

Whitehorse, Yukon**Tuesday, April 15, 2008 — 1:00 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 now proceed with the Order Paper. Are there any tributes?
Introduction of visitors.

INTRODUCTION OF VISITORS

Speaker: Fellow members, it is my distinct pleasure to welcome Mr. Don Taylor. He is sitting in the Speaker's gallery. Don was the Member for Watson Lake from 1961 to 1985, and he was Speaker of this Assembly from 1974 to 1985. Mr. Taylor was personally responsible for having a green Legislative Assembly — or so it is my understanding. Thank you very much for coming.

Applause

Speaker: Are there any other introductions of visitors?
Returns or documents for tabling.
Reports of committees.
Are there any petitions?
Are there any bills to be introduced?
Notices of motion.

NOTICES OF MOTION

Mr. Cardiff: I give notice of the following motion:
THAT it is the opinion of this House that:

(1) in November of 2004, the minister responsible for the *Access to Information and Protection of Privacy Act* said there were 23 items to be reviewed in a full consultation of the act;

(2) in his 2006 annual report, the former Information and Privacy Commissioner called the *Access to Information and Protection of Privacy Act* “flawed legislation that is badly in need of review and amendment”;

(3) the Yukon government has made zero progress to date on the ATIPP file; and

THAT this House urges the Yukon government to immediately launch a comprehensive review of the *Access to Information and Protection of Privacy Act* and seek public input into amendments that would improve public access to government information while still providing necessary protection of private information.

Speaker: Are there further notices of motion?
Hearing none, is there a statement by a minister?
This then brings us to Question Period.

QUESTION PERIOD

Question re: First Nations, government relations with

Mr. Fairclough: I have a question for the Minister of Education. Good faith goes far beyond the words and flashy

rhetoric we heard in the House yesterday. Good faith is an essential precursor to any kind of negotiation. Good faith can be lost in a minute but can take years to restore. Good faith must be demonstrated. This government had such an opportunity last week. The Premier could have said that in his opinion witnesses were not necessary, but if the First Nations felt strongly about it, he would do it. He could have supported the motion from the Member for Copperbelt, but he chose not to and that was an opportunity lost. Now, here we go again. The Premier says, “Trust me, and I mean it this time.” Well, we’re going to need very, very strong assurance that this government is dealing in good faith.

What can the minister tell Yukoners today to assure them that this government will finally deal with First Nations on a fair basis that demonstrates good faith?

Hon. Mr. Rouble: I appreciate the question coming from the member opposite. It’s always a good opportunity to get up and talk about what this government is doing in education and what this government is doing in relations with First Nations.

Mr. Speaker, it was just earlier this morning when I had a meeting with the chair of the Chiefs Committee on Education. This chief represents a Yukon First Nation and sits as the chair of a committee within the Council of Yukon First Nations. He and I, as well as officials from the Department of Education, and the Council of Yukon First Nations, were discussing ways of going forward with the education reform project with the New Horizons project and working cooperatively in order to ensure that we have the best education system on the planet that meets the needs of our students and of our communities. We will continue to work with the Council of Yukon First Nations, our other partners in education, including teachers, administrators, school boards and school councils.

Mr. Fairclough: On December 13, 2006, in reply to a question from the Member for Mount Lorne, the Premier said, “I want to quickly move to the issue of governance. If the third party’s position with respect to the issue of governance is devolving public jurisdictions or diluting public jurisdiction, that is their position, not the government’s position.”

The Premier doesn’t get it and he doesn’t understand it. He’s still living in the past and this is very unfortunate for the Minister of Education. As we’re all aware here, the Premier is the minister’s boss and, if the boss doesn’t get it, then we have a problem here.

What does the minister propose to do in light of the Premier’s demonstrated stubbornness and lack of understanding of this issue?

Hon. Mr. Rouble: I and other members of this government suggest that we cooperate in governance. There was the *Cooperation in Governance Act*, which was passed by this Assembly and created the Yukon Forum, which can be used as a vehicle to have government-to-government negotiations and discussions.

I’ll continue to meet with the Chiefs Committee on Education; we’ll continue to work with our other partners and stakeholders in education; we’ll continue to use the governance structures we have in place.

We'll work with the Commission scolaire francophone du Yukon; we'll work with our school councils to help them achieve their potential, and we'll work with our other partners and stakeholders in education to ensure we meet the needs of students and the community.

Mr. Fairclough: He didn't answer the question. He could have said that he would meet with the Premier and get him up to speed on the issue.

Mr. Speaker, there is a need for the minister himself to set the record straight. He also said in this House on December 13, 2006, and I quote: "We are committed to working with our partners in education and the stakeholders. Those include First Nations; those include the Teachers Association; those include the school councils; those include the school committees; those include the French language school board."

I wish to give the minister an opportunity to clarify. Does the minister consider, as his statement would indicate, that he considers a First Nation government to be equal to the Teachers Association, the school councils, the school committees and the French language school board? Would the minister please make the record clear on this point?

Hon. Mr. Rouble: Mr. Speaker, this is an excellent opportunity to set the record straight for the member opposite. The Government of Yukon certainly recognizes the Yukon First Nation governments as orders of government — that is clear. It is offensive to me to hear people not want to refer to them as that.

Mr. Speaker, we will work with other orders of government. We will also work with our other partners and stakeholders in education. Those include students, parents, teachers, administrators, the Commission scolaire francophone du Yukon, the Association of School Councils and Boards and Committees, the individual school councils, the many not-for-profit organizations that all play a very important role in educating our youth.

Mr. Speaker, the government will continue to work with Yukon First Nations, with the Council of Yukon First Nations and I will work with the chair of the Chiefs Committee on Education. The department will work with the First Nation Education Advisory Committee to ensure that we are meeting the needs that we have in our communities.

Question re: Education reform project

Mr. Fairclough: I know that the minister has a well-stocked briefing book full of pat answers for anticipated questions concerning education reform.

However, Mr. Speaker, I am very concerned about the government's inability to be objective, and I don't believe that this government has the credibility to move forward with the implementation of education reform.

Members of this government, including the Premier, have destroyed the good faith needed to take our education system into the 21st century.

Will the minister concede that his government's adamant position toward First Nation governments is now a roadblock to any meaningful progress in education reform?

Hon. Mr. Rouble: Mr. Speaker, for once I wish the member opposite would deviate from the script, the standard

script that is read every time wherein he stands up and says, "the minister opposite did not answer the question."

Mr. Speaker, I have answered the member's questions. I have given him details about how this government is going forward. I will be happy to provide additional details. I would be happy to talk about how the Government of Yukon is working in conjunction with the Council of Yukon First Nations on the New Horizons project. I would be happy to talk to the member opposite and tell him how those two groups are making joint presentations to the Pan-Canadian Interactive Literacy Forum. I would be happy to inform him how those groups will be working with the Yukon Association of School Councils, Boards and Committees.

I would be happy to tell him how those two groups have gotten together and have made joint presentations to First Nations, to school administrators, to the Yukon Teachers Association and to the Secondary School Planning Committee.

Mr. Speaker, there is a very strong relationship that has been created between the Council of Yukon First Nations and the Department of Education. We will continue to work closely with them and we will continue to work very closely with our other stakeholders and partners in education.

Mr. Fairclough: Saying one thing and actually following up and doing what they said they were going to do is another.

Now, we're not surprised at the minister's answers at all. All Yukoners want and deserve is to have an educational system that reflects what they want for their children and for themselves. In order to make that happen, there must be a system in place that allows them to have input and some degree of control. The status quo is not good enough. This government has made it abundantly clear that they don't believe in letting Yukoners have that degree of input. They made it clear they do not have a plan to take the evolutionary steps that people want and deserve. This government is stuck in the past, despite what the minister is saying.

Is the minister prepared to accept the challenge and push forward with education reform?

Hon. Mr. Rouble: Yes, the Government of Yukon is moving forward with education reform. The project is titled "New Horizons" and we'll be working on the good work that the education reform team did; we'll be working with our stakeholders and we will be working with our school councils and other bodies to encourage them to participate in education. We'll work with the school councils who already, under our act, have the ability to call for the creation of local instructional material and programming. We'll work with our school councils to empower them to be more involved in the decision-making in their school. We'll work with the school councils to create the school plans. We'll work with our administrators to ensure that the wishes and desires of the community are reflected in the school plan and are carried out in our educational system. The Yukon education system has an awful lot to be proud of; we're going to build on our successes and build on the involvement of others.

Mr. Fairclough: Mr. Speaker, this government and the Department of Education have an opportunity to move forward

— an opportunity to have a bottom-up — a bottom-driven — system as opposed to the top-down one that we have now. I am disappointed to hear some of the answers from the minister opposite.

Yukoners, and that includes First Nations, have been very patient. They went through the *Education Act* review some years ago. They went through the education reform project and now they want action and not further delays.

Will the minister commit to get this government out of the time warp they have locked themselves into, and move forward in meaningful and progressive education reform?

Hon. Mr. Rouble: Mr. Speaker, I am not sure if the member opposite has heard my responses. I have detailed what is being done and what is going on.

I could come up with other lists where we have been responsive to wishes of school councils or of other groups, and we will continue to work with other groups.

We will continue to explore new ideas — some that I am sure the member opposite will agree with and some that I am sure he will disagree with. We will continue to look at new avenues and new ways of educating.

We have heard from parents who want to see changes in the outcome of the system. If you continue to do things over and over again the same way, you will get the same results. We recognize that and we are willing to make some changes.

That being said, we will continue to work with all our partners in education, with the orders of government, with the employees in the Department of Education, with teachers, school administrators and councils, and we'll look at using our resources wisely, efficiently and effectively.

Question re: *Child and Family Services Act*

Mr. Edzerza: It is unfortunate that the Minister of Health and Social Services has made it necessary to continue with questioning about the *Child and Family Services Act*. Yesterday I tried to clarify with the minister why many First Nations and others are calling the act flawed and are asking for amendments. I pointed out that one of the key issues is the discretion that is allowed for decision-making by the director. All the minister would say is that I should read the act and that inclusive collaborating and planning is threaded throughout.

Well, I have read the act, so let me give the minister a concrete example of the problem. The cooperative planning process outlined under section 44(1) only starts after the fact, after the director came to a conclusion about a child's need for protection/intervention. Will the minister acknowledge that the cooperative planning process does not kick in until the director has already made decisions about the child?

Hon. Mr. Cathers: The member is mistaken in his assertion. I think what may be confusing the member — and I don't have the exact clause in the act in front of me — but the member is referring to the term "intervention" and I think that the member is confusing "intervention" with "apprehension". "Intervention" simply includes supports being offered to a family by the department or by a First Nation service authority.

Cooperative planning, I would remind the member, is a new section of the act that was not and is not in the current *Children's Act*. It is part of the new section of the act that is

aimed at ensuring a cooperative and inclusive process. The cooperative planning, specifically, is a process where extended family and formal community supports, service providers and professionals join with the family in developing a plan to meet the needs of the child and family and is an approach aimed at strengthening and empowering families to protect and nurture their children. Cooperative planning must be offered when a child is in need of protection and when a child is leaving the custody of a director, and it may be offered in any other situation. The process encourages collaborative planning and avoids the need to proceed with adversarial court situations.

Mr. Edzerza: It appears the minister is confused; he didn't answer the question.

Section 44(1) says that cooperative planning is offered, "...if the director believes that a child is in need of protective intervention and the director (a) has commenced or intends to commence an application to a judge..."

That is what the act says, but First Nations and others want to be involved in decisions about their children from the beginning. As for the question of accountability, the minister didn't even reply to my question yesterday. After years of intimidation and fear, trust needs to be built by the minister with First Nations and other families. One way to do this is to provide for an independent review and possible appeal of decisions of the director.

Will the minister consider amendments to allow for an independent review and appeal process in this act?

Hon. Mr. Cathers: I have answered this question before. The member would note if he reviews the act that there are, in fact, two provisions. One provision is that a committee must be established within five years of a proclamation date to review the operations of the act. Secondly, there are procedures in there to allow other areas to be reviewed by a committee if deemed appropriate — but again, the requirement is to review those operations within five years.

As well, further steps will be taken when we establish the act to create the office of the child advocate. That will provide one more step of independent accountability for those who feel their needs may not be addressed within the system. The member, when referring to the area of accountability — in fact, he would note that I answered this extensively in Committee of the Whole debate yesterday afternoon. I read out sections, made reference to sections for the review of members where the new portions of the act referred to accountability.

I remind the member that in the cooperative planning section, he is misinterpreting what an intervention is. Intervention applies to any involvement. Of course, there must be a determination by a duly designated official that there is a need to take some steps to trigger the whole process. But there is a requirement to involve the First Nation at the earliest possible opportunity and a requirement to involve extended family.

Mr. Edzerza: The minister certainly is confused. He didn't answer the question again.

We don't dispute that the new act is an improvement; we're just trying to point out that it still doesn't go far enough to meet the concerns expressed by many people during the consultations. In the consultation papers, the minister keeps bring-

ing up presenters' talk about innovation, negotiation of First Nations, political will to make changes, stronger opinions, and resources at the front end. One presenter put it this way: "My concern is primarily with how the words of the legislation are put into action." These are worries that the act only tinkers with problems and that departmental practices and policies will not respond to the real needs.

Will the minister undertake to evaluate the policies and practices of his department to ensure they fully support the implementation of the intent and spirit of the new act?

Hon. Mr. Cathers: Of course, steps will be taken to ensure the act is effectively implemented and the commitments and legislative changes made are honoured and implemented. What the member is failing to recognize is this is the result of nearly five years of work. For him to suggest it's tinkering minimizes and is not respectful of the involvement by First Nations, stakeholders and officials of the Department of Health and Social Services, who have invested countless hours on these matters. They are very committed to these matters, because we believe we have an act that will be the best in Canada. It will be the most inclusive in involving First Nations and them being informed and involved in cooperative planning at the earliest possible opportunity. All this, while maintaining the provisions that a director of family and children's services, or a First Nation service authority established under the act, can take the steps necessary if immediate intervention is required to protect the health, safety and perhaps life of a child. Those steps are in there; it is a balanced act.

I would remind the member that steps such as cooperative planning are completely new in this act. It was not in the old act and this is part of the increased focus on trying to avoid going to court when it is possible to do so and, instead, engage First Nations, extended families and others in cooperative planning.

Question re: *Child and Family Services Act*

Mr. Edzerza: In the *What We Heard* papers on philosophy and principles, we read that the project team took up the work in a spirit of trust and with the firm belief that the law can be made better. We agree with that goal. That is why we are trying to question the minister in the spirit of trust.

The *What We Heard* papers all mentioned recognition of cultural differences and the need to be child-centred and family-focused, as these are important principles that need to be integrated into the act.

Many presenters said the legislation should incorporate specific recognition of First Nation values, traditional First Nation laws, and beliefs.

My question is to the Premier: will the Premier explain specifically how the new act incorporates First Nation traditional laws, values and beliefs, which many First Nations say it fails to do?

Hon. Mr. Cathers: Mr. Speaker, much of this can best be answered when we get into the line-by-line debate in Committee of the Whole, hopefully this afternoon, or in general debate when the member has the opportunity to ask questions.

I would also refer him to *Hansard* from yesterday afternoon. Some of these questions I answered extensively during the many hours of debate we had on this topic.

I would remind the member opposite that the guiding principles are new in the act; they were not in the previous legislation. Service delivery principles are also new. Both set the context in which the entire act must be read. They are right up front to provide that context. Both contain recognition and note that First Nations must be involved at the earliest possible opportunity. As well, there is recognition of the desire to ensure that extended family and others are involved to the greatest extent possible and appropriate, while always ensuring the safety of the child. There is also recognition of the desire to have children who must be taken out of the care of their parents placed with an extended family member in foster care or adoption, as a preference, which was not in the old act.

The recognition of custom adoptions, something that was heard clearly from First Nations that they wanted in the legislation, is also in the act.

I look forward to more detailed debate, referring to the clauses and showing the member that. I am sure he will be pleased with what he sees.

Mr. Edzerza: Mr. Speaker, it's good the minister referred to *Hansard*. Yesterday the Premier stated bluntly that he would not go down the road of co-governance. He said that they would maintain the liability and the responsibility for all Yukon children and they would not devolve it.

What we can't understand is why the public government can't maintain that responsibility and still incorporate First Nation traditions, values and beliefs into this legislation. Surely, it does not have to be all one or all the other. We are one community. Surely we can evolve legislation that includes everyone. How can the Premier reconcile his claim that he is responsible for all Yukon children when 80 percent of children in care are First Nations and their values and traditions are paid mere lip service in the act?

Hon. Mr. Cathers: Again, the member is mistaken. When he suggests there is no recognition of First Nation involvement, I will encourage him to read sections including section 2 and 3. Let me refer the member to sections that recognize cultural heritage. There is significant recognition of the importance of culture and community in the lives of children. All that I am going to read out here are new sections.

The principles and best interest factors identified the importance of preserving culture. Case plans for children in the care or custody of a director will stress steps to preserve a child's identity as guided by the participants of a cooperative planning process. The priority for placement of a child in care is with extended family and in their cultural community. The rights of children in care also now include the right to maintain cultural heritage, participate in community activities, pursue spiritual development and visit with extended family members.

And I would refer the member to sections 2 and 3, section 4, sections 6, 7, 22, 44, 88 and 89.

Mr. Edzerza: The government's philosophy is to maintain the liability and the responsibility for all Yukon chil-

dren and to not devolve it. What the Premier's words illustrate is a complete clash of philosophies.

First Nations are talking about respect, including the sharing of responsibilities. What the Premier is talking about is hanging on to power. There's no middle ground with this Premier. Because of this inflexible approach, First Nations are developing their own legislation to meet their cultural values and beliefs. At least one First Nation has expressed a desire to work with the public government to make their legislation and the new act work in harmony.

Is the Premier willing to work in good faith with First Nations who are developing their own legislation, or does he still insist that they either do things his way or draw down authority for child welfare altogether?

Hon. Mr. Fentie: I recognize the emotional attachment the Member for McIntyre-Takhini has in this area, but I want to help him correct the record. The government's position is quite clear. This act goes as far as it can while respecting jurisdiction. It's all about respect, Mr. Speaker.

The Yukon government cannot fetter the minister's discretion, because we have the responsibility and the liability for children in care, and that's absolute. However, I would not diminish — as the Member for McIntyre-Takhini has — what the First Nations have negotiated in their final agreements.

There's good reason why they negotiated the provision that allows them the option of occupying this authority. Yes, a First Nation has developed their own act; yes, the Yukon government is cooperating and working with that First Nation with respect to their act. If First Nations want to go further in terms of taking on this responsibility and this liability for children in care, we would encourage them to exercise that option they've negotiated in their agreements and occupy the authority — we will support it.

Question re: Nurse shortage

Mr. Mitchell: Mr. Speaker, I would like to ask the Minister of Health and Social Services about his failure to provide Yukoners with an adequate number of nurses. It is obvious that this minister's efforts to date on this issue are not sufficient. We are still hearing from the nurses themselves, from the public and from other health care professionals about how dire the situation is. It is probably only a matter of time before this file too is taken away from this minister — given his inability to get anything done.

Now, last spring the minister announced that a task force would be set up at the hospital to deal with this issue among others. Can the minister confirm that the task force has now been abandoned? If not, why has it not been meeting?

Hon. Mr. Cathers: Mr. Speaker, it is interesting to hear the member suggest that the government has done nothing when the member ought to know full well that his statement is inaccurate. This is the first government in Yukon history to develop a comprehensive health human resources strategy, including a significant increase to the previous existing nurse bursary, which was the only program in place for this purpose. We doubled the support for that, as well as doubling the number of applicants who would be accepted. We developed a nurse mentoring programming, which is a program that groups

such as the Yukon's Registered Nurses Association have been calling for for years and have seen inaction from the Liberals and the NDP on this file — we acted. We acted in other areas such as incentives internally and the new LPN program — licensed practical nurse program — which will be up and running at Yukon College this fall.

All together, the health human resources strategy is \$12.7 million and that does not include the allocation for the LPN program. We have acted in this area. The member, of course, voted against all of these matters and the member ought to know full well that this government has acted far beyond what any previous Yukon government did in this area. We will continue to work on this file with health professionals and others.

Mr. Mitchell: While this minister continues to develop strategies, he also tells us that nurses are leaving the territory and he has had to close the beds that had just been recently reopened at Copper Ridge Place.

Nurses that we spoke to want the task force to be given a chance, but instead it has been shelved. Last spring the minister stood in this House and said he had full confidence in the former CEO of the hospital. Then as soon as the House rose, the CEO was gone.

This minister is obviously in over his head with this entire portfolio, and as we have seen over the last few months, things keep getting taken away from him as a result.

Just last week we learned, for example, that management of the new Watson Lake hospital has been transferred to another department.

One of the biggest shortages at the hospital is in the surgical ward. Will the minister confirm that they are short at least four full-time nurses in that department?

Hon. Mr. Cathers: It is unfortunate that the member is continuing his approach of petty name-calling rather than addressing matters —

Speaker's statement

Speaker: Order please. The language on both sides of this Legislature today is getting quite strong. I find there have been accusations against individual ministers, as opposed to party policy. I would ask both sides of the floor to watch their words, please.

You have the floor, Minister of Health and Social Services.

Hon. Mr. Cathers: In respect for your ruling, let me try to rephrase my comments. The member ought to know — the member does know — there are national shortages of health care professionals. The member knows that this government has invested many millions more in this area than any previous government.

The member knows that we increased the annual funding for the Whitehorse General Hospital by roughly 50 percent over the level it was at under the Liberals, or \$10 million.

Mr. Mitchell: Yukoners don't want to hear this minister's list of excuses about national shortages. They want to hear what this minister is going to do to solve problems for Yukoners. This minister has no idea what's happening at the hospital. It's all someone else's fault. It's national shortages.

We saw that last spring with the bungled dismissal of the former CEO of the hospital. One day the minister had full confidence in him; the next day, he's gone with a big severance cheque in hand.

We continue to hear very discouraging reports about grievances against the hospital, filed by nurses who are unhappy. We have the unsafe situation caused by a shortage of psychiatric nurses. We have the 12 beds at Copper Ridge Place closed because there are no nurses in Yukon to staff them.

The Thomson Centre remains closed, despite promises that it would be open six months after the last election, at least partly because of no nurses. Perhaps we should send a calendar over.

When is the minister going to admit he hasn't done enough and make nurse recruitment the priority it needs to be?

Hon. Mr. Cathers: We know what's happening here. There's collective bargaining underway at the hospital. It's unfortunate that the member appears to be trying to influence that by his comments here.

Let me remind the member what happened with regard to the debate last spring regarding the then CEO of the Yukon Hospital Corporation. At that time, the Leader of the Liberal Party attacked that individual, an individual in my department and an individual on the board, in his attempt to gain political credit. This government will never dignify those attacks.

Some Hon. Member: (Inaudible)

Point of order

Speaker: Order please. Mr. Mitchell, on a point of order.

Mr. Mitchell: I have a point of order on Standing Order 19(g). The minister is imputing about three different motives in that response and I don't think he should be doing that in this Assembly.

Speaker's ruling

Speaker: I agree. There is a point of order. Honourable minister, be very careful or I'll ask you to sit down. You have the floor.

Hon. Mr. Cathers: Thank you, Mr. Speaker, and I would encourage the member to be similarly careful when he stands in the House, with the comments he makes around dedicated public servants.

I would again remind the member that we have increased annual funding to the Yukon Hospital Corporation by roughly \$10 million. That's an increase of roughly 50 percent from the level it stood at under the Liberals. We have significantly acted in this area — again, a \$12.7-million health human resources strategy, including nurse mentoring and nurse bursaries. I could go on if I were not out of time.

Speaker: The time for Question Period has now elapsed.

Notice of opposition private members' business

Mr. Cardiff: Mr. Speaker, pursuant to Standing Order 14.2(3), I would like to identify the items standing in the name

of the third party to be called on Wednesday, April 16. They are Motion No. 373 and Motion No. 376.

Mr. McRobb: Pursuant to Standing Order 14.2(3), I would like to identify the items standing in the name of the Official Opposition to be called on Wednesday, April 16, 2008. They are Bill No. 103, standing in the name of the Member for Porter Creek South, and Bill No. 106, standing in the name of the member for beautiful Kluane.

Speaker: We will now proceed with Orders of the Day.

ORDERS OF THE DAY

Hon. Mr. Cathers: 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 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

COMMITTEE OF THE WHOLE

Chair: Order please. Committee of the Whole will now come to order. The matter before the Committee is Bill No. 50, *Child and Family Services Act*.

Do members wish to take a brief recess?

All Hon. Members: Agreed.

Chair: We will take a 15-minute recess.

Recess

Chair: Order please. Committee of the Whole will now come to order.

Bill No. 50 — *Child and Family Services Act* — continued

Chair: The matter before the Committee is Bill No. 50, *Child and Family Services Act*.

Mr. Mitchell: Thank you, Mr. Chair. This has been an interesting and frustrating debate that we have had to date on this act. I just want to recap a little bit.

This bill, Bill No. 50, is a very large and somewhat complex piece of legislation. What we have heard to date are two very different versions of what can only be one reality.

We've heard from the minister that there was full and more than sufficient consultation with First Nations for five years, that their issues had been incorporated in this legislation, their concerns have been addressed, and this legislation has resolved all of the outstanding issues that First Nations raised.

What we've heard from First Nation leaders is very different from that. We've heard that they raised many issues but that, when they finally received the draft legislation in November of last year, many of their concerns were not addressed at all; others were addressed, but in their minds, inadequately.

Now it was because of that complete disconnect between First Nations and so many of the children — up to 80 percent

of the children in care or in custody affected by this bill are First Nation children that they feel that this bill goes a ways but not far enough.

The minister says that it completes the picture. That is why we wanted to have witnesses here. That is why we asked for the witnesses to come, so that instead of the minister and me debating this and each asserting what is or isn't being done on behalf of First Nations, the First Nation leaders could have sat on the floor of this Assembly, asked questions and answered questions for themselves. Perhaps then the minister could have convinced the First Nation leaders of his position and we would have had a better informed debate. It is very unfortunate that the members opposite prevented that from happening.

Thank you, Mr. Chair. I can see that my time is up.

Hon. Mr. Cathers: It is a pleasure to rise here. I'd like to focus on the members in debate — it is unfortunate, but again we're seeing a very negative debate rather than recognizing the new features of this bill and the fact that it is a significant improvement over the *Children's Act*, that it is a significant step forward.

Mr. Chair, I'd just like to highlight some of the new areas, as members have certainly not got around to that in areas of debate.

Changes here are all new areas incorporated in the new child and family services draft legislation now before this Assembly. They are not in the current *Children's Act*. Those include the fact that there are now guiding principles and service delivery principles that set the overall context in which the act is to be interpreted. Those are included at the front of the bill and take precedence over other matters within the bill and set the overall context for interpreting clauses of the bill. That's a new approach to legislation. It is a legislative approach that has become more common in recent years in jurisdictions that have tried to take a more modern approach to legislation. It provides that context — that umbrella — under which everything is to be interpreted and sets the stage for when it is interpreted by lawyers or, ultimately, by the courts, if that comes to pass, making it clear how the overall bill is to be considered.

These guiding principles and service delivery principles are new. They include principles that recognize the importance of supporting families, the recognition of the importance of preservation of culture, the involvement of extended family, of the First Nation and the community in collaborative planning.

Those are up front in sections 2 and 3 of the new legislation for any who wish to read and review that. Of course for anyone who is listening or watching or reading, all of this is available on-line through either the department Web site or through the Legislative Assembly Web site as well, as this is currently a bill under progress.

Another new feature in the bill not found in the *Children's Act* is cooperative planning. This is put in place and is part of the entirely new focus that is being adopted in this legislation to attempt to avoid court, to involve the First Nation extended family and others who have significant relationships with the child in a cooperative planning process, involving those extended families, the informal community supports, service providers, appropriate professionals, et cetera in joining with the

family to develop a plan to meet the needs of the child and the family.

This is done in an effort to attempt to avoid court, and to reach mutual agreement on the steps that need to be taken rather than getting into the adversarial court process. This is a significant improvement in this legislation in that it is attempting to avoid the adversarial court process and avoid litigation, but instead focus on cooperation.

Cooperative planning is aimed at strengthening and empowering the families to protect and nurture their children and provides the ability, under other areas of the act as well if there is a need. If the parents are not able to take care of the child, it provides recognition of extended family first. If there is a suitable individual able and willing to take on the care of the child, that can be done by voluntary agreement.

Cooperative planning also must be offered when a child is in need of protection and when a child is leaving the custody of a director. As I've mentioned previously to members, this act is structured so it can also be used by a First Nation service authority. There is an obligation in the legislation where, if a First Nation wishes to establish such an authority, the minister must negotiate to establish the authority in accordance with the act. This does not diminish the rights of First Nations who have self-government agreements to occupy this authority and establish their own legislation, if they so choose. However, it is a process that falls in line with what the Member for McIntyre-Takhini was urging us to do earlier — and unfortunately has not recognized that it has been done through the good work of officials during the consultation and the joint development of policy and joint informing of the legal drafting. There has been a step taken that provides a measure that does not force First Nations into the position of choosing to draw down and negotiate their PSTA — program service transfer agreement — for occupying that authority. It provides a mechanism, as has been done in other jurisdictions, but not many to date, to establish a First Nation service authority, if they so choose and, if they establish that, it operates in the identical manner to the director of family and children's services. They must follow this legislation if they choose to create such an authority.

The powers of a director of such a service authority are identical to the powers of the director of family and children's services and subject to the same review and same accountability reports to the minister, and so on and so forth.

In answer to members opposite, cooperative planning is referred to in sections 6 and 7, section 44 and section 98.

Other areas that are new in this legislation include voluntary supports for parents. This provides the ability to give support to parents that was not previously in the bill. This is in sections 2 and 3, part II, sections 6 to 20, section 34 and section 29. It includes supports for parents to fulfill their parental role and be actively involved in planning and decision-making for their children.

It supports a focus on early intervention. Our aim is to promote and strengthen families through voluntary services. For example, a parent of a child with a disability maintains their parental role to the extent possible in a special needs agreement, and supports for the special needs child may be

made until he or she reaches the age of 19, and does not require the child to go into care or custody of a director.

Previously, if parents needed such a service for their child, or needed mental health services, for example, outside the territory — which is not required in many cases but is necessary for a small number of children with complex behavioural or psychological problems — they did not have the ability to enter into a voluntary agreement. They had the choice — they could transfer the custody of their child over to the director, but they were not provided the ability, as this now does, to transfer decision-making power to the government for such matters as are necessary for certain specific decisions, for liability reasons and for simply executing those supports and implementing them.

There is a need for the director to have some decision-making powers and be able to undertake decisions as a guardian of the child; however, there was not previously a flexible structure in place. Parents had the choice of either having their child in custody or not in custody. We are changing this through this act and, in fact, as I have indicated before, in some areas such as out-of-territory mental health treatment, we have already implemented that programming in advance of the act and made those changes in policy and regulations.

Another area is supports for youth — a new area in the act, a new focus on voluntary supports for youth, including those age 19 to 24 who are leaving care and transitioning back to their home community. In addition, youth age 19 to 29 may receive support services if the youth cannot return home. Of course, attempts are made to return them home, but there are some youth between the ages of 16 and 19 who have been identified through the consultation processes — an area whereby some are not able to return home and are capable of taking care of themselves. This change will provide the ability for the department to provide increased support to those children. It would also of course apply to a First Nation service authority if one were established. It would create that mechanism for providing voluntary supports to those youth. Those supports can range, for example, from counselling to tuition fees.

Another new area in the legislation is the recognition and provision for family and extended family involvement. Family and extended family involvement is emphasized in the principles and is found throughout the bill. There is a significant decision-making and planning role for families and extended families provided in sections that refer to cooperative planning.

As well, there is the ability for extended family to care for a child without the child needing to go into care through what is referred to as an extended family agreement. It is again an area I referred to earlier that is done by mutual agreement of the parties involved.

The new court order provision also would allow a child to be placed with an extended family member or other person significant to the child if there were a need to remove them from the care of the parent. Again, this is referred to within the bill and is a new provision that provides recognition of extended family first for placement of a child in foster or adoptive care if such is necessary.

For members' reference, sections in the act referring to this include sections 2 and 3, section 4, sections 6 and 7, section 14, section 44, section 55(2), section 52(c), section 55, section 57(3), and section 88.

As well, there is a provision under this area for the right of a child in care to visit extended family, and the opportunity for family and extended family to seek a timely review of decisions. This is provided through recognition of the language in the act that makes it very clear that there is a desire to include family, even if it is not safe. If it is identified by the court that it is not safe for the child to remain with their parents, there is provision for contact to continue as long as it does not endanger the physical safety or emotional well-being of the child.

As I referred to in Question Period, there is the recognition of cultural heritage, which is new in this act, and was not in the old *Children's Act*. There is significant recognition of the importance of culture and community in the lives of children. The principles and best interest factors include identifying the importance of preserving culture to the well-being of children, particularly of First Nation children.

Case plans for children in the care or custody of the director will address steps to preserve a child's identity as guided by the participants in the cooperative planning process. As I indicated, priority for placement of a child in care is with extended family and, if that is not possible, within their cultural community as the second choice. This is also new in this legislation.

The rights of children in care also include the right to maintain cultural heritage, participate in community activities, pursue spiritual development and visit with extended family members. The relevant sections members will find dealing with this are sections 2 and 3, section 4, sections 6 and 7, section 22, section 44, section 88 and section 89(3).

Community involvement is another area that is newly recognized and provided for in this legislation. It is addressed in the principles as well as in the recognition of a community's role in the section referring to mandatory reporting of child abuse and neglect. That, as I have mentioned to members, also includes the requirement for mandatory reporting of child pornography. It is encompassed within that section of the act and makes us one of the first jurisdictions in Canada to include that mandatory reporting as a requirement.

Community members may also be invited to participate in the cooperative planning process, and there is a provision for community representation on the committees that may be established under this bill in reviewing the legislation. Relevant sections to community involvement include sections 2 and 3, sections 6 and 7, section 22, section 44, sections 88 and 89, section 167, section 175 and section 183.

Involvement of First Nations in decision-making is also addressed in the principles and reflected throughout the bill. First Nations will be involved in planning at the onset of involvement with a family. Again, as I reminded members, it makes it explicitly clear that First Nations must be involved at the earliest opportunity while recognizing that in some cases of urgent need for action to address child safety, there may be a requirement for a director — whether it be the director of family and children services or a director of a First Nation service

authority — to act very quickly to keep that child safe. However, again, I mention that there is a requirement to involve First Nations in that planning and to inform them at the earliest possible opportunity. This includes requirements to involve First Nations on investigations and reporting back when a child is brought into care. In court hearings, First Nations will now have status as a recognized party in such hearings, which also is new and is something that was important from the joint consultations conducted by Department of Health and Social Services and the Council of Yukon First Nations.

As well, First Nations will be involved in cooperative planning for adoption. Relevant sections to this include sections 2 and 3, sections 6 and 7, sections 27 and 28, section 32, section 41, section 44, sections 47 and 48, section 60, sections 88 and 89 and section 98. Again, as I've indicated to members, many of the themes I previously referred to in debate are threaded throughout the bill, and that's why I'm referring to these sections for the benefit of members.

In comments made by the Leader of the Liberal Party in his introduction, he suggested that, of the number of children in care, First Nation children represented 80 percent of the total. That is not accurate. If the member will review the statistics presented in the budget book, he'll see that First Nation children in care were 68 percent of the total number of children in care for the year of 2006-07. For the member's information, as of March 31, 2008, First Nation children represented 66.4 percent of children in care.

We recognize that this disproportionate representation of First Nation children is still a cause for concern, but I think the members would note that, as a result of cooperative and collaborative work in part, as well as other areas that are addressing some of the root causes of the challenges within communities — such as the Domestic Violence Treatment Option Court, Community Wellness Court and the substance abuse action plan, as well as other community initiatives — have resulted in lowering some of these numbers.

I think members will join with me in being pleased to see these numbers dropping, while we recognize that there is still cause for concern and further action, which this bill — if passed by the Legislature — will assist us with.

Another new provision within the act is providing for First Nation service authorities and allowing them to deliver services. The bill sets out flexible options for First Nations to deliver services, including the establishment of a First Nation authority or authorities which would be autonomous authorities will full administrative and policy-making powers and their own directors.

A director established under this act may also delegate the delivery of services to an organization or First Nation. A self-governing First Nation, of course, has the option under their final agreement to exercise their own powers and enact their own legislation, if they prefer to do so. Relevant sections of the act are sections 2 and 3, sections 168, 172, and sections 173 to 180.

Another new area within this act is clarifying the court process. Court processes have been streamlined and clarified to clearly establish the purpose and process of each step. Timely

decision-making is emphasized and there are limitations on adjournments of a matter that can occur.

There is also more flexibility in the orders made, including the order to place a child with another person — for example, an extended family member. Again, a new provision is that First Nations will have party status in court hearings.

Other new provisions include quality and accountable services. There are mechanisms in the bill that ensure quality and accountable services are delivered. Cooperative planning will allow for collaborative decision-making and is expected to reduce areas of non-agreement.

A complaint process is required to be established by a director and must be known and accessible to children and families.

In addition, there are provisions to establish minimum standards and demonstrate compliance with standards, and for submitting annual reports.

There is also provision for requiring involvement of cooperative planning participants in an annual review of case plans, and an advisory committee will review the act every five years.

I understand I am out of time, Mr. Chair. Thank you.

Mr. Mitchell: I thank the minister for his comments. Some of them were very specific, and I would think no doubt we will get into them in even more detail when we go through the bill clause by clause, perhaps later today.

There are a couple of things I would like to comment on. The minister says that the figure of 80 percent is not a current figure in regard to the percentage of children in care who are of First Nation descent. He quotes figures of approximately 67 percent in the more recent statistics — up to 68 percent. While on the one hand we are pleased to hear the numbers have dropped, the 80-percent figure has certainly appeared in the past in a number of publications, and 64 or 68 percent is still — as I am sure the minister would agree — far too high. Certainly, it's high enough to cause First Nation governments to pay particular attention to this act.

As the minister says, there are some positive steps in this legislation. The minister commented on the new supports for youth ages 19 to 24. I think I previously commented on that, but we think these are good provisions. We're glad to see this continued support in place for children who have been in care. We think that that transitional support is important and will hopefully assist — as the minister says — for these young people to transition back into society in a healthier and more productive manner.

The minister states that parents are now provided the ability to voluntarily transfer some responsibilities to the director over some decision-making powers based on liability and other issues. Those sound like positive provisions, but there are still issues being raised to us by First Nations in particular.

I'm going to elaborate on a few of them here, and I think there are other members who wish to speak. I know the third party wishes to get into this debate, and all of us want to get into the clauses of the bill, so I'm not going to go on at great length.

For one thing, family conferencing — which the minister made reference to in yesterday's debate — and the cooperative

planning process are only used — by our understanding, and I'm sure the minister will correct us when we're wrong; this is how the First Nations are viewing it — when the social worker decides that a child is in need of protection, and the social worker has either commenced, or intends to commence, a court proceeding.

So there are two points: first, this is already the status quo — the social worker already involves the family and First Nations in case planning, once a court process has been started. It's not entirely accurate for the minister to say the requirement to offer family conferencing will reduce the need to go to court because, in many cases, the social worker has already decided there will be a court application, and that's why it then goes on to include the First Nation and family conferencing or cooperative planning. There's not necessarily anything in the act that suggests the family conference can be used to avoid court, other than if — as already mentioned — the voluntary care agreement is being contemplated, and that is a rare occurrence.

Secondly, there's no way that anyone — First Nation or family member — can participate in the social worker's decision that a child is in need of protection. The social worker retains all the decision-making powers, so the question has been asked: how can we prevent a child from being taken into care if we're not providing the social worker with all the family information?

First Nations feel these sections are inconsistent with the guiding principles — which the minister has referred to — and the prevention mandate of the new law.

First Nations are notified, as the minister has said, in section 27(1), when an investigation has been commenced, but that is notification not consultation. There's no mechanism in the act to recognize a duty to consult.

One question we would have: should Bill No. 50 become law, is it possible that First Nations could challenge in court the lack of a consultation requirement, should a social worker fail to notify adequately?

This begs the question — I did ask this the other day: what is consultation and notification? Is it a phone call or is it something more than a phone call? What will be meant by this?

First Nations, as we've said, are only involved in a cooperative planning process or a family conference once the social worker decides that a court application is necessary or a voluntary care agreement will be made. The First Nation can then participate in the development of a case plan.

This is not that different from the status quo. First Nations, as the minister knows, are already involved in the case planning process and, most times, First Nation officials are asked to sign the documents for court. This is therefore why First Nations want to be involved in decision-making. The social worker already has the authority to use voluntary care agreements. It's status quo. They've rarely been used because the social workers also say — and sometimes correctly so, obviously — that the parents must be cooperating. Of course, these affidavits, when it goes to court, are generally adversarial, and the parents don't want to cooperate.

Another point involves the alternative dispute resolution or ADR process in section 8. First Nations are telling us that they

would like clarification of that. The process or the service has not been defined in the act. Their question is — and since they can't ask it here, we'll ask it on their behalf: does this section mean that an ADR process can be used instead of the court process? If it can, then it should say so in the act, and, therefore, First Nations concerns would be alleviated. If not, they are asking if these are the improvements that they thought were coming.

It has also been pointed out — I think yesterday the minister said, "Even in instances where court proceedings have been started, an agreement can be reached on a plan before the hearing and the matter can be withdrawn from court — which is not currently the case."

We have been informed since the minister made these statements that he is wrong about that because several of these situations have only recently been negotiated that way under the existing legislation. The minister says that this is new and First Nations are saying that it is not new and that those abilities already exist.

First Nations want to be involved in the process of development of the child advocate. For example, it has been pointed out that British Columbia has a very progressive child advocate who is serving as a very good watchdog. As I have asked before: can the minister illuminate us on whether the child advocate is seen as an arm's-length stand-alone sort of position, much like the Ombudsman, or a reporting position, more like how the worker advocate is being viewed? It is not in the current act but only contemplated in an act to come back over a year from now when this act has been proclaimed.

We are looking, as are First Nations, other advocates and NGOs, for an explanation from this minister as to what he contemplates in the position of child advocate. What is the role, the powers, and how would that position integrate with this legislation since it is not within this legislation?

Extended family agreements — again, a social worker has discretion to decide if such an agreement is appropriate and whether funds may be available. As I suggested the other day, there should be mandatory funding for kinship care — not only to alleviate First Nation concerns, but the concerns that I raised yesterday on behalf of a constituent — as opposed to this being discretionary or even requiring involvement such as applying for foster care status.

Those are some of the questions I have for the minister. I do look forward to a more in-depth discussion when we go through the bill clause by clause.

I think it would be more productive to carry forward that way, because what the minister is now doing is referring to clauses throughout the act in response to the general debate questions, and it is difficult for us to follow along that way. It will probably be better for both sides if we do that within a clause-by-clause question and answer session.

That is the bulk of what I want to ask at this point. I would point out that First Nations have another stake in this, besides the obvious stake, in that we are talking about so many of their children, whether it be 68 percent, higher or lower; it is still an awful lot of First Nation children. They are the majority of children in care. I think we can agree on that.

With respect to child welfare, the federal government devolved this to First Nation agencies down south. The Government of Canada has jurisdiction over First Nations through the Constitution. In the provinces it was devolved to First Nation agencies. That hasn't happened in a similar manner in Yukon, but of course through the final agreements, First Nations have the ability to take responsibility for that. The Premier suggested as recently as yesterday that they should do so if they are not happy with this act. I know that a number of First Nations, perhaps as many as seven, are now contemplating that.

In the meantime, millions of dollars are coming to the Yukon government on behalf of First Nation children and families. In effect, the Yukon acts as a fiduciary for First Nations in some cases. Serious money comes here and the First Nations are concerned with how that money is spent.

Again, if the minister chooses to disagree, I will have to tell him that it is unfortunate that he couldn't disagree directly with the First Nations. We are forced to bring these issues forward on behalf of constituents as they present them to us. As I have pointed out, we are not lawyers or experts, and we would have preferred if the First Nations, under legal counsel, could have made these points or asked these questions directly of the minister, and the minister could have responded and perhaps convinced the First Nations of his position and convinced us likewise. It would have been better to do it directly, but we know that's not going to happen.

Hon. Mr. Cathers: It's interesting; again, the member is engaging in debate and he's failing to recognize the process that was entered into. We followed that process. As I said yesterday to members regarding the November 7 consultation draft of the legislation, the only substantive issue identified with that by the First Nations Health Commission was the desire to have a child advocate incorporated. That is why the provision has been made in the legislation to establish an act.

The member asked about what that will be and how that will go on. Well, the member knows — I've answered the question. We will be consulting on that; we will be working with First Nations, stakeholders and the public on developing exactly what the role of a child advocate is and developing that piece of legislation. That will occur roughly over the next year to meet the commitments that have been made in this area. We will then move forward with establishing that legislation.

In a number of cases, the member is referring to areas and bringing forward disputes on this topic, trying to create an issue. I would encourage the member — I did answer much of this yesterday. I would refer him to *Hansard* for some of that. One area I will agree with him about is it would be helpful if we got into line-by-line debate on some of these matters. I will continue to provide, in some of the overall areas that have been identified as issues and concerns by the members opposite, references to sections of the act that contain portions relevant to that. As the member will note from my last response, in some cases there are a number of sections that are relevant.

Mr. Chair, the member is raising the issue of foster parents, kinship care and suggesting that the act should say the government "shall" provide reimbursement and "shall" provide financial assistance. I would point out to the member that if a

child is adopted or is in foster care, the desire is to ensure they have sufficient resources to take care of that child.

This is a new section in the act that was not previously there. Although it has been offered in policy, recognizing it in the act is new. The desire of that area is to ensure that anyone who takes on the care of a child is not put into financial hardship. Of course there the ability already exists through social assistance — if someone is on social assistance — to provide for them and the child, no matter whether that child is theirs, adopted or in foster care. This area of the legislation is designed to provide for those who are in the middle, in between being on social assistance and being sufficiently well off financially that it will cause them no concern. This provides the ability to assist them in caring for a child they have agreed to take on, who is part of their family and ensures that it won't cause undue financial hardship.

This would apply, for example, to a multi-millionaire. If one agreed to take on a child of their sister or brother, cousin — it doesn't really matter — and they were very financially well off, and that taking care of such a child would cause no hardship and no stress, would the member really suggest that because they were taking that child on, that there is a need to provide them with financial compensation for doing so? The intent of the structure of the act that we have proceeded with is to assist those who require that assistance and to allow the officials to provide appropriate support to those who need it.

The member ought to know by now that legislation prescribing an obligation to pay is something that is not commonly entered into in legislation because of the potential legal implications of such a clause. Commonly, legislation is enabling and allows the appropriate arrangements to be entered into in policy and/or regulation and, in this case, to base it on the needs of the child and those of the extended family, rather than basing it on a legislative obligation to pay.

I want to make sure the member recognizes that I believe the vast majority of individuals who would agree to take on a child would do so out of a desire to keep their family together and to help that child. Frankly, some might be insulted if the member is inferring there is a need to pay them for services. What we want to do is provide the ability to assist them appropriately, if indeed they need assistance, and to do so in a respectful and appropriate manner.

Moving on to other areas, on the alternative dispute resolution, the member suggested it's not sufficiently recognized or supported, or sufficiently in there. What the member fails to recognize is this is a new provision in the act. It's not in the *Children's Act*; it's in the new *Child and Family Services Act*. Some of the procedures and practices the member was referring to in his comments — he says, "Well, they already happen." What the member is failing to recognize is there are a number of areas, through the new First Nation child welfare policy — which we acted on in March 2007 — that flowed from the consultations and what was heard during consultations on the child act. We have acted in this area but it is not in legislation; it is merely in policy. The legislation is now moving forward to identify and recognize those practices.

Also, currently there exists no legal obligation to continue some of these practices. This is to entrench in law some of the practices that have been successful, as well as provide the legal mechanism to allow for new practices, such as cooperative planning and increased alternative dispute resolutions.

The member is entirely missing the point if he thinks that alternative dispute resolution would be entered into and a court process would still occur. Alternative dispute resolution is intended to be an alternative to court. That is why it is entitled "alternative dispute resolution". If an alternative dispute resolution process is successful, it is aimed at avoiding the court system.

In alternative dispute resolution, the act promotes the use of cooperative, collaborative, inclusive processes through the guiding principles. It will reduce the adversarial and confrontational nature of court proceedings, and the requirement to offer family conferencing and other alternative dispute resolutions is designed to reduce the need to go to court and avoid it entirely, if possible.

The court is required to promote the use of cooperative planning processes. If the matter comes to court, a judge is required to determine if a family conference was held and the outcome of the conference. If a family conference was not held, the court can be adjourned so that a family conference can be held prior to the court hearing. That is in section 79.

A director will work with the family to achieve agreement on a plan, and if a child requires out-of-home care, then the family and the director can enter into a voluntary care agreement. Again, this is another alternative to court.

Even in instances when court proceedings have been started, if an agreement can be reached on a plan before the hearing, there is now the ability to withdraw the matter from court, which was not previously an option under the legislation. Previously, once the court process was launched, it had to be concluded. That is in section 56 of the act.

Part 2 of the new *Child and Family Services Act* is all new provisions, for the members' ease of reading. These are new provisions aimed at more collaborative, cooperative planning processes, alternatives to court, avoiding court, involving First Nations, involving extended family and, whenever possible, reaching mutual agreements on how to proceed and provide the appropriate support for the child and the family.

Some of the alternative dispute resolution processes include mediation, which is provided for in section 8. A family can use that or any other alternative dispute resolution process at any time when they are receiving services under the act.

Moving on, other areas that provide for First Nation involvement include the guiding principles, as I have noted; there is a statement in section 2 — under "Guiding principles," section 2(j), provides for involvement of First Nations in decision-making processes as early as practicable.

In reference to cooperative planning, First Nation involvement is required at the onset of involvement with the family — sections 6 and 7 of the act.

The child's First Nation shall be invited to participate in planning for the safety of the child and for supports to be provided for the child and family. Cooperative planning must be

offered when a child is believed to be in need of protection, when a child is leaving the custody of a director and for adoption planning, and may be offered in any other circumstance as well. The relevant sections are section 44 and section 98 of the act.

There is a requirement for the involvement and/or notification of a First Nation in a number of sections — involvement in the cooperative planning process and other matters, and notification of steps taken under the act.

Cooperative planning — the stages at which that is required include cooperative planning, initial contact and investigation, reporting back to a First Nation, a child who needs to be protected from contact with someone, notification when the child is brought into care, documents to be served in respect of a court application, parties to a court hearing, application for subsequent order, rights of a child in care, and cooperative planning for adoption. The relevant sections are sections 6 and 7, section 44, section 27, section 28, section 32, section 41, section 47, section 48, section 60, section 88 and section 98.

First Nation delivery of service — there is flexibility in how First Nations are able to deliver services to their members, including the option of establishing a First Nation service authority or authorities where First Nations can deliver some or all the services provided for under the act.

The authority would be autonomous and have full administrative and policy-making powers with its own director, and a First Nation services authority would be initiated by agreement and is responsible to the Minister of Health and Social Services, as that is where the act falls under. As I indicated before, if a First Nation requests to negotiate an agreement to establish such a service authority, there is a requirement to enter into those negotiations.

Another option is that the director can delegate the delivery of parts of the act to a First Nation or to an organization. The third option that is available to all self-governing First Nations is that if they wish to exercise the power of their self-government agreement through the program service transfer agreement process, they can enter into that arrangement.

Should they choose one of the options provided within the act, the relevant sections for the first option are sections 168 to 172, and in the second option, section 176.

Other areas of recognizing involvement and providing for First Nation involvement include preserving the cultural identity of a First Nation child. Again, these are new areas within the legislation.

The guiding principles identify the importance of knowledge about family origins in section 2(c); the cultural identity of a child in section 2(d); extended family members' involvement in health, safety and well-being of a child in section 2(h); involvement in decision-making of a child, parent and extended family members in section 2(i); First Nation involvement in decision-making processes in section 2(j); as well as in the service delivery principles, which identify the importance of programs and services that should be planned and delivered in ways that are sensitive to cultural heritage of families in section 3(c); communities and First Nations should be involved in the

planning and delivery of programs — covered in sections 3(d) and (e).

Best interests of a child: the importance of preserving the cultural identity of a First Nation child must be considered in determining the best interests of a child and is provided for in section 4(2).

Cooperative planning: with guidance from the family and a First Nation, cooperative planning will be offered in a culturally relevant manner, which may involve ceremonies, food, elders or other relevant activities. While a family conference is named as one example of cooperative planning, the bill allows for other approaches, including those that are practised within First Nation communities.

Case plans for children in the care and custody of a director address steps to preserve a child's identity and culture. Case plans will be developed with the input of First Nations at the cooperative planning process. The relevant sections are sections 6 and 7, section 44 and section 98.

Priority of placement: provisions include the priority placement of a First Nation child. When a child cannot live at home, placement should be sought with extended family first or within the First Nation community. The relevant section is section 89.

Rights of children in care: section 88 sets out the rights of children in care and includes the rights of children to receive guidance and encouragement to maintain their cultural heritage — section 88(1)(i); to participate in community activities — section 88(1)(g); to pursue spiritual development — section 88(1)(h); speak to and receive visits with members of the child's extended family — 88(1)(d); and the right to privacy during discussions with a representative of the child's First Nation — 88(1)(j).

Provisions for the involvement of family, extended family and others significant to the child are recognized in the guiding principles. They speak to the importance of the involvement of family and extended family, noting that family is the primary influence on a child and should be supported to provide for the care and well-being of a child — section 2(g); extended family members' involvement in the health, safety and well-being of a child is provided for in section 2(h); extended family members' involvement in decision-making process — section 2(i).

Service delivery principles speak to the importance of involvement of family and extended family, noting that families and children should receive the least disruptive form of support that is appropriate — section 3(b); “collaboration builds on the collective strengths and expertise of children, families, First Nations, and communities” — section 3(f); and “a child and members of the family and extended family should have an opportunity to seek a timely review of decisions...” provided for in section 3(g).

Cooperative planning emphasizes the central role of parental involvement in planning for their children and encourages the involvement of extended family members as well as others with significant relationships with the child and is provided for in sections 6, 7 and 44.

Another new provision includes provision for agreements with extended family to care for a relative's child without need-

ing to take the child into care, and section 14 refers to that process.

If an agreement cannot be reached in the cooperative planning process and the matter proceeds to court, the family or extended family now has the ability to submit their own plan for the child to the judge for his consideration. The relevant section to that is section 55.

If the matter goes to court, a provision for a new court order has been added, whereby a judge can order a child to be placed with a person other than the parent — for example, an extended family member under a director's supervision. The relevant sections are 52 and 57.

Thank you, Mr. Chair.

Mr. Edzerza: I've heard a lot of comments today, some coming from the Premier, that stated that I had kind of a close attachment to this particular subject. He's right, I do, and for good reason. The minister may have been involved with this kind of work for two, three, four years; I've been involved with it for 20 years plus, not as a minister, but as one who had to interpret the law of family and children's services, one who had to constantly go to bat for the individual citizen out there who was having much hardship from their children being apprehended and not understanding the process of the law.

I don't pass myself off as being one who has a legal counsel background; however, I have had the opportunity to work with the old act and to find out that it was very weak with regard to any First Nation involvement during the apprehension of their children. I also know that there was a great imbalance here with respect to the individual citizen having the financial resources to be able to properly have representation in the court system.

The imbalance is that with government, they have an abundance of funds. They have the opportunity to select numerous legal counsel who are professionals in determining the law on child welfare versus a family in a community of poverty that has no other option but to ask Legal Aid to provide their counsel. They do not have the finances to be able to select the best legal counsel to represent them in court.

I have seen this on numerous occasions, and one example I will give today is that many years ago — 25 years ago plus — I was driving downtown. I saw two people walking on the side of the road so I picked them up; they were friends of mine. I asked them where they were going and they said, “Down to the courthouse.” Upon questioning them further, they told me that they were going to court to try to keep their son. I asked them out of interest who was representing them. They said, “Nobody.”

So I went to the courthouse with them, and lo and behold they were telling the truth. There was no legal representation there for this family. The family and children's services branch had, I believe, three legal counsel sitting there.

Upon having dealt with these situations on numerous occasions, I voluntarily offered to support this family. A lot of things went on in that courtroom that I brought to the judge's attention — one of them being the imbalance of representation for the parents in question versus the government. I thought it was very unfair that two individual citizens had to face a de-

partment full of legal counsel who all specialized in child welfare law.

It ended up that the judge did side with me on a lot of the things that I raised and, to make a long story short, at the end of the day the children stayed with the parents. I can testify on the floor of the Legislature today that I talked to this young fellow as recently as a month ago, and he is doing very well. He survived without going into the care of the director. Had I not been there at that particular point in time, this young fellow would have been in protective custody. Obviously he didn't need it. He survived by not going into the care of the director.

I wanted to bring that to the attention of the minister of today. The real sad story that comes out after all the consultations that took place with regard to this act is that those very people are still unhappy. They are still unhappy.

This leads me to a quote that was made by Chief Seattle in 1854 — and this whole thing about consultation has to do with respect: “Respect means listening until everyone has been heard and understood, only then is there a possibility of ‘balance and harmony’...”

Well, this is where this act falls short. There is no balance and harmony; otherwise, you would not have had the galleries filled here a week ago with First Nations who are saying that they haven't been heard. As I go through some of the documents that were handed out at the briefing, I tend to believe that they are correct.

I know the minister is going to stand up and cite something I said about moving forward with this act. I know he's going to say that, because he can't pass it up. It's the only line he has to deal with me. My answer to that now is: so what? So what if I said that?

There is a time when someone says something — and I am always of the opinion that a person should always have an open mind and should be able to stand up and be accountable for what they say and be able to say, “Yes, I made a mistake,” or “I wasn't accurate,” or whatever it might be. I am that kind of a person. I am willing to say, you know, after talking to the First Nations and having gone through these documents — which we did not have back in April; these were just given to us at the briefing — it's very easy to look at this document called, *What We Heard*, on the *Children's Act* revision. Mr. Chair, I can't help but come to the conclusion that the philosophy and principles of the First Nations were really brought forward in good spirit and sincerity, believing wholeheartedly that this government is going to consider giving us some responsibility.

Well, Mr. Chair, I believe where the barrier was put up was exactly what the Premier said in the House here just yesterday: “That is co-governance. We have no desire to go down the road of co-governance. We maintain the liability and the responsibility for all Yukon children, and we will not devolve it.”

Now go and consult with the people in the territory and come back with something that we can live with. Well, the problem here, Mr. Chair, is that this comes out when the act is being brought into the House. The Premier should have said this right from day one. He should have said to the First Nations, “This is our guiding principle here. This is what we're

going to stick to and nobody is moving us off of this position.” I can guarantee you almost 100 percent today that the First Nations would have told you to go wherever.

When you came to their community they would have said, “Nope, we're not interested in talking to you. You go do what you want because your guiding principle is that you have no desire to go down the road of co-governance.”

Now, one of the major problems that I have with this is that the government is willing to make all kinds of collaboration agreements when it comes to economic development ventures. They are willing to do anything when it comes to economic development, but when it comes to social problems and social agendas, the answer is: “No, we don't want to include you in the decision-making power, because it is our money.” That is basically where the barriers are and where they will remain.

I also want to put on the record that I have great concerns when the Premier would allow MLAs to have a free vote when it came to increases in MLA salaries, but he would not allow a free vote on such an important piece of legislation as the *Child and Family Services Act*.

I find that unacceptable. It's not right; it's totally wrong. As long as these kinds of barriers are put up between First Nations and the government, there will never be a working relationship.

I also want to say I was appalled at the comments made by the Member for Pelly-Nisutlin. She was appalled at First Nation people coming here, saying they have some issues with this act. I think there will be a lot of people appalled at that comment that was put in the paper and made on the floor of this Legislature.

But it's like First Nations know —

Some Hon. Member: (Inaudible)

Point of order

Chair: Mr. Cathers, on a point of order.

Hon. Mr. Cathers: Under our Standing Orders, 19(g), one may not impute false or unavowed motives to another member. Certainly the Member for McIntyre-Takhini is using remarks made by the Member for Pelly-Nisutlin out of context to express a motive entirely different from that which the member expressed in debate the other day. Mr. Chair, I would ask you to have him temper his remarks and respect the Standing Orders.

Chair's ruling

Chair: On the point of order, there is no point of order, but I would remind the members not to personalize debate. Mr. Edzerza, you have the floor.

Mr. Edzerza: Thank you, Mr. Chair. It's something that was said on the floor of the Legislature and nobody disputed it when it was said. It's something that First Nations also understand, and that is everybody is entitled to an opinion.

I would like to look at some of the guiding principles here. Philosophies and principles are critical in the development of a document — not to the government, but to the receiving end of this legislation. That is who it is critical to. This is going to

affect a lot of First Nation people. A lot of people in my riding are going to be affected by this legislation, and that is why First Nations wanted to have a little bit more of their values and their philosophies put into this act.

It is not a big thing to correct. I think if there was a political will on the part of this government toward the social agenda like there is toward economic development, the social problems would be inundated with funding. You wouldn't have to keep trying to twist someone's arm to put a land-based treatment centre in place; it would already have been done. There is no question about it.

Like I stated before, when you deal with social programming, they are not finance-generating initiatives and that creates a problem for this government. I sincerely hope that someday they will see the value in dealing with the social agenda as expeditiously as they do with creating jobs. The lack of qualified tradespeople is really reflected in the extent of the social problems in the community.

I know several First Nation operators who are very good operators. They are all very dependable, and they do a good job when they are at work. I know a lot of young people who are around the community today who would love to have a land-based treatment centre right in town where they don't have to go a long way from their families.

I want to talk about some of the general principles. This is coming right out of the document *What We Heard*: "Child protection has a bad reputation. To help correct this it's important to state in the act that the principle of taking the least intrusive action is important. This should be in the preamble."

"I want prevention to be the central feature of the philosophy of the new act. I also want it to be child-centred and family-focused. Building stronger families should be our main job as social workers." That came right from the social workers. If a social worker is concerned that things are not family focused, then obviously there are some concerns that need to be addressed.

"The foundation of principles should include recognition of cultural differences when looking at individual rights versus collective rights. This is particularly important in First Nation cultures." That statement speaks a thousand words. Cultural differences — ever since I was elected as an MLA, I've been talking about cultural differences and cultural clashes on the floor of this Legislature. When I was in government within Kwanlin Dun, I always talked about the cultural clashes and the cultural differences because, even in First Nation governments, some things were not clear as to why the First Nation government wanted to go in one direction but the federal government or the territorial government had their own agenda.

Again, it was all due specifically to the difference in cultures.

It is very obvious to First Nations that, being a minority, we have to follow and be dictated to by the bigger governments. First Nations don't have the financial support or the finances in place to take on the federal government regarding cultural differences. They wrote the *Indian Act*; you live under it or you go to jail.

Now we have an opportunity to develop legislation today that can be more culturally friendly. I know the minister is going to get up and go through all these notions that he has about what is going to address the cultural differences, so I'd like to hear what he has to say.

Hon. Mr. Cathers: The member suggested that I was going to spend all my time pointing out remarks he has made before, but I won't. I appreciate that the member is expressing a different point of view than he did before; however, the member should recognize and be accountable for his words as members of the government are expected to be. The member himself did note in the media on February 15 that consultation had been going on for five years and I quote: "The longer it's delayed, the more negative impact it has on the citizens who really needed something in place 20 years ago."

I remind the member that we spent five years consulting. We embarked on a process, jointly consulting, jointly going out with CYFN to consult, jointly developing the policy and jointly informing the legal drafting. The member suggested that we should listen to everyone, until everyone has been heard. The opportunity was provided for everyone who wished to come forward to do so. As I read out yesterday in debate, the attendance at some of the meetings makes it very clear that there was large participation in this process.

But we have to move forward, as the member himself noted on more than one occasion. We cannot spend another 20 years consulting on this to ensure that everyone has spoken on the issue, if they did not previously take the opportunity that was provided to them to make their views known.

The member's words were, "Everybody's entitled to an opinion." Well, as the member knows, there are always differing opinions on significant policy matters. What we did in this context, in this process, in this review of the *Children's Act*, is embark upon a historic process. This is the first time in Yukon history that the government has moved out and gone with the Council of Yukon First Nations to jointly do public consultation, to jointly develop the policy, to jointly inform the legal drafting. We have fully honoured our commitments; we have listened to First Nations, to stakeholders and to the public.

I refer to the 12 topics in *What We Heard* and the significant stack of comments heard from the public. I have mentioned a number of the areas where these have been incorporated into the act. I have reminded the members or made them aware of new sections in the act, including the fact that part 2 is an entirely new section and is related to the new emphasis on cooperative planning, on alternative dispute resolutions, to avoid court, except when absolutely necessary, and provides far more ability and requirement for involvement of the First Nation and extended family and the prioritization of extended family for placement of a child, if a child must be taken into care.

Now, the *What We Heard* document — the member suggests that he has only had a short time to review it; that it was only available at the briefing provided by officials, that it was the first time he had an opportunity to see it. The Leader of the Third Party — the member's colleague — was concerned yesterday and in fact, rose on a point of order, thinking the docu-

ment I was reading from was one they had not seen before. Well, as the member has now recognized, stacks were provided at the briefing by officials of Health and Social Services. This document, as the Member for McIntyre-Takhini — and indeed, all members of this Assembly — should be well aware, has been public and posted on the *Children's Act* review Web site which is www.yukonchildrensact.ca since September 2004.

The Member for McIntyre-Takhini, at that point, was a member of this side, a member of the government caucus and of Cabinet, and was aware of the discussion that included the desire to ensure that this is publicly available on the Web site, as it has been since September 2004.

Officials from Health and Social Services did, once again, provide that to members at the briefing on the legislation. It's unfortunate that they had not read it before, and I am pleased to see that some of them have apparently taken steps to read it now.

The member bridged into other areas to talk about the social agenda and stated that this government has not acted on the social agenda. Mr. Chair, if the member will review his memory, the member will recall what has been done and will realize that the statement he made is not accurate and does not reflect the facts. This government has acted in areas of the social agenda far beyond what previous governments have done, including social assistance reform, significant increases to non-government organizations we work with, a five-step FASD action plan — including investing and increasing the resources to groups such as FASSY, and Options for Independence Society — as well as increased resources to groups such as Challenge, increased resources to women's shelters, collectively amounting to — with Kaushee's Place, Help and Hope for Families Society, and the Dawson City Women's Shelter — an annual increased funding of roughly \$1.2 million since this government came into office.

Those are just a few examples off the top of my head. If the member would like, I can come forward with more information and notes on some of the investments the government has made on the social side of the ledger. The member ought to be well aware that, in fact, we have acted in a number of areas that other governments did not. Other areas that spring to mind: increased funding to YFSA — now known as Many Rivers Counselling — funding for youth outreach workers, funding for the Outreach van. These are just a few examples off the top of my head — not to mention the substance abuse action plan, which the member had a hand in developing and, unfortunately, the member did not carry it through and continue on with that involvement.

The member was referring to the intrusiveness of actions and suggested that a desire for less intrusive services and no intervention should be in the preamble of the act.

The member should note that this is right up front in the act under "Service delivery principles". These principles begin a new section of the act setting the context for how the rest of the act must be interpreted and delivered and how all policies and programs pursuant to this legislation must be implemented.

"Service delivery principles" begins by noting:

3 "The following principles apply to the provision of services under this Act

"(a) in making decisions, providing services and taking any other actions under this Act, a child's sense of time and developmental capacity should be respected;

"(b) families and children should receive the most effective but least disruptive form of support, assistance and protection that is appropriate in the circumstances..."

Again, right up front at the beginning of the act, service delivery principles set the context for how the act must be interpreted. It says right there "the most effective but least disruptive form of support, assistance and protection..."

Section 3(c) notes:

"(c) programs and services should be planned and delivered in ways that are sensitive to the cultural heritage of the families participating in the programs or receiving the services..."

Again, there is recognition of culture and the importance of that has been identified, particularly by First Nations, but is also important to non-First Nations citizens as well.

Carrying on in section 3:

"(d) communities should be involved in the planning and delivery of programs and services to their residents;

"(e) First Nations should be involved in the planning and delivery of programs and services to their members..."

Again, this is under "Service delivery principles", noting that First Nations should be involved in the planning and delivery of programs and services, and they are provided for right up front in the act.

Subsection 3(f) "collaboration builds on the collective strengths and expertise of children, families, First Nations, and communities; ..." That again, is in reference to matters such as collaborative planning and provides the clarity that a service delivery principle should build on that collective strength and expertise of children, families, First Nations and communities. In 3(g) "a child and members of the family and extended family should have an opportunity to seek a timely review of decisions made under this Act which affect them."

Moving on, Mr. Chair, and I note from the member that the guiding principles are key to the act as are the service delivery principles and the next section, "Best interests of the child", expands in — I believe there was one line in the child act referring to "considering the best interests of the child." This has been expanded to take up one clause with two sub-clauses and one of them has 10 various subclauses, to describe the best interests of the child. So, this includes 4(1): "In determining the best interests of the child all relevant factors shall be considered, including

"(a) the child's safety, health and well-being;

"(b) the attachment and emotional ties between the child and significant individuals in the child's life;

"(c) the views and preferences of the child;

"(d) the child's physical, cognitive and emotional needs and level of development;

"(e) the importance of continuity and the resulting stability to the child, and the effect of any disruption in that continuity;

“(f) the child’s cultural, linguistic, religious and spiritual upbringing and heritage; ...”

Again, if the member notes, this is a specific reference to cultural, linguistic, religious and spiritual heritage and their upbringing — a recognition under best interests of the child to be used not only by the director of family and children’s services or the director of a First Nation service authority, but also to be used by the courts if the matter gets to a court process and is not able to be resolved earlier through cooperative planning or alternative dispute resolution.

“(g) the importance to the child of an on-going, positive relationship with their parents and with members of their extended family;

“(h) the ability of a proposed care provider for the child to fulfill parental responsibilities;

“(i) the role assumed by a proposed care provider during the child’s life; and

“(j) any history of family violence or child maltreatment perpetrated by a prospective care provider, and the effect on the child of any past experiences of family violence or maltreatment.”

It moves on to a specific section, 4(2): “If a child is a member of a First Nation, the importance of preserving the child’s cultural identity shall also be considered in determining the best interests of the child.” There’s no discretion: it says it “shall” be considered. I remind the members, that applies in matters of cooperative planning, alternative dispute resolution and court processes, among others. It is up front in the legislation; it must be applied throughout that entire legislation in determining the child’s best interests.

Another area I have briefly referred to, but not in large part, is the area of extended family support — again, a concern brought forward by the members opposite. The guiding principles recognize that a family is the primary influence on a child and should be supported in caring for their child. In addition, the principles recognize the importance of the involvement of extended family in caring for children and in decision-making processes. Relevant sections are sections 2(g), (h) and (i).

Service delivery principles also speak to collaboration with extended family and to a timely review of decisions, as I have just indicated to the member. When determining the best interests of the child, the extended family shall be considered: when considering the attachment and emotional ties between the child and its significant individuals, the importance of continuity for the child and the importance of an ongoing relationship with extended family.

Cooperative planning shall be offered by a director, and extended family shall be invited to the planning process. Cooperative processes emphasize the central role of family and encourage the input of extended family members, as well as others significant to the child. Relevant sections include sections 6, 7, 44 and 98.

There are new provisions for agreements with extended family to care for a relative’s child without needing to take the child into care. Based on the needs of the child and extended family, supports may be provided, including financial support, respite, caseworker support, counselling or services for chil-

dren, including things such as medical or special needs; and section 14 is relevant to that topic.

As I believe I have noted before, if agreement cannot be reached in the cooperative planning process — and I remind members cooperative planning is new in its recognition in this legislation — and the matter proceeds to court, the family and extended family may submit their own plan for the child to the judge for the judge’s consideration. Relevant section is 55.

A new order has been added whereby a judge can order a child to be placed with a person other than the parent, including an extended family member — and again, the recognition of extended family members in the act is a new provision and it is a totally new provision that priority of placement with a suitable extended family member shall be considered. That issue of priority of placement of a child with extended family is section 89, if the legislation is very relevant to that.

There is also provision for the right of a child in care to visit extended family and an opportunity for family and extended family to seek a timely review of decisions. I direct the members’ attention to section 88.

Of course, the one area, as I indicated — the one substantive concern that was brought forward by First Nations after the November 6 consultation draft was provided to them — was the desire for a child advocate. That was the one concern brought forward in the process and that is why it has been added to the legislation when it was not included in the consultation draft.

It was set out for separate legislation to establish that process, and as I have indicated, we will be consulting with First Nations, with stakeholders and with the public on the details of that legislation.

The child advocate will be independent of any director appointed under the *Child and Family Services Act*, and the establishment of that position will require looking at various models and consulting with the public, including determining the scope of the powers of that office and who will be served by the advocate.

Mr. Chair, another area that I don’t think I’ve noted to the members is the provision of the involvement of community. As I noted previously, it is under “Guiding principles”, section 2(k). It is under “Service delivery principles” that communities should be involved in planning and delivery of programs and services and that collaboration builds on the collective strengths and expertise of children, families, First Nations and communities.

As well, the reference in “Best interests of the child” speaks to community inclusion and the importance of continuity and stability, and the importance of ongoing positive relationships.

Through this legislation, protection of children now becomes a community responsibility with the mandatory reporting of child abuse, and people will be required to report such matters. This includes, as I’ve noted, child pornography. There would be mandatory reporting under this legislation. The relevant section to this is section 22.

The involvement of community and cooperative planning provides for community members and individuals important to

a child to be invited to participate in that cooperative planning. The relevant sections include sections 6, 7 and 44.

The rights of a child in care are also new in this legislation, and that includes the right to visit with their family and extended family members, to participate in community, social and recreational activities and to participate in spiritual activities. The relevant section is section 88.

There are provisions also under this legislation, as far as accountability goes, to establish committees to act in investigative, administrative and/or advisory capacity, which will include community representatives.

The operation of the legislation will be reviewed every five years and a committee will oversee this review. This committee will include a representative of the minister, of First Nations, a lawyer, and up to three other persons — section 183.

So, Mr. Chair, in wrapping up my comments at this stage in debate, I would note, again, to members all of the areas where I've identified significant improvements over the previous legislation. I would hope that members would recognize that this legislation is a significant step forward in involving First Nations and involving extended families and in recognizing the needs and best interests of the child by specifically identifying numerous areas, including the importance of cultural and spiritual activities and the heritage of the child.

Thank you, Mr. Chair.

Mr. Edzerza: It appears that, rather than having a debate where questions are asked and answered, we are sort of just putting our own positions here on the floor — and that's all right.

I want to touch just a little bit on culture, because culture is critical to be heard in this area. I have to say not only for the Yukon government, but for most governments — whether municipal, federal, territorial or provincial — culture doesn't mean much to them. It only means a lot to the people to whom it belongs.

It is unfortunate that all the governance models that First Nations had were destroyed through history. I know that, a long time ago, my mother told me many stories about how our culture was so different from what she called the white man's way. It is quite ironic, but it has only been in the last 24 years that I began to make a connection to that statement made by her, and I'm beginning to understand that culture is very important to the very existence of our people.

Again, this document — *What We Heard* — about philosophy and principles — is quite impressive. I understand what's being said in it very well. This one statement here is very critical and one has to really read it over and over to understand exactly what the message is. This person said it's important for children to know their cultural history. My granddaughter was adopted at age two by a First Nation family. She grew up thinking she was a member of a different clan from the one she was born into. The girl is now confused. You have to be very careful when you take First Nation children away from family. That's something that the government and the ministers and everyone working in family and children's services needs to take back: that one little phrase there and understand it, and you'll go a long way with First Nation families.

I believe that, when it comes to the cultural side of things, there is a dire need for a lot more First Nation families to come forward and open their homes as foster parents. But then, again, on the other hand, I totally understand why they won't.

I know our experience of foster parents and therapeutic foster homes was not positive. We had many difficulties, lack of support, and numerous things — and I am not going to get into them. I only raise them because it's important to note that there is not an abundance of First Nation foster homes, and it's not because First Nations don't care. There is another side to that coin. I would encourage the minister and the department to seek understanding of what the other side of that coin really means.

It's only when those who come forward with good intentions are met with a lot of stress and rejection that you begin to realize, why am I doing this? You begin to ask yourself and question yourself: why am I doing this?

It becomes a very confrontational endeavour with the department, and it shouldn't be like that. It should be a situation where everyone tries to strive for harmony and good working relationships and has the best interests of the child at heart, and they are working toward that goal.

Having said that, I want to touch just a bit on the best interests of the child because I think this is a very important phrase.

One person said, "In living and working in the communities, I see the best interests of a child often overshadowed by politics and the child loses out because of unspoken and unacknowledged political conflicts. I hope that this legislation doesn't do the same and that it acknowledges and attempts to deal with the politics and protects the best interests of the child not just in words but in actions. Otherwise it may not make a difference."

That's a pretty powerful statement, and very accurate. All of the comments I've been going through from *What We Heard* are very powerful words.

Another person said, "The idea of the best interests of the child is a loaded concept. Who can disagree with it? Yet the question of who decides what are the best interests reflects power relationships in our society. It seems the power can rest with social workers and judges rather than families and communities. If we ask "How can we best protect children?" or "How can we best work together in the interests of children?" would we get at other ways to approach this?"

It's a good question. It is very accurate. Why should some people have more authority than others over what happens in the community? Quite often, when something goes wrong in a community, the ones making the decisions don't have any idea about the family or the extended family.

Another person said the best interests of a child include preservation of culture — there's that word again: "culture". "Culture" is always being added to these statements. There should be something in part 2, to deal with best interest factors to address culture when determining placement of a child. It is important not to rip the child away from the place and culture in which he or she was raised.

I hope the department will keep these documents and refer back to them. It would be a good way to keep yourself on track as to where you should go with a number of these things.

I just wanted to get a few of those statements on record because, again, it focuses very heavily on culture. I'm kind of surprised. One thing that did surprise me a little bit, when I looked through the *What We Heard* document, was that most of it came from First Nations. That in itself should really be a high, positive indicator that the majority of the problems within the family structure, where apprehensions are taking place, is with First Nations. They are the ones who had a lot of input into *What We Heard*.

But I will stress again that the barrier that was put in place from day one is not going to make any of these documents really relevant in the act. When one starts out with the agenda that we have no desire to go down the road of co-governance, we maintain the liability and the responsibilities for all Yukon children and we will not devolve it — those are important words as to why a lot of the First Nations' concerns are not being met in this document and why there was a gallery full of people coming to voice concerns with this document.

The criticism about the document is very constructive; it's constructive criticism. It's unfortunate that the government is not going to accept it as constructive criticism but as opposition to the bill. I heard the minister talk about collaboration agreements such as — I think he mentioned — the Yukon Forum. If the government can go that far as to strike up a Yukon Forum, I'm quite sure that, if they had the political will, they could strike up a collaboration agreement with all First Nations to address the concerns they have about this document.

I constantly keep hearing from the government side that First Nations can draw down; they negotiated that; that's their prerogative; that's their right. Well, the only thing that is being left out of those comments is that there are no finances to do such a thing. I think that maybe the government should sit down very seriously with First Nations in the Yukon Forum and say, "Okay, if you want to draw down, we're willing to send all the money to you that we get for child welfare protection — every bit of it. If there are 80 percent First Nation children in care, you're going to get 80 percent of the budget."

I think they would be voted out of government so quick it would make their heads spin. They would have to lay off numerous employees. They would have to try to get work with the First Nations. It would totally disrupt the whole social welfare program and government.

It's the same with education. The Minister of Education always says to draw down; the Premier says to draw down. Well, if you did and keep on provoking and encouraging First Nations to do that, they might just listen to you. Then you have a real problem. You want segregation in the schools? You might get it. That could be reality. People need to think that those words are very powerful. When you encourage somebody to pull out of a governing structuring system and not be interested in any more collaboration or partnerships, then you had better be prepared for the consequences, because there are always consequences that follow.

I just want to touch a little bit on concerns with the director having too much power. Again, this comes from some of the documents here — there is a relevant concern that the director holds all the cards. The new act needs to strike a better balance in this area to give a better perception of fairness to all. That's not really harsh criticism; that's merely how some person felt about it.

Another statement here: child welfare should be in the hands of First Nations, with First Nation people qualified to do it. If the government has the last say, that's where the trouble is.

Another statement is, "Lots see social workers as Indian agents; they came in and took kids. I think the Yukon government is like your federal agency for the childcare of our citizens. In order to meet the needs of First Nations people, legislation should reflect the policies of First Nations."

Those are not comments that shouldn't be received with good will, because these comments are made from sincere beliefs that people have within them.

I really enjoyed reading these documents just to hear what the people really said, versus what is being put in the legislation. I saw right away and I knew that there would be a barrier to being able to have co-governance because when I was the Education minister that is a barrier that I was hitting. That is a barrier that stopped me from being able to go anywhere with continuing on with that act. I was told that co-governance is off the table — don't even talk about it; it's not going to be in there; it is not going to be included.

Obviously, I couldn't really go out and do anything with it because that wasn't the way that I felt about revisions to the *Education Act*. I felt that there should be a sharing of responsibilities, and if they want to call that co-governance then I guess that is what they call it. To me, it was just a matter of respect and nothing else — no fancy words to support the move. All I was thinking about was respect for other people.

The new law also provides that the director "may" establish one or more advisory committees to promote and encourage the participation of the community in the planning, development and delivery of services.

This section is an improvement; I have to admit that. In the new law it appears that this has been included to address the discretionary decision-making likely of the social worker, and so be it. However, the director is not mandated to establish an advisory committee, and it will likely depend on the minister to decide whether an advisory committee is established. It is important to recognize that difference.

Also, the social worker is not mandated by law to work in collaboration with family or First Nations when making decisions. Whether a child is in need of protection or a child should be placed if out-of-home care is required, the services to be provided and access to a child — ultimately the social worker still retains the final say.

In addition, section 43 has very limited scope in that a family conference can only be used once it has been determined that the social worker believes that a child is in need of protection. In other words, a family conference cannot be used

to change a social worker's decision that a child is in need of protection and a court application is necessary.

Again, Mr. Chair, some of those points are some of the reasons why First Nations were in here last week, trying to make a statement that we need to be heard more. We have to have what we said reflected more in the legislation.

I want to touch just a bit on child protection, because that is an important area too. One person said that family and children's services needs to treat the First Nations as a real partner. "They should ask us how we can help them with the family. Right now they are very intimidating and I feel they don't need my help. Before they apprehend a child they should come to the First Nation to see if there is anyone to help." That is a very good suggestion.

Another person said, "These are our children; they are not the Yukon government's children. First Nations need to influence the decision and have representation throughout the process, all the way up through the system." Again, that is another very good comment.

There are concerns and at the end of the day probably an argument could be made that the director has a legal duty to consult First Nations at the investigative stage of the child protection process. I believe the Leader of the Official Opposition referred to that somewhat when he asked if we are going to have court challenges.

Hon. Mr. Cathers: I appreciate that the member has had a long involvement in these matters and that he cares very deeply about the topic. Unfortunately, it becomes very frustrating engaging in debate with the member, when some of the areas that he is referring to reflect experiences long past. I am assuming that the member's recollections are accurate; I'll take the member's assertion; I am not going to challenge that, but these matters do not reflect recent history at all on how services are delivered. I recognize that much of the member's frustration arises from matters from perhaps 40 years ago. The one thing I do find unfortunate is that it's not reflecting modern Yukon service delivery or even recent history.

That being said, in returning to the member's questions, he referred to the topic of co-governance. Yes, the member is correct. The Premier has been very clear that we will not devolve public jurisdiction. We have the obligation on the part of Yukon citizens and are responsible to all Yukon citizens, both First Nation and non-First Nation equally. Every Yukoner, in going to the polls for a territorial election, has the same right as any other Yukoner at the age of majority. They have the right to mark their X on the ballot and vote for the candidate of their choice. They do so, and Yukon history makes it quite clear that they engage in that process at a far higher percentage than is the practice outside of the territory in the rest of Canada. That's something I think we all see as a sign of the healthy democratic engagement of Yukon citizens.

In some elections, ridings have been decided and members elected by a handful of votes. I recall a tie in a past election. There was another case where someone was elected by three votes. In another case, a current member — the Member for Porter Creek South — was elected by a margin of six votes. That is a sign of direct involvement.

I appreciate the member's concern with this area.

Chair's statement

Chair: Order please. I would just like the members to focus the debate more in line with the *Child and Family Services Act*, please. Minister of Health and Social Services, you have the floor.

Hon. Mr. Cathers: Thank you, Mr. Chair. I realize I had strayed a bit; I was simply trying to provide some comfort to the Member for McIntyre-Takhini. I will certainly return to the topic as per your reminder, but simply noting to close that topic on the issue of co-governance, yes — as the Premier has made clear — we will not devolve public jurisdiction. We are responsible to all Yukon citizens and have recognized in this particular matter — the *Child and Family Services Act* and the review of the *Children's Act* that occurred — the disproportionate representation of First Nation citizens and their children in the processes affected by the legislation. That is why we embarked upon the process — the first time ever in Yukon history of jointly working with the Council of Yukon First Nations to conduct joint public consultation, jointly develop the policy and jointly inform the legal drafting on this legislation.

Now, the Member for McIntyre-Takhini was also referring to the area of First Nations' ability to draw down — as he referred to it — their authority under self-government agreements. Certainly, First Nations have the rights accorded to them by their self-government agreements. They have the ability to occupy this jurisdiction if they wish to do so. But the member should be aware — from his time on the government side — that if they do so, the process for that is called a PSTA — programs and services transfer agreement — and that does include negotiating with the Yukon government and the federal government on both how they do so and the resources for doing so. The basic structure or the basic principle applied to such negotiation is that the net savings to the Government of Yukon would be transferred to any government under that agreement.

But that of course is established through a formal process, and established after 30 years of negotiation.

Mr. Chair, the member referred to another area under this legislation. He said a social worker is not required to work in collaboration, and that they have the final word in decision-making under this act. Mr. Chair, that simply bears no reference or relevance to what is in the legislation. It is incorrect. The member is wrong on that. While the trigger — the initial decision that there appears to be a need for preventive intervention — does require someone coming to that determination, immediately upon the decision that intervention, protective or otherwise, must be engaged in, there is a requirement to involve the First Nation at the earliest opportunity. As indicated, that is provided right at the beginning of the act under the guiding principles applicable to the act and under service delivery principles as well.

Another new area of the act that has unfortunately not seen a lot of debate — although there was a comment from a member that voluntary care agreements already exist — I would like to draw the members' attention to part 2, which provides for family support services and agreement — although there was

some limited ability, and there is some limited ability under the *Children's Act* for a few voluntary care agreements — the scope and the breadth under which these can be engaged in have been significantly expanded. As I indicated previously, this opens up new options for parents who have a child with special needs, for parents who have a child in need of special needs support or mental health support, and it opens up that ability to them to receive that while retaining the custody of their child, but providing the ability for transfer of the authority to make decisions to the government in areas where it is necessary to receive such services.

Under family support services and agreements, I draw the member's attention to section 10 of the act. The purposes of services and programs provided under this division is to promote family integrity and to provide supports to family and children, whether the children are residing at home or residing with extended family or in out-of-home care or have returned home. The services and programs may include services for children, counselling, in-home support, out-of-home care, homemaker services, respite care, parenting programs and services to support children who witness family violence.

Transitional services or services to support youth under the division may also include counselling, independent living skills training, educational training supports, and facilitating connections to appropriate educational or community resources. Again, this is new under this legislation and not in the *Children's Act*.

Agreements for support services for families — “A director may make a written agreement with a parent who has custody of a child to provide support services to maintain the child in the home, to prepare for and facilitate a child's return home while the child is in out-of-home care, and to support the child and family where the child has returned from out-of-home care or from any other living arrangement.”

Again, another new section under this legislation is the provision for special needs agreements, whereby “A director may make a written agreement with a parent who has custody of a child with special needs for in-home support services or out-of-home care services.”

“In the agreement, the parent may assign the care of the child to the director and delegate to the director as much of the parent's powers and responsibilities respecting the child as is required to give effect to the agreement.” To which I referred earlier, the clause of the act is section 12(1) and (2).

Voluntary care agreements — section 13(1). “A director may make a written agreement for out-of-home care services with a parent who has custody of a child if, in the opinion of the director and the parent, the child requires out-of-home care services.”

In the agreement, the parent may assign the care of the child to the director and delegate to the director as much of the parent's powers and responsibilities respecting the child as is required to give effect to the agreement. Again, this is another flexible arrangement, which is a new provision in the legislation. It is not in the *Children's Act*, but is provided for within the new *Child and Family Services Act*. It is another area where a significant step forward has been taken in providing more

flexible, responsive supports to help families whenever possible to avoid taking a child into custody, while ensuring and providing for the safety of that child.

Agreements with extended families or others is provided for under section 14 of the act: “(1) A director may make a written agreement with a person who is a member of a child's extended family or other person to whom the parent of the child has given the care of the child, for the provision of support services to maintain the child safely within that family setting”; and, “(2) The agreement may provide for the director to contribute to the child's support while the child is in the person's care”. Again, this is an area that was brought up by another member in debate.

Chair: Order please. Committee of the Whole will recess for 15 minutes.

Recess

Chair: Order please. Committee of the Whole will now come to order. The matter before the Committee is Bill No. 50, *Child and Family Services Act*.

Hon. Mr. Cathers: Other arrangements within the act, to continue where I left off, are the provision for agreements for transitional support services:

“17(1) A director may make a written agreement with

(a) a youth who is leaving the custody of the director; or

(b) a person who, as a youth, was in the custody of the director;

for the purpose of providing transitional support services to assist that person to move to independent living.”

The agreement cannot extend beyond the person's 24th birthday, but this is of course yet another entirely new provision in the act that was not allowed under previous legislation and is aimed at supporting youth in a manner similar to the supports provided by parents to their children. As members will be aware, it is quite common for kids to reach the age of 18 or 19 and set forth on their own, and be ready to take on the world, and then they discover they need a helping hand from their parents. This provides the ability for similar services to be provided to those youth.

It also allows a person under the age of majority who is not able to live with their parents, if they are over the age of 16, to enter into an agreement for services.

With that, I will turn it over to the Member for McIntyre-Takhini.

Mr. Edzerza: I just want to put a few comments on record and I have two questions.

First, I'd like to start by saying that Bill No. 50 omits several appropriate checks of power, including an independent child advocate and an independent review of the complaints process.

Also, the director is responsible for establishing the procedure for reviewing their own powers, duties and functions under the act. This lacks transparency.

Bill No. 50 does not recognize the lawmaking authority of First Nations, consistent with the Yukon First Nations self-government agreements.

Bill No. 50 does not provide any other means than court to resolve child protection matters. In this area, I would like to mention that there was no mention of the possibility of traditional circle court proceedings for apprehension cases, which I think would have been a real asset to this legislation.

Bill No. 50 is unclear whether the extended family members would be required to be screened as an approved foster home, or whether there would be specific criteria for kinship homes.

Bill No. 50 needs to be strengthened by involving a child advocate and other proactive support measures, and a transitional period.

So those are just a few of the concerns I want to put on record. I just have a couple of questions for the minister. Firstly: why was the child's legal status and establishment of parentage omitted from the new act? Secondly: why are the provisions relating to custody, access and guardianship omitted from the new act?

Thank you.

Hon. Mr. Cathers: Well, Mr. Chair, first of all, the member said — and I believe that I am quoting him accurately — that the act does not provide for any means other than court to resolve child protection matters. Well, I am baffled by that statement because it is not accurate; it's miles away from accurate. We've spent a significant amount of time discussing the fact that the cooperative planning processes, alternative dispute resolution and so on, are all aimed at resolving matters, including child protection matters, as alternatives to the court process. The intent is to use these processes rather than going to court.

I could re-read everything I've read before. I could go through those notes and sections of the act. I am not sure what benefit that would provide to anyone. I would encourage the member to review *Hansard* and note my extensive comments on this topic. He would note that, in fact, his statement that the act does not provide for any other means but court to resolve child protection matters is blatantly inaccurate. It was an issue. There were challenges with the ability to resolve matters without going to court in the *Children's Act*, but part 2 of the new *Child and Family Services Act* is dedicated to these types of matters and to resolving issues without having to go to court, and to do so cooperatively whenever possible. Again, there is a requirement to involve First Nations and the extended family, and to consider other individuals who may be important in the life of the child.

As far as the status of the child and the establishment of parentage, custody and guardianship — those portions are renamed the "*Children's Law Act*" because there is national work underway on this topic. There are some changes related to things such as advances in assisted human reproductive technology that require the need to examine who can and should be considered a parent; changes with regard to the definition of marriage will have some impact on this. The definition of a parent is the foundation to determining custody access and guardianship.

It would be practical to make revisions, utilizing the information gained through the national work rather than making changes now and being forced to change it in a few short years.

I'm not sure what our most recent timelines are on this because it is a national initiative, but at one point in time it was anticipated that there might be some changes later this year. That has now been pushed out but I can't recall the exact timelines.

It is important that we utilize the national changes in this matter and incorporate that into the new *Children's Law Act* when changes to that are made — that they be based on the changes that occur across the country, since I believe that every jurisdiction across Canada is involved in that process and that discussion.

Our act, as the member will note, is flexible enough and the wording is specifically designed so that if and when changes occur nationally to issues such as custody access, guardianship, the status of parents and the status of the child, the act should not need to be amended to reflect those changes. It refers to a person having custody of a child — that is the common terminology; without having the clause in front of me, that is the basic tone of the terminology, and it refers to birth parents, which of course would both remain the case under changes that might occur in the *Children's Law Act* revisions.

So, Mr. Chair, I think that addressed the member's question. Again, as I noted, with regard to his statement about lack of alternatives to court, I will not go through a repetition of my previous extensive comments on the topic, unless the member really wishes me to do so. Instead, I would encourage him to review *Hansard*.

Hon. Ms. Horne: It concerns me that the members opposite could take my words so out of context. I was not appalled at the First Nations being in the gallery. My being appalled was directed toward the actions of the opposition. We should not be jeopardizing the safety of our children by using them as pawns in a political ploy.

I respect the right of the First Nations and their leaders to express their concerns about any act the government puts forward. We live in a democratic society. This is their right. As an elected member of this Legislature and a citizen of the Teslin Tlingit Council and most importantly, as a mother and grandmother, I support the proposed new *Children's Act*. I believe this government has gone the distance to address the concerns of First Nations in this legislation.

On another note, 30 years was spent negotiating treaties and self-government agreements in this territory. Those treaties clearly define those relationships within Yukon between public government and First Nation governments. They clearly define that jurisdiction. Fulfilling the spirit and intent of the treaties is not about co-governance. It was never envisioned in those negotiations. Collaborative governance is, however, something in which government wants to be partners and wants reflected in our government.

This government is committed to the partnership process between the Yukon First Nations, which led to the development of this act.

I would like to make it very clear that I was not appalled at First Nations being in the gallery. We are working with First Nations. We respect their word, and we respect their input.

Thank you. Günilschish.

Mr. Mitchell: The Member for Pelly-Nisutlin has certainly passionately addressed her views on this act and obviously we all respect her doing so.

I just want to clarify one thing for the record. The Member for Pelly-Nisutlin made reference to co-governance. That is not something that we in the Official Opposition have or will endorse, so we are *ad idem* on that. We do, as she said, believe in cooperative work and in collaborative work, but not in co-governance, and that was certainly never our intent in asking that First Nation voices be heard as witnesses. It was always our understanding that, at the end of the day, all votes would be votes of elected members of this Assembly, after good spirited debate, and there would be no co-governance.

I thank the member for putting her thoughts on the record and I would tell the member that I agree with her.

Mr. Edzerza: I would like to also thank the Member for Pelly-Nisutlin for clarifying the comments that were made in the Legislature.

One needs to be a little clearer when they make these kinds of comments, I guess, but that is beside the point. I still want to say that I don't care how many agreements were negotiated in the past. If they have no financial component attached to them, they are useless, and I want to put that on record.

As long as the First Nations went into negotiations with the good spirit of intent and, at the end of the day, found out that they had no financial compensation whatsoever to deal with these agreements, then I say it is going to be very hard to implement those agreements.

One way to deal with such a lack of funding and such imbalance of power is to look at how you can work in partnerships. Co-governance is a word that basically dictates power. Why can't the Yukon government — whether it's this one or another one — respect First Nation governments and say we can work together, rather than drive a wedge between them?

Chair: Is there any further general debate?

Seeing none, we'll proceed clause by clause in Bill No. 50.

On Clause 1

Clause 1 agreed to

On Clause 2

Hon. Mr. Cathers: I won't comment extensively on this, as I did significantly in general debate. However, section 2, the guiding principles, of course, is a key part of what is new about this legislation. It is key in that it sets the overall context by which the act must be interpreted, and provides guidance on the principles that must be considered in all decision making by a director, by a social worker, by a judge, and by any others with involvement under the act.

Mr. Edzerza: With regard to the guiding principles, I have a friendly amendment I'd like the minister to consider. They are very straightforward, so we may be able to agree to them without having formal written amendments in front of us.

Chair: Order please. Do any of the members of Committee of the Whole wish to take a five-minute recess?

All Hon. Members: Agreed.

Chair: Committee of the Whole will take a recess for five minutes.

Recess

Chair: Order please. Committee of the Whole will now come to order.

We will proceed with the debate on clause 2.

Amendment proposed

Mr. Edzerza: I would like the minister to consider an amendment. I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended at clause 2(e) by adding immediately after the word "family" the following expression: ", including extended family,".

Chair: It has been moved by Mr. Edzerza that Bill No. 50, entitled *Child and Family Services Act*, be amended at clause 2(e) by adding immediately after the word "family" the following expression: ", including extended family,".

Hon. Mr. Cathers: The amendment is a moot point. In fact, if the member looks further down to clause 2(h), it provides for extended family.

Mr. Edzerza: It was our intention to have extended family included there, because we are talking about primary responsibilities for safety, health and well-being of a child. I think it is important to have the extended family wording right in that particular phrase.

Hon. Mr. Cathers: Again, I appreciate the member's concern, but it does provide for it already under the guiding principles — the recognition of extended family. Again, I remind the Member for McIntyre-Takhini that the entire section on guiding principles is a new part of the act. We have provided for the involvement of extended family in clause 2(h) of this section. I understand the member's concerns and there is no disagreement on this side, but this is a needless amendment. I suggest we need not spend a lot of time on it. We should simply move on. The act does not need to be amended to address the member's concern.

Mr. Edzerza: Well, I would bring to the minister's attention that it says that family members "should be". That's quite different from saying that family members have the primary responsibility. It is very different wording.

Chair: Are you prepared for the question?

Some Hon. Members: Count.

Count

Chair: Count has been called. The bells will ring for five minutes.

Bells

Chair: It has been moved by Mr. Edzerza

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 2(e) by adding immediately after the "family" the following expression, ", including extended family,".

All those in favour, please rise.

Members rise

Chair: All those not in favour, please rise.

Members rise

Chair: We have seven yea, nine nay.

Amendment to clause 2 negatived

Chair: Is there any further discussion on clause 2?

Amendment proposed

Mr. Edzerza: Mr. Chair, I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 2(h) at page 15 by deleting the expression “should be involved” and substituting for it the expression “has a role”.

Chair: It has been moved by Mr. Edzerza

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 2(h) at page 15 by deleting the expression “should be involved” and substituting for it the expression “has a role”.

Is there any debate on the amendment?

Mr. Edzerza: The reason we were looking at having a change here is because of the wording again. “Should be involved” is not specific; it’s kind of iffy and it really doesn’t have credibility for a family who really wants to be involved. It should read that the family “has a role”. That’s more precise, more definite, and I believe it would be a lot more clear to those who run into some issues with the words “should be involved” in this area.

Hon. Mr. Cathers: I think this is an attempt for the member — sorry, what I was going to say would be possibly verging on contravening our Standing Orders, so I’ll rephrase that.

I recognize the member’s desire in showing an involvement here. However, this appears to be a hastily cobbled together amendment. I do point out it’s not even grammatically correct, by the way. To say extended family members “has a role” — obviously this has been done in a hurry and does not even recognize the grammar applicable to our language, let alone the legal drafting standards.

What I want to return to is the substance of this, noting that the member is making an issue out of nothing here.

The only case in which extended family members would not be involved is if they chose not to be involved or if it was determined by a director — whether the director of family and children’s services or a First Nation service authority, appointed and established under the act — that the involvement of a member of the extended family would be harmful to the well-being of a child, particularly the emotional well-being, or would be unduly disruptive to the process. That is the only circumstance in which they would not be involved in cooperative planning processes, alternative dispute resolution, et cetera.

The intent has been clearly stated here in that they should be involved, but there must be discretion to prevent harm to the child. If, for example, there was a situation with a member of an extended family who had abused the child, there must be the discretion for the director of family and children’s services or the director of a First Nation service authority to exclude that individual from the conference, to prevent that child from being faced with someone who had abused them.

I appreciate the member’s concern. The concern is addressed: the intent is very clearly stated that members of the

extended family should be involved. But I would hope the member would agree with me that it would be appalling for this Legislature, or any member of it, to suggest that a child should be forced to face across the table at a cooperative planning process someone who has abused them physically or sexually, by virtue of legislation.

Therefore, it is paramount that there be the discretion to allow the responsible officials not to have such an individual involved in that process. That does not diminish the role of other members of the extended family, that does not diminish the role of the child’s First Nation involvement, but it is critical that no child ever be faced with having the law force them to sit down and face someone who had physically or sexually abused them. And that is why the language must remain “should”.

The language proposed by the member is a semantic difference; it does not change fundamentally the intent. I’m not suggesting that the member was stating that a child should face an abuser across the table, but that is why the language is “should,” because in the legal context it is a clear statement of intent, while allowing that discretion that must be there to allow the director of family and children’s services or a First Nation service authority to prevent a child from ever being forced to face someone across the table who has abused them physically or sexually by virtue of legislation that was too prescriptive.

Mr. Cardiff: We will accept the minister’s grammatical correction. If it’s possible for all members to understand that it needs to be plural. If we could change it from “has a role” to “have a role,” that would make the amendment grammatically correct. I’ll leave the argument to my colleague, the Member for McIntyre-Takhini.

Mr. Edzerza: I believe the minister is going off on a path that’s not even suggested here. I mean, nobody expects victims to go in and be forced to sit in with a family member. If they were ever to entertain a circle court process, you would find that — again, this is where there is a real cultural clash with respect to legislation.

In First Nation circle courts, a lot of the time the victims are sitting right there — they have extended family; if there is a problem, they’re sitting right in the circle. Again, it’s at their discretion. Nobody forces anybody to do anything.

I wanted to correct the scenario that the minister put forward, because quite often circle sentencing does exactly what he says will never be accepted in the court system.

Chair: It has been moved by Mr. Edzerza

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 2(h) at page 15 by deleting the expression “should be involved” and substituting for it the expression “has a role.”

Amendment to Clause 2 negatived

Clause 2 agreed to

On Clause 3

Hon. Mr. Cathers: I would be very brief in my comments, noting again that I discussed the service delivery principles significantly in general debate. I do want to emphasize to members again that service delivery principles are an important part — they are a new part of the act; they set the overall con-

text in which the act should be interpreted and they are supported. In fact, these themes occur throughout various clauses and are specified, clarified and enhanced in various clauses, as appropriate.

Amendment proposed

Mr. Edzerza: I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 3(b) at page 16 by adding immediately after the word “children” the expression “and extended families”.

Chair: It has been moved by Mr. Edzerza

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 3(b) at page 16 by adding immediately after the word “children” the expression “and extended families”.

Mr. Edzerza: We asked to have this in there because, again, extended families in First Nation communities play a very big role in anything that has to do with removing a family member from the community or the home. I think that it is appropriate that we do add the expression “and extended families” just for the sole purpose of ensuring that there are not going to be comments down the road that it is not required in the act to include extended families.

Hon. Mr. Cathers: If the member will look to other sections here in the guiding principles and service delivery principles and throughout the act, there is a reference to extended family. Under “Guiding principles” in the previous clause 2(h): extended family members should be involved in supporting the health, safety and well-being of a child... et cetera. The member is, I believe, misinterpreting the meaning of clause 3(b) and he is not recognizing that this is in reference to children and their custodial parents and the need for the least disruptive form of support, assistance and protection.

There are significant provisions throughout the act — I could repeat my previous comments from general debate but I would again encourage the member to refer to *Hansard* rather than spending a tremendous amount of time rehashing points previously made. The act takes significant steps in increasing the involvement of extended families, providing the ability to include them, providing for the first time the recognition of extended families as the preferred choice for placement of a child who has to be taken into care or taken from their parents — the fact that now extended families will be recognized as the first placement of choice for such a child and with the cultural community as the next choice, if extended family is not available.

It is already addressed, but again the member is misinterpreting the meaning of this clause. His amendment would have the effect of making it less clear and would weaken the act; therefore, I recognize what he is trying to achieve, but he is mistaken in this area.

Mr. Edzerza: I find it quite fascinating that nobody understands except the minister. As it stands, we in the third party probably already understand one thing, which is that, when they have the numbers, anything they do in here will pass.

Amendment to Clause 3 negatived

Chair: Is there any further debate on clause 3?

Clause 3 agreed to

On Clause 4

Mr. Edzerza: I move

THAT Bill No. 50, entitled *Children and Family Services Act*, be amended in clause 3(f) at page 16, by adding immediately after the word “families”, the expression —

Chair: Order please. Clause 3 has carried. Is there any debate on clause 4?

Hon. Mr. Cathers: Again, I have addressed this issue significantly in general debate, but I want to highlight to members’ attention that clause 4, which specifies the best interests of the child, replaces what was previously a one-paragraph reference in the *Children’s Act*, by elaborating things that must be considered in determining the best interests of the child. This includes first and foremost their safety, health and well-being.

Secondly, it includes the attachment and emotional ties between the child and significant individuals in their lives, as well as considering their views; considering their physical, cognitive and emotional needs and level of development; the importance of continuity and resulting stability, and also recognizing again, for the first time, the child’s cultural, linguistic, religious and spiritual upbringing and heritage. Also, the importance to the child of an ongoing positive relationship with their parents and with members of their extended family.

Chair: Is there any further debate on clause 4?

Clause 4 agreed to

On Clause 5

Clause 5 agreed to

On Clause 6

Amendment proposed

Mr. Mitchell: I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 6(2) at page 18 by deleting the words “offer the” immediately after the word “shall” and delete the word “of” immediately after the word “use”, so that the amended clause shall read: “A director shall use a family conference or other co-operative planning process.”

Chair: It has been moved by Mr. Mitchell

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 6(2), at page 18, by deleting the words “offer the” immediately after the word “shall” and deleting the word “of” immediately after the word “use”.

Is there any further debate?

Mr. Mitchell: Just very briefly, it’s to create an increased certainty that there shall be the use of a family conference or other cooperative planning process, recognizing that it won’t always be appropriate to use a family conference rather than just an offer being made.

Hon. Mr. Cathers: It is appalling to hear this coming forward. It’s unfortunate.

I’ll be fair to the member opposite and recognize that maybe he is misinterpreting the intent of this. The amendment proposed by the Leader of the Liberal Party would not — in

any way, shape or form — reduce the power of the director, as he seems to be purporting it would. That would not limit the power of the director, or a director under the act; it would limit the power of the family, their freedom of choice and their right to refuse the process.

The cooperative planning processes identified in this clause, and under part 2 of the new *Child and Family Services Act*, are voluntary. The act clearly states that the director “shall” offer the use of that family conference rather than a cooperative process.

If the member’s amendment were to pass, it would eliminate the right of the family to refuse such a process if they did not wish it. At this point in time, the only way in which such a process will not be entered into is if the family refuses to enter into it. The member is proposing an amendment that would eliminate the family’s right to refuse that process.

Chair: Is there any further debate on the amendment?

It has been moved by Mr. Mitchell

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended at clause 6(2) at page 18 by deleting the words “offer the” immediately after the word “shall” and delete the word “of” immediately after the word “use”.

Amendment to Clause 6 negatived

Chair: Is there any further debate on clause 6?

Clause 6 agreed to

On Clause 7

Some Hon. Member: (Inaudible)

Point of order

Chair: Mr. Kenyon, on a point of order.

Hon. Mr. Kenyon: I appreciate all of the chatter and direction and requests coming off-microphone. For the record, people should stand and be recognized and state what they are talking about.

Chair’s ruling

Chair: On the point of order, there is no point of order, but the Chair will not proceed if there is further debate on a clause. All the Chair asks is that the members stand up and get the Chair’s attention so we can proceed with the debate.

Mr. Cardiff: Could we have one minute to talk here for just a second before we conclude clause 7?

Chair: Is there any further general debate?

Mr. McRobb: I would like to hear what the third party has to say on this particular clause. Both opposition parties have a lot of concerns about this bill and, Mr. Chair, if I may comment on the procedures of this House, it is recognized practice for the Chair to clear clauses once the critics of each party have indicated the clauses are clear, not by listening to the members of the government side —

Chair: Order please. Currently we are debating clause 7. If the members have a point of order, please stand up on a point of order, but presently we are debating clause 7.

Clause 7 agreed to

On Clause 8

Clause 8 agreed to

On Clause 9

Clause 9 agreed to

On Clause 10

Amendment proposed

Mr. Edzerza: I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 10(1) at page 21 by deleting the word “and” at the end of subclause (g), by replacing the period at the end of subclause (h) with a semi-colon, and by adding the following:

“(i) housing; and

(j) financial support to grandparents and extended family.”

Chair: Order please. Just on an informational basis, Committee of the Whole does not amend punctuation and grammar, but we will proceed with this amendment:

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 10(1) at page 21 by deleting the word “and” at the end of subclause (g), by replacing the period at the end of subclause (h) with a semi-colon, and by adding the following:

“(i) housing; and

“(j) financial support to grandparents and extended family.”

Is there any debate on this amendment?

Mr. Edzerza: We thought it would be very important to add these two issues because they aren’t covered in clause 10(1). These two are excluded, and we feel that it’s one thing that is really lacking in the whole child welfare system. A lot of children end up under the roof of their grandparents. It’s actually getting to the point where children could be in care, with the director paying huge sums of money, but the grandparents have taken over that role just due to respect for their grandchildren.

We all know that with all the changes in society today a lot of the grandparents really can’t financially provide this service, but they do. Sometimes they end up cutting themselves very short on their little budgets. It would be of great assistance to the public at large if these two were added to this part of the act. Thank you.

Hon. Mr. Cathers: I don’t disagree with the member’s intention of seeing provision for housing and financial support to grandparents and extended family, but I find myself wondering whether the member actually read the clause or just read the sub-parts of it. Section 10(1) begins with saying, “The purpose of services and programs provided under this Division...” — and noting that, notes the purpose of programs under the entire division. It says, “The purpose of services and programs provided under this Division is to promote family integrity and provide support to families and children whether the children are residing at home, residing with extended family, are in out-of-home care, or have returned home...”

So that refers to housing. That refers to financial support to extended family and the services provided under that may include services for children, counselling, in-home support, out-

of-home care, homemaker services, respite care, parenting programs and services to support children who witness violence.

The member's amendment is ineffective. It changes nothing substantively. It is needless and pointless and would in fact create lack of clarity in the bill because it would stick in, low on the list of clauses, something that was provided for in the overarching clause. I would urge the member to take a closer look at the bill because this amendment is counterproductive.

Mr. Mitchell: On the amendment, Mr. Chair, recognizing and agreeing with the minister when he says that residing with extended family is right in the overarching 10(1), however, when we get down to what it may include — services for children, counselling, in-home support, out-of-home care, homemaker services, respite care, parenting programs and services to support children who witness family violence — those are specific.

As I mentioned during general debate, I have been phoned by more than one grandparent who has said that they have now found themselves in the position of providing food, clothing, admission costs to sports activities and so forth, without any help, because they were in effect parenting their grandchildren but hadn't had themselves declared foster parents.

So I would argue that the Member for McIntyre-Takhini's amendment under (j) regarding financial support to grandparents and extended family would perhaps clarify that and allow those people to make application for that additional help.

Hon. Mr. Cathers: Unfortunately, the Leader of the Liberal Party is wrong. It would not clarify it. It would create confusion. The member is suggesting those people would not be provided for. I refer him to 10(1)(c) "in-home support". That provides, under the list of programs provided, the ability to support those extended families, including housing and financial support.

Seeing the time, I move that we report progress.

Chair: It has been moved by Hon. Mr. Cathers that we report progress on Bill No. 50, *Child and Family Services Act*.

Motion agreed to

Hon. Mr. Cathers: I move that the Speaker 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 Chair of Committee of the Whole?

Chair's report

Mr. Nordick: Committee of the Whole has considered Bill No. 50, entitled *Child and Family Services Act*, and directed me to report progress.

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

Some Hon. Members: Agreed.

Speaker: I declare the report carried.

The time being 5:30, this House stands adjourned until 1:00 p.m. tomorrow.

The House adjourned at 5:30 p.m.