extension of the BC Railroad north of Dease Lake any time in the foreseeable future. He suggested that it is going to be quite a long time before the last extension that they did make is a paying proposition, and that it will be a long time into the future before any consideration to a future extension will be given by British Columbia.

**Question re: Ethiopia aid**

**Mr. Penikett:** A quick question for the government leader: at the outset of this sitting the House resolved to join in the Ethiopia aid effort. The government leader indicated that this government was prepared to generously participate. Could he indicate in what manner we will be contributing to that effort?

**Hon. Mr. Pearson:** I heard a news broadcast this morning that brought it to mind. We have not yet heard from the federal government. We anticipated getting some direction from the federal government, or some indication from them, as to exactly what kind of participation they were expecting from the provinces and the territories. The news broadcast this morning was an indication of a donation, not from the Northwest Territories government, but from a specific community in the Northwest Territories.

**Question re: Interpretation Act**

**Mr. Kimmerly:** I have a simple question with no supplementaries to the Minister of Justice. The *Interpretation Act* in section 17(g) defines the male gender to include the female gender and corporations.

<sup>15</sup> Without making a representation, is the minister considering including also the female gender in order to be in conformity with the *Constitution*?

**Hon. Mr. Philipsen:** Naturally, anything that is not in conformity with the *Charter of Rights* we will be looking at and bringing into line.

**Question re: NCPG power grid**

**Mr. Porter:** A question of clarification for the government leader: yesterday in the House, the government leader expressed the position that he would favour the eventual extension of the NCPG power grid system to all communities in the Yukon. I would like to ask the government leader, seeing that he is aware that NCPG is planning to extend the power grid system to Johnson's Crossing, when that occurs, is the position of his government that the power line be extended to the community of Teslin as well?

**Hon. Mr. Pearson:** I know that it is not going to be extended to the community of Teslin as well. The decision has been taken to go as far as Johnson's Crossing at this point in time. There is little doubt that that decision has moved the grid another 50 miles closer to Teslin. I do not think that it will be very far into the future before the grid is to Teslin.

**Mr. Porter:** Can the government leader give to the House an explanation as to when that decision was made and who made that decision?

**Hon. Mr. Pearson:** NCPG made application to the Public Utility Board some months ago. The major reason for the decision is because of the very high cost of producing diesel electricity in Johnson's Crossing. As I tried to explain yesterday, the extension of the grid is very much a function of costs. I do not think there was any doubt about it, when NCPG was able to point out that the cost of production, as opposed to the cost of extending the line to Johnson's Crossing — given that the objective is eventually to get it to your home riding of Watson Lake, Mr. Speaker — it was prudent to go ahead with the extension as far as Johnson's Crossing at the earliest possible date.

While I am on my feet and on this subject, I also heard another radio broadcast this morning, syndicated from Ottawa, that Dawson City was the only community in the territory that is on diesel generation. Of course, that just is not true. There are a number of communities in the territory that are on diesel generation, the largest one being Watson Lake, besides Dawson City.

**Mr. Porter:** In his answer, the government leader indicated that the reason was based on economics. Can the government leader explain how they can reach that decision, when Teslin has a greater population in which to provide for the extension of electricity than Johnson's Crossing?

<sup>16</sup> **Mr. Speaker:** Order, please. I think that might be a little difficult for government to answer, not being in the power business.

**Hon. Mr. Pearson:** It costs something like four times as much to produce a kilowatt of electricity in Johnson's Crossing than it does in Teslin.

**Question re: BC Rail**

**Mr. McDonald:** The government leader said that Mr. Bennett could not foresee an extension of BC Rail into Yukon. Can the government leader confirm that Mr. Bennett's rejection of the proposal was largely due to the large capital costs associated with the construction of the railway?

**Hon. Mr. Pearson:** I do not know. It would simply be a matter of conjecture on my part. I can say without reservation that the premier was very firm in his statement in respect to his foreseeable intentions as to the extension of the railway.

**Mr. McDonald:** Given the high capital costs of the construction of the railway, has the government of Yukon considered using its special relationship with the federal government and the Deputy Prime Minister to request funding to assist in the extension?

**Hon. Mr. Pearson:** We, as a government, have always been much more interested in the extension of the White Pass railway north from Whitehorse into the Selwyn Basin. That has always been our number one priority. I would think that it will continue to be our number one priority.

**Mr. McDonald:** Regarding the extension of the White Pass railway, has a cost analysis of this transportation option been formed to determine the viability of the option?

**Hon. Mr. Pearson:** Yes, there have been a number of cost analyses done and every one of them, of course, has proven that it is not very cost efficient yet to extend that railway. There has to be a considerable amount of known development to be undertaken, particularly in the Selwyn Basin. It may well happen. We are hopeful that it is going to happen in the Macmillan Pass area. The member opposite may not be aware that the actual line was surveyed in the early 1960s; 1961 or 1962. That survey is still realistic, it is still there.

**ORDERS OF THE DAY****MOTIONS OTHER THAN GOVERNMENT MOTIONS****Motion No. 26**

**Mr. Clerk:** Item no. 1, standing in the name of Mr. Kimmerly.

**Mr. Speaker:** Is the member prepared to deal with item no. 1?

**Mr. Kimmerly:** Yes.

**Mr. Speaker:** It has been moved by the hon. member for Whitehorse South Centre that this House urges the Government of Yukon to review the recommendations respecting sentencing options for impaired drivers made by His Honour Judge B.D. Stuart in his decision of May 18, 1984 in the case of Regina vs. Henry Earl Debastian; and

that the Government report to the House during the 1985 spring sitting on the action it proposes to take in respect of each of the recommendations made by Judge Stuart.

<sup>17</sup> **Mr. Kimmerly:** This is obviously a motion which deals with the general problem of impaired driving in the territory. I am not going to go on at any great length because there is a large volume of work to do this afternoon, but I do deem it my responsibility to point out a few of the more important facts to all members of this assembly.

I am sure that all of the responsible members have already read this decision in its entirety so I will not re-read it, but I will point out a few facts very briefly. The decision quotes a few statistics and the important ones are that the criminal court in Yukon is telling us that impaired driving offences constitute 43 percent of the *Criminal Code* offences processed through the court. This is an astounding figure. The court also tells us that 45 percent of Yukon impaired drivers are repeat offenders, which is even more astounding. The court tells us offences, on average, have increased by eight percent a year, and the decision tells us that the most reliable, available estimates are that about 50 percent of all highway fatalities involve alcohol.

Another way to put that, and this is a statistic not in the judgment, but if we look at the approximate annual rate per household of violent offences, the average household is affected by

a death caused by an impaired driver three times as often as that said household is affected by a murder.

The topic of capital punishment and other topics in the criminal area receive perhaps more attention, but it is an undeniable and indisputable fact that the problem of impaired driving causes the greater damage, death and destruction.

<sup>18</sup> I say that it is our responsibility, and many of our constituents are being aggressive in telling us that it is our responsibility, to respond to this problem. It is interesting that at the federal-provincial conference attended by the justice minister last week, the news reports included an announcement by the federal government to address the problem by stiffening penalties. Yukon has already done that, within its jurisdiction concerning licences, but the problem continues.

The court, faced with the problem, has studied it as best the court is able, within the legal method, and the adversarial system that it must follow. The court has signaled to us, in a plausible and professional way, that the sentencing options available to the court are basically simply not addressing the problem sufficiently. The court reviews the existing sentencing options in detail, and it gives us information as to the actual practice in the courts and the decisions of the judges in the general or statistical sense. The court makes a number of observations. The point of the motion is to force some political attention on this information, and to make a statement of political will. The statement of political will that should be made, I believe, is that the citizens of the territory require a better answer to the problem of impaired driving.

I am not here to say that I have all the answers. I wish I had. If I had, I would not be shy about expressing them. However, there is a responsible statement made about the possibility of some changes and it is our duty to take it extremely seriously.

<sup>19</sup> I have proposed, in the past, the possibility of impounding automobiles of impaired drivers. That is not in the judgment, but it is my personal opinion that it would serve as a very substantial deterrent. That also should be studied extremely carefully.

In summary, the motion calls for a study and a report back to the House about a very serious issue and I recommend that all members support the motion.

**Hon. Mr. Philipsen:** We on this side are very pleased that the judge has brought these recommendations respecting sentencing options for impaired drivers to our attention. I see no reason why we would not be happy to report our findings on these recommendations after we have had an opportunity to study them. As far as we are concerned, we would be in agreement on this motion.

*Motion No. 26 agreed to*

#### **Motion No. 27**

**Mr. Clerk:** Item No. two, Motion No. 27, Mr. Kimmerly.

**Mr. Speaker:** Is the hon. member prepared to deal with item no. two.

**Mr. Kimmerly:** Yes.

**Mr. Speaker:** It has been moved by the hon. member for Whitehorse South Centre that it is the opinion of the Legislative Assembly of Yukon that there should be a property rights section enshrined in the Canadian *Charter of Rights and Freedoms* which would identify clearly both the nature of the property rights to be guaranteed and the jurisdiction of each level of government in respect of property rights, and

that the Legislative Assembly of Yukon urges the convening of a conference at which representatives of the federal, provincial and territorial governments would meet for the purpose of drafting an acceptable property rights section for the Canadian *Charter of Rights and Freedoms*, and that the Speaker forward copies of this motion to the Prime Minister, to all Premiers and to the Government Leader of the Northwest Territories.

**Mr. Kimmerly:** This issue was debated on the 24th of November, 1982, and for reference it is at page 245 of *Hansard* in the 1982 volume.

It has been brought back two years later because it is the intention of members on this side to attempt to have a more serious and less political debate of this most serious issue that is before the

Canadian people. It was serious then and is serious now. It is my opinion that at sometime in the future the *Constitution* will undoubtedly contain reference to property rights.

<sup>20</sup> We wish to put our position clearly on the record about this and we wish to express our doubts, perhaps, or our concern about certain efforts which have occurred in the past to entrench property rights which we believe would be disastrous.

Much debate occurred in the federal arena at the time of the extended *Constitution* debate and I will not go through it in great detail. After that, the BC Legislature passed a motion to include property rights and we, here, passed the same motion amid a debate about what it actually meant.

Later, it was proposed in the Manitoba Legislature, an NDP Legislature at the time, that a different wording be put in the *Constitution*. Incidentally, the Manitoba motion was as follows: "Section 7 of the *Constitution Act* be repealed and the following substituted, 'Every one has the right to life, liberty, security of the person, enjoyment of property, adequate income, essential health care, equality of access to education, pre-collective bargaining, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.'"

The other political parties have attempted to define to the public what the NDP position is. We believe that it is our job to define to the public what the NDP position is, and other parties ought to be confined to restrain themselves to defining their own position.

I have said in the past, I said it in November, 1982, and I say it again: our party supports property rights.

<sup>21</sup> It has always supported property rights, and in the future that I can foresee, it always will. The important issues are that there must come at some point a decision between where the rights of individual property owners and public rights conflict. Where will the line be drawn? A concrete example of this is in expropriation laws. Governments have almost universally passed expropriation laws which allow the government, exercising what the government calls the public interest and public will, to deprive individual citizens of their property rights and compensate them for the property in money, despite the wishes of individual owners.

Also, much debate has occurred around the extension of the definition of private property rights. I would draw reference to our leader's comments in the debate on occupational health and safety. In the name of property rights, it has occurred in the past that the rights of people to live in, and to work in, safe conditions has been denied. It is crucial to define properly where property rights start and where they end. It was our position in 1982 that we support property rights, but they should not have ascendancy over human rights. That is still our position.

We are cognizant of the fact that the Tory premiers in the Tory provinces did not support the proposed property rights provision in the *Charter* back in 1980 and 1981. They did not support it, not because they were opposed to property rights — they are not opposed to property rights — they did not support it because the inclusion of property rights in the *Constitution*, if it is not worded very carefully, will remove the jurisdiction of the provinces that they now have over this very important area.

<sup>22</sup> The jurisdiction of the provinces and also the territories is clear over property and civil rights. It is the expression of the political will of the right wing premiers that it remain so. It is our opinion that responsible debate aimed at achieving the goal of adequately guaranteed property rights, without harming human rights, can occur if all of us take a reasoned approach to this issue.

It is our position that a federal-provincial conference now could fairly easily define the jurisdictional question, that is, in the elaboration of the rights, and the specific legislation should be defined as to what is in the federal arena and what is in the provincial arena, that can be done and should be done.

It could be a matter of consensus. We believe that if reasoned heads prevail, the definition of property rights can be made clear and specific and inserted in the *Constitution* so that the individual homeowner is clearly protected within only the limits of the national interest to the possibility of some kinds of expropriation.

It is important that these issues be put in the *Constitution*. Traditionally, it is the wealthier classes in society who advocate



their inclusion. However, if we look at our history, the great abuses that have occurred have occurred on the poorer segments of society. It is a matter of embarrassment to me, as an individual, that the property rights of a whole class of Japanese Canadians were simply ignored during the war, in the interests only of racial bigotry, if the *Constitution contained adequate guarantees, that would not be possible in the future.*

<sup>23</sup> The interests of aboriginal people to their property is also a related question and a very important question. It has been law in this country that the property rights of Indian people, as a class, have not been recognized. It is our position that we support the property rights of all classes of people and all individuals, and they should be responsibly defined and made inalienable.

**Hon. Mr. Philipsen:** It is a pleasure to stand today on this motion that we have before us. As the member opposite has mentioned, on November 24, 1982, we discussed this in the House — and I am very sorry to see the leader of the opposition leaving at this time. But, quoting from that, as the member opposite did not do, I think I would like to get a few things on the record at this time. The first thing would be that on Tuesday, September 21, 1982, respecting an amendment to section 7 of the Canadian *Charter of Rights and Freedoms*, it would read as follows: "Everyone has the right to life, liberty, security of person and enjoyment of property, and the right not to be deprived thereof except in accordance with the principles of fundamental justice". We urged legislative assemblies of all other jurisdictions, the Senate, and the House of Commons in Canada to adopt similar resolutions. It would be interesting, therefore, to go to the conclusion of this debate and look at how we voted after division was called. I could go down the list but I think that anyone who wishes to do that would have no problem in doing so, as it is in *Hansard*.

There are some problems I have with some of the statements made today; the statement that it has never been an NDP policy not to have this right enshrined in the Canadian *Constitution* and in the *Charter of Rights*. I stated in the debate at the time that the amendment proposed by the Legislative Assembly of British Columbia was identical to the one proposed by the national Progressive Conservative Party, the Special Joint Committee of the Senate and the House of Commons, of the *Constitution* of Canada. Initially, the Liberal members of the committee, supported the amendment.

<sup>24</sup> The Solicitor General, Robert Kaplan, told the committee that the government would accept the Conservative amendment guaranteeing the right to property. That was on Friday. By Monday the Liberals had changed their minds. I think that there is very little doubt that the question of the inclusion of such a fundamental right in our *Constitution* is gone because, at that particular time, the national leader of the New Democratic Party, Ed Broadbent, said he would withdraw NDP support from the unilateral action of the Trudeau government if it contained the amendment that would guarantee property rights to the people in the country.

This brings me to the question: have the members on the other side of the House changed their minds as to the national NDP policy on this issue? I know from reading the debate over and over since it has happened that the member opposite who raised the motion has not changed his mind. I do know that others, presumably, must have changed their positions and I will try and demonstrate why I feel that way.

Statements by the national leader of the NDP on that debate, statements that go for things that would say, "this is an American experience with explicit constitutional guarantees for property rights, suggest strong legitimate reasons for not wishing to include such guarantees in the Canadian *Constitution*". Another statement: "so why are we having this debate, apart from the petty purpose of attempting to create a phony election issue. What is behind this?". Another statement: "I believe that the property right clause is a Republican notion and is not a Canadian one". Another statement: "Republicanism is foreign to Canada. It is an alien idea and so, I suspect, is the philosophy behind this resolution. Social democrats do not see property rights as absolute".

I have been taken to task in this House on a number of occasions for things that I have said and I have stood up and said that "yes, I make mistakes". I am curious, at this present time, for my own well-being and my own feeling of self-assuredness, that this motion that I brought to this House two years ago as a new member of this Legislative Assembly, when I felt that it was a fundamental issue and the right of Canadians, and we went through a long harangue and a great political debate about it. We ended up with division, where both sides have to stand and disagree or agree on the motion. This was an experience that I felt badly about for a long time because I believe, as does the member for Whitehorse South Centre, that property rights should be enshrined in the Canadian *Constitution*. I have no problem in supporting this motion and I am sure that the members on this side of the House would agree with me in that statement. But, after I sit down, I would appreciate a statement from the other side of this House that would make me understand that the members opposite totally agree with the member for Whitehorse South centre. Is this a motion that would reflect the views of the party territorially or is it now a reflection of the party on a national level? I would be happy to know that. Therefore, we, on this side of the House, would be happy to agree with the amendments as proposed.

<sup>25</sup> **Mr. Kimmerly:** I will speak very briefly. This, of course, is an expression of our position, and I may say and announce it as a caucus position, and it is the position of the territorial party. Other parties will speak for themselves. They are not shy about it, and that they will do in the future, I am absolutely sure.

The explanation that the minister opposite is asking for, I believe is as follows: it has always been the priority of social democrats that the rights of people should take priority and preference over the rights of property. An example is the issue of occupational health and safety. Safety of the workers is more important than an increase in profit, because it is obvious that it is often the case that work can be done more cheaply at the expense of adequate safety provisions in the workplace. There are many other examples of where the principle of property rights has been used in the past to promote the interests of big business against government regulation, and the interests of the very wealthy. They conflict with the rights of individuals.

As social democrats, we believe that the distribution of wealth, which has occurred in the past and which occurs now, is fundamentally unfair. We do not support the maintenance of the existing distribution of wealth. We do support the rights of every single individual, which includes the wealthy, but most importantly, us poorer people, to enjoy property. We support the increased opportunity of most, especially, poorer people to acquire some property, and to acquire more property. When they acquire it, they will want to protect it.

<sup>26</sup> It is our position that we have always supported the rights of individuals to hold and enjoy their property.

**Mr. Speaker:** Division has been called.

Mr. Clerk, would you kindly poll the House?

**Hon. Mr. Pearson:** Agreed.

**Hon. Mr. Lang:** Agreed.

**Hon. Mr. Philipsen:** Agreed.

**Mr. Falle:** Agreed.

**Ms. Nukon:** Agreed.

**Mr. Brewster:** Agreed.

**Mrs. Firth:** Agreed.

**Mr. Ashley:** Agreed.

**Mr. Penikett:** Agreed.

**Mr. Kimmerly:** Agreed.

**Mr. Porter:** Agreed.

**Mrs. Joe:** Agreed.

**Mr. McDonald:** Agreed.

<sup>27</sup> **Mr. Clerk:** Mr. Speaker the results are 13 yea; nil, nay.  
*Motion No. 27 to*

**Motion No. 28**

**Mr. Clerk:** Item No. 3, standing in the name of Mr. Kimmerly.

**Mr. Speaker:** Is the hon. member prepared to deal with item

No. 3?

**Mr. Kimmerly:** Yes, Mr. Speaker.

**Mr. Speaker:** It has been moved by the hon. member for Whitehorse South Centre that this House urges the Government of Yukon to initiate an enquiry into the detention of any person in an approved institution or in a place of secure detention pursuant to the provisions of the *Mental Health Act* during the calendar years of 1983 and 1984, and

that a report of this enquiry be produced for tabling at the 1985 spring sitting of the Assembly, which report would contain: (1) a description of the circumstances of each such detention, (2) a consideration of the alternative actions which might have been taken, and (3) recommendations for alternative actions in future cases.

**Mr. Kimmerly:** All members are, of course, aware of the central issue here. We debated amendments to the *Mental Health Act* in the spring, and the minister responsible answered questions last week and yesterday on this issue and there was a ministerial statement today, which encompassed this issue and included other things as well.

It is a very important issue. It may not involve very many people. In fact, I believe I know the number of people it involves and it is a very small number, indeed. However, the importance to those individuals is extreme; it is paramount in their minds, I know. I know, because some of them have personally told me. It is a simple motion, calling only for a study into the effects of the amendments and, to some extent, the procedure before the amendments were passed in the spring. It simply calls for a report to the Legislature which will force a responsible consideration of alternatives and a responsible consideration of improvements in the system.

I believe that the members on the other side of the House are like-minded to members on this side and that we all want to do the right thing by people who are mentally disturbed or suspected to be mentally disturbed.

It is unfortunate that the partisanship which has occurred, has already occurred. I know I have been a part of it, and it is my intention to act as responsibly as I can to improve the lot of these unfortunate disadvantaged people, whose lot, incidentally, is protected in the *Constitution* that we spoke about a moment ago. Perhaps the word "incidentally" is misplaced.

I am sure that the efforts that I have made — and of others — have rankled some interest in the past. I feel slightly sorry about that, but really, if I have done anything to bring the issue closer to the centre of the political agenda in the territory, I am pleased about that, and not sorry in any way at all. I would urge all members to take a little time and look at this situation, and consider improvements for the future. We all will agree, I know, if there can be some improvement.

**Hon. Mr. Philipsen:** The *Mental Health Act* provides for the establishment of the mental health review board in Section 63(1) of the act. This board reviews all detentions and they make recommendations. This board has been appointed, and is functioning satisfactorily now. In our view, it would be an unnecessary duplication of the board's responsibility to initiate any kind of inquiry that this motion suggests. We therefore will not be supporting the motion.

**Mr. Kimmerly:** I speak again, because I was aware of the minister's comment. I did not mention, earlier in the day, that we would not agree. I certainly do not agree to any secrecy around this issue. In fact, I venture to say that I personally would be able to obtain the written consent of the persons involved to publish this information. It is not necessary to use their individual names. I am reasonably certain that I could achieve that. I do not know I could, but I expect I could.

The process of putting people in a jail cell has occurred for a small number of the people. In at least one case, the name of the person appeared in the local media. The circumstances around that kind of occurrence should be known. They should be studied and the possibility of any alternative action should be looked at. I am

very pleased that the board will do this. I am extremely pleased. However, because of the importance of this issue, it is our duty as legislators to also do that. It may very well be the most responsible procedure to take the board's findings and to look at them and discuss them as responsible legislators and politicians. This motion essentially calls for a procedure like that. I am extremely sorry that the government is not going to vote for this modest motion. The issue will obviously continue. In the future, I hope, it will be resolved without the continued pain of some unfortunate individuals.

*Motion No. 28 defeated*

**Mr. Clerk:** Item no. 4, standing in the name of Mr. Kimmerly.

**Mr. Speaker:** Is the hon. member prepared to deal with item No. 4?

**Mr. Kimmerly:** Next day, please.

**Motion No. 31**

**Mr. Clerk:** Item No. 5, standing in the name of Mrs. Joe.

**Mr. Speaker:** Is the hon. member prepared to deal with item No. 5?

**Mrs. Joe:** Yes.

**Mr. Speaker:** It has been moved by the hon. member for Whitehorse North Centre that it is the opinion of this House that the services provided in relation to the territorial court circuits in rural Yukon should be expanded and improved; and

that this House urges the Government of Yukon to review those services and, in particular, to give consideration to locating courtworkers in the rural communities, expanding the training program for justices of the peace, arranging for visits to the rural communities by Crown prosecutors and defence lawyers both prior to and during sittings of the court and providing better facilities for sittings of the court in rural communities.

**Mrs. Joe:** It is no secret in this House that I have spoken many times on some of the concerns that I am going to be talking about here. Over the last few months, I have talked to a number of people who have expressed their concern with regard to the problems that they have during court circuits. They involved not every single community but some communities. More recently, I have been in contact with residents of Mayo and Dawson City. Those are the only two communities that I had never attended during court circuit as I had not had the opportunity before, so, during the summer I travelled to those communities. Before I did, I had some contact with some people from Dawson and their concerns were big concerns. They had been expressed many times to different people. I would just like to quickly go over some of the things that they had said.

The general impression being left by the residents of Dawson is not favourable. This is in relation to circuit court. During the last few circuits, the majority of cases have been postponed to future sittings and, during the last sitting on June 19th and 20th, 19 charges of 38 on the court docket were postponed until September 19th and 20th. The residents of Dawson see or hear of numerous crimes being committed or people being charged for offences, however, they do not see those people being convicted or being penalized for their offences. It would appear that the delays are caused by the accused not having time to seek legal counsel. On June 19th, it was noted that the defense lawyer interviewed five persons in twelve minutes. We find this to be totally inadequate as a clear picture of the evidence cannot be obtained and the accused are not being fully informed of their rights.

They go on to say that being able to continually postpone cases increases the cost of the court system. These costs include those judges, clerks and lawyers attending each circuit and also to return RCMP members, who have transferred out of the territory, to give evidence. These concerns were brought to me in June. At the time they said: "Recently, a member travelled from Prince Edward Island to give evidence of a total time of eight minutes in court." While they realize that in most cases, it is unavoidable, with a proper justice system in place, the majority of these costs could be eliminated. In some cases, actions have been dropped as the costs to return the officer to give evidence could not be justified for the

prosecution of the crime. They go on to talk about different things that they are concerned about in the courts.

On July the 18th, there was an official letter of complaint sent to the chief judge of the territorial court with a copy to the former Minister of Justice, Mr. Ashley, along with a copy to the City of Dawson, to the Department of Human Resources and to the JP Association. In the official letter of complaint, they expressed their concerns and they have been numbered in order. They are generally what I have just read. They talk about lack of time to prepare cases when they have courts and there are no legal services provided in the interim; that is, between courts. If you have a court in June and you have another one in December, there is no legal contact whatsoever unless that person does come to town and does talk to a lawyer in town.

We talked about delays in court where a person attends court in April for a first offence, and it is usually deferred until another court at the end of June. At that time, the lawyer has a chance to talk to the accused. Very often, at that time, he may plead not guilty, and would have to set a time for trial, which would happen possibly in December. In cases like that, it can take anywhere from three months to six months to nine months before that case finally comes to court.

The suggestions that they have is that they should bring lawyers into the communities between circuits. Defence lawyers or courtworkers need to spend more time with the clients and fully advise them of their rights. The dealing with certain offences should be immediate, especially such serious offences as impaired driving. They go on to discuss all of those concerns, one of them being a toll free number for clients to reach lawyers in town, and things like that.

When I received a number of these complaints from different people, I travelled to court in Mayo, and travelled to Dawson, and I observed the court in progress while I was there. As I said, those were the only two communities I had not attended court circuit in. While I was in Mayo, I sat in court. It was supposed to start at ten o'clock. It started at 11:15 and adjourned at 3:00. During that time, there were 29 persons who were charged with 41 offences on the docket. I sat there and I watched court in action where everything was handled very rapidly. It appeared to me, and other people sitting there, that there just was not the time that was needed to deal with those individuals who were appearing in court. As a result of that, many were adjourned until the next court circuit, which is coming up next month.

I was a bit concerned, at that time, because the former Minister of Justice had informed me that justices of the peace were being trained, in the communities during court circuit, by the attending judge. I found that that was not the case. It was not the only time that that was not happening. In talking to other JPs, I found out later that the justice of the peace in Pelly, who was appointed in 1981, who is still a JPI and is still willing to train as JP II, had not sat with a judge for three circuits. She finally gave up because she felt that he did not feel that he had time for her. The justice of the peace in Mayo, right now, is willing and able to train, which does not happen very often. She is willing to sit as the JP II, which would probably cut down on a lot of the court cases when the circuit goes into town. It would cut down probably on less than half, because there are very many cases that they can deal with, with regard to motor vehicle offences, *Liquor Act* offences, and whatnot.

I saw something there that was not happening, that we were told in this House was happening.

The next day I went to Dawson, and I should have brought the former Minister of Justice with me, because I think it would really have been an eye-opener. At one time I invited him to attend a court docket in Whitehorse and I had no idea that the Dawson court circuit would be twice as bad. It was something that I had not anticipated. I had heard about it, but you do not know what really happens until you see it. There were 56 persons on the docket, with 84 offences, who had to appear at four o'clock in the afternoon. Except for six of those people, all the rest were waiting at four o'clock to go into this room they have set up for court. As I was walking in, there were a number of people standing outside the building; there were a number of people standing and sitting on the

stairway; there were a number of people sitting around in the hallway waiting for it to start. It was supposed to start at four o'clock but did not start until quarter to five.

I sat there for three hours and I was really, really upset when I left. I just saw a court in session that I could not believe. As I said, you do not believe it until you see it. In the courtroom there were 12 chairs in the gallery, there were 24 people sitting there waiting, either to observe court, or to go to court. Of course, there was all kinds of noise. While I was sitting there waiting for court to start, I observed an arrest, a charge being laid, and all kinds of noise out in the hallway.

During the three hours that I sat there, there were, I think, a number of cases — probably about 15 or 17 — that were stood down because those people did not know what they were going to do once they got into court. Throughout this whole three-hour process, people were being read their charges, half of them not knowing what to do. They were sent outside to wait until they got to the end of the docket that day. At seven o'clock that night they got to the end of the docket. They had a break and, at that time, the defence lawyer took it upon himself to talk to all of these people so that I can believe it when they say that the defence lawyer spoke to five people in 10 minutes, or whatever it was. It was even less than that here because court went on until about 11:00 o'clock.

As I sat there, there were many, many things that everybody was not happy with — not only me but the people who were in court — including the judge. In the room, you could hear dogs barking, radios playing and cars going by outside. As a matter of fact, during the time we were sitting there, they were cleaning the nests off the building. It was just totally unacceptable. I feel that, unless a person sees that happen, they are not going to believe it. I do not know whether or not the former or present Minister of Justice has had a chance to attend court in any of these support circuits, especially Dawson, where they have all of these problems. After I sat there, I believed what the people were telling me.

I believed it because I saw it and I was disappointed because I felt that things should have improved over the years, and I am sure they have.

After sitting there all that afternoon, I stayed there for two extra days and talked to people in the courtroom. They were all very discouraged. There were all kinds of people making complaints; people who were working in the courts. I sympathized with them. When I bring motions to this House, I do not bring them just for the sake of standing here and talking. I bring them because I think there is a concern. When I got back, I spoke to a number of other people about these problems in the courtroom. One of the things that I was asked to do at the time was to bring this concern to the House, so I am doing it.

Since I have been a member of this House, I have had a chance to hear about different things that are happening in the justice system. I think that there has been a lot of effort made to improve the court system and many other things. I applaud the government for doing those things, but I certainly want them to know that there are still many problems out there.

The lack of training that I talked about is happening, not only in Dawson, not only in Mayo, not only in Pelly, but it is happening in other places as well. Some of the judges go out to the communities and hold court and they allow the JPs, either JPIs or IIs, to sit with them. From experience, I found that is a very, very good way to get training. I found that it helped me to learn, probably twice as fast as I would have if I was just sitting there.

There were problems with crowded courtrooms, and one of the things that came about at the same time was that if there were courtworkers in the communities that were there either part time or full time, where regular JP courts were held, they could probably deal a lot more efficiently with cases that came before them because they would have a JP to work in conjunction with the courtworker. That would make things a lot better.

As a matter of fact, during my talks with some of these people, it was brought to my attention that one of the more experienced JPs was ready to quit because that person felt that she could not tolerate holding JP court anymore unless the accused had someone there to help defend him, or to do whatever it was necessary to make the

courtroom run more efficiently. I would hate to see that JP leave. She probably has been there longer than a lot of other JPs and has a lot of experience that can be passed on to other people.

In speaking to other people out in the community during that period, one of the things that was brought to my attention that surprised me was the fact that the JP in Dawson, who is an experienced JP, had been told that he could travel to Mayo to hold court there. That would be an added expense. It would take a day's travel back and forth, and he would get paid for the time that took. What was so surprising was the fact that there is a JP in Mayo who, with just a little bit of training, would be able to do the same thing that the JP from Dawson would do.

Also, at the same time, the JPI, who was refused the training during court circuit, has attended court there during court circuits. She is quite willing to go down to Pelly, and the people in Pelly are quite willing to have her there, along with the other JP, who has been a JP since 1981, and still is not sitting in the courtroom.

When I made this motion, I hoped that members in this House would support it. I have had to talk about all of these things that I was aware of, and not just from hearsay, but from seeing some of these things take place. I think that, when I used Dawson as an example, I probably picked the worst court circuit in the territory. There are still other problems in some of the other communities. The thing that was mentioned more and more to me during that time was the lack of courtworker services. As they mentioned in Dawson, in the time between the courts, there was nobody around who they could get any kind of information from unless they phoned a lawyer or came to town to see a lawyer. Sometimes there was just a simple thing like speeding, or driving without a licence, or drinking in public, or something like that. The fines in those cases are sometimes just voluntary.

This motion only asks that the government review those services, and give consideration to all the things that were mentioned in the motion. I ask members of this House to support it.

**Hon. Mr. Philipsen:** We, on this side of the House, find this a rather tough motion. In saying that, I would like to explain. Just recently, in a speech to this House, it was said, "We have also revamped our system of court circuits to more effectively service communities outside Whitehorse. Through the complete cooperation of the bench, the private bar, the Crown Attorney's office, our Justice department and all other support services, we have been able to increase the number of court circuits and to implement a new system of prior sitting justice of the peace courts to vastly improve the present court system, and all this will be achieved within the quite current court budget." Now I realize and empathize with the statement of the member on the other side of the House, for we do realize that the system had some very great flaws and deficiencies and we have been working towards rectifying those situations. I am sure that this is not the end, and that we will have to go further in this regard. To that end we, on this side of the House, would be supporting this motion in its present form.

**Mr. Kimmerly:** I feel it is almost my duty to speak on this. The reasons for that, which I will explain so that the member leaving can read them at his leisure, are that I believe the only person in the Yukon who has been on the circuits as a court attorney, as a defence counsel, and as judge, may be in the opposition. I have not been an accused; it is the only position I have not yet had. I was also the first Territorial Court Judge in the Yukon and I was the last judge to be a sole member of the Territorial Court here; thus, I did all of the circuits. That knowledge and experience really saddles me with a responsibility, in a sense, to speak about this particular issue.

I remember when I was the only member of the territorial bench and the then-Minister of Justice appointed the second judge and made a ministerial statement. He made the statement that the second judge would enable more frequent court circuits. Now, the budget for court circuits was not expanded and it was thus impossible to have more court circuits. I was not a politician at the time and could not comment. I am grateful for the opportunity to comment now, although somewhat late.

The observations of the member for Whitehorse North Centre are personal observations and are heartfelt observations, and are very serious criticisms. The minister will be aware, if he consults with the rural members of his caucus, that there is a significant feeling in the communities outside Whitehorse that the court circuit of justice is not a very good system. It is not working very well.

The task of the circuit court is an extremely difficult one and the needs of the circuit have not been adequately met in the past. I would recommend to the minister that his good words and words of encouragement are one thing, but the real issue is the financial resources of the court workers who are in the community, the financial resources of the legal system to pay lawyers to go to the communities and prepare properly and the financial resources to provide an adequate building to carry out the court in. It is those issues that are more important than good words and I would commend the member bringing forward this motion to continue her vigil on this issue and especially pay attention on the budget debates on these issues.

**Mr. Porter:** I, as well, would like to rise and speak in support of the motion before the House. Specifically, I would like to focus my attention on the courtworker program.

As members will recall, there was a recent conference held in the community of Yellowknife, Northwest Territories. During the course of that conference, it was pointed out that Yukon's version of the courtworker program was sorely lacking in terms of resources and, in comparison to jurisdictions such as the NWT, was woefully inadequate in certain respects. I believe, in Yukon that the courtworkers were at one time confined to Whitehorse and could not travel the circuit at one particular occasion because of the lack of financial assistance. Not to belabour the point of the lack of financial assistance with respect to the courtworker program, I would like to raise a specific point of support with respect to the motion that talks about locating courtworkers in the rural communities. One aspect of government's function, as I understand it, is that, where possible, government should be encouraging the devolution of its responsibilities to certain regions of the territory. I think, in the aspect of the courtworker program, the government would find no difficulty in identifying a need in the communities for such services delivered by this government.

In the community of Watson Lake, there has been a specific request discussed with the member for Whitehorse North, and also with myself. I travelled to the community on various occasions, and I have been in receipt of representation from community members that reflect all aspects of community life in that community. They have argued very clearly that that community, in particular, needs a native courtworker. Those services are definitely needed in that community.

Traditionally, Watson Lake has always been identified as a high crime area. I am aware of many debates in the House in which you yourself, Mr. Speaker, have been a party. I remember the report that was commissioned by the Yukon Association of Non-Status Indian People that provided the statistical information to back up that statement. In respect to the kinds of crimes that have been identified in the Watson Lake area, the majority of the crimes related to juvenile crimes. Just recently, I was involved in a case where a 12 year old from that community had to be sent out of the community, and had to be sent out of the Yukon into another jurisdiction, to receive help. My understanding of a good justice system has always been the point of prevention of crime and the rehabilitation of those individuals who do end up committing crimes. Based on the kind of need that has been identified in that community, and based on the functionings of a good justice system, I would say that the community of Watson Lake clearly does need a native courtworker. If it is a question of there being a lack of trained personnel, I would like to bring it to the attention of the House, and particularly to the minister in the government side opposite, that there is an individual who makes her home in the area of Watson Lake, who lives in the community of Upper Liard, who has been trained as a courtworker.

In speaking in support of the motion, I would just like to impress upon the minister that there have been requests from the community

of Watson Lake for a native courtworker. I look forward to his favourable recommendation on that.

**Mrs. Joe:** It is a pleasure to know that the government is going to support this motion. In line with some of the other things that I mentioned at the time is the fact that the department felt it was important to use their own lawyers in prosecuting territorial offences in court circuits. I am not sure whether they do it in town yet. It is equally as important to look very seriously at the implementation of more courtworkers. I would also like to suggest that the member for Klondike attend court circuit in his home town, as the member for Mayo has done in his.

*Motion No. 31 agreed to*

**Mr. Clerk:** Item No. 6, standing in the name of Mr. Porter.  
**Mr. Speaker:** Is the hon. member prepared to deal with item No. 6?

**Mr. Porter:** In view of the absence of the Minister of Renewable Resources, I will stand the motion over to the next sitting day.

*Motion No. 37*

**Mr. Clerk:** Item No. 7, standing in the name of Mr. McDonald.

**Mr. Speaker:** Is the hon. member from Mayo prepared to deal with item no. 7?

**Mr. McDonald:** Yes.

**Mr. Speaker:** It has been moved by the hon. member for Mayo that this House urges the Government of Yukon, when it next requests proposals from the chartered banks in regard to the provision of banking services to Government of Yukon, to impress upon these banks that a very high priority should be placed upon a commitment to providing banking services to communities such as Mayo, which do not currently have access to such services.

**Mr. McDonald:** I do not think it is sufficient just to say that the motion is self-explanatory. I hope that the members will vote for it. Superficially, of course, nothing can be so boring as to speak about financial services for a district which is far removed from the experiences of most members of this House. However, rural members in the House will truly know what considerable inconvenience can exist, operating without a bank and living hundreds of miles from the nearest bank.

In this House over the past year or so, we have heard about the closure of the bank in Mayo and the wind-down in its services to the community. We have heard about the negotiations the bank has had with the mine in Elsa to exact some sort of concessions from that employer to provide the service for an entire district. Subsequent to that, we heard about the government's involvement in attempting to get the banks to see the wisdom of providing rural services in areas such as the Mayo district, or to convince them that is the socially responsible thing to do under the circumstances. We have seen the government attempt to provide a minimum level of service within the natural restrictions that exist, given the nature of the territorial agent's office in Mayo. The territorial agent's office is acting as a cheque casher and a bulk money mover for the community, to a limited extent.

The fact that the people of that district have no banking facility is rather significant in terms of the financial expense. It is necessary for them to enjoy banking facilities. It is quite often considered to be an investment of several hundred dollars to come to Whitehorse to conduct business, to talk with the manager of a bank about personal finances, to negotiate loans, to check bank records, to do all those miscellaneous things such as to purchase money orders and Canada Savings Bonds, to make deposits, to acquire cash, et cetera. It is difficult for businesses themselves to maintain sufficient cash on hand of the right denominations. It is difficult, at the same time, to take the chance of having too much cash on hand in order to ensure that demand is satisfied.

It should also go without saying, that banking is a very fundamental service that is all too easily taken for granted by the very people who enjoy banking facilities. A press report came out

at one point in the deliberations to acquire banking services for Mayo, and a number of people were quoted as mentioning their personal concerns with having to bank long distance. One business person was quoted as saying that she had a couple of personal cheques that came back to her before Christmas — and the press report was dated March 26 — and she said it was still not cleared up. She stated that if they had a bank there it would be so much easier — even once a month would help.

Another person was quoted as saying they were a bit peeved and in constant need of having to cash cheques here and there. Many of them did not have cars and had to bum rides to Whitehorse in order to get banking services. One person has said that the mail-in bank account seemed prone to error. She said she had heard some complaints from people who complained that their cheques bounced due to a bank mistake. They know of dozen of cases of people dealing by mail with banks in Whitehorse that involved foul-ups. One person said that he went through a little anxiety about what the heck had happened to his money and, when the person tried to explain things to the bank over the phone, he felt the desire to jump into the car and go down to see the bank manager. That is something that is not easily done when you live 280 miles from the bank manager.

The personal accounts of problems with the lack of banking services are numerous. I could add a number of personal accounts myself, Mr. Speaker, but as a rural member yourself, you should understand the cost of having no banking services would be considerable.

When one particular bank closed its doors on the people of Mayo a year and a half ago, one employer in the Mayo district attempted to negotiate an agreement with the bank to provide services to the community. The agreement was rich enough to include provisions that would subsidize the bank almost in its entirety. It would pay the wages of the banking personnel; it was prepared to pay for the banking building; it was prepared to pay living expenses for the personnel; and, it was prepared to pay travel expenses for supervisors to come in on occasion, including the supervisor's wages. To supplement that, they were prepared to pay for office supplies for the bank. That proposal was not good enough for the bank. The bank wanted a guaranteed profit on top of it. So, if that is the kind of mentality that we are dealing with, we really must deal very seriously with this problem and use what clout the government has, to wrestle some concessions, which are socially responsible, from the banking fraternity.

The motion before us today talks about the government using its influence to encourage the banks to provide this service. It is left fairly generally worded, as we feel that we need to give the persons, who are going to be forming the negotiations, the latitude to find imaginative ways to provide banking services. However, we know from experience, as we have gone through this procedure once before, that the government leader has requested from the banks that they provide a costing of what may be necessary to provide service to this particular rural district. We know that those negotiations have failed. So, something a little more imaginative, with perhaps a little more muscle, might be in order, given the size and nature of the problem. Obviously, the size of the government's deposits should mean something to any given bank.

If the government cannot use its considerable influence to make some banks more socially responsible, then we have a problem with the banks, which should be addressed immediately. That is perhaps a step that we do not need to take until we have determined whether or not the banks are going to be acting responsibly in the near future.

I think I can anticipate what the government leader may have to say. I am trusting that the government will vote for this motion. The government has, in the past, given indication that they are, in their words, 'on side on this one'. It would encourage me to believe that the government will at least support this motion in principle. How the government intends to carry out its commitment to negotiate with the banks in some forceful manner, is something that will probably be left up to the government leader, or perhaps the deputy Minister of Finance. Nevertheless, the Legislature must send a very clear message to the government, and to the banks, that this

is a very high priority for rural people and there is no backing down, in terms of our commitment to providing banking facilities for this rural district. We should also be sending the message that, should banks be considering ceasing service or curtailing service in other rural areas, for purely financial reasons; there is a social cost to doing that. If we are going to give them the powers of monopoly in this country, they are going to have to do the socially responsible thing, by providing a wide level of service to all communities, including major rural districts, such as Mayo.

I am encouraged from previous remarks by the government leader, that he can support this motion. I am hoping that the government will exercise its authority in this community to encourage the banks to provide the service to the Mayo district.

**Hon. Mr. Pearson:** I think probably the member for Mayo unwittingly used the right word in his final statement. About all we can do is, in fact, encourage the banks to provide service to the smaller communities in the territory. This is not a new concept. I know for sure that in the last, probably six, proposals that have gone to the banks, the major criteria — every single time without exception — has been the service that the banks might provide to the communities outside Whitehorse. With all five major banks here in Whitehorse, we have no problem at all, which is a very, very enviable position for us to be in. Banking is a private enterprise. It is run by private businessmen; probably without a doubt, the most pragmatic private businessmen in the whole world. After all, nobody likes bankers. Why do people not like bankers? Because they make money. All they deal in is money and they are not interested in talking to you if they cannot make money. That is a fact of life. Anybody who has dealt with the bank knows that. I am sure that the member for Mayo has had dealings with the bank and knows that.

At the present, we deal at the Canadian Imperial Bank of Commerce and we have for a number of years, because they are the only bank that has given the most consideration to the communities outside Whitehorse. At the present time, the Canadian Imperial Bank of Commerce supplies banking services to one degree or another in Haines Junction, Carmacks, Teslin, Dawson and Watson Lake. The Toronto Dominion bank, for quite another reason, is the banker at Cyprus Anvil. The reason being that they were Cyprus Anvil's bankers just like the Royal Bank was in Elsa.

I would guess that this spring, the Government of Yukon will take cognizance of this motion and will be going to the banks again and asking for proposals, once more. It is done about every two or three years. We have indicated to the banks that we are very interested and concerned about Mayo in particular, or the Mayo-Elsa area. We have sought proposals outside of our overall proposal because when we sought those proposals we did not have very much to offer them outside of cash:

1. It was simply the case that we did not think it was a good enough deal to enter into on behalf of all the people of the territory. So, we put in the cheque cashing service at Mayo, hoping that would alleviate the situation somewhat. We also are aware that the company has a system in place in respect to its employees that I am sure does help them to some degree.

We are going to support the motion. There is little doubt about that. We will also be making sure that the criteria, when we go for proposals again to the banking community, will once again be the service that can be provided to the communities outside of Whitehorse with a special emphasis, this time, on Mayo.

*Motion No. 37 agreed to*

#### **Motion No. 35**

**Mr. Clerk:** Item No. 8, standing in the name of Mr. Ashley.

**Mr. Speaker:** Is the hon. member prepared to deal with item No. 8?

**Mr. Ashley:** Yes.

**Mr. Speaker:** It has been moved by the hon. member for Klondike that this House urges the Government of Canada to devolve responsibility for the Yukon operations of the Northern Canada Power Commission to the Government of Yukon at the earliest possible opportunity.

**Mr. Ashley:** Electricity is undoubtedly the major driving force behind the economies of this and every other nation in the world today. Whether it is produced by wind, water, air, or fossil fuels, electricity is the most indispensable form of energy for individual use and economic activity. Given the prospects for future technology, it appears that electricity will continue to be the most stable energy source for decades to come. Yukoners, private enterprise and governments must keep this in mind when considering future economic growth in Yukon.

The existing arrangements for the production of electricity in the north have placed a heavy burden on the economic vitality of Yukon. This is due largely to the designated role that Northern Canada Power Commission plays in the control of production of electricity. The existing mandate of NCPC and the questionable past performance of this federal crown corporation have undoubtedly contributed to our relatively high cost of electrical power, and in turn, the poor competitive advantage of Yukon to attract industry in a dynamic world economy. NCPC has not acted as a tool for economic development. This is the case, even though publicly-owned utilities across Canada and throughout the world are competitively offering inexpensive power to attract industry and promote economic growth.

At present, surplus power is available in almost every province across Canada. I might add that this electrical power is being offered to prospective customers at prices considerably cheaper than Yukon.

Yukon has many obstacles to economic growth. Some of these, such as our distance from markets, cannot readily be overcome. Others, such as the high cost of electrical energy, can return to competitive advantage, given the will to take the necessary action.

Conservative estimates place Yukon's hydroelectrical potential at more than 7,000 megawatts. This does not take into consideration the vast potential for electricity produced by fuel-fired generators or other fuel sources. It is true that, in certain cases, costs of constructing electrical generating plants is higher than comparable places in southern Canada. But it is equally true that there are several sites where electricity could be generated at a relatively low cost per kilowatt hour. The facts, as they now stand, put us at a disadvantage. We must take immediate measures to turn our electric potential into an advantage that will provide the kind of infrastructures that will promote economic growth. The first step to achieve such a goal is the devolution of NCPC's Yukon operations to the Government of Yukon.

Our present pricing arrangements for electricity are completely unsatisfactory. The act of Parliament which created the Northern Canada Power Commission places two very severe limitations on this Crown corporation. First, NCPC must establish rates in Yukon that are not less than the estimated cost of supplying power. These costs include interest and principal on loans, operating maintenance, repair and other expenses of the facilities, and the cost of administration and all other expenses as attributed by NCPC to operations in Yukon.

Second, NCPC has been given the privilege of being the only electrical generating authority in the Yukon. Although Yukon Electrical has made some small inroads to challenge NCPC on this principle, the Crown corporation remains the sole actor in any substantial power development, what makes NCPC's monopoly objectionable is the apparent performance of the corporation in the past and the relative inaccessibility as far as accountability goes. It is quite obvious that the electrical consumers in Yukon have had little input into the decisions of NCPC. Their only relationship with the corporation is the burden of paying for the cost of cost-overruns on the Aishihik project, and the like. How much input did the people of Dawson City have when NCPC decided to replace their hydro generating plants with diesel generators? Because of a decision made in the corporate boardrooms of NCPC, Dawson City residents are now paying some of the highest costs for electricity in North America. Recently the officials of NCPC indicated to Dawson City consumers and other consumers on NCPC's diesel generating system that they will have to pay almost double the prices they are currently paying. This has affected almost every



facet of our lives. For example, the annual cost of electricity for Dawson General Store in 1981 was approximately \$44,000. This store's energy charge has been passed on to Dawson City residents on every loaf of bread and pound of butter they buy. Clearly, this is not the kind of decision one would expect from a power authority concerned with promoting Yukon's economic growth.

And what of the infamous Aishihik fiasco? What can you say about a project that was budgeted at \$16.75 million and ultimately cost \$39.3 million? What can one say about the fact that it was supposed to generate 30 megawatts of power but can only generate a fraction of that over the course of the year?

« What we do know is that the cost is too high, and Yukoners will be paying for it for years to come, unless decisive action is taken. Yukoners are saddled with Aishihik, and there does not appear to be much we, as consumers, can do about it. I do not pretend to have experience on hydro generation. It always struck me that it was unusual to construct a hydro dam on a leeward side of the highest mountains in North America. Every child is taught in our schools that the leeward side of a coastal mountain range is going to be semiarid, if not a desert.

At the risk of appearing to give this House a lesson in prime ecology, we must all be aware that moisture-bearing clouds must dump their moisture to raise high enough to get over the mountains. When descending onto the leeward side of the mountain range, the dry air tends to dry the surfaces it passes over. I am certain that it did not take NCPC long to realize that there was not enough water to run the Aishihik plant at full capacity, but that it was too late to reverse the project.

To make up for the power shortfall resulting from the Aishihik project, NCPC chose to expand the generating capacity of Whitehorse. The fourth wheel is also another major initiative decided in the boardrooms of NCPC, outside the territory, with little input from Yukoners. The cost of this new plant was a mere \$61,344,000, and came in slightly under budget.

It appears the major thing NCPC learned from the Aishihik experience was how to budget more accurately. This new plant has a maximum capacity of 20 megawatts, but in the tradition of the Aishihik plant can only produce a fraction of that on a sustained basis. Realistic estimates suggest the fourth wheel can produce eight megawatts of electricity on an annual production.

Was this in the best interests of Yukoners, considering we have to pay for every cent spent by NCPC in Yukon. As it turns out, the cost of the Aishihik project and the fourth wheel in Whitehorse, is approximately \$100 million, for an average annual output of approximately 20 megawatts of power. This is an excessive cost for electrical power by any standards in the world.

What makes this most scandalous is that the electrical consumers of Yukon, who have had no way to make NCPC accountable for their decisions, must pay the price everytime they turn a light on, or purchase goods from Yukon businesses.

There were a number of other items that could have been developed, instead of the Fourth Wheel, but for one reason or another, were disregarded. Even though the most advanced techniques were employed for the \$60 million fourth wheel, the cost of producing electricity at this plant is 16.7 cents per kilowatt-hour over its lifetime. This is even more expensive than the cost of diesel generating plants that have been used to power the Whitehorse-Aishihik grid. NCPC's rationale for going ahead with this high-cost project was that the cost of diesel fuel would gradually rise, and the fourth wheel would be cheaper than the diesel plants in the long run. We all know that there is an oil glut in the world over the past two years; as new sources of oil and gas are discovered, and the world moves towards more efficient ways of consuming energy. It appears that the oil glut will be with us for the foreseeable future. Except for the pricing arrangements of the National Energy Program, the rationale for the construction of the high cost fourth wheel has been destroyed.

« Consumers of Yukon are once again left holding the bag. According to the statistics provided by the Department of Economic Development and Tourism, there are at least seven hydro projects that could have been constructed where there could have been cheaper power based on the average level of cost per kilowatt hour,

rather than the fourth wheel. Whereas the fourth wheel produces power at 16.7 cents per kilowatt hour, Liard River could have produced power at 12.5 cents per kilowatt hour, Squanga Creek at 12.2 cents per kilowatt hour, Ross Canyon for 7.7 cents per kilowatt hour, Hoole Canyon at 6.6 cents per kilowatt hour, McIntyre Creek for 4 cents per kilowatt hour, and mid-Yukon for 3.7 cents for kilowatt hour. The third stage of the mid-Yukon project could produce power at approximately less than two cents per kilowatt hour.

With all these proposed sites, one must wonder why NCPC chose to construct the fourth wheel at Whitehorse. We all know that hydroelectrical projects always generate a certain amount of opposition and controversy. Perhaps, it was because a fourth wheel was the least controversial option that NCPC decided to go with it. Clearly, it would have been the least difficult project as far as the people at NCPC are concerned. Again, I have answered the question of whether the fourth wheel is in the best interest of the people of Yukon.

To what advantage would the transfer of NCPC Yukon operations to the Government of Yukon have for Yukoners? First, I would like to say that we would be rid of the terribly restrictive and detrimental legislation that governs the people at NCPC. I have no doubt that many of the people who work for NCPC would like to be more imaginative and constructive in promoting Yukon development, if they had the opportunity. Secondly, Yukon government, by its very nature, must be more responsive to the needs of Yukoners than a federal crown corporation. The structure of NCPC is designed on the same basis as any colonial organization that is governed from Ottawa. Although the federal government may be well intended, as I believe the new Conservative government is, it is not the same as the local government body. The Yukon government is clearly more powerful for people of the Yukon than the government of Canada. Accountability results in the willingness to act on behalf of, and in the best interests of, your particular constituency. Given the apparent lack of direct accountability over NCPC, even though Yukoners are paying the bill, the transfer of NCPC's Yukon operations to the Government of Yukon is an absolute necessity consistent with all principles of parliamentary democracy.

Thirdly, the transfer to the Yukon government could provide us with the opportunity to use the electrical generating capacity of Yukon as a tool for economic development. This, of course, always brings us to the proverbial question of which come first: the chicken or the egg? People have stated in the past, and will undoubtedly state in the future, that industry must create the need for the production of our full generating capacity. They maintain that it is not responsible to make huge expenditures of money without the demand being present in advance. When we see the large surpluses of power across the nation, everyone must realize that this policy is unreal and shortsighted.

« Even though there are these electrical surpluses, Yukon has the potential to develop even lower cost electricity than most other areas in North America. Given assistance from the Yukon government and imaginative financial schemes, Yukon's capacity to generate low cost electricity could be the single most attractive backing to attract economic growth in our territory.

Throughout the world, the philosophy that developing nations need help from developed nations has been widely recognized and accepted. Canada has played a respectable role in this regard. One of the most significant projects that usually is undertaken for foreign aid purposes is the construction of electrical generating plants. Large scale electrical generation is apt to give the developing countries basic low cost electrical infrastructure from which to build a world class competitive economy. In the case of Ghana, the Canadian government provided funds to construct a major power dam in order to provide this nation with a source of currency. Ghana's own currency is not traded in the world market and is considered almost valueless given the economic strength of that nation. The dam was constructed, in this case, to produce cheap power to sell to Nigeria. Nigeria would in turn pay for the electricity in Nigerian currency which is accepted on the world market. Ghana could then go into the world marketplace and purchase goods with the Nigerian currency.

The point in the Ghana example is clear. The capacity to generate electricity is essential for the promotion of economic growth in underdeveloped areas. Although some people do not want Yukon developed any more than it presently is, I view the majority of Yukoners want provincial-style accountability and economic stability that would be forthcoming with the transfer of NCPC's operations. The chicken or egg argument is not credible in the post recession age. Government-owned utilities and Crown corporations across Canada are setting the stage for economic development in their regions. We must also act now in a like manner, or we will be too late.

I mentioned the possibility of the Government of Yukon using imaginative financial schemes to provide low cost electricity to Yukon. Perhaps I could mention one simple mandate. The Yukon government very recently announced the first phase of the development of a \$40,000,000 Yukon College facility. This is an expensive item but will undoubtedly repay itself many times over by educating our children and adults. Although the value of this contribution is hard to quantify in dollar terms, I think we would agree that, over the long term, it would be worth it.

The benefits provided by the means of an allotment in Yukon's capital budget for the construction of our electrical generating capacity would be much easier to quantify. Every allotment provided in this manner to the construction of a power project would lower the cost per kilowatt hour of the electricity that would be produced by the project. With assistance through nongovernmental capital allotments from the Yukon government and traditional financing arrangements, I am certain we would generate power in Yukon cheaper than most other areas of North America.

<sup>47</sup> This is only one example of how the Yukon government's control of the NCPC's operations could assist our economic development. There are many other ways. The existing mandate of NCPC makes this type of initiative impossible. A spokesman for NCPC has indicated that fuel costs of diesel generation is going to have to be paid by consumers in our smaller communities. This could as much as double the cost of electricity in Dawson City. The Yukon government has supported the position of re-equalization with the communities to make it more equitable for residents throughout Yukon. In Dawson's case, NCPC's announcement raised a very bitter question. Why was Dawson City put on the diesel system in the first place? The NCPC came to Dawson City in 1966, and in its unyielding, incredible shortsightedness devoured a hydro generator power grid, and replaced it with a diesel generating plant. Now they want to double the cost to consumers, which is already among the highest in the country.

I am certain the Yukon government would agree that this is inequitable, onerous and counterproductive to the economic development in Dawson City. A more acceptable solution would be forthcoming. There are many aspects to this debate, which is markets for electricity, and the way in which a dilution of the NCPC to the Yukon government fits in with the initiative toward constitutional development recently announced by the government leader. I am not going to propose any further discussion in order to permit my fellow members to debate the motion.

In conclusion, I believe the past injustices endured by Yukoners by the shortsightedness and inefficiency of the previous federal government and its Crown corporation, NCPC, have created circumstances that must be changed: The Yukon government must be given the assets of the NCPC's Yukon operation, debt free. Then, we Yukoners must leave no stone unturned in our search for alternate sources of power, large or small, since we cannot have large scale development on a short term basis. The Yukon government must be given the responsibilities and assets of NCPC, debt free, as recommended by the House of Commons subcommittee entitled Electrical Power North of 60. We must look at each community and area to take the necessary actions. Larger scale projects are alternatives to attract the industrial and technological diversification we all so eagerly desire. Yukon should take its rightful place in Canada, as a strong and productive partner in the Canadian union. First, we have to get the ball rolling with the transfer of the NCPC's Yukon operation to our own government. I trust there will be unanimous support for this motion.

**Mr. Porter:** I would thank the preceding member for all of the five minutes that he has allowed for his fellow members to jump in on the debate. Really, in terms of the perspective of this side of the House, there is no real need for a lengthy debate on the issue. We are quite in support of the motion, as presented to the House. We see the decision is very clear. It is one in which the board of directors of the NCPC must move the Yukon operations of the NCPC from Edmonton to the northern side of the Rockies. We are fully supportive. In terms of what the consequences of the move would mean to Yukon, I think that we must look at the history of government, particularly this government. They have, over the last couple of years, been very spirited in terms of their demands of Ottawa to transfer this and to transfer that and to transfer these responsibilities.

<sup>48</sup> So, if I were to be able to analyze these possibilities, then I would suggest that maybe Ottawa should move quickly on this issue. Given the special relationship that they enjoy with the current government in Ottawa, we should expect no problem in terms of this being done possibly next week. In terms of what it will do, in terms of looking at this government's capabilities is that for once the government will have a responsibility in a major area of the territory. They will have a responsibility for legislation with respect to labour. They have some responsibility with respect to the transportation corridor in terms of highways. If we do move on transportation, there will be very little left that the government cannot say that they are not responsible for in terms of motivating and initiating economic development in this territory. I think that it also would be a very good test case to see what kind of government we have here in terms of ability to handle responsibility. In that respect, I think that the Government of Canada should be very much encouraged to begin the discussions on transfer.

As a final word on this subject, I think that power is one subject that we know will be introduced to this House time and time again. I just might suggest that, quite possibly, the next time that there is a power shift in this Legislature that we may be on the other side of the House, now occupied by the members opposite.

**Hon. Mr. Lang:** I would like to thank the member for Campbell for his vote of confidence in the first part of his speech, as to our ability to assume that responsibility. I want to assure him that he will never ever see this side of the Legislature from the point of view of sitting here on any long term basis.

*Motion No. 35 agreed to*

## BILLS OTHER THAN GOVERNMENT BILLS

### Bill No. 102: Second Reading - adjourned debate

**Mr. Clerk:** Second reading, Bill No. 102, adjourned debate. Mr. Penikett.

**Mr. Penikett:** I will try and talk fast as we have three bills to deal with in one hour.

**Some hon. member:** Faster, faster.

**Mr. Penikett:** When I broke off last week, I was citing the report of Mr. Mike Wittington of Carleton University about the indigenization of the NWT public service. Mr. Wittington had observed that while there seems to be a visceral commitment to the indigenization of the territorial bureaucracy, the efforts to achieve that goal in the NWT would only be partially successful. He observed that the Government of the NWT is likely as effective as any government anywhere in providing the goods and services of the people to the territories, but it is a bureaucracy that is not of the north to the extent that it should be, if the feelings of alienation from the government in the communities are to be curbed. In the final analysis, the only solution to this is to increase the number of native northerners in the more senior positions in this government.

Mr. Wittington went on to observe that a latent but important impact of the commitment to the goal of indigenization of the territorial bureaucracy is the style of management that is evolving, particularly in the regions.

<sup>49</sup> Basically, what is happening in that territory, is a growing recognition among line managers that a significant portion of his or



her responsibility is for training and development. This point has been made very effectively by a gentleman by the name of Mike Bell, who happens to be the Superintendent of Social Services in the Baffin region. He said, "Staff must begin to see their roles not only as service providers but also as resource persons and instructors willing to share their expertise with others, learn from others, and allow the department or agency to function as a learning environment for staff and community residents. The adoption of a development ethic inevitably leads to some confusion and requires change of orientation on the part of many professionally trained staff who are accustomed to seeing themselves as service providers rather than educators."

I conclude by saying that the problem of trying to make the Public Service more reflective of the community it serves is, I think, as much a problem here as it is in the Northwest Territories. The bill we have before us is proposing to take steps which would have the effect of doing exactly that. I would only want to conclude my remarks to the House by quoting from the Prime Minister of Canada, in his answer to a question about affirmative action during the 1984 leaders' debate, which took place during the recent federal election. Mr. Mulroney said, "This question will take very serious measures. It is a moral problem and we will take every measure possible to make real progress. It is a real priority".

I share the view of Mr. Mulroney that it is a real priority and I urge the members in this House to support the proposal. Thank you.

**Hon. Mr. Pearson:** I recall when we last sat and listened to the proposer of this bill, and now the leader of the opposition, wax very eloquent about an act to provide for affirmative action and equal pay for work of equal value within the Public Service of the Government of Yukon. I recall that the member for Whitehorse South Centre said that, in the drafting of this bill, he may have been purposefully vague, that the bill may be somewhat of a compromise. But, the fact of the matter is, I am quite surprised that the member for Whitehorse South Centre — who I heard today putting himself up as quite a Constitutional expert — has fathered this bill in this Legislature. Every single bit of advice that I have received, in respect to this bill — and it has been considerable — has started out by saying that the bill is unconstitutional.

<sup>50</sup> Mr. Kimmerly, with all due respect, should have known that. I do not think that there is any doubt about it, but I am not set with the bill for other reasons as well.

It makes some presumptions. It presumes that there are unequal and discriminatory conditions in the Public Service of Yukon right now. I have challenged the member opposite, on numerous occasions, to bring me specific instances. I have assured him that I would take immediate action, as the minister responsible for the Public Service Commission, whenever he did that. I have been listening to the member for Whitehorse South Centre make this accusation for a number of years. He has never ever been able to put his money where his mouth is, not once. And he comes up with this bill. Well, it is rather interesting. He deals with two groups of people and proposes that we discriminate against all other minority or disadvantaged groups. The one group that I am appalled is not included here is the handicapped, who I think are a minority disadvantaged group. Yet, the member has not included this group in his bill. I also found it very interesting that he conceded in Question Period today that the Minister of Justice was correct in what he said last week in respect to the drafting of the bill. The *Interpretation Act* is very, very clear in respect to the use of the word 'he' and what it means in legislation. It does not say anything at all in the use of the word 'she'.

It makes it very difficult for us to think that this bill was drafted with any degree of sincerity at all. I believe that the member has put the bill in to try and gain some political brownie points from someone but certainly, if this is a demonstration of his best drafting skills, we have to be very, very suspect.

Primarily on the basis that the bill is entirely unconstitutional, we on this side will be voting against it on principle at second reading.

<sup>51</sup> **Mr. Porter:** I have a very few brief comments with respect to the issue of the bill on affirmative action. I, as you will recall,

raised the question of this government hiring aboriginal people from the Yukon through the government ranks. I am sorry to report that there has been no visible improvement in terms of this government's attention or this government's action, with respect to the hiring of aboriginal people. In terms of the question raised by the vote of hands, yes, I personally know of two people who were appointed to boards in the last few years.

On the question of board appointments, I think it is ironic that the aboriginal people of Yukon had to go to the negotiating table and to use that process as a process in which they negotiated themselves, in some cases, 30 percent of the seats on public boards, and, in some cases 50 percent, for the record. This ordinarily is a responsibility of government. Government is set up to deal with all of its constituents. It has to make laws, and it has to direct benefits for all the people it serves. You would have thought that since this government has been around since the days of 1902, that the matter would have been addressed a long time ago. But, not to totally gloss over this government's efforts, we must recognize that through the negotiating process they have come to terms with respect to one element of the government's representation with respect to the population of aboriginal people.

In terms of the government itself, I think that there is a lot more room for improvement. I encourage the government to work on this area, and to try to very positively recruit more aboriginal people to become involved in this government.

The leader of opposition mentioned the Northwest Territories. It is a clear statement of fact. The Government of the Northwest Territories has gone a long way in terms of having the indigenous people of that area represented. If you want to speak to the government leader over there, you would be speaking to a member of the Loucheux community. If you want to speak to the Minister of Renewable Resources, you would be speaking to an Inuit member of the community. If you want to speak to the deputy minister of Renewable Resources, you would be speaking to a Metis member of the community.

The government leader says that they have 70 percent of the population. In the Western Arctic, that is not true. What has occurred there is that the government clearly has hired, not only on qualifications recognized by institutions known as universities or technical schools, but has also allowed people the opportunity to gain employment through merit. If those people demonstrated longevity in terms of service to the community, those people were hired on that basis. I have personal knowledge of that. In fact, I know many of the people who are employed by the Government of the Northwest Territories.

<sup>52</sup> In terms of this particular motion before government, I think that we, on this side of the House, encourage the government positively to see it as a problem and to deal with it as such, and to work on measures to bring about greater involvement in the Public Service of this government by the aboriginal population of Yukon.

**Hon. Mr. Philippen:** There are a couple of points that I feel should be clarified in the member opposite's dissertation. The area of population has not been addressed quite correctly. The number of people in Yukon who are of native ancestry is somewhere in the area of 20 percent: in the Northwest Territories I think it is closer to 65 to 70 percent of the total population of the area. There is something else I think should have been mentioned while he was in that discussion. The Government of the Northwest Territories is not faced with being in direct competition with an organization such as the Council for Yukon Indians, which is, at present, rather a lot of people who this government would like to have working for it, and have named these people but are unable to get them because they are working for the Council for Yukon Indians at the present time. I think those facts should be brought into this discussion at this time.

**Mr. Speaker:** The hon. member for Whitehorse South Centre now speaking will close debate.

**Mr. Kimmerly:** I will be purposefully brief so that we can get to the other items on the Order Paper as this will be our last opportunity. It is unfortunate that the topic of debate was

not affirmative action. We can talk about affirmative action but there are two major arguments against affirmative action. The other side did not even raise one of them.

Three ministers spoke. The first one told us his height, which, incidentally, officially, is 1.68 metres. The government leader blamed the messenger. He attacked me as did the first minister, and said the act was unconstitutional. Mr. Speaker, he did not say how it was unconstitutional or why it was unconstitutional. Members opposite do not like it when I quote law at them but I will for a moment or two. A very significant legal issue was not raised here at all. There is a legal argument that the federal *Human Rights Act* and the commission headed by Gordon Fairweather, in fact, applies to the public servants of Yukon, and Gordon Fairweather clearly stated that here publicly, a little while ago.

“That was not mentioned. The legal test cases have not occurred. The constitutionality of affirmative action is not absolutely clear as the courts have not judged on it, but it is certainly provided for in the *Constitution*.”

It is unfortunate that we did not debate the real issues because the women and the Indians of the territory deserve that. There was an intensely political debate. The government obviously do not support affirmative action. They are not doing it and that is most unfortunate.

*Motion for second reading defeated*

#### **Bill No. 103: Second Reading**

**Mr. Speaker:** Second reading, Bill No. 103, standing in the name of Mr. Kimmerly.

**Mr. Kimmerly:** I move that Bill No. 103 entitled *An Act to Amend the Expropriation Act* be now read a second time.

**Mr. Speaker:** It has been moved by the hon. member for Whitehorse South Centre that Bill No. 103 be now read a second time.

**Mr. Kimmerly:** I will be more brief than I intended because of the time constraints on us today.

This is a very simple little bill, and for those of us who believe in private property rights, and that means all of us, because we have all voted for it, it is a time such as this that the real crunch comes. What the bill does is correct an anomaly in the law which has existed for a long time and which is a threat in the law to property owners. The present system of law allows a government to expropriate private property at its will, at its whim. The private property owner has no recourse at all. There is a provision in the bill that a private property owner can go to court over the amount of compensation paid but he cannot argue with the government and say, “My private interests are paramount over what you say are the public interest”. A concrete example is coming up over the court house.

“There is suitable land available to build on in the city but the government is saying, ‘No, we do not want that land; we want particular land a block and a half away. We are going to expropriate a private property owner in order to get it’”. Is that ultimately in the public interest to deal with private property in that particular way? If the members opposite really believe in private property, they will allow individual citizens who own property, access to the courts to get a nonpolitical, impartial decision on whether the expropriation is in the public interest. It is a simple bill calling only for that. Members will have little difficulty, I am sure.

**Hon. Mr. Philipsen:** The proposed section 3.1 would effectively substitute the court as the expropriating authorities of the government. This points out a fundamental, philosophical difference between the member on the opposite side of the House and myself. The court is not elected and not accountable for determining the public interest. Further public hearing in the court for an expropriation of the sufficiency of the justification of the expropriation would inevitably require disclosure of alternatives, which, once disclosed, would no longer be practical, simply by virtue of disclosure.

The proposed section 3.1 would effectively destroy the power of expropriation and, more importantly, political accountability or its

exercise. It is naive to dismiss political accountability as unimportant. It is so powerful a factor that it has often deterred this government from expropriating where, by most assessments, it would have been much in the public interest to have expropriated the property. The addition of the words “where it is in the public interest” is a companion to the proposed section 3.1 and should be rejected for the same reason.

I am shocked that such a valid value defender of private rights, as the hon. member, Mr. Kimmerly, purports to now suggest the repeal of subsection 4(2). The purpose of 4(2) is particularly important to establish the *Expropriation Act* as the paramount source of expropriating authority and the rights and procedures in respect of compensation. We, on this side of the House, will be voting against this bill.

*Motion for second reading defeated*

#### **Bill No. 104: Second Reading**

**Mr. Clerk:** Second reading of Bill No. 104, standing in the name of Mr. Penikett.

**Mr. Penikett:** I move that Bill No. 104 be now read a second time.

**Mr. Speaker:** It has been moved by the hon. leader of the opposition that Bill No. 104 be now read a second time.

“My inspiration for closing this measure came from the experiences I had recently, of listening to my constituents complain about how their prospect of getting long awaited jobs on the airport construction project would not be realized. In discussing it with them, it became clear that there are a great number of public works in the territory, not all of them federal, some of them territorial, which have been given to outside contractors. This, for one reason or another, diminished somewhat the prospect of local people getting work on these jobs.”

What those people were essentially saying to me, is there ought to be a law. And I said, right on. Here you have it. A very simple proposal that affirms a principle that I have heard stated by members opposite so I assume that there will be no profound philosophical principle objections to the bill on second reading. Some of the great complexity in detail in some of the clauses would be subject for appropriate detailed study in committee. However, the principle is an important one.

Let me also say that we have, from time to time, had arguments or disagreements about what a local person is. This bill affirms and proposes to make a statement of law, that people who are resident in the Yukon, who have paid taxes in Yukon, who are eligible to vote in Yukon, people who have been here a year, would qualify as Yukoners. As the members know, there are a whole range of residency requirements and different residency rules in the territory. At one point I tried to consolidate them in an excellent little bill called the *Fairweather Friends Ordinance*, which unfortunately ran into some technical difficulties in this Chamber.

I say this entirely seriously. We sometimes seem to have two policies on this question. I have heard members opposite speak about this subject, and I must say that I agree with them in saying that people who contribute to this community, who have invested in this community, whose taxes contribute to public works, ought to have a special advantage, especially during periods of high unemployment, which is what this bill argues about — getting work in the public projects here. However, we have sometimes seemed to have a different policy operating in the Public Service Commission, which seems to treat people that, as long as they apply for a job here, they are a resident here, even if they got off the plane, as a rule.

I would not go so far as the minister from Porter Creek East, who seems to propose a kind of class system in the Yukon, where the 50-year people get preference over the 20-year people, and the 20-year people get preference over the five-year people, and so on.

**Hon. Mr. Lang:** I never said that. What are you talking about?

**Mr. Penikett:** It has been implied in a number of the minister's speeches, where he denounces the members on this side as being ineligible to address the Chamber on one issue or another because they have not been here as long as him.

The simple proposal here is that one year be the residency rule.

which happens to be the residency rule for voting in elections. It would also guarantee the people would pay, if they have been working, income taxes to the territory.

**I** would submit that the proposal is a worthy one. I am sure that the principle will be enthusiastically endorsed by members on all sides of the House. They will say that this is the kind of law we ought to have here — right on, Tony, good work — and we can then give it the kind of careful, thoughtful consideration in Committee that this measure, no doubt, deserves.

**Hon. Mr. Pearson:** I would move that debate be adjourned on this bill.

**Mr. Speaker:** It has been moved by the hon. government leader that debate be adjourned on Bill No. 104.

*Motion agreed to*

**Hon. Mr. Lang:** I would request unanimous consent to return to motions respecting committee reports for the purpose of dealing with motion no. 36.

*Unanimous consent granted*

**Mr. Speaker:** We will then proceed to motions respecting committee reports.

### MOTIONS RESPECTING COMMITTEE REPORTS

#### Motion No. 36

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

**Mr. Speaker:** Is the hon. member prepared to proceed with the motion?

**Mr. Brewster:** Yes.

**Mr. Speaker:** It has been moved by the hon. member for Klwane that the Fourth Report of the Standing Committee on Statutory Instruments, presented to the House on May 10, 1984, be concurred in.

**Mr. Brewster:** The Standing Committee on Statutory Instruments has been consistently following the guidelines as laid out in the McReur Report in respect to the proper format for drafting statutory instruments. The administrative arm of this government has continued taking the position that we are in conflict with the McReur Report's recommendations. For example, the McReur Report states that statutory instruments must cite a specific authority for the regulations. The administration has taken the position that they do not have to cite the specific authority. I have made appeals to this assembly in the past seeking a better understanding of what guidelines we as members of the Standing Committee on Statutory Instruments are to follow. In the report we discussed in this assembly today we have made reference to a large number of orders, which, in our estimate, do not cite the proper authority. In one reference to *Hansard*, most ministers of this government have previously admitted there are committee members who are right, or at least partially right, in a great number of the cases we report. In fact, there were many more instances when the government agreed with us than they disagreed. There seems to be a contradiction here and it is time that we, both the Standing Committee on Statutory Instruments and the government, got our acts together.

There are those who maintain that many of the small errors in our committee reports are insignificant and meaningless. I would caution those skeptics to consider what a court of law would do in such a case. The government has a responsibility to take every practical measure possible to ensure that our laws and regulations withstand the tests of courts.

I would like to mention a few examples. Order-in-Council 1983/247 was signed on November 20, 1983 for the fiscal year 1983-84, but was retroactive to April 1, 1983. The Workers' Compensation Order-in-Council 154 did not have the year on the document. Another example of the retroactive Order-in-Council was 1983/146. After discussing this mistake with departmental officials, it was determined that the administrative problems between the federal government and our government led to the

delay. We have been assured that this has been corrected.

In closing, I would like to appeal to the government to meet with the Standing Committee on Statutory Instruments to establish a firm set of guidelines that we can follow. There are enough problems in government, even when everybody knows what they are doing. With the conflict over what guidelines are required, this situation is hopeless.

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**Hon. Mr. Pearson:** I do not want to let it be conveyed that I think for a moment that the situation in respect to regulation making in this territory is hopeless. I am disappointed that the chairman of the committee feels that way because it has been my experience that this committee has performed a very valuable service to this government. If the chairman and the members of the committee would look at the first report that they made to this House and the number of regulations that they dealt with in that report and in this report, I am sure that they will have to concede that there has been a considerable amount of progress and also a certain meeting of the minds.

It is true that we as a government do not agree with all the recommendations of the McReur Report. That is our prerogative. We will stand up and we will be counted for it in this House. That is what it is all about. In light of the time, I would like to table for your and other members' edification my reply as the minister responsible for the *Regulations Act*, also, the replies to the specific concerns mentioned in the report by the various departments in the government who have been cited in the report.

**Mr. Kimmerly:** I would like to thank the chairman for his remarks which, in my opinion, are courageous.

I want to make a further comment and make it cautiously because this committee, as the other committees — Public Accounts for example — can only work well and in a business like way if they are not partisan. The members on it are politicians and all of us are occasionally partisan, once in a while. You will have to forgive us for that.

The government leader tabled the answers and I will be very interested in looking at them. I am especially interested in the progress that the departments make. I would emphasize that although the statement about considerable progress was made, there are some areas where the committee is bogged down. The committee has met with witnesses and solicitors, at least once, and we have been told that the solicitor, especially, simply disagrees with the committee and is not going to follow our recommendations. I want to say that if a committee makes a report and there is a motion of concurrence, and it passes, I do not care who it is, they have no business not obeying the recommendations of the committee concurred in by the House.

<sup>58</sup> I hope the deputy minister is listening. It is not him, but he should know about that. There has been some meeting of the minds, but not total meeting of the minds. I am not going to go into detail about the specific recommendations. They speak for themselves, but I do say the members of this committee will continue to work diligently in this somewhat unglamorous job. It is my belief that all members, regardless of their political party or position in the committee and in the report, have only one goal: that is to serve Yukoners by improving the regulations under which they must live. We are doing our very best. We will continue. I am assured that the somewhat forceful words spoken today ultimately will assist us.

**Mr. Brewster:** In closing debate, I urge the administration of this House to get together on the terms of reference both for the House Committee and for the administration. In 1975, Commissioner James Smith commissioned the handbook to follow in making up regulations. I am told it has been discarded and no handbook exists. This is very apparent as we receive OICs written the same day from the same department, but completely different in format.

I appeal to the government to work out a set of guidelines for both the House committee and the administration. Otherwise, we will go nowhere. It is very interesting that some members of administration feel that they are over and above the House. I would suggest that this attitude does not help the situation.

Mr. Speaker, my last statement, I regret very much having to make. I am very disappointed and greatly concerned that information gathered from our committee meetings was used yesterday in the House at Question Period. Although I am sure this is legal, to me, it is very poor taste and morally not right, and brings the credibility of the whole committee into question. As a result, I shall have to consider in the next few days my position on this committee.

*Motion agreed to*

## GOVERNMENT BILLS

### Bill No. 47: Second Reading

**Mr. Clerk:** Second reading, Bill No. 47, standing in the name of the hon. Mr. Philipson.

**Hon. Mr. Philipson:** I move that Bill No. 47, *Miscellaneous Statute Law Amendment Act, 1984 (No. 2)* be now read a second time.

**Mr. Speaker:** It has been moved by the hon. minister of justice that Bill No. 47 be now read a second time.

**Hon. Mr. Philipson:** The purpose of this act is to make minor amendments to several acts with the view of making those acts more accurately express what is intended by them. In some cases, anomalies, inconsistencies or archaic terminology are removed. In keeping with past practice, we have not included in this bill amendments that represent significant changes in the policy of legislation to be amended.

The *Miscellaneous Statute Law Amendment Act, 1984 (No. 2)* includes the repeal of several acts that technically still have the force of law but are now unnecessary because they relate to events or programs that are no longer current or because they deal with matters that now fall within the scope of newer legislation.

Some of the amendments proposed here are to bring statutory provisions into compliance with the Canadian *Charter of Rights and Freedoms*. In that connection, I want to point out that we intend to bring forward in another session, an anomalous type of bill to make a more comprehensive set of amendments to deal with the obvious conflicts between our statutes and the Charter.

**Mr. Penikett:** I was very surprised when I started reading this bill this morning. I was a little relieved when I heard the minister say just now that it was about anomalies and inconsistencies. I guess that is all right. When I started reading some of the things that this bill would do, appealing Section 10 of the *Apprenticeship Training Act*, and something big like that, just like that, gone; the arbitration schedules 1 and 2 of the *Arbitration Act* could get the chop just like that; the *Business Development Act*, something about effecting Section 25(3), well...

**Mr. Speaker:** Order, please. It is not really proper to refer, in general debate, to other than the principle of the bill at second reading.

**Mr. Penikett:** I am sorry. Unfortunately there are about 150 principles in this bill, which is my problem. It does refer to the *Business Development Act*, which we just finished talking about just a little while ago. I notice there are provisions doing away with the *Bulk Sales Act*. I do not know what is wrong with the *Bulk Sales Act*, and why we are doing that. I notice that the *Chiropractic Act* is gone and the *Citizenship Instruction Agreement Act* — I never knew what was wrong with that. I notice that there is an attempt to bring metric to bear on the *Cemeteries and the Burial Sites Act*. I am concerned that an important cultural tradition such as our expression "six feet under" should not be tampered with by this legislation.

I am curious to know, from the minister, whether they have had any problem with that. I notice that the *Controverted Elections Act* is to be changed. We have not had any of those for a while. We used to have them all the time but we have not had any recently. I hope that is not just a convenience in there.

There are some important things that are done away with here. The *Curfew Act* is repealed. Some people might be quite surprised and quite astounded to know that. The *Dawson City Historic Sites Aids Grants Act* is repealed. I would have thought that would have been a great concern to the member for Klondike. The *Fitness and*

*Amateur Sport Agreement Act* is repealed completely, and I just wondered if this government is coming out against fitness and amateur sport. It is horrible. The *Gasoline Handling Act*. The *Hairdressers Act* — I mean, have the hairdressers been consulted? The *Mechanics Lien Act*, the *Marriage Act*, the *Woodsmen's Lien Act*. Now, I do not know if the woodsmen have been consulted. I notice something here affecting churches. There is even something affecting the Whitehorse South Centre member, because it proposes not to close streets that we previously voted to close, which is very interesting.

There is also something that will affect the Chamber of Commerce, and a number of other things. In other words, this bill seems to cut a very wide swath through every feature of Yukon life and Yukon legislation. I certainly hope the minister will have answers to all of my questions when we get into committee on this one.

**Hon. Mr. Philipson:** I hope that, before the member is six feet under or it is converted to metric, he will be able to explain all the problems that he has with this piece of legislation. And to get on with our life in an upward fashion.

*Motion agreed to*

**Hon. Mr. Lang:** 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:** I will call the Committee of the Whole to order. At this time we shall adjourn until 7:30. When we return we shall go on Bill No. 42, *Occupational Health and Safety Act*, followed by Bill No. 40, *An Act to Amend the Children's Act*.

*Recess*

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

### *Occupational Health and Safety Act — continued* *Amendment proposed*

**Mr. Kimmerly:** I would like to move an amendment. I have identified the issue yesterday. The amendment will serve to focus.

I move that Bill No. 42, entitled *Occupational Health and Safety Act* be amended in clause 15(5) on page 12 by deleting the phrase "ordinary conditions" and substituting for it the phrase "up to the standard generally considered safe in the industry".

In speaking to the amendment I will be brief initially. I have identified the issue yesterday, and the minister may well have prepared a response. I will listen to that first. This amendment would strengthen the bill and bring the language into regular conformity with the main object, or main principle, of the bill.

The phrase "up to the standard generally considered safe in the industry" is still a very general phrase which would be defined by experts in the industry, as is the phrase "ordinary conditions". It is a better phrase because it would clearly identify a test of the generally considered safe practices. In the case where ordinary conditions were unsafe, which may exist in some circumstances, this amendment would clear up that little problem.

**Hon. Mr. Philipson:** I have given a considerable amount of thought to the situation as we adjourned on this last night. A consensus for a standard of work, given the diversity of regulations and work procedures found in all jurisdictions, is impossible to achieve. The Canadian Standards Association has attempted to standardize certain work procedures but they are at a loss to certify a procedure. Refusal of work depends on a number of factors, the most important one being the perception, identification, and assessment of risk by the individual

worker.

<sup>103</sup> Work refusals are largely unique situations and we are more concerned with the workers being able to identify the risk in these situations than to suggest an arbitrary standard.

To summarize, there are very few standard work practices. Risk identifications are based on knowledge, perception and assessment of unique situations that are not ordinary conditions associated with a particular task. Therefore, we feel that the word "ordinary" is being used in its proper context in this section and we would vote against amendment.

**Mr. Kimmerly:** This comes as a complete surprise to me but I would respond this way: the minister has used the phrases "identify risk", "arbitrary standard", and "risk identification". The obvious intent of the bill is to not allow a worker to make an individual assessment of the risk because, in some cases, that may be unreasonable or it may be disagreed with by almost everybody else or, in some cases, absolutely everybody else.

<sup>104</sup> In that case, we clearly agree with the government that it would be unreasonable and bad legislation to allow that. The identification of the risks must be according to an industry standard or there must be a consensus or a near consensus as to the conditions which are dangerous and what conditions constitute an acceptable risk. As some activities are always dangerous, the issue is only to minimize the risk.

The wording I have proposed in no way changes that principle. It is still a wording that does not allow an individual assessment of the risk. It clearly identifies the test as a standard generally considered safe in the industry. The nature of the test, as to whether it an arbitrary test or an individual test or a consensual one based on business practice, is in no way changed by this amendment.

<sup>105</sup> The amendment only clarifies it, and tidies it up and identifies a standard generally considered safe in that industry as opposed to "ordinary conditions". In some cases, ordinary conditions will be dangerous. This wording is a substantial improvement. I would ask the minister to respond to that particular issue, as he did not in his first answer.

**Mr. Chairman:** Any more debate on the amendment?

**Mr. Kimmerly:** If the minister is not going to respond, I can respond again by attempting to provoke him. That would probably be counter-productive. I have identified the problem, and the minister has responded. He responded about one issue, that is about the nature of the test. I have countered that argument with the statement, and I have identified reasons that the nature of the test is not changed. It is not an arbitrary or an individual test, which is sought to be concerted here. It is the same general test, concerning conditions which would be ascertained by looking to the practitioners in the area. If it is a mine situation, to miners and mine safety experts.

<sup>106</sup> It is not in any way an individual test. The minister only identified that issue in response. I raised another issue and I am asking the minister to respond to that other issue.

**Hon. Mr. Philipson:** I have given my reasons why this is the word we feel is a reasonable word. The member wishes reasons why I feel this way. He says it is a standard set by industry and I would tell him 'no'; this is a situation where the worker is exercising a right that is a right that he should be able to know that he is in a situation that is a unique situation, outside the ordinary situation, in which he would normally be asked to work. I can think of a great number of situations where I have been involved in industry where work has been done. I wonder if the member opposite has.

If you were to go into an oil tanker and had to have that oil tanker steamed before you had to work in that, and have a check done on the oil tanker to see if the levels were acceptable to go in and work on before welding, that would be ordinary. If you were asked to go in before a check had been done, that would be out of the ordinary. If you were welding and did not have the goggles provided to do the welding, then that would be out of the ordinary because it is not an ordinary standard procedure in an industry. I could go on forever.

The rules must suit the site, therefore they must vary. We must have the ability for an individual to make that assessment because he is the person who is working in that situation that may be

deemed as a situation outside the ordinary. I am not going to go along with the statement that all the situations will be determined by standards. We have to give the individual the right to be able to determine whether it is outside what he would be doing in his ordinary work. I would suggest that the welder who works on an ordinary, daily basis; the truck driver who drives a truck every day; the individual who steams those tanks and welds those tanks, knows what his ordinary job is and does not need to be told whether the work has become dangerous. That is why this section is here so the individual can work and refuse to work if it is outside the ordinary. It is a very simple principle.

**Mr. Kimmerly:** That example is an interesting example. I would respond this way. In that example, it is obvious that the ordinary conditions are conditions that would also be generally considered safe in the industry. It is quite clear that, if that is an ordinary practice that is generally considered safe in the industry, then it would not matter, for that example, what the wording was in this legislation.

<sup>107</sup> There will be cases where an ordinary condition is unsafe and it would be better to use the test of a standard generally considered safe in other industries. The members opposite are responding or mumbling about the use of the word 'standard'. I am unaware of the standards of cleaning oil tanks before welding occurs inside of them but I am sure there are some. The standard would be on all of the combustible materials. It is relatively simple about that particular example. The situation in the uranium industry would be far more complex in that the ordinary conditions may not be accepted as a standard that is generally considered safe in the industry. I am unaware of any uranium mining in the territory but it may occur in the future.

Standards on offshore oil rigs, if the jurisdiction we are looking for is established in the future, may have many dangerous practices that are considered safe by some and are not generally safe in industry. I would recommend to the members opposite that this is far superior wording that would afford greater protection and would thus be a better bill.

*Amendment defeated*

*Clause 15 agreed to*

<sup>108</sup> **Mr. McDonald:** The minister may recall that in the dying moments of our discussions yesterday that I drew to his attention that, perhaps, the provision requesting that a safety officer determine the legitimacy of a complaint may be unrealistic in rural areas, in a place such as Elsa, for example. The minister said, and it is recorded in the *Blues*, that the safety officer would be on site. I am sure that the minister did not suggest that the government would be hiring a safety officer to be on site at all times in order to expeditiously handle these complaints. The safety officer is defined in this act as somebody who is appointed as a safety inspector. The conditions are quite clear in that regard on page 3.

There remains a problem with the safety officer investigating a particular refusal to work expeditiously. We have a clause here which states that the worker should remain at a safe place near his work station during all the working hours until the safety officer shows up. Can the minister give us some assurances that these provisions in the act that deal with the right to refuse unsafe work will be dealt with expeditiously? Does the government feel that they have handled the problem efficiently?

**Hon. Mr. Philipson:** I have said that the safety officer in the context of the chief safety officer. The chief safety officer has the ability to have a person who is on site working in his behalf if they have been able to show that they are capable of doing that. On larger sites there would be that person in any case. We also have the committee that would be on the site. The people on that committee would be able to fill these types of areas, on these types of investigations, unless there was something substantial where a chief safety officer has to come.

The reason that we have this in this manner is that we would like to encourage people who are in the workplace to solve their own problems in these areas, expeditiously. Clause 16(1) applies where this cannot be resolved in the workplace by the workers and the management, and the safety officer who is appointed will investi-

gate and make a decision. It is to have the incident solved at the point as quickly and expeditiously as possible.

**Mr. McDonald:** I recognize that this is a problem which, under the circumstances, may be almost unsolvable. Consider, as the minister says, that what we are looking at is a situation where the conciliation between the employee and the supervisor has not been successful and we are looking for an arbitrator. Obviously, it is very difficult to dispatch a qualified safety officer to a work site expeditiously. That is the difficulty. The appointment of a person who is not a member of the public service to act as arbitrator in a situation like this seems to me to add a different kind of complexion on the problem.

**Mr. McDonald:** In such a situation, who would the minister consider to be a valid appointment in appointing a safety officer to conciliate, when, essentially, a right and duty has been given to a qualified safety officer pursuant to this act? Who would the chief safety officer appoint to arbitrate that dispute? Is that safety officer going to be a member of management, or a member of the employees? Who can successfully arbitrate in an even-handed manner, under the circumstances?

**Hon. Mr. Philipsen:** In a mine like Elsa or Keno Hill, there is a safety officer on site, at all times. In the first instance, I would think that the safety officer, who is there at his place of work, would be able to make that original decision. Beyond that, in a mine like Keno Hill, you would have a safety committee. Those safety committees would be made up of a number of people, which can go between four and 12, from the number of people who work in the directly related area. Therefore, you have a large number of people to rely upon and call upon to help make this decision. I would think that if it was unsolvable through those avenues, then you could call upon the chief safety officer of the territory to help you if it got to a complete standstill.

**Mr. McDonald:** The situation is beginning to get a little fuzzy here, because I thought I understood the problems. I thought the problems could, to a certain extent, be unsolvable, and we just have to live with them. But it is being fuzzy to a certain extent here, which has worrying connotations. First of all, the safety officer that the minister is referring to, the only person who is given that title that I know of, at that particular mine, is the now current personnel manager, who obviously, as an employee of the company, and works for the company, may have a conflict of interest in his determinations. The safety officer is strictly the employee of a company. There may be a consideration that this person would not have the same character as a member of the public service, who would be charged, as an expert, in arbitrating these kinds of disputes. It would be hard, as a mediator and as an even-handed person.

The government leader is asking me to "come on". I do not know exactly what that means. I am trying to understand the government's position.

Beyond that, the minister has suggested that the whole purpose of the act is to be self-regulating, and I agree with that. That is the idea, considering the distances involved between the safety inspectors and the various work places around the territory. Where does it say, in the act, that the safety committee is given the power of the safety officer to, at this stage of the investigation, arbitrate the dispute? I am not clear as to where that is. Is this going to be another article of faith that we are going to have to live with? Perhaps there will never be a problem, and there will never be a reason to test this whole section of the act.

If the minister is prepared to admit that there is some difficulty in administering this act, with this subsection in mind, then I will be prepared to live with that. I know that there is a problem in terms of providing mediation services from Whitehorse to the outlying districts.

**Mr. McDonald:** I do not know whether the minister is really prepared to have a safety officer, employed by the mine, act as the arbitrator in a dispute between the mine and the employee.

**Hon. Mr. Philipsen:** I am wondering if the member opposite is finished or just winded. I have been trying to get up for about five minutes.

**Mr. McDonald:** Do you want me to answer that? Mr.

Chairman, I am not winded. I am prepared to continue but would like to hear the minister's answer.

**Hon. Mr. Philipsen:** If the problem cannot be solved by the people who are at the site, then the safety officer must attend the scene. There is no choice about it. Therefore, the people in the workplace are encouraged to solve their own problems. If they cannot solve their own problems, the chief safety officer must attend the scene and must give a recommendation. It is that simple — that keeps the problem from happening where somebody is going to be, as you may think, hired to give unfavourable decisions by a company who would like people to work in unsafe conditions.

**Mr. McDonald:** I understand the minister's position now, and I think that is the position that is the reasonable one. The designation of some private individual to act on the site on behalf of the chief safety officer may not be the same answer. I am certainly hoping that the minister is not suggesting that that is the answer. Obviously there conceivably could be problems with the administration of this portion of the act, given the distances. There is a section down the road, which deals with the necessity of the worker remaining at the scene of the place of work, or close to this place of work. Obviously, there could be a long time waiting for a safety officer to show up. There may be difficulties with this portion of the act, perhaps experience with these provisions will allow us to prove it in the future.

**Mr. McDonald:** In clause 16(5), should a worker refuse to perform unsafe work, the clause says the employer shall not put another worker into that workplace or not request that another worker go into that workplace, unless that worker has been informed of the initial worker's refusal to perform the work, and his reasons for it. Now, I submit that there may be just a slight problem with this clause. Let me illustrate by way of an example. I think, fellow worker to fellow worker, perhaps the minister and I can come to some understanding here.

There is a situation, for example, where a miner is working in a stope. He regards the ground conditions in that stope to be unsafe. Perhaps there is not enough rock bolting or improper timbering has left the working conditions unsafe. He would not like to work there until certain decisions are made to make it safe. That kind of understanding requires a good deal of skill. It certainly requires a miner to understand that. It would also require an experienced mining engineer to understand that. I understand the federal government does have that type of person on staff.

Should this miner refuse to perform this work, it says here that an employer may request another worker — it does not say another miner or another experienced miner — to be assigned to that place of work. This other worker may not have the experience to really understand the nature of the dangers that are suggested by the experienced miner. For that reason, he may not be able to reasonably make the decision as to whether or not the workplace is unsafe. Does the minister foresee a problem in this kind of situation?

**Hon. Mr. Philipsen:** No, I do not. The right to refuse is an individual's right only. It is not a group's right to refuse or a committee's right to refuse or any other type. It is the individual's right to refuse. I spent a lot of time driving around Yukon, driving in areas where my feeling was that I could go from one place to another in, what I considered, relative safety. Why do people park and stay in those areas for a day or two at a time? I never question those people's right to refuse to go because they felt that they were not comfortable with the situation, therefore they did not go. This gave me an individual choice to make that determination. That is what this worker's right to refuse is. It does not say a committee's right to refuse or a group's right to refuse. It is a worker's right to refuse. It is an individual choice; therefore, I have trouble agreeing with the assessment that we would absolutely have to agree that the workplace was safe.

We have, beyond the original worker's right to refuse, the committee that can make those determinations if it is found that a couple of areas are unsafe.

**Mr. McDonald:** The whole purpose of the individual's right to refuse unsafe work, which he reasonably believes to be unsafe, is to prevent accidents. That is the reason why we have the right in



there. It is not just some arbitrary right we would like to enforce because it sounds good. It is there to prevent accidents. There are situations, as the minister suggests, where the individual's right to refuse may vary with other experienced individual's right to refuse. His understanding of the work process may be as experienced, but it may be different in terms of their assessment of the danger.

I can think of a couple of examples where that might occur. Lines that regularly have differed in their opinions is the safety of climbing poles. Regularly this is something that is accepted in the industry. Electricians who fear climbing poles are not requested to climb poles. For them, that is a dangerous piece of work.

For them to climb a pole is dangerous for them, and that is generally accepted. For a person who fears the road conditions, that is dangerous.

**Hon. Mr. Philipsen:** Maybe we could put this in a proper light if we put it this way: where you said that there is an individual electrician who does not wish to climb a pole, and he feels it is an unsafe condition, if the member opposite was a person who did not fear to climb the pole, and had more experience than the person who did fear to climb the pole, and his experience told him that it was not an unsafe condition for him to climb the pole, do you think that that second person, who did not have the fear of climbing the pole and had more knowledge about the pole and was able to climb the pole, should be told he could not climb the pole by the person who had a fear not to climb a pole, or a person who did not have that experience?

By the same token, if I am driving down the road, and I have 12 years' experience in driving, and a man with two years says that the road conditions are not safe, should he determine for me that the road conditions are not safe, if I have determined that the road condition is safe? We are attacking this from a different angle. If you put yourself in that position, as an experienced miner, and I come to the mine and three weeks after I have got there I tell you that you should not work in that mine because I consider it unsafe, should you then be put in the position, with your experience and knowledge, of saying, no, I cannot go in there because this man says it is unsafe, although you, with your experience, feel that it is safe. It is the individual's right. It is your right to refuse that work.

**Mr. McDonald:** I was going to refer to the case of the road conditions and there being different opinions among experienced drivers, as cases where the individual right may be expressed adequately, in effect, right now. Those are the cases that I think support the minister's case about this clause. I think that the points that he made, and the points that he repeated, regarding the electrician climbing the pole, and the driver driving a truck, were valid examples of where this clause would not challenge the safety practices, necessarily, in any workplace. Those are legitimate examples supporting this particular wording.

What I am trying to do, is draw distinction between a situation where it may be a matter of preference in a case where there are two experienced electricians, one who can climb poles, and one who cannot, and a situation where there is a legitimate judgment as to the dangers in the workplace. It does not say there that two people of equal experience will assess the workplace. It merely says two workers. What I am trying to say is that in a case of an electrician, on one hand, perhaps, the experienced electrician decides that it may be unsafe to check a circuit. He refuses to check a circuit. They send in a labourer who knows nothing about the electrician's job, and that labourer, that other worker, will be requested to make a professional judgment. It does not say of "equal experience", I repeat, it does not say "of equal experience". He will still be requested to perform work for which he cannot make a reasonable judgment.

A case in point are the two workers working in an underground stope. One worker is qualified to reasonably make a judgment about the safety conditions in that stope, and the other worker, who may be a trammer, or may be a labourer, or may be a ditch digger, is not in a position to make that kind of a judgment.

For that reason there may be a problem here. There may be all kinds of things happening in a situation where it may occur that despite the refusal by an experienced person, there may be all sort of encouragement for an inexperienced person to take that

experienced person's place. There may be a problem in those terms with this particular clause.

Would the minister mind responding, please.

**Hon. Mr. Philipsen:** I think possibly that we should start looking at this as though every electrician has the same qualifications and that every truck driver has exactly the same standards. I have worked in the industry a great number of years and I know that there are good truck drivers, mediocre truck drivers and bad truck drivers. There are truck drivers who may go to another person and say, "Shall I chain up today?". They are both driving trucks and both getting the same amount of money. Both are supposed to be doing the same job but one asks another whether he should put on chains. So, the right is an individual right. It is not a class action. It is not a committee action. It is my individual right to say that I do not think that this is a safe work procedure and that I wish to refuse to do the work. I may say to the person that I do not think that it is safe. He could tell me that it is safe, and I may say that I do not feel comfortable. That does not mean that he does not feel comfortable. That does not mean that he cannot do the job. It is that individual's right, who feels uncomfortable, to refuse to work. Not for the whole place to come to a standstill because someone feels uncomfortable about the road conditions on a particular day. I have seen days when 450 people drive down the road without chains. Other people drive into town with chains on. Other people stop and do not move because it is bad. Those are individual choices. It does not mean that the whole fleet should stop 350 miles out of town because one individual did not feel comfortable. That is what we are talking about here. It is the individual's right.

**Mr. McDonald:** I am not talking about the individual rights as expressed between two experienced people, two people who have the same experience. If one trucker with some experience decides he is not going to drive on the road, that is one thing. And if another trucker decides he will drive under the conditions, that is another thing, but if you put somebody who does not even know how to drive a truck, that is another thing. If you put a journeyman electrician into a workplace and you tell him to check a circuit and he refuses and then you put a labourer into his place and you tell him to go and check the circuit or tell him to do a rudimentary job for which he cannot make a reasonable judgment or an experienced judgment, that is another thing and something that may be quite unacceptable. The whole point of this right is to refuse unsafe work and to prevent accidents. That is the purpose of the right. It is not some arbitrary right that we are all born with. It is a right that we all give ourselves; to refuse unsafe work and to prevent accidents.

**Hon. Mr. Pearson:** For a moment I would like to go back to a miner working in the stope who has 15 years' experience. Now, I am going to make an assumption and I think it is a fairly safe one. If that miner has 15 years' experience, it is very likely that his fire boss has 15 years' experience or 12 years' experience or 10, or maybe even 25 years' experience. Normally, the people in those positions, kept to those positions because they do have the experience. This section seems to be very, very clear to me. What it says is that if the man with 12 years' experience decides that stope is unsafe, he has the right to go to his fire boss and say, 'Mister, I am not working in there, any longer.' That shift boss or fire boss, has the right to go to another miner who may only have six month's experience, and say to him, 'Laddie buck, this guy says that this place is unsafe, but I have got to tell you my 25 years' experience says that the place is safe and I would like you to go to work in there.' Now, that is all that section says. The guy with six month's experience can say, 'No, no, I am going to listen to the guy with 12 years' experience notwithstanding your 25 years' experience'. It has nothing to do with experience. It comes down once again to the right of the individual to decide. That individual makes an arbitrary decision. It is completely irresponsible of the member from Mayo to suggest that an employer, because he cannot find a truck driver who knows how to drive a truck down a slippery road — cannot find somebody to drive it — is going to find a labourer who does not know how to drive a truck, to get into that truck and drive it down the road. It does not even make logical sense anymore. The section is very, very clear and very explicit.

**Mr. McDonald:** I would not like to fall into the trap of accusing

somebody or other across the floor from not having certain kinds of experience but I will not fall into that kind of trap. The example that the government leader gave of one of the shift bosses, with lots of experience, directing a person of lesser experience to do a piece of work that he feels is safe, is a legitimate example of where there may not be a problem.

On the other hand, I will give you a very specific example where there may be problems. We have a situation here and this is not uncommon. Without using names, I will use actual people in a situation in a particular mine, which I know so well, where there is a shift boss with three years experience, working in the mine. He has never been a miner. He is in charge of determining who is going to work in various workplaces. He depends a lot on his judgment. Under normal proceedings, he depends on the miners to provide that kind of judgment.

One day a miner comes to him and says that he is not going to go into a workplace and hand muck in that workplace because he feels that workplace is unsafe. This shift boss, with his limited experience in ground conditions, determines that that muck has to move. He asks a trapper to go into that workplace and hand muck — something that does not require a lot of experience but nevertheless does require the experience to understand his work environment. He tells the trapper to go in to hand muck. That trapper does not have the experience to know ground conditions, but he does have a strong back and he can handle it.

**Some hon. member:** But he also has been told that it is unsafe.

**Mr. McDonald:** He has been told by that one miner that the workplace is unsafe. The shift boss tells him that miner has all kinds of personal problems, you do not believe that guy, do you? You are a hardworking young buck, you are going to move ahead in this organization. Why not go in there and do it. This guy was working there yesterday, today it is better, take it from me.

That is the kind of situation that can exist despite the motions of rejection by the entirely inexperienced member for Hootalinqua.

**Some Hon. Member:** (*Rude vocal noise*)

**Mr. Penikett:** That is the best speech he has given all session.

**Mr. McDonald:** I am not saying that there could not be legitimate examples where this clause will operate without difficulties. I am suggesting that there are cases where this clause may operate with difficulty. I am suggesting a concrete example of where it can. The government leader asks me how I would change it. Perhaps if we had a select committee, we could hammer this out. We could have sat down, taken the experience from amongst the MLAs — of which I have some — and we could have worked this kind of problem out.

**Some hon. member:** There is no problem here.

**Mr. McDonald:** Perhaps there are arguments we have not considered. I am suggesting there is a problem here and it may be a significant problem in certain circumstances. The consequences of the problem may be extremely serious. Even one problem may be extremely serious. We may regret today, even though we are trying to intellectualize this whole thing right now, that we have not addressed it.

**Mr. Chairman:** Let us continue.

**Mr. McDonald:** On 16(7). This clause applies to the matter of discipline of an employer to an employee. Does the minister intend that the discipline here can supersede discipline which may be incorporated into an collective agreement.

**Hon. Mr. Philipsen:** This would be an officer of the board. There is an appeal process to whatever decision is taken here.

**Mr. McDonald:** There can be a union appeal on the basis that it supersedes the collective agreement.

**Hon. Mr. Philipsen:** There is always the right of appeal.

**Mr. McDonald:** Will the appeal be successful, if they appeal on the grounds that it supersedes the collective agreement. I am asking to what extent this affects the collective agreement?

**Hon. Mr. Philipsen:** I will direct your attention to page 18, 30(1). Any person aggrieved, or any trade union representing a worker aggrieved, by a decision or an order given by the director, a chief officer or a safety officer or the refusal of the director, a chief officer or a safety officer to give an order under the act or the regulations, may appeal to the board.

**Mr. McDonald:** That gives the trade union the right to appeal, but I am asking if they can appeal a decision of the board to allow the employer to dismiss an employee. That they can appeal that decision on the basis of dismissal is more severe than that which is allowed in the collective agreement.

**Hon. Mr. Philipsen:** They will meet.

**Mr. McDonald:** Are there any other cases where the collective agreement can be superseded in this act?

**Hon. Mr. Philipsen:** I think we have to find that as we come to it. I cannot think of any specific instances.

**Mr. Kimmerly:** Would the minister just confirm for us that it is his understanding that, where a collective agreement exists and the law exists as well in a corresponding way, it is a fairly clear and established rule that the law supersedes the collective agreement?

**Hon. Mr. Philipsen:** I believe what we are getting at is whether an act of government supersedes a collective agreement, and yes, it does.

**Mr. Penikett:** I have a very serious question, which if the minister does not have the answer now, I would appreciate him coming back to it. There will be, as the minister will be aware, collective agreements in a number of industries where there are high risk occupations, where the safety provisions of those collective agreements are far tougher and far more industry specific than anything in this legislation. That in my mind, at least, raises a serious question, if the answer the minister just gave my colleague is correct. Because it would replace those tight and specific and high standards in those collective agreements with the lower standards in this act.

**Hon. Mr. Philipsen:** I believe that the hon. member knows that in anything like this, there are minimum standards that do not affect maximums. Anyone can go beyond the minimum. This sets the minimum.

**Mr. Penikett:** That is what I hoped. I was a little concerned with the previous answer. I wonder if the Minister of Justice might just check — not right now — with his law officers to confirm that point. I think it would be of concern to a number of people.

**Hon. Mr. Philipsen:** To set the leader of the opposition's mind at rest, I will check into it. I am absolutely sure that it is the same as the electrical code. It sets out the minimums that a person must apply to. Building codes have minimums and nothing at all says that you cannot go above those. Most people that have union membership understand that union agreements are always minimums on wages. You can always get more. It is the same with just about any kind of legislation that I have ever seen.

*Clause 16 agreed to*

*On Clause 17*

*Clause 17 agreed to*

*On Clause 18*

*Clause 18 agreed to*

*On Clause 19*

*Clause 19 agreed to*

*On Clause 20*

*Clause 20 agreed to*

*On Clause 21*

*Clause 21 agreed to*

*On Clause 22*

**Mr. McDonald:** On 22(1), I wonder if the minister could give us an indication could give us an indication as to what the future is for agreements with federal provincial governments? Do we anticipate that the *status quo*, as far as inspections are concerned, for example with the mine inspections branch of Northern Affairs will continue into the near future or have negotiations been taking place to change that?

**Hon. Mr. Philipsen:** Briefly, the immediate requirement of this provision is that until such time as the mine safety function is transferred to this government, the Department of Northern Development may continue the administration of mine safety and blasting.

<sup>18</sup> This is transitional. We are in the process but I cannot tell you more about it. We are trying now.

*Clause 22 agreed to*

*On Clause 23*



*Clause 23 agreed to*

*On Clause 24*

*Clause 24 agreed to*

*On Clause 25*

**Mr. McDonald:** On 25(1), could the minister just tell us what the government is speaking of here when it refers to "codes of practice". Can he give us an example?

**Hon. Mr. Philipsen:** The "code of practice" are tried and proven methods of performing specific, hazardous undertakings such as excavation, and confined entry work. The "code of practice" would be utilized in establishing a standard of set hoisting signals, for example.

**Mr. McDonald:** It says that the "codes of practice" do not have the force of law. What power does the government have to enforce these codes of practice? What is their purpose besides just setting standards? In the case of hoisting signals, what is to prevent somebody from developing his own set of hoisting signals? What is the purpose of the standard set, in that case?

**Hon. Mr. Philipsen:** Well, generally, from my understanding of the industry, when you work around cranes in hoisting, and areas like that, you could get a person in from the union from British Columbia, or whatever, to work on a crane, and that set of signals would be the same set of signals that are employed everywhere. We would set that code so that the signals being used are standard signals. We wanted to make sure that nobody would be injured by conflicting sets of signals.

**Mr. McDonald:** I understand the reasons for having a standard set. I know, for example, in hoisting signals, that it is standard that one dash is up, one dash for stop and two dashes for down. What is to prevent some operator from establishing his own set: three dashes for up, three dashes for stop and four dashes for down? If the "code of practice" does not have the force of law, what force does it have, or is it meant to have any?

**Hon. Mr. Philipsen:** Well, by establishing it here, we would be giving the chief safety officer that power. If he were on the work site and looking at the safety procedures and the work procedures going on, and noticed somebody was doing something in contradiction to the legislation as set down, he could have them adhere to the code for any particular industry that has a known code that is adhered to.

**Mr. McDonald:** I do not want to jump the gun very much but in 25(3), it says that the provisions of an approved code of practice do not have the force of law. Therefore, there is some question as to whether or not the chief safety inspector can do as the minister said, in forcing the employer to follow the standards set as guidelines. Perhaps the minister could explain it, or perhaps he could get back to me with an explanation?

**Hon. Mr. Philipsen:** I will get back to the member opposite.

*Clause 25 agreed to*

**Mr. Chairman:** We shall recess for ten minutes.

*Recess*

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

*On Clause 26*

**Mr. McDonald:** On 26(1), does the minister intend that the people on this board be different from the employment standards board, or does he intend to use the employment standards board to double as the occupational health and safety board as well. I understand that Cyprus Anvil, in its submission to the green paper committee a couple of years ago, suggested that the two boards be one and the same. There was some question as to whether or not you could acquire the expertise in both areas if the board was the same. What is the minister's intention regarding this situation?

**Hon. Mr. Philipsen:** We are giving a lot of consideration to what the member has just suggested. I am not entirely sure whether that will be the final recommendation.

**Mr. McDonald:** On 26(5), I know that the minister has received representation to ask that the vice-chairman be appointed from among employer and employee representatives, that there be two vice-chairmen, that they should act alternately on the board, one being an employee designate, and one being an employer

designate. Where does the minister stand on that particular request?

**Hon. Mr. Philipsen:** The same as the for the employment standards. We would put on two vice-chairmen, and we would have one from each segment of the board.

*Clause 26 agreed to*

*On Clause 27*

**Mr. McDonald:** On 27(1), this board bears some disturbing similarities to the employment standards board in this respect: here the chairman can appoint a panel which essentially — if we read on — has the power of the board. The panel can be one member. The panel can be a number of the employees. This panel has the power of the board. Therefore, in making determinations and in considering appeals that are before it, the chairman alone can determine that an employee representative can make that decision on his own. Later on, the provision would state that the board has the opportunity within 14 days to appeal the decision. However, if the board does not convene for 14 days, it forfeits that right.

I discussed this at some length with the minister responsible for labour services when we were discussing the *Employment Standards Act*.

The minister said, as an article of faith, that the chairman would be a nice guy who would never do such a thing. He would be politically sensitive. I have doubts about that. I wonder if the minister would care to comment on the suggestion that perhaps this is a situation which we may not want to exist, and that we should want any panel to be composed of at least one employer representative and one employee representative to ensure that both the employers and the employees have some representation in making any kind of consideration. Considering that the panel can deal with any subject, and considering that its decision will be binding, and considering that the board can only review that decision, if it reviews it within 14 days, that is not that much of a safeguard.

**Hon. Mr. Philipsen:** The board and the panel act under legislation. Each must act on the principles of natural justice, without bias. Should they not, the decision may be challenged in the courts. Section 32(2) permits the board to reconsider any decision or order made by it, or a panel, or may vary or revoke a decision of the order. These are deemed to be sufficient safeguards.

While I am on my feet, I got some information that what we were discussing before on Section 25(1) and (3), that I said I would bring back, if the government says an employer must use a code of practice and does not, and this results in a serious accident or injury, then the code is admissible in evidence. If the employer has his own code and it is deemed to suffice — the workers are trained and know the code — there will be no requirement for use of a standard code. Codes of practice are educational, and it is to the advantage of the industry to have standard practices, and it would be up to the employer to indicate that his code is workable. If his employees have been trained in his code, it may be better for them to use that code. That is part of the reasoning behind 25(1). I am sorry that I have spoken on that at this time.

**Mr. McDonald:** If you would permit me to ask a question about the code of practice, what is the purpose of admitting the code of practice as evidence in a trial if the code of practice has no force of law? What is the purpose of that?

**Hon. Mr. Philipsen:** If the government says that the employer must use a code of practice, and the employer says, no, I will not use the code of practice, and there has been a serious accident or fatality, and it can be shown that that may have been caused by the employer that did not use a code of practice that was recommended by the government, then that is admissible in the court of law, and would be used as evidence.

**Mr. McDonald:** Does that mean that the employer would be charged with negligence, if he had not used the code of practice?

**Hon. Mr. Philipsen:** I think at that point that would be determined by the people who hear the case, if they were to hear that the government had suggested a certain thing and the employer (inaudible) and it resulted in a serious injury. That would be taken into consideration by the people who are judging the case.

**Mr. McDonald:** On 27(1), the minister has suggested that the justification for this clause allowing the panel of one to act as a

board is the suggestion that every board member is expected to act without bias. We accept in our original concept of the board that there is going to be a bias in the sense that we do appoint representatives of employers and representatives of employees and we make sure that they are represented in equal numbers. We do accept the fact that there will be some sort of bias that these people will bring to the committee. Otherwise there would be a panel of four citizens with a chairman. They may be representatives of employers or representatives of employees. Because we accept a measured bias in the formation of the board, why is it that we cannot transfer that balance through to the panel which has the power of the board?

**Hon. Mr. Philipson:** I believe that I have already answered that. The board and the panel act on neutral legislation. They are already acting on it. Each must act on the principles of natural justice without bias. They must act without bias. Should they not act under the principles of natural justice, then their decision could be challenged in the court. Section 32(2) permits it. The board may reconsider any decision or order made by it or the panel and may revoke the decision or order. We, on this side, deem that these are sufficient safeguards.

**Mr. McDonald:** Presuming that the minister is right regarding the conduct of individual board members, why is that, in a previous section, we take trouble to ensure that biases are covered in the board in the making of the board itself? We are ensuring that there are two members who are representatives of employers, specifically singling out employers and specifically singling out employees. We are specifically ensuring that there is a balance, two and two, on this board.

**Hon. Mr. Philipson:** I think that the member has answered his own question. We have a board with a chairman, two members who are representative of employers and two who are representative of employees. Therefore, the board is a nice natural balance. If the panel is selected and the board wishes to challenge what the panel has said then the board has the right to do it. Then the board that we go back to is representative of both. Therefore, you have safeguards built into the system. We are saying that the panel must follow the legislation and the legislation must act to the principles of natural justice without bias. We have the safeguard. To sit and stand here and say that legislation is being drafted so that we can put in people who are going to be biased, one way or the other, is an unreasonable assumption when you realize that the board, which has members of both employers and employees of equal numbers sitting in judgment on that panel, can reverse decisions. There does not seem to be any real reason for further discussion in this area.

**Mr. McDonald:** The minister said that initially we had two members who were employers, and we had two members who were employees. That is a nice balance — in his words. What is the purpose of the balance? Now the minister suggested that you have the right to appeal to the court. I thought that the purpose of the board was they were not going to feel the need, or the necessity, of going to the courts to deal with situations which we would like to see go to a board. Presumably, that would be the more expeditious way of handling things. Now, we have a board here, sort of a quasi-judicial board, to deal with situations which arise from the act. We accept that there is a level of bias. In the minister's words, we accept that there is a nice balance on the board. And we say that, anytime this balance can be interrupted and if you feel there is a bias, you can go through the courts. Now, I had thought that the whole purpose of the board was to avoid the courts at all costs. There does not seem to be any good reason to go through the courts on the basis that there is a perceived bias. Presumably we can avoid that kind of referral to a court, simply by ensuring that the panel has representatives both from employers and employees. That bias would, therefore, not be a reason for taking it to the court. We can avoid the courts altogether — that is the purpose of the board, is it not?

**Hon. Mr. Philipson:** I think that we really could have got around this very easily in the member's mind, if it said that the chairman of the board, may, from time to time, establish a panel consisting of one or more members from the members who represent the employees. That seems to be point that is coming

across. It does not say that the chairman is going to appoint a member from the employer's side or the employee's side. It says he has the ability to appoint a panel from the board. And that the board may look at the decisions that the panel has come up with, and that the panel must follow the rules of natural justice, without a bias. Therefore, there is no reason to suggest that because it is written in here in this way, that this is going to, in any way, try and make decisions that are going to be different than the decisions possibly made by the representatives of both groups if they were making it. The chairman has the ability to set that panel and the board is always there as an overseer. Safeguards are in the act to ensure that this is not abused. It does not say who is going to be on that board, or on that panel.

**Mr. McDonald:** I thought that it was self-evident that, if the chairman of the board appoints one member to form a panel, that one member is going to have to, by necessity, be either one of the two employees or one of the two employers' representatives. He cannot be half a member of one, and half a member of another. By necessity, he has to be one of the two. Now, the minister suggested that there is a safeguard whereby the board may review its decisions within 14 days.

<sup>24</sup> After that, the safeguard is void. It is conceivable that a panel could make the decision and then 30 days later, the board sits at its regular meeting and decides that it may want to review the decision of the panel. In fact, after it reaches the 14 day limit, the panel's decision stands, by the force of this act. It is not so much of a safeguard as the minister would have us believe.

**Hon. Mr. Philipson:** This board is not being set up as a political board. This board is being set up as a board representing employers and employees. I am not going to stand here and make the distinction that because a member of the panel is from an employee group or an employer group that they naturally have to be either good or bad. I cannot understand why the the member continues to have a problem. If one individual who is on the panel does something that is outside the legislation and does not operate under the rules that come down from this legislation, and does not follow the natural justice without bias, then this board can revoke, overturn, look at the decisions or do anything they want with it. It is very difficult for me to understand why this continues to rise.

You can go to the courts where there has been a denial of natural justice or where the board has exceeded its jurisdiction and not given a fair hearing and shows bias. You can go to the courts. It is open to you.

**Mr. McDonald:** I keep repeating the same thing over and over again. The minister seems to be repeating verbatim the terms of the act. This does not satisfy me. Perhaps the minister is getting his direction from the government leader and perhaps that is why we are sticking on the same thing.

**Hon. Mr. Pearson:** On a point of order, Mr. Chairman, I have sat for about three days and listened to the member for Mayo make very snide remarks about the government leader and what he might be doing when he is sitting down. It may bother him, but it is going to bother him, and I am not going to change my ways.

**Mr. McDonald:** The government leader is piqued.

I have tried to make it very clear that I understand that the government, in attempting to define a board which has representation from distinct groups in society, is recognizing that there is a bias in society which they would like to have represented on the board, and they would like to have them in even numbers. They, later in this act, take that initial premise, distort it somewhat by insisting that one of these people can make the decisions of the board. I have stated that I think the safety provisions to review the decisions of the panel are not adequate. The minister says that if I do not like it, we can appeal it through the courts. I say once again, that the whole purpose of the board is to help avoid the court and avoid the whole question of bias in decision making. The minister, I am sure, will stand up again, if he is provoked enough, and say exactly the same things. There is nothing more I can add. I do not intend to stonewall this any further. I do not think there is anything more we can add.

<sup>25</sup> On Clause 27

Clause 27 agreed to

*On Clause 28*

*Clause 28 agreed to*

*On Clause 29*

*Clause 29 agreed to*

*On Clause 30*

**Mr. McDonald:** On 30(4), I know the minister has received representation at previous sessions of the committee to request that the board make known its decisions, in writing, to the persons involved. Can the minister give us an indication as to whether or not he feels that that is a reasonable request?

**Hon. Mr. Philipson:** Yes, the board will render all its decisions in writing with the reasons.

*Clause 30 agreed to*

*On Clause 31*

**Mr. McDonald:** I do not have any problems specifically with 31(3)(a). I would like to ask the minister whether or not he feels that it is reasonable to request that a representative of the employee, or the person alleged to have contravened the Act, or the complainant, representative of either of those two people, to attend as well as the people mentioned in clause 3, to attend any proceeding before the board?

**Hon. Mr. Philipson:** I believe it is a rule of common law, which goes without saying, that there is representation.

*Clause 31 agreed to*

*On Clause 32*

*Clause 32 agreed to*

*On Clause 33*

*Clause 33 agreed to*

*On Clause 34*

**Mr. McDonald:** In this part, I have taken note from some others that the definition of a serious injury is not as wide as it was in the *Mine Safety Act*. Can the minister suggest why it has been reduced to the extent it has?

**Hon. Mr. Philipson:** The reporting of serious injuries or accidents has been a requirement in Yukon since 1983. This provision has moved from the regulations to the new act. This requirement is included since immediate investigation by safety officers is extremely beneficial in determining the cause of the accident and recommending alternative procedures to prevent reoccurrence.

**Mr. McDonald:** I thank the minister for that information, except that was not the information I was asking about at this point. I would like to know why the definition of serious injury, in this part, in general terms, is not as extensive or encompassing as the definitions in the *Mine Safety Act*. I also know, and the minister knows, from representations, that there has been a request to include additions to, at least, the definition of serious accident.

**Hon. Mr. Philipson:** I would have to say that the requirements to report accidents under this act are not intended to achieve the same results as the other. The end results of reporting accidents under the *Occupational Health and Safety Act* is to permit a determination of the cause and to prevent a reoccurrence. That is about the best I can say about it.

**Mr. McDonald:** Can the minister give us an indication how the government would feel about including in the definition of serious accident the roll-overs of equipment in trucking accidents?

**Hon. Mr. Philipson:** I think I would like to consider that for a moment, if the member opposite would not mind.

*27 Clause 34 agreed to*

*On clause 35*

*Clause 35 agreed to*

*On clause 36*

**Mr. McDonald:** On 36(2)(i), my representation made to the minister was that after there was a repair to a crane boom, that there should be a requirement for a professional engineer to certify it. Given the situation with the operations of cranes, this may be a necessary requirement. How does the minister feel about that?

**Hon. Mr. Philipson:** The certificate of a crane boom is covered under the general safety regulations. That should answer that.

**Mr. McDonald:** This section deals with the seal and signature of professional engineers. It does discuss some rather specific things, such as the load limits of floor, roofs, or temporary work

platforms, et cetera. Perhaps along with that we should include repairs to crane booms. If we are going to be that specific in this instance, is there not reason to be specific with crane booms?

**Hon. Mr. Philipson:** No, we do not feel so. We feel that covering the crane booms in the general safety regulations is adequate, and that we put these in because these have a great complexity. We feel that an engineer should be making a determination about temporary work platforms and these kinds of structures that are temporary in general. In areas where you are doing these types of things, there are engineers on the site or in the area who can make these determinations at the time. We feel quite competent that the crane boom, being covered under the general safety regulations, is the area for it. These are two different and separate matters.

**Mr. McDonald:** This section does deal with temporary work, but it does not only deal with temporary work. It also deals with permanent work. It talks about the professional engineer providing his seal and signature on the load limits of a floor or roof, or for a temporary work platform. The nature of this article deals more than just with temporary work platforms. It deals with something of a more permanent nature when we are talking about floors and roofs. Crane booms are a rather serious thing as well and ought to require the seal and signature of a professional engineer. I would have thought there would be a good reason to include that here as well.

*Clause 36 agreed to*

*On Clause 37*

*Clause 37 agreed to*

*On Clause 38*

**Mr. McDonald:** On 38(2), the clause deals with the safety officer consulting with a number of workers in certain circumstances. Does the minister regard the necessity of the safety officer, in the absence of workers, consulting with the trade union as being something to be included?

**Hon. Mr. Philipson:** It goes without saying.

**Mr. McDonald:** In other parts of the act, we do make the effort to mention the fact that the trade union will be consulted or will participate, et cetera. Is there any reason why we can take for granted that the safety officer will endeavour to consult the trade union here where we do not take it for granted in other clauses?

**Hon. Mr. Philipson:** I do not see any reason why we would consider that it would not.

*Clause 38 agreed to*

*On Clause 39*

*Clause 39 agreed to*

*On Clause 40*

*Clause 40 agreed to*

*29 On Clause 41*

**Hon. Mr. Philipson:** On 41(1) on the second line, it says "members for the board". It should be "members of the Board". It is a typo.

*Clause 41 agreed to*

*On Clause 42*

*Clause 42 agreed to*

*On Clause 43*

*Clause 43 agreed to*

*On Clause 44*

*Clause 44 agreed to*

*On Clause 45*

*Clause 45 agreed to*

*On Clause 46*

*Clause 46 agreed to*

*On Clause 47*

*Clause 47 agreed to*

*On Clause 48*

**Mr. Kimmerly:** Yes, on 48(1), I have no comment or criticism. How was the figure of \$15,000 arrived at?

**Hon. Mr. Philipson:** By comparing it with other jurisdictions.

*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 51*

*Clause 51 agreed to*

*On Clause 52*

*Clause 52 agreed to*

*On Clause 53*

**Mr McDonald:** This clause deals with the introduction of new biological or chemical agents which may endanger the health and safety of the workers. In this clause the director may require a manufacturer, distributor, or supplier to provide a report or assessment of the chemical agent. That is all it says. In a previous article, dealing with the right to know what the chemicals can do in the normal course of work, the requirement of the employer to produce records of information are quite detailed. You have to provide such things as the ingredients thereof and their common or generic names, the combination of the properties thereof, the toxicological effect thereof, the effect of exposure thereto, protective measures recommended to be used, emergency measures to be used and the effect of the use, transport and disposal thereof. In cases where there are standard chemicals in the workplace, the regulations about determining the specific nature of the chemical are rather specific. Where we are introducing new chemicals to the workplace, there does not seem to be a specific request outlined in the clause. I wonder if the minister could suggest a reason for that?

**Hon. Mr. Philipsen:** I request that you report progress on Bill No. 42.

*Motion agreed to*

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

*Motion agreed to*

*11*

*Mr. Speaker resumes the Chair*

**Mr. Speaker:** I will now call the House to order. May we have a report from the Chairman of Committee?

**Mr. Brewster:** The Committee of the Whole has considered Bill No. 42, *Occupational Health and Safety 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 hon. members:** Agreed.

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

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

**Mr. Speaker:** It has been moved by the hon. member for Whitehorse Riverdale South that the House do now adjourn.

*Motion agreed to*

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

*The House adjourned at 9:27 p.m.*

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**The following document was filed November 28, 1984:**

**No. 12 - Reply to Fourth report of Standing Committee on Statutory Instruments (Pearson)**