



# The Yukon Legislative Assembly

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## **HANSARD**

**Wednesday, January 7, 1987 — 1:30 p.m.**

Speaker: The Honourable Sam Johnston

# Yukon Legislative Assembly

SPEAKER — Honourable Sam Johnston, MLA, Campbell

DEPUTY SPEAKER — Art Webster, MLA, Klondike

## CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
Hon. Tony Penikett	Whitehorse West	Government Leader. Minister responsible for: Executive Council Office; Finance; Economic Development; Mines and Small Business; Public Service Commission
Hon. Dave Porter	Watson Lake	Government House Leader. Minister responsible for: Tourism; Renewable Resources.
Hon. Roger Klimmerly	Whitehorse South Centre	Minister responsible for: Justice; Government Services.
Hon. Piers McDonald	Mayo	Minister responsible for: Education; Community and Transportation Services.
Hon. Margaret Joe	Whitehorse North Centre	Minister responsible for: Health and Human Resources; Women's Directorate.

## GOVERNMENT PRIVATE MEMBERS

### New Democratic Party

Sam Johnston	Campbell
Norma Kassl	Old Crow
Art Webster	Klondike

## OPPOSITION MEMBERS

### Progressive Conservative

Willard Phelps	Leader of the Official Opposition Hootalinqua
Bill Brewster	Kluane
Bea Firth	Whitehorse Riverdale South
Dan Lang	Whitehorse Porter Creek East
Alan Nordling	Whitehorse Porter Creek West
Doug Phillips	Whitehorse Riverdale North

### Liberal

James McLachlan    Faro

## LEGISLATIVE STAFF

Clerk of the Assembly	Patrick L. Michael
Clerk Assistant (Legislative)	Missy Follwell
Clerk Assistant (Administrative)	Jane Steele
Sergeant-at-Arms	G.I. Cameron
Hansard Administrator	Dave Robertson

<sup>01</sup> **Whitehorse, Yukon**  
**Wednesday, January 7, 1987 — 1:30 p.m.**

**Speaker:** I will now call the House to order.  
 At this time we will proceed with Prayers.

*Prayers*

## DAILY ROUTINE

**Speaker:** We will proceed at this time with the Order Paper.  
 Introduction of Visitors?  
 Are there any Returns or Documents for Tabling?  
 Are there any Reports of Committees?

## REPORTS OF COMMITTEES

**Mr. Webster:** It is an honour to present the report of the Select Committee on Renewable Resources entitled Yukoners' Views on Managing our Renewable Resources.

**Speaker:** Are there any Petitions?  
 Introduction of Bills?  
 Are there any Notices of Motion for the Production of Papers?  
 Are there any Notices of Motion?  
 Are there any Statements by Ministers?

## MINISTERIAL STATEMENTS

### Small Business Incentives Sub-agreement

**Hon. Mr. Penikett:** It is my privilege today to be able to announce that the Government of Canada and the Government of Yukon have just signed a new Small Business Incentives Sub-Agreement worth \$4.6 million.

<sup>02</sup> As Members are aware, from previous debate on the Capital Budget, negotiations for this new sub-agreement have been underway for the past year. These negotiations have now resulted in substantial funding that will stimulate manufacturing, processing and service industries within the Yukon.

This new five-year sub-agreement, the sixth under the Canada-Yukon Economic Development Agreement, is to be cost-shared on a 70/30 basis. It will provide for loans or contributions for a small or medium-sized firm to establish an operation or to modernize or expand an existing operation.

For example, an existing sawmill could improve the quality of its product with the installation of a kiln or planer. In the manufacturing area, such industries as a sash and door plant, glue-laminating facility, brewery or metal fabricating shop could be eligible for funding. Examples of selected service industries might include a laboratory that analyzes water samples, communications firms or an industrial bit-sharpening facility.

The original Canada-Yukon Economic Development Sub-agreement failed to include the Yukon's proposed business development program. During our consultations with communities and businesses, we heard repeatedly that the lack of any EDA program for small business was a major deficiency in the agreement. This new sub-agreement demonstrates that the public's message has been heard and, together, the federal and Yukon governments have been able to respond.

The Small Business Incentives Sub-agreement will have an immediate direct impact on the Yukon's economy through the creation of new employment and business opportunities, but the benefits of the sub-agreement should extend far beyond the five-year term of the agreement. By helping to process Yukon resources into more finished products for local use and for export, it will contribute substantially to our efforts to promote a more diversified and stable economy.

Today, the Yukon government would like to publicly extend its appreciation to those federal colleagues — Michel Cote, Minister of Regional Industrial Expansion; Bernard Valcourt, Minister of State for Small Business; and Bill McKnight, Minister of Indian Affairs

and Northern Development — who were instrumental in helping the Yukon become the second jurisdiction in Canada, preceded only by British Columbia, to conclude negotiations for a Small Business Incentives Subagreement. The Governments of Canada and the Yukon have been able to work together to develop solutions to the Yukon's economic problems and, today, we see tangible evidence of that cooperation.

<sup>03</sup>

**Mr. Nordling:** I am pleased that an agreement has been reached that will provide funding for the stimulation of the Yukon's economy. However, I have some very specific concerns with several of the provisions of the agreements outlined in the Ministerial Statement.

The third paragraph states that the agreement will provide for loans or contributions, and I stress the word "contributions". I assume that "contributions" refer to grants, and I do not believe that grants are the best way to stimulate our economy.

Although the agreement will last for five years, I would have much preferred a revolving loan fund to have been negotiated whereby money loaned would be repaid and would be available to stimulate Yukon businesses on an ongoing basis.

My other concern is that paragraph three goes on to state that the contributions or grants, as I would call them, could be used to "establish an operation". My fear is that grant money will be available for an individual or group to start a new business in competition with an existing business. This may not be fair to those Yukoners who have built their own businesses through their own financial and sweat equity.

I would urge the government to analyse very carefully exactly how it plans to handle this agreement in order to be fair to all Yukoners. Again, my fear is that we are becoming a territory of grants, and that the first thing that any existing business or new business looks for when deciding to expand or start up is what grants are available. I do not think this is healthy, and again I would urge the government to be very careful with the implementation of this agreement.

**Mr. McLachlan:** I am indeed pleased to see the completion of this agreement and the signing this week. I am pleased that a void will be filled that has not happened before. I would appreciate it if the Minister could advise the Legislature what the maximum available is under this agreement to any one business in particular, and what is, more importantly, a small business. Will it be the volume that the business does? Some businesses gross in the millions and still apply for the funding.

<sup>04</sup> **Hon. Mr. Penikett:** Thank you for the comments of the Members opposite.

As most Members know, the forms of assistance from the government are variously loans, contributions or grants, and contributions and grants are different; they are different in law and they are different in the regulations under which we operate. Though we understand the point that the Member for Porter Creek West is making, the question of revolving funds has been proposed to the federal government before and rejected. We are, of course, sensitive, as all the EDA Programs are, about the adverse competition and implications, and that is a consequence. I want to tell the Member that as we will this month be consulting with the various business interests likely to be affected in the community.

We will be getting input on the program so that it will be finalized and in place before April 1st, and we should ensure that there is good private sector representation on the management committee.

With respect to the question asked by the Member for Faro, I should tell him that I can provide him with a lot more detailed information as time goes on, but applicants shall not be eligible if the allowable costs of the project to exceed \$2 million and if their payroll is in excess of 250 employees or if they have tangible assets valued at more than \$7.5 million. So we are talking about small and medium-sized businesses. If the eligible costs of the project exceed \$100,000 and the project falls within the category of sensitive industries, then the project may not be eligible either. There are

program criteria which are established in the agreement. There will be more details forthcoming, and I will be happy to provide information packages to the Member for Faro and other Members who may be interested. As I say, we will be consulting with the affected private sector groups locally this month as to the final way of delivering the program.

#### **Motion of Urgent and Pressing Necessity**

**Mr. Nordling:** I rise pursuant to the provisions of Standing Order No. 28. I would like to propose a Motion of Urgent and Pressing Necessity. In light of the fact that the Government House Leader has indicated that this House will proceed with Bill No. 99, entitled the *Human Rights Act*, beginning immediately following the debate this afternoon, and in light of the fact that the electoral district of Tatchun is not represented in this House, and in light of the fact that a by-election has been called for February 2, 1987, which is only a little more than three weeks away, and in light of the fact that on the CBC News, January 5, the Government Leader was quoted as saying that he had decided to call a by-election in Tatchun on February 2 for a good reason: he did not want the riding to go without representation for two consecutive sittings of the Legislature.

Representation is very important for all Yukoners.

In light of the fact that all Members of this House, including the government side, agree that this Bill, No. 99 is one of the most important pieces of legislation ever brought before this House, and in light of the fact that this legislation will have a profound effect on the lives of all Yukoners, including those residents of Carmacks, Pelly and Little Salmon, and in light of the fact that this House has plenty of other business to do — in fact, we are in the middle of the Supplementary Estimates; we are in the middle of the Capital Budget; we are in the middle of the *Gas Burning Devices Act* and there are five other bills on the Order Paper — I would move

THAT this House not proceed with Bill No. 99, entitled *Human Rights Act*, until such time as all electoral districts are represented in this House.

**Speaker:** Standing Order 28 requires that there be unanimous consent for such a motion to be moved. Is there unanimous consent?

**Mr. Lang:** Division.

**Speaker:** There is no unanimous consent.

#### **Speaker's Ruling**

**Speaker:** Before beginning Question Period, I would like to give a ruling on a Point of Order that arose during yesterday's Question Period. The Point of Order discussed at that time was whether questions can be asked on a subject that is before a court. Standing Order 19(1)(g) states that:

"A Member will be called to order by the Speaker if that Member refers to any matter that is pending in a court or before a judge for judicial determination where any person may be prejudiced in such matter by the reference."

This Standing Order is qualified by Rule Number 11 of our Guidelines for Oral Question Period. This Rule states:

"A question is out of order if it deals with a matter that is before a court. In civil matters, however, this restriction will not apply unless and until the matter is at trial."

The matter that was being discussed yesterday is a civil matter and is not yet at the trial stage, so questions respecting it are in order.

The Chair would ask that Members be careful in the phrasing of their questions, since it is clear from Rule Number 2 of the Guidelines for Oral Question Period and Annotations 358 and 359 in *Beauchesne* that it is not in order to ask for a legal opinion.

The Chair would also refer Members to Annotation 339 in *Beauchesne*, which outlines the position of the Speaker with respect to matters that are before the courts. That Annotation states:

"The responsibility of the Speaker during the Question Period should be minimal as regards the sub-judice convention, and that the responsibility should principally rest upon the Member who asks the question and the Minister to whom it is addressed. However, the Speaker should remain the final arbiter in the matter but should

exercise his discretion only in exceptional cases. In doubtful cases, he should rule in favour of debate and against the convention."

This then brings us to today's Question Period. Are there any questions?

#### **QUESTION PERIOD**

##### **Question re: Land claims, overlap policy**

**Mr. Phelps:** In view of your ruling and again pertaining to the subject issue, namely the Statement of Claim that was filed in court on December 19 last by the Kaska Dena of the overlap claim lawsuit, I would like to ask whether the Government Leader has read the Statement of Claim yet?

**Hon. Mr. Penikett:** No.

**Mr. Phelps:** When does the Government Leader intend to have a look at this document?

**Hon. Mr. Penikett:** I have a great deal of reading material on my desk, much of it important, but I do not think the order in which I read documents is, in fact, a fit subject for Question Period.

**Mr. Phelps:** Can the Government Leader advise whether the Government of Yukon is retaining outside counsel with regard to seeking advice on the issue of intervention in the case?

**Hon. Mr. Penikett:** The question of whether we are retaining outside counsel should be properly referred to the Minister of Justice. The matter is a matter for discussion between our negotiators, the Executive Council Office and the Department of Justice. They may well have already consulted with outside legal advice, but I do not know that.

##### **Question re: Land claims, overlap policy**

**Mr. Phelps:** I would be pleased if either Minister answered this question. I will ask it of the Government Leader, but, of course, if the Minister of Justice wishes to respond in his place, that is fine with me.

Has this government examined the factual basis or lack thereof behind the alleged overlap? Have they studied any of the facts in support of the claim in detail?

**Hon. Mr. Penikett:** I do know that officials of this government have examined the documents in connection with the claim and have sought and are having meetings with the parties to this action to improve our understanding of their positions before we make a decision as to exactly how we shall protect our interests.

**Mr. Phelps:** Is it the government's intention to engage any experts in the field of history, anthropology or those kinds of fields in order to examine the claims made by this outside group of people?

**Hon. Mr. Penikett:** I do not know whether we have at this point. Certainly not to my knowledge have we retained any historians or anthropologists on this subject. I will take the representation of the Member opposite under advisement.

**Mr. Phelps:** Has this government availed itself of any knowledge from the federal government, any studies made by the federal government with respect to the claim of overlap?

**Hon. Mr. Penikett:** I know that we have been in discussions with the federal government. Whether there are any documents in the federal archives or particular research projects undertaken by the federal government that they have made available to us, I cannot state with certainty.

##### **Question re: Northern housing allowances**

**Mr. McLachlan:** As a result of new federal legislation that deals with increased exemption for northern housing allowances — I am referring to the \$225 or \$450 monthly exemptions for self-contained housing — the federal government will collect significantly less income tax from Yukoners than they have before. This will have a consequent reflection on revenues accruing to the Yukon government.

The figure that is reported in the media is an approximate \$1.6 million less revenue. Could the Minister of Finance tell the House if this is an accurate figure? Is this a true reflection of the lesser amount of money that will be accruing to this government now?

**Hon. Mr. Penikett:** I would want to answer that question

precisely for the Member, so I will have to take it as notice because I cannot vouch for the number that has been stated by the Member.

**Mr. McLachlan:** When the Capital Budget was being drawn up, did the Department of Finance take into consideration the fact that there would be less revenues recovered as an effect of these changes?

**Hon. Mr. Penikett:** I do not think that would be done in connection with the Capital Budget. The Member should understand that while the government did at one time receive a separate allocation for its Capital Budget, it does not now under Formula Financing. Our estimates of the revenues that we will be receiving in the next fiscal year, starting April 1, will not be made known to the House until such time as the Budget Statement is presented to the House for that year. That will be normally sometime in March or April.

**Mr. McLachlan:** That was the intent of the final supplementary. Is the Formula Financing Agreement flexible enough so that it will absorb the \$1.6 million, or does it become a direct burden on the government?

**Hon. Mr. Penikett:** The Formula Financing Agreement does protect us from some unforeseen and unaccounted for losses in revenue. We are able, by a formula that has been described in this House before, to make, at a certain point, a reasonably accurate prediction of our revenues for the year.

Those revenues are made up of a combination of locally generated tax revenues and other fees and levies and the grant that comes from the federal government, which is sufficient to meet the formula revenue that we will be getting in the next year. I do not think I can give a statement of what the revenue will be in the next year until I present the Budget.

#### Question re: Watson Lake Forest Products

**Mr. Phillips:** Can the Government Leader tell this House if the timber leases that the government purchased, with the acquisition of Watson Lake Forest Products, in BC and the Yukon are renewable or will they come up for public tender in the future?

**Hon. Mr. Penikett:** I believe that they are both renewable. I am not quite sure about the process in BC, and I could give a detailed answer for the Member if he wished it. I believe that they are up for renewal on May 1, 1987 as a normal, continuing process in BC.

**Mr. Phillips:** Was the Government Leader talking about the British Columbia leases that are up for renewal? I would like to know when the Yukon and the British Columbia leases are up for renewal.

**Hon. Mr. Penikett:** I could certainly give him that information. For obvious reasons, I do not have it at my fingertips, but I will return to the House with that information.

**Mr. Phillips:** My final supplementary is in relation to the Kaska Dena claim and the timber leases. What is the Government of the Yukon going to do to protect Yukoners interests in the timber rights that were part of the purchase? Will that come into play with respect to the court action?

**Hon. Mr. Penikett:** I understand that it has no impact that we anticipate at all.

#### Question re: Flat Creek land transfer

**Mr. Lang:** I have a question to the Minister of Community and Transportation Services. It has to do with the very contentious issue that always seems to be with us. It is a question of land transfers from the Government of Canada. I want to refer specifically to the Flat Creek area north of Whitehorse. Could he inform the House whether or not the Kwanlin Dun Indian Band has given its consent to that particular block land transfer to be transferred to the Government of Yukon?

**Hon. Mr. McDonald:** I am not particularly up-to-date on this application in the detail the Member is requesting. I do know that FEDLAC has approved this transfer in principle and the sketch is being developed now. It should be going to Ottawa soon.

**Mr. Lang:** When the Minister says that it is going to Ottawa soon, when does the government expect formal transfer of this particular block of land to the Government of Yukon? What is the

timeframe?

**Hon. Mr. McDonald:** I would hope that we will have this land transferred to the Yukon Government and the people of Yukon this summer.

**Mr. Lang:** I have a further question with respect to the area in question. Could the Minister inform this House whether or not the government has done the necessary soil tests on the land in the area so that it could be classified into agricultural categories?

**Hon. Mr. McDonald:** Testing has been done. The final report is to be expected soon, at which time we will be able to delineate the sites for various agricultural plots, which we would expect to go into the area. Obviously, this area has been determined by the Agricultural Section of Renewable Resources to be suitable for agricultural development.

#### Question re: Flat Creek land transfer

**Mr. Lang:** Further to the soil tests, has the government also undertaken the necessary tests for depths as far as wells are concerned in conjunction with the program that he referred to earlier?

**Hon. Mr. McDonald:** I will have to look into that detail. I will have to secure that information.

**Mr. Lang:** This might be a detailed question but perhaps he does have this. Have percolation tests been done in the area as well?

**Hon. Mr. McDonald:** My understanding is that they have been initiated, but the test results have not been received yet. I will check on that detail for the Member, as well.

**Mr. Lang:** Could the Minister provide the House with whatever information they do have at the present time? When other studies are completed, could he table them in this House as well?

**Hon. Mr. McDonald:** I will table whatever information the Member has requested that is pertinent to the information the Member requested.

#### Question re: Watson Lake Forest Products

**Mr. Phillips:** With respect to Watson Lake Forest Products' British Columbia timber leases, is it the Government Leader's understanding that these leases are renewable and they do not come up for tender or bid?

**Hon. Mr. Penikett:** I gave a reply to the Member a few minutes ago, in which I indicated that I did not have at my fingertips the precise procedure by which British Columbia dealt with those questions. I did indicate to the Member that I will provide him with the information that he seeks, and I will be happy to do so. I do not have it at my fingertips.

**Mr. Phillips:** It is my understanding that the British Columbia timber leases are up for bid. They run for 10 years, or something, and then they are up for bid. They are up for bid in May of this year, like the Government Leader says. When the government purchased Watson Lake Timber, did they not understand that these were not renewable and that they had to compete on the free market to obtain these valuable timber leases?

**Hon. Mr. Penikett:** Whatever the facts of the situation are, I am absolutely confident that the consultants we retained, who are among the best people in the business and based in British Columbia, were perfectly well aware and properly researched the facts surrounding the British Columbia leases.

**Mr. Phillips:** Is the Government Leader, who is the person in charge of this government, telling us that he did not know anything about the timber leases, did not know whether they were renewable? There is not much of a sawmill if you do not have the timber leases. It is very important to the sawmill. Did the Government Leader have this information? I know he has not looked at the Kaska Dena claim, but did he not look at the lumber deal either?

**Hon. Mr. Penikett:** The Member opposite has peculiar notions of the way a Cabinet Minister must spend his time. We employed people, and have employed people, to investigate certain questions for us and analyze certain situations for us.

I have already tabled the report of the consultants in this House, which looked into some of the matters that the Member stated. It is

free for him to read, and I do not know if he has read it. I can come back to the Member with the precise information he seeks.

If he wants to seek an argument with me in Question Period about facts that he asserts, and I have no way of knowing that they are true at this moment, I will come back to the Member with the precise information.

#### Question re: Septic systems

**Mr. Phelps:** With respect to the Rural and Native Demonstration Housing Projects in Carmacks and Carcross, I am in receipt of a copy of a letter to the Minister dated December 16, from the architectural firm that is in charge of the engineering side of the project. That letter refers to a problem. The problem is that because septic tanks are not allowed in Carcross, a pumpout system has to be provided. That will cost a minimum of \$300 per month for each of the houses, each of the families who are building the houses.

Why did the Yukon Housing Corporation allow this project to proceed in Carcross when the situation was known prior to the construction start?

**Hon. Mr. McDonald:** I dimly recall the letter that the Member is referring to, and we having the accusations that the engineering firm leveled reviewed. I am confident that the Housing Corporation would have taken into account, along with the user group, whatever disposal system would be in place to determine if the sewage system was not only technically feasible but also affordable.

The accusations that the Member is repeating are still being reviewed by the Corporation and by Municipal Engineering.

**Mr. Phelps:** Will the Minister come back to this House once he has ascertained the factual background to the complaint? It is not just the engineering firm that has written regarding this. The Carcross/Tagish Indian Band has also expressed its concern.

We would like to know why the Yukon Housing Corporation allowed these projects to proceed when people knew that no septic tanks were to be allowed. Would the Minister come back with that reply once this issue has been examined?

**Hon. Mr. McDonald:** I will have to review the validity of the accusations being leveled not only in the letter, but repeatedly by the Leader of the Official Opposition. I will have to determine if those allegations are true before I can respond to the House. I will, however, undertake to respond on any detailed matter of whether or not a specific septic system was feasible or affordable, if the Member wishes.

**Mr. Phelps:** Is the Minister looking into a solution for the problem in Carcross, given that the participants and the engineering firm are saying that it is a requirement to have pump-outs that are going to cost a minimum of \$300 per month to the families? Is the Minister now looking into a solution to this problem?

**Hon. Mr. McDonald:** We, first of all, have to establish whether or not the accusation leveled by the people writing the letters is in fact the case. It cannot be a problem until we have satisfied ourselves that it is actually one. The Carcross/Tagish Indian Band may have taken its direction from the people writing the letter. The Member for Hootalinqua has certainly taken his direction solely from the people who wrote the letter. I have already indicated that we are having the accusations researched. I have also indicated that the Corporation was satisfied that the sewage systems that will be placed in that community were not only technically feasible but were affordable. The accusations that are being leveled are being reviewed.

#### Question re: Septic systems

**Mr. Phelps:** This letter came forward back in December. I am not simply taking this at its face value. I have spoken to two of the three builders, owners-to-be of the houses going up, and the information is readily receivable, I am sure by a phone call to the Department of Health and Welfare. The gentleman's name is even in the letter.

I am wondering how long it will take to see whether or not the pump-outs have to be provided. Surely, the cost is very easily verified as well.

<sup>12</sup> How long?

**Hon. Mr. McDonald:** Was that a question, or was that simply

a repeat of the previous question?

I have already indicated that the allegations being levelled in the letter are being reviewed and were directed to be reviewed when the letter was received.

**Mr. Phelps:** We are also informed that there are similar problems with regard to the same project in Carmacks. Can the Minister advise me whether or not some of the buildings being built there under this program are going to be forced to go into this kind of expensive system, far beyond the means of those needy persons who are fortunate enough to get into the program?

**Hon. Mr. McDonald:** It is incredibly easy for the Member to stand up and say that he is informed that there are concerns all over the territory, and perhaps in Carmacks or anywhere in order to do damage to a particular program, in order to seek support for his case.

I would be interested in knowing who informed the Member that those allegations are true, because that is very relevant information here. We have to know the credibility of the people involved.

Secondly, I think we are talking about the technical advice associated with these projects. That is very important. If there are any problems in Carmacks or with any other housing program anywhere in the territory, I would be more than willing to undertake to review any individual detail.

I know that there are concerns with private and public housing projects around the territory with respect to sewage disposal. It is not unique to any community. There are problems in Haines Junction; there are problems in Dawson; there are problems in Mayo; there are problems everywhere. That is not a new problem for this territory. It is maybe new for the Member for Hootalinqua.

**Mr. Phelps:** The Minister was joyfully going on at length some months ago about the problems with the Willowdale Subdivision in Haines Junction. The problem there had to do with the soil conditions and related to the high cost of sewage treatment.

How can he now say that he and his corporation have not bothered looking into the kind of facilities necessary in Carcross. Why is he saying now it was not necessary to look into this?

**Hon. Mr. McDonald:** Firstly, the new accusation is that I have not looked into the problems and allegations levelled in a letter that the Member previously referred to, and that is patently false. I already indicated that we have.

Secondly, we are looking generally into the sewage disposal systems around the territory, to make them more cost-effective than those previously devised.

It is our intention to encourage the development and the design of sewage systems that can be affordable by almost anyone. That is the reason why we have undertaken extensive studies in a number of locations around the territory over the past year, which I have mentioned previously in this House, to improve the situation for many areas and existing subdivisions that have experienced the problems.

We are looking into the situation generally. I have already indicated that we are looking into the allegations levelled in the letter.

#### Question re: Septic systems

**Mr. Phelps:** Is it true that septic tanks will not be allowed in the three demonstration houses in Carcross and, rather than that, pump-out facilities will be required?

**Hon. Mr. McDonald:** I do not have the details at my fingertips with respect to whether or not a septic system in a particular house in Carcross is fully satisfactory, given the allegations that have been made. When the decision was made to go ahead with these units, I know there was a sense of satisfaction among the expertise that we have in this government. I have already indicated to the Member that we are reviewing the allegations that have been levelled by the engineering firm, mimicked by the Member for Hootalinqua. I will be able to provide that information to the House when it is made available to me.

**Mr. Phelps:** I take it that that information will answer all the questions that I have raised, including, just to be very specific, the issue of whether or not Yukon Housing Corporation ought to have known that septic tanks would not be allowed prior to construction

starts on these three buildings. We are looking at needy families who are building these houses and are faced with \$300 a month each just for this unforeseen circumstance beyond their control.

**Hon. Mr. McDonald:** The Member repeats the allegation. It has not been substantiated, but it certainly sounds like good politics on the face of it. For support, he uses a letter that he has quoted in this Legislature. I can inform him that I have already indicated to the Department of Community and Transportation Services and the Yukon Housing Corporation that I would like the allegations reviewed. I am certain they are professional enough that they have reviewed these situations before, keeping in mind the income levels of the families involved and keeping in mind the desirability of introducing septic systems that are satisfactory to the people who are going to be moving into the units. That is clearly a significant consideration.

**Mr. Phelps:** If the allegations are true, and I am sure you will find that they are, is the government prepared to in some way subsidize the cost of the pump-outs in Carcross?

**Hon. Mr. McDonald:** That is highly hypothetical and it seems to me, because the allegations have not been substantiated, highly irresponsible as well.

#### Question re: SEAL Program

**Mr. McLachlan:** My question is for the Minister of Economic Development. The Legislature has voted a considerable sum of money for the SEAL Program in the 1987/88 Capital Budget. Although it seems inevitable that demand for these energy saving programs to reduce heating oil consumption will increase, is there, at the moment, any other energy saving measure that is being considered by the government for inclusion in this program?

**Hon. Mr. Penikett:** I am sorry I am going to have to ask the Member in his supplementary to be more precise as to the direction of his question. As the Member will know, we have several programs that are designed to improve energy conservation in the territory. The SEAL Program provides, in the main, for retrofit procedures that, here and elsewhere, have proved very successful at cutting the heating bills and, therefore, the energy leakage on the Yukon economy. I am sorry I did not understand the precise direction of the Member's question.

**Mr. McLachlan:** There is, of course, as this Legislature is aware, considerable controversy within the City of Whitehorse over new legislation respecting wood smoke. I have always felt, personally, that part of the answer to the wood smoke program lay in newer, more improved, better, solid fuel-burning appliances. It would be possible within the confines of the SEAL Program to provide government assistance for people to replace older or inefficient, polluting wood-burning devices to upgrade those wood-burning devices with better ones. Can the Government Leader foresee this type of initiative being included in the SEAL Program to assist with this problem, at least in the Riverdale area?

**Hon. Mr. Penikett:** When and if we amend the SEAL Program, it will obviously not be, of course, a program which is Riverdale-specific. We are looking at some changes in the SEAL Program with a view to studying the possibility of providing the means for, as I said, the more fuel efficient appliances. If that is what the Member is getting at, then we will, of course, when we are ready, come forward with those proposals. I will then provide the Member with more information. As the Member knows, it is a subject of some complexity.

**Mr. McLachlan:** We are now at the mid-point of the Yukon winter. I am wondering, as a number of residents have concerns on this issue, if the Minister has any timeframe that he can announce to the Legislative Assembly as to when he believes that this type of thing could be made official?

**Hon. Mr. Penikett:** I will have to take that question under advisement.

I would like to try to explain to the Member that we have been working with the officials in the Department of Economic Development, officials from the Department of Community and Transportation Services, and with the relevant federal departments for several months to establish some criteria for solid fuel-burning appliances based on the research in other areas. The criteria to establish

clean-burning appliances will have to be tied to Canadian standard burn tests, and there will also have to be some kind of recognized testing procedure related to the testing procedures that have been developed in the United States of America.

At this point, because of some problem in terms of the legal framework of our *Building Standards Act* and the *Public Health Protection Act*, the criteria may have to be published as guidelines, if you like, before we could go through the legislative changes because, as the Member knows, that takes some time. We will also have to discuss, I think, with the municipalities and the other affected people how we are going to do this. I do not think, at this point, that I am happy to proceed just by way of regulation coming from the Yukon government. It is a matter of sufficient complexity that it will take some time.

I will try, however, to come back to the House with an answer for the Member as to when we hope to be able to complete this work. It is not a simple matter that is entirely under our jurisdictional authority.

#### Question re: Cultural awareness programs

**Mrs. Firth:** I have a question for the Minister of Education regarding cultural awareness programs and teacher orientation. Some time ago the School Committee Conference had a resolution presented to it by the CYI regarding cross-cultural training for teachers, and an orientation program was held in August. There was an expanded committee that was to be formed. Can the Minister tell me if that Committee has been formed, who is on it, and if they meet regularly?

**Hon. Mr. McDonald:** I will have to check on that, but I do know that a great deal of effort has been made within the department in recent months to improve the cross-cultural education of teachers. A number of alternatives are being struck now for inclusion into this coming fall's schedule of teacher activity and the orientation of teachers before they start work. That will be not only for teachers now in the system, but also for all new teachers.

A provision is being studied at the present time that has local bands in the communities, including Whitehorse, undertaking some responsibility for the orientation. This is perceived to be better and a more effective method of providing the cross-cultural orientation rather than having consultants come in and preach what native people are all about.

**Mrs. Firth:** The CYI had representation on the ad hoc committee that was set up. It was the person who was the coordinator for the curriculum development of social programs. She has left the territory, and her replacement has not been invited to any of the meetings. I would like to know why. Have there have been meetings? Is the program ongoing?

**Hon. Mr. McDonald:** If there have been meetings and the person has not been invited to them, I would like to know why as well. I will check on that for the Member.

**Mrs. Firth:** Could the Minister also tell me if the government has given consideration to expanding the cultural awareness program to the personnel and staff of other areas of government?

**Hon. Mr. McDonald:** The Public Service Commission has held some seminars on cross-cultural orientation. Perhaps the details of that could be provided by the Minister.

#### Question re: Task Force on Placer Mining

**Mr. Nordling:** On December 8, in response to my question on the government's position regarding the Task Force on Placer Mining, the Minister of Economic Development said, "It is our intent to provide Mr. McKnight with a response, not to the Task Force, but to the Water Board report, as that is the subject on which the discussions about the new policy are being based." Has this response been given?

**Hon. Mr. Penikett:** Yes. I have communicated with Mr. McKnight, but, as the Member may know, Mr. McKnight has an agent of the federal government who is working and talking to the interests that will be affected by this area in an attempt to come to a satisfactory regulatory regime. I think he is hoping to do that in very short order.

I think the proposal of the Task Force was proved wanting legally

in that the precise recommendation was not doable. We have spoken to Mr. McKnight, and we are continuing to deal with federal officials in a manner that is consistent with the resolution that was passed in this House some time before Christmas.

**Mr. Nordling:** Is the Minister's department preparing a written response or submission that will be made, outlining this government's position? If so, will that document be tabled in the House?

**Hon. Mr. Penikett:** I think I indicated to the Member previously that I am prepared to make a Ministerial Statement. I had planned to before now, but my intended date was lost, because there was a more urgent matter that required a Ministerial Statement. I would hope to do so in the next few days.

The discussions that are going on now are in the process of consultation, mediation, by the federal government to try and find a regime that is acceptable to the placer miners and to the Fisheries regulators and other interests. I am pleased that that process is going on. I am encouraging the Minister to try to come to a happy and satisfactory resolution of this matter in the next short while, before the next season.

**Mr. Nordling:** For the Minister's information, it was also on December 8 that he said that he would be making a Ministerial Statement in the next few days. He went on to say, "I cannot give an exact date at this point."

It is a month later. Can the Minister give us a more exact date as to when we will have the Ministerial Statement at this point?

**Hon. Mr. Penikett:** I am naturally flattered the Member is so eager to hear from me on this subject. Unless it will do offense to my colleagues, I would be happy to pick a day, next Friday, if the Member would like to come in. How about next Monday. If that is agreeable to the Member, I would probably do it then.

**Speaker:** The time for Question Period has now elapsed. We will proceed with the Orders of the Day and Motions Other than Government Motions?

## ORDERS OF THE DAY

### MOTIONS OTHER THAN GOVERNMENT MOTIONS

**Clerk:** Item number 1, standing in the name of Mr. Phelps.

**Speaker:** Is the hon. Member prepared to proceed with item number 1?

**Mr. Phelps:** No, Mr. Speaker. May it be stood over?

**Speaker:** So ordered.

**Clerk:** Item number 2, standing in the name of Mr. Phelps.

**Speaker:** Is the hon. Member prepared to proceed with item number 2?

**Mr. Phelps:** Mr. Speaker, may this item be stood over?

**Speaker:** So ordered.

### Motion No. 74

**Clerk:** Item number 3, standing in the name of Mr. Brewster.

**Speaker:** Is the hon. Member prepared to proceed with item number 3?

**Mr. Brewster:** Yes, Mr. Speaker.

**Speaker:** It has been moved by the Member for Kluane

THAT it is the opinion of this House that the Government of Yukon should negotiate with the Government of Canada regarding the installation of landing lights for the Haines Junction airport.

**Mr. Brewster:** I hope this motion will be received by the opposite side as a constructive motion. I know the Minister of Community and Transportation Services is engaged in negotiations with the federal Minister of Transport with respect to the devolution of Arctic B and C airports to the Yukon government.

In response to a question raised by my colleague from Porter Creek East last spring regarding the transfer negotiations and the upgrading of the Haines Junction airport, the Minister stated that it was in the government's best interest to bring certain airports up to standard prior transferring them. I agree with him. That is the purpose of my motion, to ensure that the Haines Junction airport is one of the airports slated for upgrading.

Last spring, the Minister also stated that he hoped the negotiations regarding the transfer of Arctic airports B and C to this government would be concluded by this fall. It is obvious that the fall has come and the fall has gone. The expectation of the Minister have not been met.

I hope that this delay does not mean that this department is encountering some difficulty in transfer negotiations.

<sup>17</sup> If it has, perhaps this motion will have impressed upon the Ministry of Transportation how critically important these airstrips are to Yukoners. Perhaps the Minister will kindly bring the House up to date on the current status of the negotiations. I would welcome that. If there are some difficulties delaying the transfer and the upgrading of the airports, I may be of some assistance to the Minister.

I would like to impress upon all Members of the House just how important this airport is to Haines Junction. This airport is one of the main airports in the Yukon and serves the needs of well over 500 to 600 people in the Kluane area. It is of special importance for medivac and emergency flights to Whitehorse. The airport is in a good location and is a proper length. The addition of landing lights would be a great asset. It would extend the hours of operation. I would also like to point out that the installation of landing lights was planned several years ago, so I am asking for nothing that has not already been planned.

The airport could play a key role as a staging area for mineral development in the Tatshenshini region, especially in view of the great potential of the Craggy Windy Property. We cannot afford to miss this opportunity or we will be upstaged by Haines, Alaska. If we do not upgrade the Haines Junction Airport, you can bet your bottom dollar that Haines will get all the business. Let us not get caught with our pants down on this one.

The Haines Junction airport is also very important because many important visitors want to fly to the Kluane area because it is, without question, the most beautiful region in the Yukon. The hon. John Diefenbaker and Princess Ann are two of the important visitors who have landed at the Haines Junction airport. If we upgrade it, perhaps there will be more. I call for unanimous support of this motion.

**Hon. Mr. McDonald:** Clearly the Member is going to, I think, get unanimous support for this motion. Let me just say that the government side, of course, will respond favourably, as I have already indicated once in the Capital Estimates. I hope I did not steal any of the Member's thunder when I mention that yes, in fact, we had already in the month of August, 1986, requested that landing lights be installed at the Haines Junction airport.

Clearly, we have recognized the value of this particular airport, not only to the community of Haines Junction but to the Haines Junction region and the Kluane Park. In our normal negotiations with the federal government for the upgrading of Arctic B and C airports, we have included this as a priority item. We have specifically undertaken to have Transport Canada install aircraft radio controlled airport lighting, which is commonly referred to as the ARCL System.

With respect to the questions the Member raised on the negotiations surrounding the devolution of the Arctic B and C Airport Program, I will say briefly that it is true that my expectations for the devolution of this program were not met. There were indications last spring that, all things going well, that the negotiations would not only be well underway, but may have been completed by the fall of 1986, and we, for our part, had prepared ourselves through various background reports to have a position ready, which we did. Unfortunately, there were two other players in the negotiations — the Government of the Northwest Territories and Transport Canada — and it is my information that Transport Canada's position is going to federal Cabinet fairly soon, if it is not there already in the last week or so, for approval.

<sup>18</sup> At that time, the negotiations will begin in earnest. I would hope that the three parties to the negotiations will be able to establish an agreement reasonably soon. One of the principles that we must adhere to is that there has to be an upgrading of the Arctic B and C airports before such time that the transfer is made. If not, some



commitment of funding has to made so that we might upgrade the airports ourselves after the program has been transferred.

Both in negotiations and in the normal course of business, we have undertaken to have Transport Canada, or Transport Canada through the Yukon government, install lighting systems at the Haines Junction airport. We, like the Member for Kluane, recognize the importance of lights at the airport and the importance of the airport itself.

**Mr. McLachlan:** I would like to express my support for the intent of the motion that the Member for Kluane has brought forward. I am aware of what it is like, in the first seven or eight years of Faro, to have a strip without landing lights and being unable to use the facility. At this time of year, landings are often restricted to a narrow time slot of about five and one half to six hours a day.

One other thing that will provide additional benefit to the area is that there are outfitters in the area who appreciate being able to use the airstrip, but they find that they cannot always tailor their schedules to the arrivals and departures of their business to arrivals that only coincide with daylight hours.

There is always the possibility of medical evacuations under emergency circumstances that can occur at any time of day or night. A landing strip that is equipped with the necessary lighting makes that possibility so much easier to deal with. The tourism potential is quite important, and there are a number of parties, especially in the summer, who are there on climbing expeditions and often need the airport facility to fly into. Once twilight hours hit, unless the landing lights are there, people are reluctant to fly in without the assistance. Mining development is critically important, and that is one area that should be stressed.

In 1985, when Faro was in its economic doldrums, one of the parts of the town that remained open continually and available to people was the airport. It is important in the Arctic B and C programs to remember that when navigational facilities are in existence and in use in an area, it is very important that aircraft that, from time to time, do get lost have an important navigational beacon or function to zero in on to re-establish its bearings. That is very critical. I wholeheartedly support the Member's motion.

**Speaker:** The hon. member will close debate if he now speaks. Does any other member wish to be heard?

**Mr. Brewster:** I would like to assure the Minister across the floor that he is not stealing my thunder. I was unaware that I had any. I bring this up as I have had to bring other things up in my five years in this House. Unfortunately, things can be brought forward in the House, but they get lost in the red tape of the bureaucratic mess. There are now three departments, even the NWT, looking after our situation in Haines Junction.

I have learned that the only way to do these things is to keep bringing them back. We did have plans over three years ago, and it got lost somewhere in all of the red tape. It is probably in a book in a corner somewhere. I would like the Minister to know that I appreciate that he has brought it out and has dusted it off, and we can now start again.

<sup>19</sup> Motion No. 74 agreed to

#### Motion No. 76

**Clerk:** Item number 4, standing in the name of Mr. Brewster.

**Speaker:** Is the hon. Member prepared to deal with item number 4?

**Mr. Brewster:** Yes, Mr. Speaker.

**Speaker:** It has been moved by the hon. Member for Kluane: THAT it is the opinion of this House that the Government of Yukon should negotiate with the Royal Canadian Mounted Police regarding the stationing of one or more police officers in the Destruction Bay-Burwash area of the Kluane region.

**Mr. Brewster:** This is one of the problems I have in my area. I hope this motion is very clear and very precise. Quite frankly, we are just not satisfied with what is going on.

The Minister of Justice, as well as the RCMP, have been to meetings in Burwash and the Destruction Bay area. They know very well the opinions of the people in this area. They sat and listened to young Indian women and elderly Indian women tell of the problems they were having. That was almost two years ago.

They did improve the patrols up in there quite a bit, however, this is not satisfactory. We are just not getting proper police protection in the area. I want to make it very clear, before anyone on the government side steps up and tells me that I am criticizing the RCMP, that I am not. This is not a problem of the four RCMP stationed at Haines Junction. This is a problem somewhere else, either in the detachment in Whitehorse at the head of it, or it is a political problem. I do not know which, but I would like it solved.

I will not go into some of the details of some of the cases. I would if I could, but I do not think I should bring them into the House. Some of them are not very nice. I do not think, in some cases, that the reaction was proper from the detachment in Whitehorse when the detachment in Haines Junction was closed.

I would like to point out one other thing that is ironic. We do not really seem to have a policy on this situation at all. For instance, there is a new detachment going in in Pelly. I certainly agree with this. I have no problem. I think that there should be policemen wherever there is a village or a settlement.

The one in Pelly is 70 miles away from the detachment at Carmacks. We now have four policemen there. I think this is fine. I do not think it could be better. Then we come into the Haines Junction area, and 77 miles away are two communities, plus other communities around the end of the lake. We have no policemen in that area, but we have four policemen stationed in the Haines Junction area.

There does not seem to be any policy for this. I do not know whether the computer made this decision, or who made it, but it is not a practical decision, and it is not very fair.

As the Minister of Justice well knows, we have a new chief, Chief Charlie Eikland, up there now, who has done a tremendous job of trying to bring things around. The band up there has come up fantastically. I would say, right now, besides the Champagne/Aishihik Band, it is probably one of the most progressive bands we have in the Yukon. This is very much a credit to them. I think that all government agencies, including the RCMP, should be trying to help these people, not cause problems where they are not getting the help they need.

In closing on this, I would just make this statement: let us remember, the law must not only appear to be fair, but must be fair. The same with law enforcement agencies. They must not only appear to be fair, but they must be fair. As far as I am concerned, and I think most law enforcement officers will tell you, just the fact that they are there and present, the fact that they stop and have coffee with these people, the fact that they talk to them, the fact that they are around and they are known to be there, does an awful lot to prevent an awful lot of the problems that will never occur because they are there.

If they are 77 miles away and it takes them two to three hours to get there, the whole situation, whatever the problem was, is over and gone. I know of several incidences where it was 10 to 12 hours. I know of one incidence where they waited all night and nobody showed up. These things are not required. I realize the problems of the police. I have no problem with this. I do not think it is the detachment or the foot soldiers out there. I do not know whether the Minister and the RCMP are not seeing eye-to-eye on this or not. We are not asking for any more police. We are not asking for another policeman to come in there. We are asking simply to move those policemen around in a position where the other areas are looked after.

<sup>20</sup> We are probably the most policed area in Canada, percentage-wise, and most of those are stationed in Whitehorse. I have no problem with that; this is a bigger area and this is where they should be. We are not asking for a great deal there. Except for the expense of moving one back and forth, we are not asking for a great deal more money, we are just asking for justice to be done.

**Hon. Mr. Kimmerly:** I can respond on two levels. I will

respond very briefly on a general level, perhaps even what may be called a philosophical level. The Member for Kluane stated that perhaps we have no policy on this area. It is not true. The Member also stated that he feels that there should be a policeman in every settlement or in every place where there was a settlement. That is easy to say, but is Stewart Crossing, for example, a settlement? Is Swift River? Is Destruction Bay? Is Elsa? There are concerns about those questions. I am not using the word "settlement" in the sense of the *Municipal Act* of course.

The Member talks about simply the presence of an RCMP Member changing the behaviour of people or preventing problems. I hope that he thinks about that statement and thinks about it in light of his position very often stated about government regulation and the statements about the necessity for laws and the necessity for law enforcement. Yukoners are generally a law-abiding people; I do not think anyone will seriously argue here with that statement. Yet, the statistics about occurrences in the criminal area and criminal convictions, if you were to compare them with national statistics, would lead one to say that there appears to be more criminal activity here than in southern Canada.

Those statistics, I think, are misleading. I think they are misleading for various reasons. In order to not go on at great length, I will simply identify that there are some philosophical problems with the statement made opposite that there should be a policeman in every settlement just because there are people there. The philosophy or the policy of placing police is different in the Northwest Territories and the Yukon as compared to the State of Alaska. The per capita policing is substantially less in Alaska, and it is interesting to compare those two policies. I will not go into it in great length.

The RCMP have very clear and very precise policies about their personnel and positioning Members in various communities. It is unfortunate for Burwash and Destruction Bay that they are way below the level, according to the federal RCMP policy, where a Member or detachment is justified.

<sup>21</sup> It is interesting that the reported occurrences are approximately between 15 percent and 16 percent of the detachment area. To state that more precisely, the reports of police occurrences originating in and around Destruction Bay and Burwash are between 15 percent and 16 percent of the reports of police occurrences in the detachment area for Haines Junction.

Burwash unfortunately finds itself at the outside edge of the detachment area. It is between two detachments on the highway in Beaver Creek and Haines Junction. That is a further complication.

The Member will be aware of the policing agreement that requires the RCMP to consult with the Minister of Justice about placing members in various communities, but which gives the power to the RCMP. We have a right of consultation. That policing agreement is up in three and one half years, and the western provinces and the territories are advocating an increased power for the governments concerning the placements of members and the movement of members around their jurisdictions. I am expecting that to occur, or significant advances to be made in the next territorial Policing Agreement.

It is not fair, though, for me to hide behind an agreement and to say that it is the decision of the police. In this particular case, the arguments put forward by the police, in my opinion, are quite valid, and I agree with them. I take the same position as do the RCMP in this area. The RCMP has made a clear recommendation to me about policing in Burwash and Destruction Bay, and I accept it as the best possible advice in that area. They say that any placement of an RCMP officer would be a political decision contrary to the best interests of the public and is not a justifiable expenditure.

The question does not end there. I am glad that the motion is worded as widely as it is. We intend to support this motion. I would expect it would pass unanimously.

The position of Chief Eikland and his Band is not that there be an RCMP officer in Burwash. They certainly advocated that approximately two years ago, but they are not advocating that at this time. They are advocating that there be a police presence, but that it be a police presence under the control of the Band. That is not an RCMP officer, but a Band police officer.

<sup>22</sup> That situation exists for limited purposes for the Kwanlin Dun Band and the Band in Carcross, of course, is advocating that position quite strongly at the moment. The question of a police presence is something that should be negotiated and continued negotiations should occur. I would suggest that there are complications that should probably be addressed at the land claims tables concerning the question of the jurisdiction of Band police.

In view of the fact that it is the position of the Band in Burwash that the policing presence be under their control, it is my view that the whole question of native policing and the jurisdiction of native policing should be addressed at the land claims table. I hope that this occurs, and I hope that it occurs in a timely way to meet the problems that are referred to by the Member for Kluane.

The wording of the Motion, of course, does not specifically mention the placing of RCMP officers, but the placing of police officers, which is consistent with the Band's wishes and which may be achievable; however, there are jurisdiction problems to work out. Under the present law, the only way for a designated peace officer to be so designated is that the RCMP is involved and, in fact, makes the designation so negotiation with the RCMP is a necessary part of these negotiations.

I cannot predict the outcome of these negotiations. The position of the government can be stated that all sides must be clearly heard and the positions of all sides clearly identified and the decisions should involve agreements, in this case among DIAND, the RCMP or the federal Solicitor General, the federal government generally and the territorial government and probably the CYI and clearly the Band itself that is immediately effected.

The question of policing in Burwash will undoubtedly continue to be negotiated, and I will very eagerly pursue these negotiations to best meet the needs of the people of Burwash and Destruction Bay.

<sup>23</sup> **Mr. McLachlan:** I rise to speak in support of the motion of the Member for Kluane. I have experienced a few similar problems recently in Faro in the policing presence. I feel that the motion to be more effective should have read "more police officers", rather than "one or more police officers". The force does not generally put one member into a situation anymore. That is only a minor change and is not worthy of a formal amendment.

On repeated occasions, I tried to get additional police officers in Faro. I know what the Member is going through. That is a problem of a different nature. That is a problem related to incidences that have occurred. The problem in Burwash Landing is one of distance and the non-availability of officers in their situation.

No matter where the officers must come from — some to go south from Beaver Creek or north from Haines Junction — a significant travel distance exists. If a party is occurring at 1:00 in the morning, I can appreciate the reluctance of the officers to drive up, or to drive down, to investigate the situation. Unfortunately, what is happening, as the Member has indicated, is that the situation is just not being covered.

The Leader of the Official Opposition has referred on previous occasions to the size of the police force in Whitehorse. The number of officers based here in Whitehorse has risen significantly over the past number of years, to the point that that force is well over 100. What is happening is that the capital city is being looked after and, as many of us feel, sometimes to the detriment of the rural areas.

No matter how you cut it, Burwash Landing is not getting the service from either end to the degree that they feel is warranted, and I conclude by saying that I wholeheartedly support the motion and believe that Burwash Landing should get an increase in police presence, RCMP if possible, or alternate measures if that is workable.

**Mr. Phelps:** In speaking to this motion, it seems that we have been going all over the place, particularly with respect to the comments made by the Minister of Justice.

I would like to begin my remarks by saying that there is obviously a very serious problem with respect to inadequate police protection at Destruction Bay, Burwash Landing and the other dwellings and businesses established in areas around the lake itself.

We have heard, time and time again, from the chief and council

at Burwash about the problem. There is no question in my mind that, given the facts that have been related to the Member for Kluane and the number of times that the problem has been spoken to by the Indian leaders in Burwash, the problem is a very serious one.

The real purpose of this motion is to try to arrive at a solution. Whether that means police officers residing fulltime in Destruction Bay and Burwash, or whether it means for them being in the area for a minimum period of time each week, I think is an issue that ought to be examined.

<sup>24</sup> One would have to look at the various alternate solutions available before one made a fast and hard decision about the exact solution.

In listening to the Minister of Justice who had some very interesting things to say, he, with respect, tried to have it both ways. On the one hand, he stated that he supported the recommendation of the RCMP that any placement at Burwash or Destruction Bay would be a political placement and not a justifiable expenditure. On the other hand, he looked at the motion and noted that "police" did not have the qualifying words, "Royal Canadian Mounted" in front of it. He then started speaking about an option that has been utilized in Whitehorse, that of a native police force. This is an option that various Bands have said they wanted from time to time. It is only, in some cases, I suspect, because of the lack of the presence of RCMP officers in the areas where the Band members live, although that has not always been the reason.

I had occasion to become involved in negotiating for an additional member to the Kwanlin Dun Band back when we were negotiating relocation to Hillcrest. At that time, it was made very clear to me that the RCMP was not tremendously in favour of the native police force expanding. They felt that there were problems of jurisdiction and control, which was referred to in the remarks of the Minister of Justice.

I suspect that this is presently the case. I suspect that, while he has not said this in his speech, the Minister, while willing to accept the recommendation about it being too expensive on the one hand and not willing to mention the reluctance of the alternative proposed by the Minister on the other.

The issue of negotiating native police in some of the Indian communities in the Yukon is a justifiable area to examine more fully than it has been in the past. I certainly have no problem with a thorough examination of possibilities in that regard, whether it is through land claims or through a parallel set of negotiations. The problems are rather severe. The first problem is that the native police in most parts of Canada, and certainly here, simply do not have jurisdiction to deal with the kinds of crimes that are serious. <sup>25</sup> They are in a position that if they did get involved in a whole host of serious crimes, as the Minister of Justice knows, they could find themselves in trouble with the very laws that they may be attempting to uphold.

There is also a problem that we have really two communities. While most trouble and problems seems to emanate from the Kluane Tribal Council — the Burwash Landing people — there is a need for police in other areas around the lake, in particular Destruction Bay at the campgrounds and so on.

It is very unlikely that a native policeman, despite negotiations, will fill the needs for this entire area, which is at fringe of the detachment coverage from Haines Junction.

I really like to think that we all wish to see a speedy resolution to the problem. I am supporting the motion, as everybody else in the House is. I would hope that this government, in discussions with the RCMP, would heed their advice and their recommendations as to what other potential solutions there might be, if that means, even for an interim period, before the issue of land claims negotiations is concluded, even if it is on an interim period. If the recommendations of the RCMP are rather regular visits on a fairly lengthy basis to the area involved and better coverage there, then perhaps that is the kind of solution that ought to be tried in the interim.

In any event, I make these comments because I am fearful that it will take quite some time to resolve the problem, if we are going to rely on land claims and negotiations regarding the very complex matters of native police, their jurisdiction, the *Criminal Code*

problems that are there, the agreement between this government and the federal government with respect to policing in the territory, and the problem of appropriate protection for the communities that would not be covered by a native policeman.

<sup>26</sup>

**Speaker:** The hon. Member will close debate if he now speaks. Does any other Member wish to be heard?

**Mr. Brewster:** I guess I got into a battle between two lawyers and my words can be changed around by lawyers when we started bringing in Stewart, which has probably a population of 12 or 13 and is 30 miles from the police. Elsa is also 30 miles from the police and Elsa could be another different case. Swift River has four families all looked after by the territorial government but anyway, unfortunately where I got my education I did not have to compete against lawyers so I have a little problem. I usually say what I think and sometimes it gets a little twisted around on me.

The other thing that bothers me is that we got this thing back into just Burwash. We are starting to get back into this culture thing, looking after them and not looking after the other people, and I resent this very, very much. I have a petition coming in, which unfortunately did not get here in time, but will be arriving Friday and will be tabled in this House. This will be signed by people in Destruction Bay, people in Burwash, people at the end of the lake and the people from the Kluane Wilderness Lodge. Now there is a fair number of people there. I would like the Minister to make me one promise, and I do not think he will have any problem with this. If he would just check, and I cannot check because the police apparently do not or cannot give the information to me, just how many incidents the last policeman who stayed there had in the year that he was there. It is quite interesting. I am going by rumours, but I think the rumours are fairly reliable.

I once again must point out that this is a young chief who has come in here and has taken over a band that was really down in the dumps, really going nowhere and was absolutely nothing. I have known this family since I have been here and have watched this young boy grow up. He has literally had his life threatened two or three times. He has straightened things around, he has had to go out and roll in the back alley, he has done a very good job. It is the only band that is looking at getting taxes to pay for television; they are actually looking at taxing their people to pay for their sewer and lining the houses. It is the only band in the Yukon that is trying to stand on its own feet right now and not running for help. He is trying to find these things out and look at them. I think this young boy needs a little bit of help up there. He is doing everything he can to try to bring these people ahead and he is bringing them ahead. There are people there, elderly women, who now have washrooms for the first time in their lives. In a very short time, this boy has done these things. He has had an awful time trying to sort this thing out. He has had people in there who had control of things and could not get around them. He has done it alone. Time after time they have pleaded for help. We cannot be bothered coming up because you are always complaining. Yes, he was always complaining, that is right, because he had a great problem and he has solved this problem. It is quite apparent that here again there is a loophole, apparently a good loophole, because apparently it has the government on my side and I am rather glad that sometimes I do make a few mistakes. This one helped.

What I would suggest, and I am quite sure that everybody in the whole place would be happy, and it would not cost that much. There are four policemen in Haines Junction — I do think we are that non-law abiding, I do not go around beating my wife up too much and I do not think a lot of other people do — send one of the policemen up there and rent a motel up there, perhaps three times a week, maybe twice a week, and stay overnight. Do not say when they are coming, change this around. Do not dash up there, look at the place and then dash back. Have coffee and talk with the people, not just the Chief, and not just the person who owns the lodge.

In the short time I was a Minister, one of the first things I said to the conservation officers was to go into the villages — not with a summons and a black and orange car, because everyone runs from them; they are not dumb. Pretty soon you will find they are quite

friendly. When they know there is a summons, everyone runs into the bush. I would do the same thing. I can recall running one time when the piliceman was standing outside waiting for me. Go in and meet the people. Be their friends and a lot of crime can be cut down, because people want help and can tell you what is going on.

I do not think the constables in the area would object very much to this because they are very concerned too about what is happening.

<sup>27</sup> Motion No. 76 agreed to

#### Motion No. 78

**Mr. Clerk:** Motion No. 78, standing in the name of Mr. Phillips.

**Speaker:** Is the hon. Member prepared to proceed with Motion No. 78?

**Mr. Phillips:** Yes.

**Speaker:** It has been moved by the hon. Member for Whitehorse Riverdale North: THAT this House supports the issuance of a Proclamation by the Governor General under the Great Seal of Canada amending Section 7 of the Canadian *Charter of Rights and Freedoms* to read as follows:

"Everyone has the right to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except in accordance with the principles of fundamental justice,"

and urges the Legislative Assemblies of the provinces and the Northwest Territories, the Senate of Canada and the House of Commons of Canada to adopt similar resolutions.

**Mr. Phillips:** It gives me great pleasure to rise today to present this motion. This motion is virtually the same motion that my friend and colleague, the late Andy Philipsen, presented to this House on November 24, 1982. I was not a Member of this House at that time, but from reading *Hansard*, it was a very lively debate.

The motion has its origin. The resolution was passed unanimously in the Legislative Assembly of British Columbia on September 21, 1982 and more recently was passed by the Legislative Assembly of Ontario on November 27, 1986.

For this Assembly, this motion will effectively be a reaffirmation, an important reaffirmation. This is a new Legislature, and there are many new Members. I will be extremely interested in seeing how the Members on the opposite side vote this time because of their past record on this issue.

The Members opposite, in 1982, voted against including property rights in this motion. They voted against the motion. Two years later, the Member for Whitehorse South Centre introduced a motion that indicated that the NDP did support the inclusion of property rights. In that debate, he stated, "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 restraining themselves to defining their own positions." I have restrained myself, and I await the thunderous applause and accolades from the Member opposite for giving them this opportunity to finally clarify their position.

It is not my intention to repeat all the arguments for and against the inclusion of property rights in the *Canadian Constitution*. These arguments are already in *Hansard* on page 245 of the 1982 volume and page 864 of the 1984 volume. From my reading of the debate, it appears that the Members opposite agreed that property rights should be included in the *Constitution*. The disagreement appears to be on how best it can be done. Their concerns are about the impact that such an inclusion will have on the government's ability to expropriate on provincial and territorial jurisdictions over property, civil rights and human rights and in occupational health and safety. <sup>28</sup> These concerns are valid, but they should not be insurmountable, nor be utilized to deny Yukoners and fellow Canadians the fundamental right to own property.

I am not a lawyer, but I presume that many lawyers have examined the wording of this particular motion, as it has been around for some time. Ultimately, under our new *Constitution*, it is the courts that will determine the meaning or interpretation of a particular section, irrespective of how carefully we legislators feel

we have drafted it.

In his earlier motion, the Minister of Justice proposed that a conference be held with representatives of federal, provincial and territorial governments to draft the property rights section. That is not a bad suggestion, but I presume that that is basically how the wording of the present motion was arrived at. Perhaps the Minister of Justice can advise the House if the property rights section was raised in discussions at one of his First Ministers Conferences.

In the debate on the new human rights legislation that is coming very shortly, I will be introducing an amendment to that legislation and asking that the inclusion of property rights be put into that legislation. I think it is extremely important. I am a little disappointed that it was not put into the Bill in the first place. As I said before, it is a fundamental value and a fundamental right.

In view of the recent motion in the Legislative Assembly of Ontario, it would appear that inclusion of property rights in the *Constitution* is a matter of considerable priority. Accordingly, I urge all Members to support this motion.

This will be an interesting vote. As I have said before, the party opposite voted against it once before; they voted for it with the motion that the Member for Whitehorse South Centre brought in. So, this is the rubber match. We will see where the Government of Yukon is coming from this time.

**Hon. Mr. Kimmerly:** This is in no way the rubber match. That is a colourful way to describe the debate, but it is not accurate. In fact, the rubber match, or the final match, or the real question, is what will work; what will actually be achieved.

What we are asking for here is an inclusion of an amendment to the federal *Constitution*, which would be an inclusion of property rights. That amending process is a complex process. The real question for practical legislators should be what will finally run the gauntlet, go through the process, and actually be achieved as an amendment to the *Canadian Constitution*.

The mover of the motion, obviously, did not do his research about the Ontario motion adequately. If he had, he would have discovered a very interesting fact. When you, Mr. Speaker, filed this Ontario motion, I immediately researched the question from Ontario, because I was not previously aware of it. I find that what happened in Ontario was what the Member for Kluane would probably call a lawyer's trick.

I need to explain that the procedure for amending the *Constitution* of Canada is in Part 5 of the *Constitution Act*. What is relevant is section 38 of the *Constitution* and, specifically, section 38(2), which I will read.

<sup>29</sup> An amendment made under subsection 1 that derogates from the legislative powers the proprietary rights, or any other rights or privileges of the legislature of a government of a province shall require a resolution supported by a majority of the Members of each of the Senate, the House of Commons and the Legislative Assemblies are required under Subsection 1. The assemblies required are two-thirds of the provinces that have, in the aggregate according to the then latest general consensus, at least 50 percent of the population of all the provinces.

This is essentially the amending formula for the *Constitution*. The wording is that it shall "require a resolution supported by a majority of the Members ...", et cetera. What happened in Ontario was obviously intentional. There are 125 Members in the Legislature. The vote was 20 opposed, and 44 in favour of the motion. In order for it to be constitutionally valid, they need 63 votes in favour. So it has no effect under the amending formula.

It is also significant that in a Legislature of 125, there were only 64 Members who voted. It is also significant that every single Member of the Cabinet was not present for the vote. That is interesting in Ontario, but I think it is a symptom of the politics of this kind of motion. This motion was passed in September, 1982 in BC, and it was passed by this Legislature on November 24, 1982, but it did not go anywhere else. It was simply a non-starter with most of the other provinces. Significantly, at the time, almost all of them were Conservative provinces.

What we should be interested in, as responsible Legislators, is to find a wording that will be acceptable and that will eventually

achieve success. I believe even further than that, that we in this country can virtually achieve a consensus on this important issue. I believe that that is achievable. I believe that within my political career, if I am reelected once more, God willing, I will see an entrenchment of property rights in my political life. I do not believe that it will come this year.

There are significant processes ongoing that will affect this question. Perhaps the most important of these is what occurs at the First Ministers Conferences. That is obviously the forum where constitutional matters will be decided in consultation with the various premiers.

<sup>30</sup> I can quote from the last occurring Premiers Conference, which was in Edmonton in August, 1986. I will quote from the Communique from that conference and it is as follows: "The Premiers unanimously agree that their top constitutional priority is to embark immediately upon a federal/provincial process using Quebec's five proposals as a basis for discussion to bring about Quebec's full and active participation in the Canadian Federation. There was a consensus among the Premiers that then they will pursue further constitutional discussions on matters raised by some provinces, which will include, amongst other items, Senate reform, fisheries, property rights..." I raise that because it is obviously important. That is the stage of constitutional talks in the country, at least as of August 1986, and it is fairly obvious that in order to achieve the requirements of the amending formula you essentially need Ontario and Quebec. It is clear now that we do not now have Ontario, so we certainly need Quebec. It is essential to get Quebec as a full and active participant in this process. Consequently, I would suggest that the order of priority of these matters will clearly be the inclusion of Quebec in the process first and property rights and perhaps other things like Senate reform, second.

As a Minister, I have the honour and privilege of attending federal, provincial and territorial meetings of Ministers of Justice and of Attorneys General of the provinces and of Canada. Property rights is one of the things that we are vitally concerned about. When we met in Vancouver in September, 1986, we issued a communique. When I returned I was interviewed by the CBC about property rights and it was aired on the radio, because I heard it, and I was clear about what happened there. The Attorneys General and Ministers of Justice set up a process to look at property rights. The reason we did that is that there is obviously a very wide division of opinion among the premiers. I should mention, as an example, the province of Prince Edward Island, originally under the Conservative government and now under a Liberal government, are opposed, very, very adamantly on the grounds that entrenchment of property rights would certainly supersede their provincial laws, being a restriction on the rights of individuals to own property on the basis of citizenship.

<sup>31</sup> The problem there is that absentee Americans were buying up virtually the whole island. The political will in the province was to make restrictions on the property rights of individuals to guarantee that citizens of Prince Edward Island and of Canada be the property owners in that province. They have done so. They know that entrenchment of property rights is a threat to that.

The Province of Alberta is very clearly on record as opposing the wording, which is repeated in this motion, primarily because it would take the jurisdiction out of the provincial area and put it into the federal *Constitution* as, essentially, a federal jurisdiction. It would unsettle the law of property very substantially, because the law of property would be redefined by constitutional decisions made by judges. The jurisdiction of the Alberta Legislature to legislate in the area of property rights in Alberta would be decreased if this amendment were passed in this present wording.

It is interesting that, in the province of Manitoba, with the NDP government, they have accepted property rights but not property rights as a bold statement; property rights as a list of rights, including generally human rights, the right to collective bargain and the right to health care and the like. There is significant law in the United States about the way property rights might affect some of those other issues, those of vital human rights or the question of the public interest, as it relates to individual property rights.

That is the approach that they have taken currently, which is an

indication that, contrary to claims made by our political opponents, the NDP are not opposed to property rights. Our position is, as I believe was fairly well stated in the two previous motions, that there should be guarantees of property rights in the appropriate way, and such that human rights are not superseded by property rights. To put it another way, property rights are one of the human rights that individuals should enjoy, but the question of how to protect those and enshrine those is not well defined, as of yet. <sup>32</sup> The discussions among the Ministers of Justice and Attorney Generals centred mostly on the implications, or effect, of enshrining property rights. It was virtually a unanimous view — or if not a unanimous view, a consensus — that it was essential that we have clear and precise information as to the effect of enshrining property rights. The federal-provincial process is doing exactly that at this moment.

We, being the provinces and the federal government and the two territories, have set up a process to clearly identify what implications this measure would have, and to look at the options that are available to us, to find a way that is capable of success, or will have a reasonable chance of success, as an amendment to the *Constitution* to enshrine property rights.

That process is a process in which the Government of Yukon is participating fully. It will continue, and will be further discussed at the next meeting, which is scheduled for the beginning of February.

I should not sit down before I mention the question of aboriginal rights, as it may affect property rights. There is a thought, primarily in the province of British Columbia, where the provincial government is refusing to negotiate concerning aboriginal rights currently. There is a concern there about the effect of aboriginal rights on property rights and of property rights on aboriginal rights.

To make a long story short, the legal opinions differ as to the effect. It is the position of this government, and it was a position of the previous government, that the settlement of land claims and of arriving at a solution for describing adequately, and enshrining, aboriginal rights is of particular importance to Yukon. That process should not be interfered with by these other processes.

It is absolutely crucial that we know the effect of enshrining property rights on the question of aboriginal rights, and vice versa, because aboriginal rights, at least in part, is a property right, or that is the major claim of the aboriginal peoples.

I have also researched the question of the interpretation of property rights as they exist in the United States, but I will not take the time of the Legislature to go through that in any detail. I will simply say that it is, in my opinion, not a situation that we should copy.

<sup>33</sup> The situation in the United States is complex, and we should learn from the problems that exist there about property rights before we simply follow suit.

I have spoken philosophically and generally, and I think I should end on a very, very practical note. Practically, property rights in Yukon are not threatened. People who own property, myself among them, feel comfortable that our property is secure. That remains so, and I would say there is no particular urgency in changing the laws of property. No matter what we eventually end up with, and I am quite confident that we will end up somewhere, the entrenchment of a property right will be unsettling to the law. The law will adjust the property laws, of which there are many, will need to adjust and there will be uncertainty about the ownership of property as there is uncertainty about all sorts of charter issues that are now before the courts and will come before the courts. I would suggest that prudence about this very important matter is essential and we should clearly identify the practical effects on everyone's property that such an entrenchment would have. It is the consensus of provincial and federal Ministers of Justice and Attorneys General that we do not now have that information.

Because of all that, I would move an amendment to Motion No. 78.

#### *Amendment proposed*

**Hon. Mr. Kimmerly:** The amendment is that Motion No. 78 be amended by deleting all words after the word "THAT" and substituting for them:

"this house supports the continuation of the federal, provincial

and territorial processes which are underway to (a) identify the effect of enshrining property rights in Canada's Constitution; (b) identify which jurisdiction is appropriate to enshrine property rights; and (c) identify options for enshrining property rights in Canada's *Constitution*."

**Speaker:** It has been moved by the Minister of Justice that Motion No. 78 be amended by deleting all words after the word "THAT" and substituting for them:

"this house supports the continuation of the federal, provincial and territorial processes which are underway to (a) identify the effect of enshrining property rights in Canada's Constitution; (b) identify which jurisdiction is appropriate to enshrine property rights; and (c) identify options for enshrining property rights in Canada's *Constitution*."

**Hon. Mr. Kimmerly:** This motion recognizes the processes that are underway in this country. It is support for the processes. I would be very, very clear that this is a motion to affirm and to support the processes that have a practical chance of success. The motion put forward by the Member for Riverdale North has no practical chance of success in eventually being a part of Canada's Constitution.

It is the original wording that was rejected at the time of the writing of the *Constitution*. It was put forward in 1982, and it went nowhere. I would suggest that there is a process that does have a practical change of success, and we are engaged in it, we are supporting it. I would submit that that is the appropriate political action to take, and any other action has no chance of success at all. It is not the rubber match. It is blowing in the wind.

**Mr. Phelps:** On the amendment, I would like to thank the previous speaker for his dissertation as to what is taking place regarding looking at amendments to the *Constitution* and particularly regarding entrenching property rights in the *Constitution*.

Given the speech we just heard and what we take to be a sincere belief in that entrenchment and given the importance that this party places on entrenchment of property rights in the *Constitution* as soon as is practical, we will be supporting this amendment.

I would like to go on record as stating very clearly our strong support for the inclusion of property rights in the Canadian *Constitution*. Our feeling is that the individual and his property rights must be protected, particularly against the State. It is my fundamental belief that most Yukoners who live here spend a large portion of their lives carving out their dwelling places and carving out their careers and businesses in the Yukon, and that most Yukoners firmly and fundamentally believe in private property and believe that a man's home is his castle.

In the course of political controversy, in the course of hearing what people have had to say about rights and about the law, it has been my pleasure to have, in my criminal law career, to defend individuals against the State.

<sup>35</sup> At least very few things seem to upset individuals in Yukon more than the State, through police officers and inspectors abusing the law and busting into people's houses without search warrants, and bureaucrats putting forth legislation that would make it easy for the State to enter private dwellings without due process and without proven and good cause. I am pleased to support this motion, because I would like to see it pass unanimously in this House. It is this belief that we feel so fundamentally, and most Yukoners share, and the very issue of property rights really is the little man's right against the State, more than anything else.

It is really that attitude and that belief that underpins the problems that we are going to be discussing at great length over the next few days and weeks with respect to the human rights legislation that has been tabled in this House and is now going to be coming before the Committee of the Whole.

It surprises me that we are going to have unanimous consent on this motion at this time, because it does show a little bit of sensitivity from the other side with respect to why most of us are really fearful of big brother, and have seen, on numerous occasions, the abuse of power by bureaucrats, by the police and by inspectors.

I conclude my remarks by saying I take pleasure in supporting

this, even though it is a watered down piece of work. It waters down the original motion but, perhaps, justifiably. I hope that this is the beginning of some sensitivity on behalf of the side opposite to the real basic fears that good individual Yukoners have about the state and, consequently, about the *Bill of Rights* that we will be dealing with later on.

*Amendment agreed to*

**Speaker:** Any further debate on the main motion, as amended?  
*Motion No. 78 agreed to as amended*

**Clerk:** Item number 6, standing in the name of Ms. Kassi.

**Speaker:** Is the hon. Member prepared to proceed with item number 6?

**Mr. Kassi:** Next sitting day, Mr. Speaker.

**Speaker:** So ordered.

May I have your further pleasure?

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

**Speaker:** It has been moved by the hon. Government House Leader that the Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

*Motion agreed to*

*Speaker leaves the Chair*

### <sup>36</sup> COMMITTEE OF THE WHOLE

**Chairman:** Committee of the Whole will now come to order. We will recess for 20 minutes.

*Recess*

**Chairman:** Committee of the Whole will now come to order.

### Bill No. 99 — Human Rights Act

**Chairman:** General debate.

**Hon. Mr. Kimmerly:** I will make a few very brief remarks. There was a fairly long and complete debate at second reading concerning the philosophy, if you will, and the general objects of this Act. We will obviously be in general debate for some days. I would be surprised if we are not. I would suggest that it would be a constructive way of operating to identify the areas that may be contentious. I am specifically interested because I heard a newscast on CBC — I believe it was Tuesday morning — concerning the position of the Conservative Party. They mentioned approximately a dozen amendments. I know what one or two of the obvious ones would be, but I would recommend to the Committee a process of identifying those things fairly early, so that we can debate the things that are possible to compromise on or agree to. There may be things that after we hear the proposed amendment, we would immediately agree. I do not know. I would recommend that process as a good way to proceed.

**Chairman:** Any further general debate?

**Mr. Nordling:** This is a very important Act. As I said earlier today, it will have a profound effect on all Yukoners, and we are not fully representative in this House of all members of all the electoral districts. There is no Member for Tatchun. In light of that fact, and the importance of this Bill, and the importance of representation, as the Government Leader has stressed so many times himself, this Bill has been described by the Minister of Justice as a very important, in his mind, very progressive piece of legislation.

<sup>37</sup> It is a piece of legislation that has thrown the Yukon into more turmoil than it has ever seen. It will affect each and every Yukoner, and I believe that each and every Yukoner should have input and should be represented in this House with respect to debate on this Bill. The Minister of Justice has asked that we discuss areas of concern, perhaps set out some program we can follow to facilitate debate. That is nice for him to say, I do not know what his position



is with respect to the people of Carmacks, Pelly and Little Salmon; whether he feels that he is representing them himself or not, we may hear from him. There has been a by-election called in that riding for February 2, 1987. Within just over three weeks that electoral district will have a Member. My understanding is that the Member could be sitting in this House as early as February 16, just over one month from today.

We have been working on a Human Rights Act for the Yukon for well over a year now. There was one introduced last year and withdrawn. I do not see the necessity to be rushing this through and pushing it ahead without full representation for all Yukoners in this House. This is where the Act will be voted on. This is where the discussion, clause-by-clause, will take place. The Minister of Justice has said that he will listen to the people of the Yukon, and that he has listened to the people of the Yukon. Now, I believe, the Minister of Justice should agree with his colleagues to allow the people of the Yukon to be fully represented in this House when this Act is being discussed.

There is plenty of other work to do besides this Human Rights Act. We are in the middle of the Supplementary Estimates. We have started the Capital Budget and are approximately midway through it. We began discussing the *Gas Burning Devices Act* yesterday and have not gone through the first page of that Bill. There are five other Bills on the Order Paper, including the *Lottery Licensing Act*; *An Act to Amend the Motor Vehicles Act*; *An Act to Amend the Brands Act*, *The Highways Act* and *the Pounds Act*; *An Act to Amend the Public Service Commission Act*; and, *An Act to Amend the Public Service Staff Relations Act*. These are very important Bills also, but in my submission they are not as important and will not have the significant effect on Yukoners that the Human Rights Act will have.

38 I also understand that it is proposed that we may have a week's adjournment in January. With that adjournment, I am sure that the work that we have would easily take us to the middle of February when a Member for Tatchun could sit in this House, represent his constituents, discuss this Bill clause-by-clause and be able to vote on behalf of his people on each and every clause.

The Government Leader has talked about the importance of representation, not wanting that riding to be unrepresented for two consecutive sittings. Now, he seems prepared to go ahead and proceed through the most important and controversial piece of legislation that this House has ever seen without representation from that area of the Yukon.

Earlier this afternoon, I did not receive unanimous consent to debate the motion that I proposed. I do not know which Member was opposed and denied unanimous consent. For that reason, I would move that at this time the Chairman report progress on Bill No. 99, entitled *this Human Rights Act*.

*Motion negatived*

**Chairman:** Is there any further general debate?

**Mr. Lang:** I heard the Government Leader say that the points that the Member for Porter Creek West was making were pathetic. I take exception to the utterances of the Government Leader in this House. I also heard the Government Leader say that it does not really matter how long this House sits or what is said in this House because no one listens to it.

That, in my judgment, as a Member of this House, accentuates the arrogance and the disdain that the Government Leader has for this institution and for the democratic system. There is a by-election taking place. We are right in the middle of a by-election that he chose to call this early. It was within his power to do so. I appreciate the fact that it has been called, because I believe the constituency of Tatchun should be represented.

There are very, very few Members in this House to begin with. We take one Member away from this Assembly, and it is noticed. We are not talking about the Ontario Legislature. We are not talking about Parliament. We are talking about a 16 Member Assembly with each individual having certain responsibilities, including the Government Leader who has so much disdain that he left these proceedings so he would not have to listen.

39 We are dealing with a situation where right now, by *de facto*, by some actions of a previous Member of this House, we are dealing

with a majority government that the electorate never gave to the side opposite. Those are the realities we face. Now we are dealing with a government that believes they are a majority and are going to exercise that majority to the detriment of perhaps what they deem to be a small minority of people — the people of Tatchun — comprised of 400 voters. They say, no, we are going to push this thing through.

We had business in this House. We had the Minister of Municipal and Community Affairs stand up in this House and threaten us that if we did not pass certain sections of the Budget and the Budget did not get through, they were not going to be able to operate. There were commitments made by this side. We said we would go through the Budget and expedite the proceedings of the Budget, which we did, to the point where I have said publicly that, to some extent, we could well have been criticized for proceeding too quickly.

The fall session is generally brought into play for the purposes of having the Capital Budget passed. We are dealing with one of the most major pieces of legislation in Capital expenditures ever seen or presented to this Assembly. The purposes of having the Budget presented and passed in the fall was basically so they could have the vote authority to proceed with the planning and expenditure of dollars to get the Capital financing into place for the forthcoming year.

Now, what do we have? We have a flagrant political move by the side opposite to change the order of business, which could have been completed in three or four days — the Capital Budget and the Supps. But no, we cannot do that. What do we have, as the Member for Porter Creek West put so well? We have a Capital Budget that we are halfway through, that for now is not a priority, but it was great for the Minister of Community and Transportation Services to stand up and threaten all Members of the House, that he was going to send out, on his little stationery that we cannot proceed with the programs. That threat was made. It is in *Hansard*. We had the Government Leader stand up and criticize this side, by saying that we want to go through the Capital Budget, we will not go back to the Supps, we will carry on with the Capital Budget. Now, all of a sudden, we come into the House and are faced with going into human rights, the most controversial piece of legislation, as the Member for Porter Creek West has said, that this House has seen.

In view of the fact the organization of how the Bills have been presented in the House and how poorly they have been drafted, i.e., the *Gas Burning Device Act*, which should have maybe taken a half-hour if it had been done properly. We are sitting here with the business of the House in such a manner that we have all our financial bills halfway completed; we have pieces of legislation that have been poorly drafted, because there are concerns raised by this side and, in fairness to the Minister of Community and Transportation, he has said he is prepared to look at a number of sections of the *Gas Burning Device Act*. Hopefully he does.

40 The time and the effort obviously was not put in to make what would be the standard that we would expect on this side. Obviously there is going to have to be some major amendments to make it passable. We are sitting here and now we are going to proceed to Human Rights. There was no attempt from the side opposite to reply to the request and the observations made by the Member for Porter Creek West. Does it not matter that Tatchun does not have any representation? Does this Bill have to be passed so expeditiously in the next week? Is that a dire requirement when in the next week we are going to have another holiday?

Obviously it is an attempt to push this piece of legislation through as quickly as can possibly be done within the confines of this House, hopefully with as little public exposure as possible, with or without the representation of Tatchun, specifically because that is the Member who will determine whether the side opposite can carry on with their progressive legislation in the year or two ahead of us.

I would like to hear the side opposite stand up and explain to us why this legislation is so important to be dealt with immediately today as opposed to waiting until the by-election in Tatchun is decided. Could somebody from the side opposite please stand up in the House and explain to the public and specifically to the people of Tatchun why they should not have representation in this House to

deal with legislation that may not affect them today but could have a very profound effect upon them and their families down the road.

**Hon. Mr. Kimmerly:** I will answer the question very briefly, once. The logic of not proceeding with one Bill but proceeding with the Capital Budget and other Bills in the absence of a Member for Tatchun is completely inconsistent. It is illogical. The statement that was made that we are pushing this Bill through as fast as possible is totally erroneous, and it is absolutely clear that that is not the case. It is clear to everyone that the clause-by-clause debate will take longer than a week. I will expect it will take two or three weeks. If we continue to not talk about Human Rights at all it will take much, much longer than that. There is absolutely no intention to try to debate this Bill as soon as possible. Thinking people will recognize that the statement by the Member for Porter Creek East is entirely illogical. If it were our intention to pass the Bill before the by-election at all costs, we would not have called the by-election as early as we did.

<sup>41</sup> It is the government's intention to debate human rights. The Opposition can throw up whatever roadblocks, as they are doing. However, it must be seen by the public for exactly what it is, a filibuster.

We are ready to debate human rights. We are ready to answer questions about human rights. We are not trying to speed up the process or ramrod anything through. This process will undoubtedly go on for several weeks, probably in excess of a month. I do not know. It is up to the Opposition. We can waste time talking about any manner of things, but I earnestly ask all Members to talk about human rights.

**Mrs. Firth:** It is quite clear exactly where the government is coming from. I have been listening to the debate for the last 15 minutes or so and earlier this afternoon about the riding of Tatchun having representation in this Legislature. No matter how the Minister of Justice wants to put it, we are talking about human rights, because any debate in relation to this Bill, No. 99, is dealing with human rights. It is dealing with people's rights in a constituency of the territory who are not going to be represented here in the Legislative Assembly.

After the motions that the Member for Porter Creek West has brought forward, after the comments of the Members of government in the Legislature, it is clear that in this Legislative Assembly right now, the government Members and the interim Leader of the Liberal Party, the Member for Faro, do not want to wait until Tatchun has a representative in this Legislature. We are prepared to wait until the riding of Tatchun can be represented. Although a vote cannot be recorded, I think that is very clear to all Members of the Legislature this afternoon.

I would like some answers from whomever on that side wants to answer about the debate on the Human Rights Bill and about the process of business. The Minister of Justice has just spoken in great length about how things presented from this side were illogical, how they were inconsistent. I do not think that the Chairman would disagree, trying to Chair over these proceedings, that the debates, so far in the way that the government has presented their business, have been very disjointed and disorganized.

I would like to take us quickly through the process of the organization of the government in calling its business forward. <sup>42</sup> We have been in the Legislature for three weeks. So far, the business that we have completed has been very minimal: a few Bills that were given third reading and assented by the Commissioner two weeks ago when we adjourned for the Christmas break.

Other than that, we have gotten halfway through the Supplementary Estimates — we still have not completed them — we have gotten halfway through the Capital Budget; we had some threats from the Minister of Community and Transportation Services about the Local Employment Opportunity Program and how they were not going to be able to proceed with expenditures. We indicated that we were prepared to do whatever we had to to allow government to do that, even though they had the authority to spend the money anyway. The Government Leader expounded at great length about how he was not going to divert from the order of business. It had been set. We were going to go on with the Capital

Budget and that is all there was to it.

Then we came back to the Legislature, and we were given a schedule yesterday from the House Leaders meeting on what the progression of business was going to be. We were going to proceed with the *Gas Burning Device Act*, and we were told that we would go on to Bill No. 40, and then we would go on to Bill No. 58, Bill No. 23 and Bill No. 52. That was the order of business that was given to us the first day back in the Legislature.

We came back today, and the Government House Leader has again changed the order of business. We have to have our House Leader go back and ask if we are proceeding with the *Gas Burning Device Act*? Yes, we are proceeding with *Gas Burning Device Act*; no, we are not proceeding with it. We are going right into Human Rights. We are going into Human Rights this evening, but I may have to go back to the Caucus and see what we are going to be doing this afternoon. That is logical? That is organized? That is consistency?

I see civil servants doing a merry-go-round through this public gallery here, trying to be available and accessible to their Ministers, as they discuss the Bills and the Budget as they come on the Order Paper and as they come in the procession of the House debate.

They do not know what is coming up next. They are running around in circles, not knowing when they are supposed to be available, when the debate is going to come forward on their Minister's Budget or their Minister's Bills. That is logical and consistent?

The Minister of Justice indicated to us that he was going to make some opening comments today when we went into debating the Human Rights Bill. He was going to make some opening comments, present some areas to us that he was prepared to look at, prepared to compromise on. I know there are some areas, because the president of the Chamber of Commerce has met with the Minister. A letter was sent to the Minister with respect to concerns, and a reply was sent to the Chamber.

The Minister indicated to them that there was possibly some give and take, for example, in the area of third party complaints. The government is bringing forward this Bill. They are indicating to people in their private little meetings that they are prepared to make some changes and some modifications and some compromises, but they will not come in the Legislature and tell us what they are.

<sup>43</sup> It is the government that is bringing this Bill forward and, as the Leader of the Government has said before, the opposition has a duty and a responsibility — and I have heard the Minister of Justice say this, too — to question on behalf of their constituents what is happening. This is not a filibuster. We are trying to find out why the business keeps being changed. What is the logical consistent order of business of this government? The Minister indicated he was prepared to make some changes; where are those changes going to be? Perhaps he could stand up and tell us where he is prepared to compromise, to make changes, because it could have some influence on the amendments that we are going to be bringing forward. It could expedite the business of the House and the debates in the Committee of the Whole on the Human Rights Bill.

I would like to know, from the Minister, if he can tear himself away from his newspaper for a few minutes to respond, if he will tell us exactly where he is proposing to make some compromises in the Human Rights Bill.

**Hon. Mr. Kimmerly:** I am proposing Bill 99 as it is written. I do not want to make any compromises or any changes. That is the proposal of the government.

Now, at the second reading debate, there was an identification of the problem of third-party complaints, and we indicated that we would be willing to discuss people's concerns about that or, to put it another way, we are soft on that issue. I ask: what more can we do that is reasonable?

Our proposal is the Bill as it is tabled before the House. That is our position. The next logical step is to talk about the concerns with the Bill, the complaints about the Bill. We would be very interested to take them one-by-one, or all at once, and discuss them, but we need to know what they are. I am simply indicating that it would be a businesslike way to proceed to indicate which areas are of concern. If there are no complaints or concerns coming forward



from other Members, it is the government's position that the Bill should be passed as it is. Obviously, there will be some debate, and I am not here to say that we are not going to compromise about anything. That is simply not the case. We will listen to the debate and go through the items as they come up in debate and we can explore what changes or what compromises are possible. I would love to do that.

**Mr. Lang:** I still do not understand. For the record, I pointed out that there was enough work in Committee for us not to have to deal with this Bill until the results of the election in Tatchun. The Minister of Justice made the allegation that my statements were totally inconsistent. They are not inconsistent. The Budget has been brought forward by the government. There is at least one Member on this side who is supporting, in its entirety, that piece of legislation. Therefore, there is no question that that Bill is going to go through.

What my colleague to my left does about the *Human Rights Act* is another different issue. I have seen statements made in the newspaper about it, but we will not know how accurate they are until we get down to the situation that we have to vote clause by clause.

If we complete the financial bills, there are a number of other Bills that could be dealt with without affecting the consistency of the argument. The MLA for Tatchun should be represented in this House when we are dealing with the major Bill before this House that is so controversial. I would like to think that a newly elected MLA for Tatchun would bring in a new perspective, some new ideas, help generate further debate in a constructive manner in this House. I would assume that that is the intent of all three political parties in running candidates.

We know that if the Conservative nominee is successful and is elected, that individual will bring to the House a wealth of information, a wealth of background on the proceedings of this House. I cannot speak for the other two political parties, but I can speak for our candidate. The Liberal's candidate will be chosen by Friday, and the side opposite will be choosing their candidate by Monday.

I feel strongly that a representative for Tatchun could contribute to the debate that we will be proceeding with if the government gets its way.

**45** I have a direct question to the Minister of Justice. Why is it not important to have the riding of Tatchun represented for this particular debate?

**Hon. Mr. Kimmerly:** I have already answered that.

**Mr. McLachlan:** I have a few comments to make in relation to the comments made by the Member for Riverdale South. If you listen to the debate henceforth you would believe that nobody in this Legislature has any concerns for the riding of Tatchun. With the exception of Pelly Crossing, which is not on a direct route going to my constituency as the other two parts of that riding are, I believe that I spend more time in two out of three parts of that riding than anybody else, and I am getting a number of concerns and phone calls on the issues that the former Member for Tatchun was working on and I carried forward. I resent the inferences that that is not being done.

The other point I would like to make is that the Liberal Party has some changes with regard to clauses in the Legislation. I believe there are three, number one of which I have indicated to the House Leader of the Conservative Party. We will be bringing those forward in their right place, and I hope in the spirit of debate and consideration for the particular parts of the Bill to which those are applicable.

I resent the inferences that this Member is doing nothing other than following what someone else should dictate or what someone else should feel about the provisions in the clauses in this Bill. I resent the inferences also that Tatchun is not concerned or in the strict legal sense of the word they are right in that one of these chairs is not occupied by a Member elected from Tatchun.

Does the Member for Porter Creek East want to stand up and interrupt my discussion?

**Mr. Lang:** Sure.

**Chairman:** Order.

**Mr. McLachlan:** I resent the inferences that nobody in Tatchun is allowed to be able to express his or her concerns through any elected Member of this Legislature. As I indicated earlier, I am spending a lot of time in the riding, and I have, and I do on trips home to my constituency. I resent those inferences and aspersions that are cast by the other parties.

**46 Mrs. Firth:** I have really seen the height of sensitivity now with the Member for Faro. It comes down to this: I do not care who drives through Tatchun and what they are doing. When it comes time for representation and a vote to be taken in this Legislature, people who sit in these chairs have a responsibility to move their mouths. I never saw that from the Member for Faro when it came time to vote as to whether the Human Rights Bill should be debated later or now. He just sat there quietly. So, I am sorry that his feelings are so hurt, and that he is so sensitive. However, if he wants to be able to get up and be resentful and sensitive, he has to move his mouth when it comes time to vote, and he has to say either "agreed" or "disagreed". Then the riding is being represented. When a person sits there idly with their lips sealed, there is no representation and no voice.

**Chairman:** Anything further in general debate?

**Mrs. Firth:** I would like to ask the Minister of Justice some questions about the regulations that are going to be accompanying the Human Rights Bill. I understand that the Chamber of Commerce was also concerned about the regulations and wanted to have access to them before the Human Rights Bill was passed. There have also been many concerns expressed from us in the Legislature and from the public as to the regulations and the contents of the regulations.

Can the Minister tell me what the process is going to be for the regulations being made public? Are they drafted up yet?

**Hon. Mr. Kimmerly:** There are no regulations drafted. There will not be and cannot be until the Act is actually passed. I wish to explain why that is. If all Members will look at section 33 of the Act, they will see that the regulation-making power is very limited. The regulation-making power is only about the procedures of the commission and the board of adjudication. It is a regulation about hiring employees and prescribing expenses, et cetera, which are required under our *Financial Administration Act*, if they are to be civil servants. It is not our contemplation that this staff person is a civil servant at all, but the power to regulate is given to concern the employee or employees of the commission and to concern the procedures of the commission.

**47** There is no other power of regulation. This is extremely limited. This is unusually limited, and it is that way for a purpose. It is also clear in the Bill that the regulations can only be made after consultation with the Commissioners. The Commission does not exist yet. It is something that I considered very seriously in the drafting of the Bill, because I thought that it might be useful to present regulations as well.

As the regulations only concern the procedures and the staff, it is ludicrous to present a draft set of regulations that the Commission may not accept in any event. There is no draft of any regulations. There will be no draft. The regulations will originate with the Commission. They will be only about very limited things, and that is why there are no regulations here. I have explained that also to the Member for Porter Creek East in writing.

**Mr. Phelps:** Of grave concern to me and the Members on this side is the issue of costs. I realize that the Minister has been saying that these regulations are very picayune kinds of things, but costs are a grave concern to me. If a person has a complaint laid against him, then he is going to be facing, aside from the potential for various kinds of punishment for damages, in the course of determining whether or not to fight the case rigorously, the costs to be paid should he lose on any point.

Costs is an area that, if it is to be set by regulation, is something that we should see. We should see the regulations pertaining to what the costs will be, and we should have the opportunity to debate and approve or disapprove in this House the quantum that may be allocated.

**48** I feel very strongly about this. The awarding of costs, in many cases, could be far greater than any of the damages or other punitive measures the side opposite, on behalf of the state, may

want to impose upon the person who is charged with contravening this statute.

Is the Minister of Justice prepared to come forward with regulations with respect to that item?

**Hon. Mr. Kimmerly:** The answer that I gave to the previous question holds. It is impossible for me to come up with a proposed schedule of costs. I rather expect there never will be a schedule of costs. However, I am absolutely confident that the Member opposite, being a lawyer, knows full well that there are procedures in place in courts to look after the question of costs of the parties to any action in court.

It is clear that there is a right of appeal to a court in this legislation. In the court, the question of costs is governed by the rules of the court. Incidentally, there are no regulations passed by the government about these rules. That is handled by the courts.

On the question of costs at a board of adjudication level, there are sections in there about costs. I would specifically mention a principle that we have inserted here that is not found in any other legislation in the country. That is in section 24, about the costs of people who are involved in a dispute. This section does more than cover the costs of people who ultimately win. It also provides for damages for injury to the respondent's reputation, which goes far further than the cost. This is the question of accountability.

There was a substantial debate in Yukon about accountability on *The Children's Act*, and substantial debate on other Acts and substantial debates on accountability on Bill No. 58. This is an area where the government is proposing that there be a very substantial accountability of the commission and the board of adjudication.

"The costs of the respondent can be paid back to the respondent — and more than the costs; also damages for injury to the respondent's reputation. Specifically about regulating what those costs are, the Member opposite knows full well what happened here is that there would either be an agreement as to what the costs are or, if there is not, the board would have the jurisdiction to fix the costs and, if there is a dissatisfaction to that, there could also be an appeal.

**Mr. Phelps:** I am interested in just exactly how the appeal would work. I would be interested in hearing from the Minister about that because appeal here is to Appellate Court on a question of law.

The second point has to do with section 24. In passing, with reference to that, the issue of accountability really is only partially addressed here because it would seem to us, and to most Yukoners, that if somebody comes out with a frivolous and vexatious complaint that perhaps costs ought to be awarded against the complainant. Why should the government pick up the tab for somebody who is acting in such a disreputable manner. In any event, that is just a point I will make now, and I am sure we will get to it again as the weeks and months progress.

I really feel that it is important that there be costs set up in regulations, and a schedule, because that is the way that it works in most courts — the schedule there is set by the judges, primarily. I think here that it is important that there be some certainty as to the consequences of defending, so that people who are going to be fighting complaints that may be frivolous and vexatious, because it will not hurt the people who laid the complaints at all of course, but it would have some idea of what financial obligations they may be getting themselves into.

**Hon. Mr. Kimmerly:** The Leader of the Official Opposition has obviously not considered the sections around complaints and the powers of the commission sufficiently. He would know, if he had done that, that there is no power here for complainants to proceed on their own. The only way that a proceeding before a panel of adjudicators can be made is if the commission makes it. That is a difference between many of the provincial codes and this one. That is one of the ways in that this is very much limited.

The experience in the provinces is that the cases that are the most troublesome are ones that are generally brought by complainants and not by commissions. In fact, the commissions often appear in the proceedings as intervenors, but to represent the public interest. The complainants, themselves, are carrying the case. This is not possible under this legislation.

If the commission does not proceed with the complaint, because

they feel it is frivolous and vexatious, that is the end of it, which should be a very substantial comfort to potential respondents. It is a significant reduction of power.

Consequently, it would not be appropriate to have complainants paying costs because it is not within the complainant's power to proceed without the commission. The commission would be who is proceeding, or in a lawyer's language, the plaintiff can only be the commission.

**Mr. Phelps:** I anticipated that argument, but it seems that this is really — while it logically flows from the wording of the Act — deficient in many ways. This is one minor example of that. The wording is "frivolous or vexatious". It is that wording that we find in 19.1(b). It is that wording that we find in the cost section, 24.

I will make some concrete examples while we explore this a little this afternoon. If a person maliciously lays a complaint based on falsities, I suppose it could be argued that the facts were false, but technically this is not a frivolous or vexatious complaint. That would depend on words, and we will get into words as this debate drags on, and we get into clause by clause on some of these issues.

If somebody maliciously and falsely lays a complaint, takes it to the Commission, and cleverly disguises it — let us assume that we have three great wise men who do not make mistakes but, of course, everyone does — and they proceed because they do not have enough facts or evidence to prove that it is malicious and false, then the case continues. Let us assume then at that point it goes before the adjudicators and it then comes out that most of the story is false, maliciously so, or not maliciously so, but I would like to use the extreme. It is not necessary, but I would like to make the point as clear as possible. What happens then is that the taxpayers have been put through a great deal of expense. No doubt the respondent has, as well as injury to the reputation, and yet the instigator, and I am sure this will happen, gets off scot-free. I strongly feel that it does not, by missing those kinds of cases, and not allowing for redress against the person who came forward with a false story because it will lead to a situation where the complainant must pay costs.

I accept in part the Minister's argument made about the intervening aspect of the Commission, while the Commission may, in a moral sense, be partially to blame for this thing getting as far as it did before it was quashed.

It still seems to me that part of the blame, if not all, has to rest with the person who made the complaint. I am not satisfied at all that the accountability aspect has been addressed by the manner in which this has been drafted. These are the things we will be discussing amendments about.

I feel that costs ought to be pretty specific, as they are in schedules for party and party costs in Canada. I feel we ought to have some inkling of what is involved with respect to the amounts that might be awarded against a person who is proven to have discriminated, as well as those people who may frivolously or vexatiously or maliciously and falsely start these things.

The damages for injury to the respondent's reputation: again I am talking about things as they come to mind in this part of the debate. That is fine if it goes all the way to adjudication, but that does not satisfy me at all. It seems to me if there is a frivolous, vexatious or maliciously false complaint laid in a community, — and this is a small community; Whitehorse is small and I live in Carcross, which is a lot smaller — damage will have been done by that time.

The damage will have been done by the time the thing gets to the Human Rights Commission to investigate it. The damage will have been done by then. If at that stage, it is frivolous or vexatious, or if it is malicious and false, then the principle of accountability espoused by the Minister would make it appropriate, even at that stage, that costs should be awarded. In most cases, there will be costs even at the stage of investigation. Damages for injury to the respondent's reputation, at that stage, should be awarded.

If the Commission intervenes successfully and finds out that the complaint is frivolous, vexatious or false, then the complainant should be the one who pays. There should be costs in place that should be enforced and enforceable by the respondent. As well, damages for injury to the respondent's reputation should come into

play because I can see people being ruined by this nasty piece of work.

**Hon. Mr. Kimmerly:** I fully recognize that it is a very serious issue about what happens when false complaints may be made, and I fully recognize that in the worst case scenario when a complainant lies or is malicious or is false to the Commission, that the blame is primarily on the complainant, on that person. I would be willing to explore ways to increase the accountability of that person. I have no problem with that object because I think it is sensible, really a common sense object, and am sure that few would disagree with that. The question is: where is it appropriate to pay the damages, if you will, if there are damages, and how can you establish the best checks and balances on the possibility of that kind of thing occurring?

In legislation around the country, complaints that are frivolous or that are simply not proceeded with occur fairly regularly. My figures are very approximate but there are 8 or 10 percent of the complaints that are received. I would make a point very strongly that these kind of complaints are not caused by the Commission, nor caused by this kind of Legislation. These kind of complaints exist in the community and the complaints would exist whether or not there is any law or no matter what the law is or in what form it is.

I agree with the Leader of the Official Opposition about the damage to reputation, especially in a small community, at this early stage. People do go around making false accusations.

<sup>55</sup> They occasionally go to the police. They occasionally go to the Labour Standards office. They occasionally go to wherever they can go to to lay these complaints. It is important in all legislation to be very sensitive to that and to legislate, if you will, checks and balances to minimize the possibility of that occurring and doing damage. What we have done here is unique in the country. It is ironic that Bill 58 was called radical when it was not at all. It was copied from the provinces.

**Chairman:** Order, please. The time now being 5:30, we will recess until 7:30.

#### *Recess*

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

**Hon. Mr. Kimmerly:** Before the break we were talking about the costs of proceedings under the complaint procedure or the adjudicators or the panel of adjudication. I was comparing Bill No. 58 and Bill No. 99. It is interesting that Bill No. 58 was a compilation of various sections from other jurisdictions and this Bill is entirely different. It is Yukon-written, if you will, so the term "radical" should never have applied to Bill No. 58.

The question is concerning what is the best policy to discourage frivolous or false complaints and, of course, the best way is to make it difficult to proceed if the complaints are thought to be frivolous. It is crucial, I would suggest, in considering the activity of the Commission, that the Commission have a responsible attitude towards both the interest of the complainant and the interest of the respondent.

<sup>52</sup> It was raised last year as an issue that there should be accountability for the Commission and the complaint process. The way this proposed measure addresses that question is that we have given the power to proceed only to the Commission, not to the complainant. It is in the Commission's interest, and incidentally in the respondent's interest and in the public interest, that frivolous and vexatious complaints do not proceed.

It is a deterrent to the argument that you hear for some proceedings in court that the plaintiff, even in some cases in the criminal courts, that the evidence is scanty or is not overwhelming, and it is impossible to make a decision. The matter, therefore, goes to court, and the judge or the jury is forced to decide.

Before acting in a court, or before a commission or before a panel of adjudication, a person who is causing the issue to proceed should be firmly convinced that they are right. They should not be trying something out or taking a test case to see what the result would be.

There should be a firm conviction that a complaint should proceed. The best way to do that, in our estimation, is to make the person who is proceeding accountable for failure. If they are judged in the final analysis to be wrong, they should pay the costs.

<sup>53</sup> That will be a very substantial deterrent to any commission to take a case that they are not morally convinced that is right within the legislation. This is a very substantial measure. It is new, as I have said before, and it is not found in other jurisdictions at all. It is a measure that addresses the concerns that were raised last year about any possibility of a commission proceeding with frivolous or vexatious complaints.

**Mr. Phelps:** I appreciate the point that is being made by the Minister. As I have already said, I was aware of the attempt to place at least a little accountability on the shoulders of the commission or government, whoever does pay the costs.

This simply does not go far enough. The reason it does not go far enough is that, firstly, there is a strong level of feeling in the Yukon that justice is not done if a person can lay a complaint in a frivolous or vexatious manner, or even, more particularly, and that is of even greater concern — and I am not going to try and interchange these words — is that malicious falsehoods are the order of the day.

I am sure that we will be debating this when we go into clause-by-clause, if there is a feeling that this is something that may be accommodated by the side opposite. If somebody maliciously makes a complaint based on a falsehood and it gets as far as the commission, and the person or family is under investigation, and the commission, at that point, catches on and stops it, whether they call it frivolous and vexatious or straight false, or whether you have to have broader words in there, harm has been done to the individual, group, business or family complained against.

<sup>54</sup> It is my opinion that there ought to be a mechanism for the awarding of some costs for the expenses incurred, because when you are under investigation, many people would naturally seek legal advice, or whatever, and damages for reputation. It seems to me that in those cases where it would be stopped by the Human Rights Commission that the proper place for the awarding of costs, for the most part — and I am not talking about every case naturally — would lie on the person who maliciously and falsely started the proceedings. I am saying that in a small town if that occurs a lot of damage can be done to a reputation before the Commission finishes its ruling. That is one case that is not covered here, in my respectful submission.

The second scenario moves on to where maliciously false accusations based on falsehoods form the basis of a complaint. A complaint is made and it gets to the Commission. The Commission investigates — but let us assume that this is hypothetical and no fault of its own — and is unable, at that time, to discover the false nature of the facts that were presented to the Commission. It moves to the next step: adjudication. The complaint then is dismissed and we turn to Section 24, and that is the point at which the falsehoods are discovered. At that point it seems to me that the real blame lies with the perpetrator of the falsehood, so that person ought not to remain unscathed. In those kinds of cases I want to see costs awarded against the complainant or against the complainant and the Commission. The tribunal can figure out who is to blame. I am sure in my mind that the people that I have spoken to, the hundreds and hundreds of people I have spoken to about this issue, feel very strongly about the complainant getting off scot-free if it is a malicious complaint.

<sup>55</sup> We are not on these clauses yet, but I will give notice that they will be coming forward when we get there in an attempt to clarify that situation and resolve it in a manner that would give a sense of justice to those who are concerned about that malicious kind of complaint taking place.

I am kind of digressing because I wanted to move from there back to costs. We are not going to, at this point, get into the clause-by-clause or potential amendments, but the point then becomes that there is a great need for a schedule of costs to be established. I do not think that somebody with vast resources ought to be able to fly in the top lawyer from Toronto and get everything paid for. There has got to be some kind of reasonable tariff against which costs are judged.

On the other hand, I do not think that the sky should be the limit or a person should be entirely at the mercy of a Board of Adjudicators to simply, out of the air, decide what the costs are. I am convinced that fairness, for a whole host of reasons, dictates that costs be established, and costs can be established through regulations.

I do not really feel that, unless we are going to have people with a fair amount of experience in litigation on the Board of Adjudicators, the Commission would necessarily be the people who established a tariff of costs. That requires a certain amount of expertise. It would be my wish that we have some idea of what kind of tariffs we are speaking about and what kind of costs would be considered justifiable.

I would also submit that they ought to be in the nature of party and party costs. Having that kind of indication is only fair for anybody advising a respondent to a complaint as to what he is in for, if he is going to hire counsel or defend himself through a lengthy hearing.

☞ I think that it would behoove the Commission that, when they are a little suspicious of a complainant, that they show that person these costs and explain just what might happen to them if they are not really doing this out of a sincere belief that they have been discriminated against.

That is the reason that we are into this discussion. It may be that the Minister is unable to prepare draft regulations that go into detail in the timeframe he expects this legislation to complete its way through this Committee. Perhaps the Minister could at least consider some principles for tabling, because I am very uncomfortable. It is a discomfort that I feel if there were not a limitation on the penalty section up to \$2,000. It is the same kind of discomfort I feel, because costs become a form of penalty. I would like to see them utilized in that way, as they are in civil proceedings.

If we were talking in terms of some tariff costs to be established and based on some fairly fundamental principles, I would feel much better. I would feel even better if we had a chance to see what kinds of monetary amounts were being contemplated by the Justice department. I guess we will not know from the Commissioners at this time. I think there should be some guidance.

That is going to probably result in more money out of people's pockets than the fine section will. I am convinced that you will have fewer offences under the Act than you will have situations where costs would be awarded, particularly if there is any merit in the eyes of those opposite to my opinion that a person who maliciously starts proceedings and is even caught then should have to pay something.

☞ **Hon. Mr. Kimmerly:** I thank the Leader of the Official Opposition for those comments, and I have taken good note of them. Just so that we are clear, there is a request for a schedule of costs or a tariff if that is at all possible, but at least the principle is involved in establishing the costs, and I will work on that. I sincerely hope that, at the time of the clause-by-clause debate on costs, we can have something to further that issue along.

I am not arguing with the statements that were made about the desirability for more certainty in this area. I would certainly very much emphasize or certainly agree that costs will be more of an issue than penalties because here the penalties are only for very limited and unusual circumstances, and the possible offences are extremely limited. It is extremely unusual that there will be any fines paid.

I am also taking it that there is a concern about the question of malicious complaints as well as frivolous or vexatious complaints. I will look closely at how the concept of a malicious complaint can be added, if you like, to the sections here about frivolous or vexatious complaints and that, in my judgment anyway, would probably be an improvement in this Act. There may well be malicious complaints, and I will look at how we could address that concern in addition to the way it is already addressed.

Let me briefly say that the way it is addressed now is that a complainant does not have the power to proceed to adjudication, only the Commission does, so the malicious and frivolous, vexatious complaints can be caught at the very beginning. Now there is the concern what if they are not caught, and we will look at any possible ways to improve that. I will look closely at the

question of costs to the complainant, I would think, especially if the complaint were malicious.

Now there clearly are the other legal routes that people could take, libel and slander and the like, but there certainly is a point here, and it may be possible to provide for costs against a malicious complainant.

☞ We were very careful not to give any power to award costs or to make any awards to the Commission itself. That is perhaps a complicating factor, but we will look at that question and perhaps, if there are amendments to come forward, we can improve the procedure.

**Mr. Phelps:** We will certainly be coming forward with our thoughts when we get to the clause by clause as well on these important sections. By way of clarification, when one says "malicious", I do not know if that captures it, but if someone is knowingly saying false things, that probably means "malicious", the way we have been using the term. "Knowingly false" is quite different from "frivolous", and perhaps "vexatious".

**Mrs. Firth:** I, too, want to discuss the whole aspect of regulations with the Minister. I recall, in previous times in this Legislature, the Minister being a proponent of regulations accompanying a Bill when it was tabled in the Legislature, and I agree with him. I think that would be an ideal way to present legislation so that there could be adequate and thorough debate about the direction that the government is coming from and the direction that it is going to be given to committees and commissions.

I see that the Bill is a much smaller Bill than the original one, Bill C-58, the original human rights bill. That one gave a lot of definition in it. The Minister has said that this Bill is much easier for the public to read. Because of the way it is presented, it leaves a lot of questions in the clauses as to exactly what the definitions are and what the direction is that the government is going to be giving.

Can the Minister give me any indication of how extensive the regulations are going to be? He said they are going to be limited regulations and that they will not be over-encompassing. Could he give me an idea of approximately how many pages of regulations will accompany this Bill?

**Hon. Mr. Kimmerly:** I would expect two or three pages. We considered the possibility of giving the power to regulate, to put definitions in the regulations. That is very dangerous because by changing the definitions by regulation, we can essentially change the meaning of the original Act. We decided to answer the questions about regulation by severely limiting the power to regulate. It was a decision that was made several months ago. We could have written the empowering sections differently and presented the regulations with the Act.

☞ That would be a possibility, but that was rejected because of the potential argument that you can always change regulations, which is absolutely true. The Cabinet can. Although they are public, they are easy to change. We decided the criticism was best met by not giving a wide power to regulate at all. The regulating-enabling sections here are more limited than any other *Human Rights Act* in the country, and more limited than most other legislation of any kind in the country and in the Yukon. That was done quite consciously in order to meet the argument about the power of the Commission or of the Act, generally, and the power to regulate.

The regulations will be solely about the procedures of the Commission and the Board of Adjudication and the rules about the staff. What I would anticipate here is something less than a page that would probably — and I do not promise this, but it is the reasonable way to go about it — simply adopt the government standards for payment of things like mileage and the honoraria to be paid to people and the salaries or the terms and conditions of employment of the director. They would adopt rules similar to the civil service. That is probably what they would do.

They certainly cannot — they have no power — to further define things and to talk about things like, for example, building codes, about the handicapped and about rules and things like that. There is no power at all to regulate in that area.

The intent of the Bill is that it is purposely stated in lay language, purposely simply stated as guidelines of what legislation should properly be: a statement of policy that is accepted by and enforced

by the Legislature.

**Mrs. Firth:** I find the Minister's comments very interesting. I am not being confrontative, but I believe that the practice in the past has usually been with government that, when they present legislation and the legislation is very broad in the clauses — and some of these are; they are not specific clauses giving specific direction and specific principles of the government — has it not been the practice that when that is the case that there are usually more regulations that accompany the Bill.

<sup>10</sup> For example, I can think of the *Recreation Act* and I remember when we debated that Act in the Legislature. There was a committee set up under that Act called the YRAC Committee. Some of the powers and terms of reference and so on for that committee were defined in the legislation itself. The majority of it was in the regulations; the amounts, allotments and the specific direction of the government was put into regulations. I find it quite interesting that the Minister says there will only be two or three pages of regulations accompanying this Bill, because I would have anticipated many more pages.

Also I feel that the way the Minister is presenting it downplays the powers of the Commission. I understand the government would want to do this in trying to reassure the public that it is not going to be an overburdening kind of body. In saying that there are not definitions in regulation and not specifics in regulation, that is really giving the Commission kind of a silent power, a discretionary power, where they are going to have to, based on I-do-not-know-which guidelines, make a determination of what the definitions are going to be as they go along. I find that quite an interesting concept. As to the Minister's allegations that the Commission is not going to have very many powers, perhaps the Minister could make a few comments about that.

**Hon. Mr. Kimmerly:** It is my experience that the larger complex Acts have even more regulation. As an example, the *Occupational Health and Safety Act* was fairly long, but the regulations were four to five times as long. That is a very complex area. The regulations under the *Recreation Act* were just passed last month, and they are certainly not extensive. That was an example the Member opposite used.

The observation is generally true about most Acts. This is a different kind of Act and I am very comfortable in saying that if we gave extensive regulating-making power in the Act, there would be a substantial power to alter the practice and the effect of the Act and of the Commission's actions. It could be done either way. One of the things we thought about, quite frankly, is what happens if the Commissioners change or the government changes? What happens to the enforcement of the legislation? It is in everyone's interest that it is consistent, whether the members of the Commission change or not, or if the government changes or not. People can feel comfortable about the consistency and the reliability of the Commission.

<sup>11</sup> We have purposely, very consciously, made a decision to not give the power to regulate extensively, which means that there will never be regulation about definitions and other kinds of things. It is absolutely clear that that gives the Commission less power. It is not, as the Member suggested, a kind of silent power. It cannot possibly be that. There would be no authority of regulation for anything that the Commission did, or activities under this Act.

I would say that it was a very interesting experience writing this particular Bill. I am absolutely confident that on most of the long Bills that we have, they can be shortened if sufficient time is taken to put the legislation in clear English and to use common sense interpretations, rather than particular definitions of words that are not the dictionary definitions, and things like that. It is entirely possible, if sufficient attention is taken, to write legislation and regulations in lay language.

As another example, the ill-fated *Lottery Licence Act*, or Bill No. 77 on the Order Paper, was extremely interesting. We received draft regulations as they were promised from the public servants, and they were very lengthy. Through discussing them with lay people and with spending sufficient time, we were able to make the regulations readable and cut them down by literally half. There are half as many words in the version that I tabled than the original

draft.

With this legislation, we are doing what is obviously the proper function of the Legislature. We are stating general statements about the policy that we wish applied in the Yukon about discrimination and human rights. The legislation will be applied by lay people. The Commissioners of the Commission will, undoubtedly for the most part, be lay people. The people affected will be able to read the law and understand it. There will not be, and there should not be, extensive regulations. This is a style of drafting that does not require substantial regulation.

<sup>12</sup> **Mrs. Firth:** I thank the Minister for his comments, however, I want to pursue the aspect of the regulations and maybe give some examples of some of the concerns that I have.

Because the regulations are not there, for the very same reasons that the Chamber had concerns, other people have had concerns, and that is because of the unknown factor that presents itself with this piece of legislation. Regulations, in a way, present the government's direction that it is going to give to the Commission. I understand, under the specific clause about the Human Rights Commission, they do tell the Commission that it shall do all of these things and pretty much gives the Commission a free reign. It almost makes it sound like it is going to be their duty to do all of these things.

However, that does not reassure the public or the lay person in any way as to exactly what parameters the Commission is going to be operating under. I think that is one of the greatest concerns of the general public. For example, we do not know how many commissioners there are going to be. The Minister has had that question asked of him, and we have had it asked of us. We sometimes hear that there will be three to five persons on the Human Rights Commission. I would envision something like that being in the regulations, that the Commission shall be comprised of so many members.

I know how the government is a proponent of gender and racial representation on the Commission, so I would expect that kind of direction to be given in the regulations as well. The guidelines that the Commission would be operating under would really be the direction that the government is coming from. I understand that the Minister wants the Commission to be relatively independent and to approve the guidelines, but surely there are going to be guidelines other than those stated in the Bill as to how the government wants the Commission to operate.

**Hon. Mr. Kimmerly:** I thank the Member for the question because it gives me the opportunity to make several points. It would be quite dangerous to put the number of Commissioners in the regulations, and I will put this case in scenario to the Member. What if the government did not like what the Commission was doing? They would simply double the number of members and appoint more who would be inclined to a change. The Commission would not be independent.

It is appropriate to put the number of Commissioners in the legislation. That is found in 16.1. "The Commission will consist of a minimum of three and a maximum of five members." The reason for three to five members is that there may be a vacancy on the Commission or because of the gender balance, the racial balance or the balance between the rural members and Whitehorse members may not be able to accommodate a fixed number of only three. The reason for a relatively small number is to cut down the expense. In a relatively small territory, a small number is more appropriate.

<sup>13</sup> The Member also talked about the government giving direction to the Commission. Of course, that is legislatively contemplated in things like the *Public Utilities Act* where it is contemplated that the government, by regulation, can give a direction to the Public Utilities Board. There are similar sections in the Workers' Compensation Board and in the *Liquor Act* about the Liquor Commission. So those boards, although they are independent when they consider individual cases in the case of the Workers' Compensation Board and liquor licenses in the case of the Liquor Commission, they are subject to government direction about their general policy, and that is exactly as it should be.

This particular Commission is not subject to that government direction, and it is not for very good reasons. It is akin to the civil

courts where the judges are not subject to the general direction given by the government. That is pretty clear in Canadian constitutional law now, and this is one of those kinds of bodies that is independent. There are very good reasons for that. One of them is the continuity, considering the potential change in governments from time to time. Another one of them is that perhaps one of the larger fears of individuals in the Yukon is discrimination, which is made by the government towards individuals. It would be perfectly appropriate and indeed it is contemplated that this is a piece of legislation that provides for a place for the individual citizen to complain about discrimination made by the government. I am sure, given the passage of this Act, there will be complaints by individuals about the government. I am not worried about that; I am proud of the potential of providing those people with a forum to get their complaints heard and so there will not be a procedure by regulation or otherwise to give the direction of the government to the Commission.

The Member mentioned the selection of the members briefly and the selection of members is, I would suggest, an important function of the government. The policy here is that the selection of the members is not made by the governing party or the government, but by the Legislature. That is something that we feel very, very strongly about. That is the way Commissions ought to be established. In the original Act, there was a provision to select the members by a committee.

"This procedure is simpler and a little tighter. It provides for an affirmation of any appointment in the Legislature. I want to make a public commitment here and now that it is our intention to consult with the parties in this House about any appointments, and we may be able to say: you nominate one, you nominate another, that kind of thing. It may be very cumbersome because of the desirability of obtaining a gender balance and a racial balance and a rural-urban balance, but it is certainly the intention of the government to consult completely, and that the appointments would, in any event, be the subject of debate in this House.

**Mrs. Firth:** The Minister presents his argument and it sounds good. I know it is meant to be reassuring. However, it does not do that.

I understand the point the Minister is making with respect to the direction that the government is going to give the Commission. I believe I recognized that when I said that the government would want to stress the independence of the Commission, and so on. However, there are definitely some parameters under which the Commission can operate, and it is the government that decides that. It has done so in its legislation. From what the Minister says, there is going to be nothing further in the regulations.

When we come to that specific clause, we can get into further debate about it.

When it comes to the choosing of the Commissioners, I would like the Minister to tell me how many Commissioners they are going to be appointing and if there is going to be a minimum of three and a maximum of five. I would like to know how many they are going to appoint immediately, when this Bill comes into effect, and what would be considered a quorum — I will know, I guess, when I get the number of Commissioners.

It is very nice to say to us — it sounds very nice — to say that the selection of the members of the Commission will be done by the Legislature but, really, it is going to be the Minister or the Cabinet who chooses the Commissioners, and the Legislature will affirm the choice of individuals. That is really what will happen.

I see the Government Leader shaking his head, and the Minister has said that they may even approach some method where they ask all parties for nominations and so on.

The Chamber of Commerce had made a recommendation with respect to nominating people from various groups and recommending them to the government. I know that that is how the Yukon Recreation Advisory Committee is chosen, so that there is a good cross-section of representation from the rural and urban areas, from sports and arts. It is a very complicated formula. It is contained in the regulations — or it could be in the legislation — so that there is a guideline for the choice of the individuals who are going to be on that committee.

<sup>15</sup> Has the Minister considered the Chamber's representation to them? Is he giving some thought to that being included in either the regulations or in the legislation?

**Hon. Mr. Kimmerly:** Yes, we have thought long and hard about that kind of appointment. It is virtually impossible to obtain a gender balance, a racial balance and a rural-urban balance with that kind of appointment. It is also problematic as to which organizations are represented or which are not. That becomes very, very important if you adopt that kind of a selection process. I believe there was a motion on that at a Liberal Party Convention. It was reported in the media in any event.

The problem is to adopt a process that is not fraught with difficulty or the very real possibility of a deadlock before it starts and to get people who know something about the issue, people who are representative of the various interests as I have suggested, racially, the rural-urban split and the gender balance in the territory, to get people who will work together.

Perhaps more importantly than all of that is to get people who have the confidence of Yukoners. I am not talking about the political confidence. Ideally, the Commissioners would be apolitical. Certainly, in their functions they will be apolitical, but in their appointments, ideally, they would not be politically identified. However, we all know that it is a small territory, and most people who are publicly active and therefore have the public support of Yukoners have some political identification of some kind. That is almost unavoidable.

The concern here is to find people who will have the general confidence of Yukoners, who would be considered fair-minded, mature and responsible enough to discharge this kind of an important task. I would suggest that the system of nominations by groups is not a wholly bad idea, but it is impractical to some extent. I would suggest that that process be informally used in the selection. The selection could work something like a list of people being made up who would be suitable in terms of their knowledge and their respectability. The list could go through a consultation process.

<sup>16</sup> And in generating the list, we consider things like experience on the Chamber of Commerce and acceptability to various groups. I would suggest that if you simply have nominations, you will get a Commission composed of individual members who see their role as being advocates for a particular segment of society, the commercial interest as an example, or women as an example, or native people as an example. It would be a far more constructive Commission if the Commissioners were selected first of all for their individual acceptability and then their representation of the various population interests and their acceptability to all Members in this House and their ability to work together as a cohesive Commission.

**Mrs. Firth:** The Minister did not tell me the number of Commissioners they are going to appoint.

**Hon. Mr. Kimmerly:** We would consult about that number as well, but it is obviously either three, four or five. It is silly to say that in a sense, but I would suggest that either three or five would be best because it is an odd number. It would depend on the availability and willingness of people to serve. Either three or five is acceptable to the government. In order to get a rural/urban split and a gender split and a ratio split it may have to be five. If we can find three who satisfy at least those major categories, that would certainly be sufficient.

**Mrs. Firth:** Three Commissioners or five Commissioners, there are many Yukoners who would dispute the need for either number because they find it excessive. Really, the last thing we need is a Commission with one token Tory, one token NDP and one token Liberal on it. I think we would all be in agreement with that.

Again about the regulations, I will debate further with the Minister the aspects of the Commission. The regulations, the Minister has said, are not going to include costs or penalty schedules or so on. How, then, is the Commission going to determine things like this? I look at the clause that deals with penalties and payment of damages and they talk about payment for hurt feelings and dignity and self-respect. I look at the section where the Commission has to make determinations based on relevancy, for example with the criminal record, whether it is



relevant to the business or not.

<sup>17</sup> I look at the section on harassment, where the Commission is going to be required to make determinations as to what is harassment and what is not. The Minister has said there will be no definitions. How will the Commission be making those definitions, if not simply on a discretionary basis?

**Hon. Mr. Kimmery:** There is a very large body of law now on decisions of Commissions of Human Rights. These Commissions have existed for 30-odd years. There is a law report series about these decisions of Commissions. What happens, in an effort to achieve a consistency, is that the decisions that are made become precedents. We would, in essence, become a part of the national body of law about decisions on, for example, harassment or damages and the amounts of damages. The decisions will not be discretionary. They will be compared to decisions made in other provinces, and things like that, or the previous decisions of the same board in the Yukon.

It works very well in the country, and we should be part of it.

**Mr. McLachlan:** When the Minister says that he will consult with all parties in this Legislature on the makeup of the Commission, he may be expressing his intentions — the Minister's, Cabinet's, government's — and the best intentions change. I am unclear as to how he reconciles that idea. At least Article 16 is very clearly written now, which says: "Members shall be appointed by the Commissioner in Executive Council." It says nothing, in that Article, about consulting with Members of the Legislature.

**Hon. Mr. Kimmery:** If the Member will read on, he will see the phrase, "but whose appointment will not continue beyond the next sitting of the Legislature, unless confirmed by the Legislature."

The problem there is exactly how do you put into place a procedure that cannot be simply dominated by the governing party in the Legislature. It is very difficult. The intention has been clearly stated by me, now, and I would hope that the precedent is established, so that if the precedent were broken by some future Minister, then that would be the subject of adverse comment and adverse publicity.

The procedure here about confirmation by the Legislature is purposely generally stated. What I would anticipate is that probably the Minister of Justice of the day would present a motion, after the appointment of any member of the Commission, to confirm that appointment. The reason for that is if consultations did not occur, the Minister would be open to substantial criticism, and so he or she should be.

<sup>18</sup> If a blatantly political appointment was made, it would be clearly exposed in the Legislature because the opposition would probably say exactly that. At least I hope they would. The alternatives all have flaws. One of the alternatives that we considered was the procedure in Bill No. 58, whereby a committee of the House would make the appointments — perhaps the Rules, Elections and Privileges Committee. We all know that there is generally a government majority on those committees, and it was decided on substantial advice and all sorts of directions that this is a better protection in the political atmosphere of this Chamber, than is a committee selection.

Given the tactics of opposition parties from time to time, or possibly the tactics of governing parties, this procedure provides for an appointment that would not be deadlocked. If the governing party in the Legislature chose to abuse the parliamentary tradition of consultation and chose to simply ignore the criticisms of the oppositions, this would guarantee that that would occur in the Legislature, not in private. It would bring the issue squarely to the Yukon people. That is the best protection that we could possibly give.

**Chairman:** Is it the wish of the Committee to continue or to recess?

We will recess for 15 minutes.

*Recess*

<sup>19</sup> **Chairman:** I will now call Committee of the Whole to order.

**Mr. McLachlan:** Before the break the Minister was saying this may be a better way than anything else. I would not want to pass judgment on that because I think whether that is a better way to select the members of the Commission or not may, in fact, be an argument that may be carried on as long as the length of the debate on human rights has been. Far be it from me to suggest that the U.S. model is the one we should follow, but one procedure the Minister is not totally unfamiliar with is the one where the Congress or Senate is allowed to question the candidate for the Head of the Supreme Court of the United States. That is the type of thing I was thinking. Not in that forum, however, because we have often traditionally determined not to discuss particular candidate's credentials or lack thereof on the floor of this Legislative Assembly.

I believe that a Committee such as SCREP is a legitimate one for determining the candidacy of those members of the Commission, and personally I see nothing wrong with it. I do have a distinct problem with the makeup of the Commission being promulgated, being put forward, by the Commissioner and Executive Council and then walked before the Legislature for confirmation. For something that is as sensitive as this, and I think the Minister will agree, there are a great deal of concerns about the Commission, its makeup, its mandate, its powers and who is going to be on it. I would think that he would consider all ideas and all suggestions, and I would be interested in hearing the views of the other Members and the Minister.

**Hon. Mr. Kimmery:** I do not disagree with the Member for Faro. This Legislature has no experience with what the Americans know as confirmation hearings, where people are asked questions and asked about their philosophy, if you will, or their record. Although we have no experience with it, it is generally a good process, in my view, and I have no objection to that. The only conceivable objection that I think has substantial merit is that it may be more difficult to get people to serve if they have to go through that. Maybe not. I would say that we, in drafting the legislation, considered exactly that. We thought we would word it this way because that kind of a hearing is possible under this wording. <sup>20</sup> It would be entirely possible to present a motion to the Legislature, either by the government to refer it to the committee or by an amendment to the motion to refer it to a committee. If all Members think that that is a better way to proceed, I have no strong objection to that. It is something that should be explored further in debate here, but I have no objection in principle whatsoever.

The problem about the initial appointments is that you may find yourself in a situation where the Commission needs another appointment to conduct business, to have a quorum. For example, a member may die, move away or resign. There is an added problem if two do and we need to appoint someone fairly quickly.

If the Legislature was in session at the time, it would be appropriate to bring the matter to the Legislature before the appointment is actually made. I would suggest that that is a sensible procedure by any Minister if the Legislature is in session. If Members wish an amendment to guarantee that, I have no objection in principle to that. That would perhaps be an improvement. It would complicate the Bill somewhat, but perhaps that is all right.

The concerns that I have are the ability of the Commission to function even if the Legislature is not in session and to provide the most effective means of ensuring that the appointments are made by a legislative process as opposed to simply a government appointment. Members will note in Section 17 that the annual report is delivered to the Legislature by the Speaker.

<sup>21</sup> It is delivered to the Speaker and tabled in the Legislature. The appointments under this writing here are affirmed by the Legislature. The intention, or the policy, is that the Commission is responsible to the Legislature. It is not responsible to the government of the day.

**Mrs. Firth:** I would like to go back to the exchange that we were having with the Minister on how the Commission was going to arrive at decisions. The Minister said that there were lots of precedents set and that there were volumes of human rights settlements from across Canada. I have some concerns about some of the precedents that could have been set in other provinces. I

know that the Minister is a former judge. I am sure that when he was sitting on the bench, he made some recognition that making judgments based on precedents that had been set elsewhere maybe did not always apply to the Yukon Territory, and that that could present some problems.

Is the Commission going to be bound by those precedents?

**Hon. Mr. Kimmerly:** The short answer is no. The courts are not bound by precedents of the decisions in other provinces. In lawyer's language, those precedents are known as persuasive, as opposed to binding.

It is useful, and it is prudent, that the general principles are decided in a similar way in the various provinces of the country. About the sections where the provisions are the same, or even very substantially the same, the decisions of the Commissioners, or the adjudicators, should be the same as they may be adjusted to local conditions. The point is extremely well taken. It is important that we do not apply all the law as it exists in the provinces to the Yukon situation. It is important that we adapt it to our particular circumstances. That is why it is necessary to have our own Commission, rather than to empower or import the BC body or the Alberta body. It is much more appropriate to have a Commission made up of resident Yukoners.

**Mrs. Firth:** Do I understand then that the Commission will be using the precedence, and the determination will be made on a discretionary basis of the Commissioners, and a quorum would then make the final decision? Is that correct?

**Hon. Mr. Kimmerly:** Yes, that is correct. There was a slight problem with the wording, however. The Commission does not make these decisions. The Panel of Adjudicators makes the decisions. That distinction is important. The Commission takes positions at these adjudications, and the judges should not in any way be advocates and should not be taking positions until the time of decision of the panel of adjudicators. Other than that, the answer is: yes.

**Mrs. Firth:** Once the Commission is appointed, and the Legislature is to affirm it, will it be for the present Commission that it will not be appointed until after the legislation becomes law? Would the Legislature be required to affirm it in the next sitting of the Legislative Assembly, which would be in March — or traditionally it has been in March. Would it be in the next sitting of the Legislature that the Committee would be affirmed?

**Hon. Mr. Kimmerly:** Yes, the ideal situation is that the candidates are put forward in the Legislature as a motion, presented by the Minister of Justice, approving of certain candidates given by name. That is necessarily public and the subject of debate. The Legislature could handle it however they will. I make the assurance that if I am the Minister at the time, there will be a pre-consultation with the people who are put forward.

If the Legislature is not sitting at the time of the actual appointment, the procedure would probably be to make the appointments and early in the next sitting the motion would be put. If the motion is defeated, the Commissioners would immediately cease to hold office.

**Mrs. Firth:** If a sitting of the Legislature — and notice that is not a Session, it is a sitting of the Legislature — went by without a motion being passed, the person would cease to hold office on the last day of the sitting.

**Mrs. Firth:** Did the Minister consider just having one Commissioner? Was that consideration made and, if so, why was the decision arrived at that one was not enough?

**Hon. Mr. Kimmerly:** Yes. We considered that fairly long and hard. It was rejected because it is impossible to achieve a racial balance, a rural/urban balance and a gender balance with only one person. More than that, it has been the subject of debate and criticism that this Commission has a substantial amount of power. If all that power is given to one person, I suspect that the criticism would be exacerbated or would be made more. I may be one of the people criticizing it myself. It is a substantial amount of power to give to one person and for those reasons, essentially, it was decided to proceed with a small Commission, as small as three.

If Members wish to pursue the idea of one person, we should debate that. I would suggest that the concept essentially becomes

one of an ombudsperson as opposed to a Commission of Human Rights. The powers traditionally given to ombudspersons and Commissions on Human Rights are slightly different, but there are some similarities. Incidentally, the office of the Ombudsperson is more expensive in all the provinces than the office of the Commission on Human Rights.

That is an option that we did consider, and if the Members opposite are seriously advocating that, I am quite prepared to debate at length the pros and cons of a single appointment or a Commission. The reasons for the government position are as I have stated.

**Mrs. Firth:** The functions of an Ombudsperson and a Human Rights Commissioner would really be a different kind of function. The expense to the Ombudsperson could, therefore, be considerably higher.

Speaking of expenses, can the Minister tell us what the budget requirements for the Commission are going to be?

**Hon. Mr. Kimmerly:** Not specifically, because it would be in the annual O&M Budget. I would anticipate that every year there will be a line. It would undoubtedly be in the Justice Budget. It would be a grant, or an annual funding, to the Commission on Human Rights. The contemplation of the government is that there would be two staff persons, a director of human rights and secretarial support. The expenses would be kept to a minimum. There should be a budget for public education and research, especially into the question of pay equity in the private sector. That would be contained in the same budget, of course.

**Mrs. Firth:** Just to go through that so I have it correct, there are going to be two staff persons, one director, secretarial support staff, three to five Commissioners, three or more adjudicators — a minimum of three — and then, because of the research potential or research abilities that the Commission has with respect to the concept of equal pay for work of equal value, there is a possibility that another consultant or whatever might be hired there. Do I have that correct?

**Hon. Mr. Kimmerly:** Essentially, yes. There will be two positions. The Commissioners will be akin to the people who are now members of the Workers' Compensation Board, the Liquor Board and the Employment Standards Board. I would anticipate they would meet approximately ten times a year. That would be my anticipation.

Members will appreciate that the Commission will act independently but it will only have the funds that are allocated to them at the beginning of the year.

The Commissioners will be essentially like the established other boards like the Workers' Compensation Board or the Liquor Board or the Housing Corporation, perhaps. The panel of adjudicators will be people who are named to a panel and that appointment is made the same way through the Legislature as are the Commissioners. They would not be paid at all, I would anticipate, unless they are actually called in to do a case. If there were an adjudication there could be one adjudicator or a panel of three, as an example. Those people would certainly be paid but they would be paid only on the basis of the work that they do much like labour arbitrators are paid, but the amount of their pay is generally less than arbitrators. I would anticipate appointing Yukon residents and also perhaps one, perhaps several, especially at the beginning, persons who have experience elsewhere.

**Mrs. Firth:** Perhaps it could be an adjudicator from one of the western provinces who would be acceptable to us and who would consent to come up here for some cases, especially at the beginning. I would anticipate that the staff costs would be in the neighbourhood of \$70,000 to \$80,000.

**Mrs. Firth:** Who will be doing the investigation activity? Are there going to be other people assigned to do investigative work? Will the Commissioners do it?

**Hon. Mr. Kimmerly:** I am not sure if *Hansard* caught the last part of the question, but it was: would the Commissioners be doing the investigation? I would certainly expect not. I would be very surprised if the Commissioners ever investigated personally. That is certainly not the experience elsewhere.

The investigation would be done by the Director of Human



Rights, primarily. There would be an ability to call in extra help if that were deemed appropriate for any particular reason.

**Mr. Lang:** I do not understand where the \$75,000 comes from when the Minister quickly read off the number of people who were involved. Are they being paid the minimum wage? There are secretarial staff, Directors, there is the Public Education Program. Could the Minister outline how that equates to \$75,000?

**Hon. Mr. Kimmerly:** I would expect that the director would be paid in the upper ranges of the \$30,000 level to \$40,000 level, and that secretaries are paid slightly below \$30,000.

**Mr. Lang:** Maybe I have a lot to learn, but why would this director get paid less than other directors in the government. I was always under the impression that they were in the high \$40,000, if not higher, as far as finances are concerned.

**Hon. Mr. Kimmerly:** The directors in the government are different from the Director of Human Rights. I understand that there are directors, who are called directors, in the very low \$40,000. In fact, I am absolutely positive that there are.

The position here is a responsible one, and it should be reasonably well paid, but it is not up to us to set the salaries. I would anticipate that the Director of Human Rights would be paid less than the director of a branch of a department in the government, who is supervising 20 to 40 or 50 people. It is not necessary to pay the very large salaries.

**Mr. Lang:** I would like to know why the pay criteria is not built into the Act to follow the Public Service Commission and the classification of pay that is outlined in that particular piece of legislation. Why are you leaving it wide open for possible abuse or vice versa where people are maybe not getting paid as much as they should. People may want to put more money over here than here. I do not understand why we would set up a body where the actual staff are not paid similar to the Public Service Commission. That principle applies to all your corporations that are supposedly independent and at arm's length. At the same time, the staff schedule of pay and benefits are the same as within the public service.

**Hon. Mr. Kimmerly:** It is my expectation that the Commission would follow essentially the public service guidelines. It is my expectations that if the public service evaluated this job, it would come out higher than a researcher, which is in the low to mid 30s and less than a director. The reason why it is not in the Act is that it is only in other Acts to establish that the staff are public servants for the purposes of the *Public Service Act*, which is the case with the Workers' Compensation Board and the Liquor Board — I do not know about the housing board, but I expect it is.

<sup>28</sup> The reason why it is not here is because this Commission is a different kind of Commission, which we debated a bit earlier. This person will very clearly not be a civil servant. This person will not be a civil servant for any purposes. It is inappropriate to put it in the Act. However, I would expect it will be within the discretion of the Commission, and there will be negotiation between the Commission and the government of the day as to the annual budgets. I am sure that the Minister of the day will judge the salary costs in accordance with the public service levels at the time.

It is not necessary to put it in the Act. It could be. I have no philosophical reason to suggest the rates of pay and benefits be . . .

**Chairman:** Order, please. Mr. Penikett.

**Hon. Mr. Penikett:** I move that you report progress on Bill No. 99.

*Motion agreed to*

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

*Motion agreed to*

*Speaker resumes the Chair*

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

**Mr. Webster:** Committee of the Whole has considered Bill No. 99, entitled *Human Rights Act*, and directed me to report progress on same.

**Speaker:** You have heard the report of the Chairman of Committee of the Whole. Are you agreed?

**Some Members:** Agreed.

**Speaker:** I declare that the report has carried.

May I have your further pleasure?

**Hon. Mr. Penikett:** I move that the House do now adjourn.

**Speaker:** It has been moved by the hon. Government Leader that the House do now adjourn.

*Motion agreed to*

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

*The House adjourned at 9:33 p.m.*

**\* The following Sessional Paper was tabled January 7, 1987:**  
87-3-94

Report of Select Committee on Renewable Resources entitled  
"Yukoners' View on Managing Our Renewable Resources"  
(Webster, Chairman of Committee)

