

**Whitehorse, Yukon**  
**Thursday, April 17, 2008 — 1:00 p.m.**

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

*Prayers*

**Withdrawal of motions**

**Speaker:** The Chair wishes to inform the House of changes which have been made to the Order Paper. Motion No. 168, standing in the name of the Minister of Community Services, has been removed from the Order Paper at the minister's request.

Also Motion No. 394, standing in the name of the Leader of the Official Opposition, will not be moved from the Notice Paper to the Order Paper as the action requested in the motion has been fulfilled.

**DAILY ROUTINE**

**Speaker:** We will proceed with the Order Paper. Are there any tributes?  
 Introduction of visitors.

**INTRODUCTION OF VISITORS**

**Speaker:** It is my distinct pleasure, fellow members, to introduce the participants of the 2008 Yukon Youth Parliament. They are as follows: from St. Elias Community School in Haines Junction: Kyle Karman, Jana Madley, Dylan Graves; from Watson Lake Secondary School: Jessica Thomas, Morgan Evans, Cody Magun, Robyn O'Brien, Stephanie Stone and Blair Relkoff; from Robert Service School in Dawson City: Greg Fischer; from J.V. Clark School in Mayo: Hazel Phillips, Sarah McDiarmid and Kissel Ried; from Whitehorse Individual Learning Centre: Francis Thompson; from Vanier Catholic Secondary School: Jason Lane and Patrick Docherty; from F.H. Collins: McKayla Morgan; and from École Émile-Tremblay: Jeanette Carney.

We are also delighted to have the chaperones and some of the teachers: Greg Nolan from Watson Lake; Geoff Scherer from Haines Junction; Karen Fischer from Dawson City; and Annabelle Lattie from Mayo.

Please join me in welcoming them.

*Applause*

**Speaker:** Are there any further introductions of visitors?

**TABLING RETURNS AND DOCUMENTS**

**Speaker:** Under tabling of returns and documents, the Chair has for tabling a letter from the Ombudsman and Information and Privacy Commissioner regarding Bill No. 50, *Child and Family Services Act*. The letter is dated April 16, 2008.

Are there any further returns or documents for tabling?

**Mr. Hardy:** Thank you, Mr. Speaker. I have for tabling an article written by the Grand Chief of the Council of

Yukon First Nations that has been submitted to various newspapers, entitled "Let's Get It Right".

**Speaker:** Are there any further documents for tabling?  
 Are there any reports of committees?  
 Are there any petitions?  
 Are there any bills to be introduced?  
 Are there any notices of motion?

**NOTICES OF MOTION**

**Mr. McRobb:** I give notice of the following motion:

THAT this House urges the Yukon government to show respect for Yukoners and their elected representatives by avoiding the practice of invoking closure and/or filibustering the business called for debate on private members' day.

**Mr. Edzerza:** I give notice of the following motion:

THAT this House urges the Yukon government to investigate the feasibility of establishing a safe home which will provide care and counselling for mental health outpatients on a 24-hour basis.

I give notice of the following motion:

THAT this House urges the Yukon government, now that the Thomson Centre is available, to reconsider its position on the use of this facility and designate it for mental health and medical detoxification patients since the nursing shortage means that it will be some time before it is used for continuing care.

**Mr. Hardy:** I give notice of the following motion:

THAT Standing Order 75 and 76 be deleted from the Standing Orders of the Yukon Legislative Assembly in the interest of allowing proper and thorough examination of government legislation and spending measures.

I give notice of the following motion:

THAT this House expresses its support for the Yukon people who are standing in solidarity with the people of Tibet.

I also give notice of the following motion:

THAT it is the opinion of this House that

(1) a recent international study called "Tomorrow Today: How Canada Can Make a World of Difference" ranks Canada 28 out of 30 OECD countries for environmental sustainability;

(2) this report also said that Canada's performance around energy conservation, reducing greenhouse gas emissions, and limiting certain airborne pollutants was near the bottom; and

THAT this House urges the Government of Canada to take immediate action to address its failing efforts on the environmental front, particularly around mitigating climate change.

I give notice of the following motion:

THAT this House urges the Yukon government, as it reviews its contracting policies, to develop and implement a green purchasing policy with focus on local, recycled and energy efficient goods and services.

## NOTICES OF MOTION FOR THE PRODUCTION OF PAPERS

**Mr. Hardy:** I give notice of the following motion for the production of papers:

THAT this House do issue an order for the return of any order-in-council made since November 15, 2007, appointing a member to the Yukon Child Care Board.

**Speaker:** Are there any further notices of motion?  
Is there a statement by a minister?  
This then brings us to Question Period.

## QUESTION PERIOD

### Question re: School funding

**Mr. Mitchell:** I have some questions for the Minister of Education about some of the assertions he made yesterday — assertions that don't reflect the facts.

The minister claimed yesterday that the budget for public schools had not been cut. Of course, it has been and that is right in the budget documents before us.

The minister tried to claim it was because some money had been transferred to another department. That is a different line in the budget, not the public schools branch, and had nothing to do with the question that had been asked.

The minister also claimed the previous Liberal government cut funding to public schools — again, not the case. Funding for public schools is down. Granted, it is down by a small amount. However, when the government has \$108 million in the bank, it makes no sense to be cutting education.

Why is funding for public schools down?

**Hon. Mr. Rouble:** I would urge the Leader of the Official Opposition to examine the budget in greater detail and actually look at it and compare it to the previous budget.

If one takes a look at the 2007-08 mains, they will see that the public schools operation and maintenance budget was \$77,014,000. This year, the same budget line item is \$81,160,000.

This government recognizes education as a priority. We've demonstrated this by increasing programming, creating opportunities for partners and other stakeholders to be involved, and by increasing funding.

Investments in the public schools branch have grown from \$69 million in 2003 to over \$92 million in 2007. That is an increase of 33 percent. Over the same period of time, the number of teachers has grown from 452 to 473 — an increase of five percent. The number of educational assistants has increased from 86 to 111. That's an increase of 29 percent.

Mr. Speaker, all this while the number of children has dropped from 5,432 in May 2003 to almost 5,000 children we have today — a reduction of eight percent. We're continuing to make investment in education.

**Mr. Mitchell:** If this minister were still in high school, he would be sent to the office for an answer like that. He well knows that the cost of providing the service goes up every year. There are wage increases and other factors that come into it.

The government is sitting on \$108 million in the bank, yet it is cutting funds to public schools. The minister has lots of money to send flyers to every household — flyers with spelling mistakes, we might add — that he is cutting funding to public schools.

The minister went to great lengths yesterday saying that is not the case. He tried to say it was because money was transferred to another department. The reality is something different.

This Yukon Party government has actually cut funding to the public schools branch. It is a small reduction but it is also completely unnecessary when the government is sitting on \$108 million.

Why has the minister cut funding to public schools?

**Hon. Mr. Rouble:** Mr. Speaker, the member opposite should take a look at the numbers and take a look at the budget in much greater detail.

I know he has asked for my assistance on math questions before, and I would be happy to provide him with some more answers.

We have seen the per capita investment. That is what the Government of Yukon is investing in our students. It has increased from \$11,157 to over \$15,000 per student. There is a significant increase in what we are expending per student; we are hiring more teachers; we are hiring more educational assistants, and tomorrow we will be opening another new school.

Mr. Speaker, the government is committed to education and we will work with our partners in education to ensure that we have the best programs and the best outcomes for our students today and into the future.

**Mr. Mitchell:** Last year's number was \$81.2 million; this year it's \$81.1 million. It's a cut; it's small, but the budget is definitely going in the wrong direction. Twelve other departments either stayed the same or received increases in this year's budget.

This minister needs to do a better job at the Cabinet table in standing up for education. He needs to advocate for education when his colleagues want to cut his budget. There's no reason to be cutting funding to our public schools — no reason at all.

I would encourage the minister to stop making excuses, stop denying there have been any cuts, stop wasting money on flyers with his picture on them and start spending money where it matters most: in our classrooms.

Will he do that? Will he restore the funds?

**Hon. Mr. Rouble:** Again we see the opposition tactic of, "If you can't object to a performance, if you can't object to the position, you attack the personality." Well, Mr. Speaker, I'm not going to go there.

One just has to take a look at the budgets. We've seen the Department of Education budget grow from \$100 million to \$130 million. There have been tremendous investments in education, not only in public schools but also in advanced education with the investments we're making in Yukon College and the programming there. We are providing assistance for students to go on to post-secondary and for trades and skills training.

This government believes in education for all Yukoners. We believe in making the investments in our children when they're young, in their youth in their middle years and in our adults throughout their lives.

**Question re: Opposition private members' business**

**Mr. McRobb:** Yesterday in this Legislature, the government side again invoked closure on initiatives advanced by opposition members on behalf of Yukoners. The Yukon Party shut down the debate. For a majority government to deploy closure, to force adjournment of debate on matters of public interest, can best be described in one word: arrogant.

The Premier said there was no time to deal with our legislation; however, it was opposition private members' day so, indeed, there was time and it was the appropriate opportunity.

Then the Premier said our legislation would not be proceeding in this sitting; however, we might choose to recall any bill at our next opportunity on April 30. So my question: why does the Premier believe this bill won't proceed? Is it because the Yukon Party has decided to ensure it doesn't? If that's the case, be forthright.

**Hon. Mr. Fentie:** Mr. Speaker, I understand the emotional attachment to apologizing that the Official Opposition has, all things considered, but I think that we were quite clear yesterday. It is the Official Opposition in the last week or so who have been in the public domain, considering the fact that they say that there is not enough time in this sitting to go over all the public business that has been tabled. The question to them then is, why bring forward the *Apology Act* in this sitting, when indeed it will not pass this sitting, considering all the public business that is on the floor, yet to be debated and addressed.

**Mr. McRobb:** Well, it was private members' day.

Yesterday this government demonstrated another act of arrogance. We in the Official Opposition called forward a second bill — the *Net Metering Act* — but the result was the same. The government hijacked the agenda. The Energy, Mines and Resources again used all of the time available to talk out the bill. This monopolization or filibuster has increased his speaking time to more than hours on this bill alone. He repeated much of what he said in November when the bill was first introduced, even though his arguments are redundant and easily refuted.

Again, this was progressive legislation put on the floor by members of the Official Opposition, in the interest of Yukoners and at the appropriate opportunity; but again, the Yukon Party blocked it.

So my question: why doesn't the government allow this bill to proceed? Is it because the Yukon Party has decided to ensure it doesn't? If so, be forthright.

**Hon. Mr. Fentie:** Speaking of being forthright, why doesn't the Member for Kluane explain the number of times he was called to order in the debate of the motion previous, on the animal act? The member knows full well it is on the record in *Hansard*.

I would reverse the question to the Member for Kluane. The government side has conducted business with the opposition in this sitting. Let's talk about the *Smoke-free Places Act*

that we have jointly pursued in this Assembly and brought to debate on the floor, and is passing.

Let's talk about the other unanimous agreements we have reached in motions like the *Animal Protection Act* process yesterday.

Let's talk about our offer to the Member for Porter Creek South and his bill as tabled to address the human rights legislation in the Yukon, and the unanimous agreement in this House to proceed with the review of the human rights legislation incorporating the Member for Porter Creek South's bill.

I think the Member for Kluane has another agenda here that has nothing to do with being forthright.

**Mr. McRobb:** The government and the Premier don't have the courage to admit they are blocking this legislation from proceeding. These examples of the misuse of power demonstrate that the legislative reform of this Assembly is long overdue.

The Yukon Party's own campaign document promised to focus on legislative renewal. Both opposition parties support it. Yukoners have asked for it. The commission has recommended it, and all parties have said they support it, yet it is going nowhere.

The SCREP committee supposedly dealing with it is in gridlock because the Yukon Party has put the brakes on any progress. This is about the future of this Assembly. The presence of participants in this year's Youth Parliament, who are with us today in the gallery, have reaffirmed this need.

When can Yukoners expect to see the implementation of legislative reform or renewal, as they were promised in 2006 by this Premier?

**Hon. Mr. Fentie:** I don't want to spoil the Member for Kluane's day, but this Assembly is about the future of the Yukon. That's why, on the floor at this sitting, there is a \$900-million budget investing in Yukon's future. That's why there is great emphasis on the Department of Education in this budget document, with increases to investment in public schools. That's why the *Workers' Compensation Act* is here for debate. That is why the *Child and Family Services Act* is here for debate. That is why we've proceeded with the *Smoke-free Places Act*. That is why we are pursuing a review of the Yukon Council on the Economy and the Environment. That's why we are proceeding unanimously with a review of the human rights legislation in this territory, incorporating the Member for Porter Creek South's own legislation. That is why the government side has tabled the public business in the manner that we have. It's all about the future of the Yukon.

**Question re: Yukon Council on the Economy and the Environment**

**Mr. Hardy:** In a strange way, I was quite pleased to hear the Premier confirm what I suspected all along — this government intends to do away with the Yukon Council on the Economy and the Environment. I am not pleased that he is doing it, but I'm pleased to finally get to the truth of the matter.

Of course, the Premier didn't come right out and say it in so many words, but let's look at the evidence.

First, there was a motion from the Yukon Party Member for Klondike that the *Environment Act* and the *Economic De-*

velopment Act be reviewed in relationship to the council. Then about an hour later, the Premier refused to allow other members of this Assembly to debate a motion calling on him to bring the council up to full strength so that it can fulfill its legal mandate.

Will the Premier now admit that his government intends to do away with the Yukon Council on the Economy and the Environment?

**Hon. Mr. Fentie:** I can't respond to the member's assertions of doing away with anything. That is certainly not the debate I heard yesterday. We discussed the fact that what gave rise to the Yukon Council on the Economy and the Environment took place almost 20 years ago at a time where the Yukon was certainly not in a position in the evolution of responsible government that it is in today. Today we have mechanisms like YESAA; we have 11 of 14 First Nation land claim and self-government agreements in place; we have processes like land use planning; devolution has occurred; we're no longer being dictated to by Ottawa when it comes to managing our resources, lands and waters. There are dramatic changes for the better in this territory today in 2008. That's why we are going to review these two acts and the relationship, role and responsibility of the Yukon Council on the Economy and the Environment and how it fits in a modern, progressive, much-improved Yukon from that time so long ago.

**Mr. Hardy:** I've heard it before, Mr. Speaker. Now, I don't want to trivialize what I consider an extremely important matter, but there is an expression about something that walks like a duck and talks like a duck.

Just before he guillotined debate on our motion yesterday, the Premier made it clear that his government intends to review the Yukon Council on the Economy and the Environment. That's what he said, but he only said this after going on at some length about how things have changed since the YCEE was established in the 1980s, and he's doing it all over again. In other words, according to the Premier, the council has outlived its usefulness and there is evidence in this matter.

Can the Premier explain how devolution of federal authority over lands and resources means there is less need for the Yukon government to listen to the Yukon people about how to ensure that our economy is environmentally sustainable?

**Hon. Mr. Fentie:** I know that the Leader of the Third Party takes great ownership for what transpired in the 1980s. It was a legacy of the Penikett government, a legacy of boards and committees and other instruments to ensure the public's involvement in decisions that affected them. Nothing has changed today in 2008 in ensuring the public has a role and ensuring the public understands what its government is doing; ensuring there's full disclosure of matters for the public.

But times have changed; there are new responsibilities, increased responsibilities for the government itself. There are other bodies and mechanisms mandated by law that are also now being implemented in the Yukon. How does all this fit to what happened in 1985 or 1988 or whenever this took place, some two decades ago? It's a legacy of the Penikett government, along with deficit budgeting.

**Mr. Hardy:** I have to agree with the Premier: the NDP did create a legacy of public participation in advising government on what's important. We will accept that responsibility, but it stands true today as it did 20 years ago. The Premier wants us to believe that a federal screening agency that looks at specific development proposals can take the place of a citizens body that does big-picture research and advises government on sustainable development, and that's nonsense.

The Premier wants us to believe that First Nation final agreements provide all the consultation he needs when he doesn't even honour those agreements and has allowed scores of vacancies on renewable resource councils to go unfilled. Instead of offering fragile excuses for scrapping YCEE, why doesn't the Premier just tell us why his government doesn't want to hear from informed Yukon citizens on big-picture economic and environmental issues?

**Hon. Mr. Fentie:** We do hear from Yukoners. We do hear a lot from Yukoners. Essentially that is why this government is situated in the place that it is and governing with a second mandate. It is because we listen to Yukoners, Mr. Speaker. I hope that the members opposite are part of that process of informing their government — although one would only wonder considering the debate over the last two weeks in this House.

I want to assure the member that no decision has been made to eradicate or jettison the council — not at all. In fact, what we offered yesterday is a very progressive, commonsense approach to a matter that rose two decades ago and may not quite fit into today's Yukon. We are going to review it. That is the intention. Nobody has said that the council will be jettisoned. That is not what took place yesterday and the member knows it. If the member wants to provide input on the matter, he certainly will have an opportunity to do so.

#### **Question re: Boards and committees, appointments to**

**Mr. Hardy:** I need to go back to the same issue. There is a very dangerous pattern emerging here. More and more this government appears to be ignoring or even silencing the voice of the Yukon people. Yesterday the Minister of Health and Social Services denied that the Yukon Child Care Board has been allowed to languish into nothingness. Mr. Speaker, according to the Yukon Gazette, the last order-in-council appointing someone to this board was on November 15, 2007. On February 22 of this year, eight of the 10 existing appointments expired.

So can either the minister or the Premier explain: is this an oversight? Is it incompetence? Or is it a deliberate move to deny Yukon people their voice in advising this government?

**Hon. Mr. Fentie:** Mr. Speaker, this is getting a little carried away. The member is suggesting that we are actively pursuing a system of government in this territory that would be defined as a dictatorship. That is nonsense.

There is a plethora of boards and committees in this territory with variables in their mandates, roles and responsibilities, and there are multiple processes for how we appoint citizens to these boards and committees. Some are mandated by law that exists in Yukon; some are mandated by the *Umbrella Final*

*Agreement*; some are just mandated by policy, but there are processes for appointments, which include achieving consensus with First Nations on appointments to boards. It includes going through the process with citizens by advertising, receiving names, ensuring there is some uptake on interested citizens, and even serving on these boards and committees. There are all kinds of issues regarding training so that citizens understand their liability, their role and their responsibility should they assume these positions on boards and committees.

I can assure the member that at virtually every Cabinet meeting there are a number of appointments being made, including today — I believe there were about two pages of appointments to boards and committees.

**Mr. Hardy:** It is amazing that YCEE has been three or four years in this state if they talk about it every week.

We have sat in this House and have seen this government pick and choose who we will allow to appear as witnesses. We have seen this government ignore the advice of legally mandated boards under the First Nations' final agreements. We have heard the Premier tell First Nations that if they don't like what is happening, they can go to court or start their own systems.

We have heard members opposite put down citizen groups they don't agree with by referring to them as "special interest groups". We have seen this government stack boards and committees with party favourites.

Now that the Yukon Council on the Economy and the Environment has been effectively silenced, what other advisory boards are in the government sights for elimination?

**Hon. Mr. Fentie:** The member's dissertation seconds ago had nothing to do with what was said in this House, period, and the member knows it. However, I want to make a subtle point: the member seems fixated on the Yukon Council on the Economy and the Environment, that it hasn't done things or what it's supposed to do in the last couple of years — whatever may be the case.

I want to point out to the member opposite that it hasn't stopped economic growth in the Yukon. The environment is being well protected under the many mechanisms that we have to assess and process applications for development.

By the way, under this government's watch, without any direction from the council, we are second only to B.C. in land base under protection. Some 13.2 percent of overall land base is protected here in the territory. I just heard some kibitzing from the Member for Vuntut Gwitchin, and he's exactly correct: our priority is implementing what our obligations are in land claims, first and foremost.

**Mr. Hardy:** Land protection was done under other governments, not this one. Now, on many issues, but especially on the environment and on relations with Yukon First Nations, we are at a crossroads. Decisions that we make now will have a huge impact on the lives of Yukoners for many generations to come.

Now more than ever we need to engage people in a discussion about what the Yukon will look like for our children and grandchildren, and there are people in the stands today — young people — who want to participate in that. This Premier

is saying no, no participation. The attitude of this government, in this Assembly and outside, is that it does not want any advice, it will not listen to advice and it will do its best to shut down any view it doesn't agree with.

Yesterday alone, we saw it twice during motion debate. That is not democracy, Mr. Speaker, that is autocratic rule.

If the Premier won't listen to Yukon people outside this House, will he at least support the motion we introduced earlier today to get rid of the guillotine Standing Orders that prevent members of this House from giving public business the thorough examination and debate it deserves?

**Hon. Mr. Fentie:** If the opposition members in the House want to thoroughly debate the public's business that is on the floor, then I suggest they change their approach to debating so it is more constructive and less of the grandstanding that we've experienced.

To suggest that the government doesn't listen to its public is inconsistent with the facts. Recently, we did present to the Yukon public a plan and vision for the Yukon Territory. It was called an election. As recent as October 2006, Yukoners took a look at that plan and vision and re-elected a Yukon Party government with another majority. I think that's important here, because it's a demonstration that we listen to Yukoners and we presented to them a plan and a vision that they deemed to be — in their view — in the best interests of the Yukon Territory, their families and their children.

#### **Question re: Air quality in government buildings**

**Mr. Mitchell:** I have a question for the Minister of Health and Social Services. There has been a long-standing concern among nurses, other workers and the general public about the air quality at Whitehorse General Hospital.

It is my understanding that the hospital has had an air-quality survey done and that the report has been submitted to the hospital Board of Trustees. Nurses in particular have been expressing concerns for some time now and they are concerned over the lack of any apparent action.

Will the minister confirm for the House that the survey was done and the report given to the hospital board?

**Hon. Mr. Cathers:** I'll look into that matter for the member opposite. As the member knows — but unfortunately is not reflecting in his comments — the board is a body that runs the corporation. It is a corporation of the government but the board has responsibility for that. Any studies that they may commission report to them. They will then, if appropriate, share that with others, including the minister. I can undertake to look into the member's question.

**Mr. Mitchell:** I appreciate that the minister is going to undertake to do so. I know that the minister meets with the chair of the board to maintain an informed position on what is going on there, so I'll take it as a yes. It has, in fact, been almost two years since the hospital has been in possession of these findings, yet not a single word about the contents of the report has been made public. We can be assured that the findings are not good news.

The employees believe that there is a problem, Mr. Speaker, and they have the right to know. The patients have a right to know and the public who visit have a right to know —

so why the secrecy? If there is a problem then the minister has the obligation to see that the employees and the public are informed. He must also assure himself that measures are being taken to address the problem.

Will the minister table the report so all Yukoners can see for themselves the state of the air quality at the hospital?

**Hon. Mr. Cathers:** Mr. Speaker, as I indicated to the member, I will undertake to look into his concerns. However, the member is suggesting that the fact an evaluation of air quality was done was somehow a rare matter or unusual. In fact, review of the air quality within government buildings, including within the hospital and many facilities, takes place on an ongoing basis — including this very building that we stand in here. It is a common procedure that is handled by officials.

I remind the member and any employees who are not aware of the fact that any employee of the government, of the hospital corporation, of any other government corporation, and indeed, in the private sector, has the right to contact occupational health and safety branch and request a review of the safety of their workplace — including air quality — at any point in time if they do not feel that those in authority within that workplace are handling the matter appropriately.

With regard to the issue posed by the member of an air quality review of the hospital, I will certainly undertake to look into that. I would indicate to the member that I am quite certain that if there were any issues with that air quality review, they would have been brought immediately to my attention.

#### **Question re: Power rates**

**Mr. McRobb:** Yesterday I asked the Energy, Mines and Resources minister about his hands-in-your-pocket approach to electrical bills in the Yukon. We all know that Yukoners have been reaching deeper into their pockets lately to pay for his broken energy promises.

Many consumers are hurting from paying record high gasoline prices and power bills. The minister increased power bills by 15 percent last July, and the impact on Yukoners will worsen when he increases power bills by another 15 percent this July.

This adds up to \$400 or \$500 more per year for power bills, thanks to the Energy, Mines and Resources minister.

Yesterday he hinted that the government may in fact be rethinking its heavy-handed approach to this issue — one that is costing people a great deal of money.

Will the minister consider postponing his next round of planned power bill increases that are due to kick in July 1?

**Hon. Mr. Lang:** In reply to the member opposite, certainly when we extended the rate stabilization plan for another 12 months last year at half of its original figure, we committed to look at it. We have until July to make that decision and being the government we are, we will make that decision in a timely fashion.

**Mr. McRobb:** When the minister announced his plan to jack up people's power bills last year he said to not worry, that by February of 2008 they will go back down. But that did not happen. Is it any wonder Yukoners don't trust this government? It doesn't keep its commitments. Its promises are worthless. This government has demonstrated that time and time

again, especially the Health and Social Services minister, who has already earned a notorious reputation for making promises and then —

#### **Speaker's statement**

**Speaker:** Order please. I would ask the honourable member not to personalize debate. You are singling out individual people as opposed to criticizing the party as a whole.

You have the floor. Please keep that in consideration.

**Mr. McRobb:** Thank you for that ruling, Mr. Speaker. My question is about the Energy, Mines and Resources minister and his broken promises. Will he postpone his current plan to hike power bills another 15 percent on July 1?

**Hon. Mr. Lang:** There we have the Liberal Party of the Yukon managing the energy of the Yukon — the party that was responsible for the biggest financial disaster in expansion of our power grid in the history of the Yukon — millions and millions of dollars taken out of taxpayers' pockets through mismanagement by that party.

We will do the good work of managing the power, the hydro expansion and the GRA that's coming forward. We are working for Yukoners and Yukoners will get a break on their power bill.

**Mr. McRobb:** Such an absurd answer doesn't even warrant a response.

The Yukon Party government is sitting on a surplus of \$108 million, yet it has made a conscious decision to increase power rates by \$400 or more per year for every Yukon family. There is no justification for this revenue grab.

Last year, when the minister announced his price gouging, he said it was just temporary, because there was going to soon be a review of all rates, and bills would go back down. That was supposed to be done by February. The minister has not kept his word or lived up to his end of the bargain.

I am asking him to do the right thing. His broken promise is hurting many Yukoners who cannot afford to pay more. Will he show some compassion for the ratepayer and postpone hiking power bills another 15 percent?

**Hon. Mr. Lang:** The spokesman for the Liberal Party talking about broken promises — they promised Yukoners, the consumer, a power line for \$18 million. That's the kind of promises you get from the Liberal Party. The cost, by the way, is not even finalized. It's going to be \$10 million or \$15 million over the original figure. And that gentleman stands up and talks about managing lower power rates for the Yukon and for the population?

#### **Speaker's statement**

**Speaker:** Order please. I would just caution members to not personalize debate. Honourable member, please keep that in mind. You have the floor.

**Hon. Mr. Lang:** This side of the government is going to work with Yukoners, not on subsidization, but to lower their power rate by expanding the power consumption — which, by the way, will be foreign to the Liberal Party. We are not going to subsidize; we are going to get more customer base and in

that way, do a GRA, and get cheaper rates for all Yukoners on power. We're doing that as we speak. The power expansion line is something else foreign to the members opposite: it is on time and on budget. So, let's move ahead.

**Speaker:** The time for Question Period has now elapsed. We will proceed to 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:** 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.

**Some Hon. Member:** (Inaudible)

### Point of order

**Chair:** Mr. Hardy on a point of order.

**Mr. Hardy:** I rise on a point of order to ask that further consideration of Bill No. 50 be set aside until at least next sitting day so that all members can read and analyze the submission by the Ombudsman that was tabled by the Speaker earlier today.

### Chair's ruling

**Chair:** That is not a point of order.

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

**Chair:** We will proceed with Bill No. 50, *Child and Family Services Act*.

*On Clause 10 — continued*

*Amendment proposed — continued*

**Hon. Mr. Cathers:** It is a pleasure to rise today and continue in clause-by-clause debate on Bill No. 50, *Child and Family Services Act*.

When we left debate on Tuesday, we were dealing with a proposed amendment to clause 10 of the act, moved by the Member for McIntyre-Takhini. As I indicated at that time, the member has misinterpreted the clause. The amendment he pro-

posed is redundant; it is in fact encompassed in the introductory section of the clause and the member's proposed amendment would have the effect of actually weakening that clause rather than achieving what I believe he hoped it would.

The member specifically was addressing the need for housing and financial support for grandparents and extended family. I would like to again remind the Committee that clause 10, which is "Services and programs", is part of part 2 of the *Child and Family Services Act*.

It is all a new clause of the act. All areas within part 2 are new, and are part of the new focus on collaborative steps, on steps to avoid court when possible, through cooperative planning and dispute resolution, and is part of the increased focus on providing services, programs and supports to families in a flexible manner.

The clause provides the ability to promote family integrity and provide support for families and children whether the children are residing at home, residing with extended family, are in an out-of-home care or have returned home. It then lists a number of services and programs that may be included.

As I would note to the members in the clause I read, it clearly identifies that the entire intent of clause 10 is to promote family integrity, provide that support to family and children, and that does include extended family, including grandparents. This is a step that is in addition to the support available to foster parents. This is a step that is available to those who may not formally be foster parents but may, through a guardianship agreement, have the care and custody of the child. Such agreements are voluntary; they may be chosen through the cooperative planning process or through alternative dispute resolution.

They may be chosen for other reasons, but they require the decision and consent of the parents to enter into that agreement to allow someone else to care for their children. That may be through a court process, and it may also be through the alternative dispute resolution cooperative planning or some other means that such an agreement is entered into.

Previously, there was a concern brought forward by the members. They were correct; for those who were not formerly foster parents, there is not always support available in this area. This change to the act — this new clause 10 — provides the ability for that support to be offered to those who are under a guardianship agreement or some other voluntary care arrangement. This will allow those services and supports to be provided by government — including assistance with housing, financial support for activities that the child needs to engage in, and support for necessities of life such as food, clothing and so on.

This is a new portion and addresses the gap that members identified. We concur, and so did the project team and the working group on the *Child and Family Services Act* that identified this area. This clause will address the matter without the amendment. As I indicated, that amendment would in fact, from a legal perspective, weaken the clause and weaken its ability to provide that support for things including, but not limited to, housing supports and financial support to grandparents and extended family.

I also want to note before concluding my debate on this amendment, that this entire section of the act — the support services to family — is new. It provides for a number of supportive and voluntary services, including cooperative planning processes such as the family conference in planning for a child or support services to be provided to a family. Support services would be the ones identified under this clause that can be now provided in a flexible manner.

Formal agreements to allow for the provision of family support services for in-home supports and for out-of-home care are enabled by this clause and by other parts within this section of the act, which is division 2, under part 2 of the act.

Other areas that this clause enables include special needs agreements to enable a child with special needs to be provided with out-of-home care without requiring a determination that the child is in need of protection. That is elaborated on to a greater extent in the clause that we will be coming to in due course.

In these cases, of course, special needs agreements do allow for parents to retain their role and responsibility for the child.

A key emphasis here, and one reason why clause 10 is necessary in its unamended form, is that the act contains provisions to encourage and facilitate placement of a child with extended family through the use of a formal support agreement. It is exactly through such a formal support agreement that clause 10 will allow family and children's services branch or a First Nation service authority established under this act to provide supports, including financial support, to that family in a flexible manner — through the formal support agreement referred to.

As well, there are provisions within that this clause enables, which are provided for in more detail in other sections, including enabling a family and a director to enter into a voluntary care agreement to provide out-of-home care services — sorry, I'll say that clearly, Mr. Chair: out-of-home care services — for a child where there are concerns that the child cannot safely remain in the home. Again, that's by voluntary agreement.

I hope I have clarified that for the members opposite. As I indicated, the amendment proposed by the Member for McIntyre-Takhini would actually weaken this clause's ability to provide the support the member was referring to. Since this was earlier in the week, I would suspect that perhaps on further review and greater reflection, the member may have come to the same conclusion and recognized that the act does indeed provide what he was asking for and his amendment would be counterproductive.

**Chair:** Is there any further debate on this amendment?

*Amendment to Clause 10 negatived*

*On Clause 10*

*Clause 10 agreed to*

*On Clause 11*

**Hon. Mr. Cathers:** Since I referred to this significantly in general debate, I will not spend a lot of time on clause 11. I will note that clause 11 is to provide agreements for sup-

port services for families. I also referred to this when debating the last clause.

It allows the director to 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 when the child is in out-of-home care, and provides the ability to support the child and the family where the child has returned from out-of-home care with any other living arrangement.

Again, this is part of this entire section of the act — the entire new part, which was not in the *Children's Act*. The new *Child and Family Services Act* will provide the ability for far more support to be provided to those families.

**Mr. Hardy:** I move that debate be now adjourned.

### Chair's statement

**Chair:** That motion cannot be moved presently. You can't move that debate in Committee of the Whole be adjourned. The motion that the member put forward is not the proper motion. If a motion were to be put forward, it would be to report progress.

**Mr. Hardy:** I move that the Chair report progress.

**Chair:** It has been moved by Mr. Hardy that the Chair rise and report progress. Do members agree?

*Motion negatived*

**Mr. Mitchell:** I would just look for a little more elaboration or clarification from the minister, if he might, on the wording in clause 11(1), where it refers to providing support services to maintain the child in the home. If the minister could just provide some elaboration on the sorts of services that could be provided to maintain the child in the home and what this might cover — that's what I'm looking for.

**Hon. Mr. Cathers:** The supports the member is asking about could include such things as counselling, respite, care for medical issues not covered under the health care system — such as some of the prescription drugs and other areas, or minor issues. It could include coverage for things such as school supports and equipment, special needs, medical needs, one-time supports, respite, financial supports, counselling, substance abuse treatment, in-home support such as through a family support worker, support through a case worker, parenting programs and traditional parenting programs — those could be covered through this clause.

Services to support children who witness violence, transitional supports for youth — which are actually referred to in greater part under a different clause — supports for youth, including independent living skills training, education, counselling, and it provides the ability for referral for services and support for that, and for community and informal supports.

That's not an exhaustive list of the types of supports that may be provided, but it's a bit of a high-level overview of the type of thing that can be provided. Much of this would be clarified to a greater extent, for the information of people to find out what they can get, through regulation or policy — to make them aware of what is available. The key part, which I'm sure the member will recognize, is that, previously, the existing



*Children's Act* does not provide the legal mechanism to allow the family and children's services branch to provide the support. This new part would allow family and children's services branch or a First Nation service authority established under the act to have the legal authority to provide for such services through their policies and programs.

*Amendment proposed*

**Mr. Hardy:** Mr. Speaker, I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 11(1) at page 21 by adding, immediately after the word "parent" the expression "or other person".

**Chair:** It has been moved by Mr. Hardy

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 11(1) at page 21 by adding, immediately after the word "parent" the expression "or other person".

**Mr. Hardy:** The rationale for the amendment is basically to make it more understandable for laypersons. Basically the definition of "parent" covers anyone who has custody, is my understanding. This would make it clear for the layperson reading this clause who does not normally read legislation.

**Hon. Mr. Cathers:** I appreciate the member's intent here; however, the act already covers this. If the definition of "parent" included only mother or father, then the member's amendment would in fact be of benefit to the legislation. I would refer, with the indulgence of the Chair, to the definition of "parent", which will provide some clarity of the fact that this amendment is not necessary.

A "parent" means: "(a) a mother or father of a child who has custody of the child; (b) a mother or father who does not have custody of the child but who regularly exercises or attempts to exercise rights of access; (c) a mother or father providing financial support for the child; (d)..." — and this is a key clause — "a person to whom custody of a child has been granted by a court of competent jurisdiction or by an agreement; ..." And that agreement could include the type of volunteer agreement to which I was referring to earlier in debate.

And subclause (e): "a person with whom a child resides and who stands in place of the child's mother or father;"

So the amendment the Member for Whitehorse Centre has brought forward is not necessary; it is covered under the definition of "parent" and I would point out that this is fully covered within the legislation.

**Chair:** Is there any further debate on the amendment?

*Amendment to Clause 11 negatived*

**Chair:** Is there any further debate on clause 11?

*Clause 11 agreed to*

*On Clause 12*

**Hon. Mr. Cathers:** Thank you, Mr. Chair. Just to introduce this again, clause 12 refers to special needs agreements; it is again one of the new flexible arrangements under the act that allows a director — and again, a director in the act refers to either the director of family and children's services or the director of a First Nation service authority, established pursuant to the act — to make a written agreement with a parent who has custody of a child with special needs for in-home support services or for out-of-home care services. This allows both to

be provided and, if there is need for certain services offered by the director, to have the ability to make decisions on behalf of the parent. This clause will also allow the parent to assign 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.

This is a pretty key change in the legislation that was not in the *Children's Act* previously. Currently — since this act has not yet been passed — the status quo is that parents generally are in a situation of either having custody of their child or they relinquish custody of their child. This is a new and flexible arrangement that allows them to delegate that decision-making authority to the director without losing their primary guardianship role and responsibility.

I look forward to any questions the members may have.

**Chair:** Is there any further debate on clause 12?

**Mr. Mitchell:** Thank you, Mr. Chair. I would ask the minister for a little bit of clarification in clause 12(1) with reference to in-home support services. Would this — does this or could this — include financial support as well?

**Hon. Mr. Cathers:** Yes, it could include financial support for special needs in-home and, of course, it also provides the ability for out-of-home care, which would potentially include things such as therapeutic activities and so on.

*Clause 12 agreed to*

*On Clause 13*

**Hon. Mr. Cathers:** I would just introduce this clause by noting that this allows for voluntary care agreements to allow the parent to assign care of the child to a director, and delegate to the director as much of the parent's powers and responsibilities as is required to give effect to the agreement, without requiring the parent to give up their role — their primary guardianship role — and their ability. This also does not require them to relinquish their ability to cancel such an agreement.

Again, previously the case has been that a child was either in the guardianship of the parent or in the guardianship of the government. This is a new approach and is certainly a significant step forward in the interest of providing the best possible care and support for a child and their family.

*Clause 13 agreed to*

*On Clause 14*

**Mr. Mitchell:** In clause 14(2), it reads, "The agreement may provide for the director to contribute to the child's support while the child is in the person's care."

What criteria will the director use to determine if assistance is needed and what is the extent of that assistance?

**Hon. Mr. Cathers:** Essentially this will be based on assessment by experts in terms of determining both the level of need of the child and the level of need of the family. That could include, of course, the special needs we referred to earlier.

Again, this is the area related to those who may not formally be a foster parent with whom the child is placed, but may be operating under the voluntary care agreements and the voluntary transfer of guardianship by a parent to a person they select or is jointly selected by themselves and other participants

in a cooperative planning process, including the First Nation and other members of the community.

This provides the ability for the director to contribute to that child's support. This is a new area in the act that does require some development in regulations and policy to make it clear and easily accessible for individuals. Simply put, the intent is to achieve the level of assistance required to meet the level of need, particularly for those who may not have the financial means to take on another child and may require some assistance. It has always been the case for those on social assistance that assistance would be provided, but this type of support will primarily be of benefit to middle-class, working-class individuals who would be happy to care for the child of a member of their extended family, or of friends or others in the community, but who do not have the ability to take that on without increased support.

Extended family can be helped with the new and additional demands placed upon them when taking on a relative's child. The purpose of such supports is to reduce the potential of having the placement break down, as well as to address any special needs a child may have, including those due to physical or cognitive ability or as the result of having lived with abuse and/or neglect and separation.

*Amendment proposed*

**Mr. Hardy:** I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 14(1) at page 22 by adding, immediately after the expression "a person who is" the expression "a grandparent or".

**Chair:** It has been moved by Mr. Hardy

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 14(1) at page 22 by adding, immediately after the expression "a person who is" the expression "a grandparent or".

**Mr. Hardy:** This clarifies that grandparents have priority in the extended family, which is more in line with traditional views in almost all cultures around the world.

**Hon. Mr. Cathers:** This amendment is unnecessary and in fact counterproductive. The definition of "extended family" includes, but is not limited to, grandparents. It specifically refers to persons to whom a child is related by blood or through a spousal relationship or through adoption, and includes other persons who have or have had a parent-like relationship with the child.

Why would the Legislature specifically wish to set out in legislation that, regardless of the wishes of the parents or their First Nation or their community, the Legislature wishes to determine here and now that a grandparent will take precedence over an aunt or an uncle? Why would we wish to make that determination?

The legislation allows that flexibility. The determination of who would take custody of that child in this area is based on a voluntary agreement. This is a voluntary agreement from the family member to the individual taking custody of the child.

Clause 14 also allows for supports to those who have been given custody by court. In either case, there is involvement by

the parents. There is involvement by the First Nation. There is involvement by other members of extended family who wish to be involved in the cooperative planning process. For us, as the Legislative Assembly, to stand up and dictate to them that grandparents shall take precedence in placement over an aunt or an uncle who has a very close relationship with them would not, in my view, be well-advised. It would be counterproductive and it would restrict their personal freedom.

The act, without this amendment, allows that flexibility to those individuals, through cooperative planning and, of course, through a court decision, after receiving the representations from the individuals. I remind the members there is the requirement for the judge to consider whether cooperative planning has taken place and to set aside a court hearing if that cooperative planning has not occurred.

Mr. Chair, the Member for Whitehorse Centre has brought forward an amendment that does nothing to enhance the rights of the parents or the families. All it does is provide increased dictation by the Legislative Assembly and limitation of the rights of those individuals.

**Mr. Hardy:** Mr. Speaker, when a minister gets up there and makes accusations to a member opposite, all they are asking for is a debate that is going to go on all day on one issue. If the minister wants to talk about dictating, this whole act is about dictating. The power of the director is so huge in this act that it is about dictating.

This minister has a tendency to overlook all of that. What happened in the Legislative Assembly by not allowing the First Nations to come as witnesses was dictating by —

**Chair's statement**

**Chair:** Order please.

Mr. Hardy, the debate is on the amendment to clause 14 that you put forward. I would expect members to debate that amendment only, please.

**Mr. Hardy:** Thank you, Mr. Chair, and I will.

I just don't like being accused of dictating at all.

This is in recognition of the grandparents in every family. In almost every culture around the world, grandparents have a role to play. They play a huge role in raising children and taking on responsibilities. When the parent or parents for reasons of death, or inability to raise the children themselves — it could be financial, it could be emotional, it could be many reasons — the grandparents step in. I can assure you, Mr. Speaker, I am a grandparent. I know what I am talking about here. This minister isn't.

It is already saying "parent", which immediately — well that is already dictating one group. We are just asking for this in consideration of traditional views of the First Nations, of other cultures around the world — and if he doesn't believe me, I'll have a debate about that as well. Around the world grandparents do have recognition, very specifically, in raising or in helping a family. They have a role to play — a very significant role.

This act doesn't recognize that. We wanted to make sure that the grandparents were recognized.

**Hon. Mr. Cathers:** I will be very brief, just noting again that the rights of grandparents are already provided for fully within the definition of “extended family”. This amendment is not necessary to ensure those rights.

I agree with the Member for Whitehorse Centre on one point: the grandparents’ role is a very important and significant one, and in many cases, I will agree with him that it takes paramountcy over other relationships. However, I hope that other members of the Assembly will join me in leaving the flexibility to families to decide whether a grandparent should take that role, or whether it should perhaps be an aunt, an uncle, a cousin or other. We are not disagreeing on the importance of grandparents, but the member’s amendment is not necessary, and I believe it is counterproductive.

**Mr. Hardy:** I move that Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 14(2), at page 22, by deleting the word —

**Chair:** Order please.

Mr. Hardy, we are still debating the previous amendment.

Is there any further debate on the amendment we are debating presently?

*Amendment to Clause 14 negatived*

**Chair:** Is there any further debate, Mr. Hardy?

**Mr. Hardy:** Thank you, Mr. Chair, and thanks for correcting me. I was getting a little ahead of myself there. I was excited, I guess.

*Amendment proposed*

**Mr. Hardy:** I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 14(2) at page 22 by deleting the word “may” and substituting for it the word “shall”.

**Chair:** It has been moved by Mr. Hardy

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 14(2) at page 22 by deleting the word “may” and substituting for it the word “shall”.

**Mr. Hardy:** Basically, the rationale is that it makes it compulsory for the director to make an agreement for financing an extended family’s care for a child.

**Hon. Mr. Cathers:** The member is not reflecting on what standard legal language is here. Unless one were to list in legislation or regulation the exact amount of that financial contribution, it would have no effect, whether it said “may” or “shall”, in actually ensuring needs were met.

I don’t want to diminish the member’s concern — I recognize that he is bringing this forward with good intention, but it is not necessary. It would not meet standard legal drafting. This provides sufficient flexibility. The details of how needs will be assessed and what compensation can be provided will all be set out in regulations and/or policy.

If the member is concerned that someone may not get the supports they need, I would remind the member that the entire purpose of this clause of the act — which is a new clause of the act — is to enable the payment for and the assistance through such agreements, when previously the director of family and children’s services did not have the legal authority to make

some of these arrangements. There were a limited number that could be provided.

However, the number of support agreements that can be entered into will be significantly expanded by this new legislative provision. The key assessments will be financial ability and need. This will include paying for supports, including services for children, such as medical, school needs, diapers, and special needs. It will allow one-time supports; it will allow payment for respite; it will allow financial supports; it will allow counselling; it will allow substance abuse treatment; it will allow the compensation and provision of in-home supports; it will allow case worker supports; it will allow parenting programs and traditional parenting programs; it will enable services to support children who witness violence, transition supports for youth and referral for services in community and informal supports.

The member’s amendment is not necessary and would be a departure from standard legal drafting and provisions that are in various enabling acts, such as those that enable the payment for medical treatment and other matters. This is well-intentioned but it is not necessary and would not be the standard legal approach to such matters.

**Chair:** Is there any further debate on the amendment?

*Amendment to Clause 14 negatived*

**Chair:** Is there any further debate on clause 14?

*Clause 14 agreed to*

*On Clause 15*

**Mr. Mitchell:** I have a question regarding clause 15(1). In the interest of time I’m not going to read out the clause, but the question obviously refers to this clause. In agreeing, does the parent have to assume additional responsibility beyond what a parent without such an agreement would and does this agreement lessen the responsibility of the director?

**Hon. Mr. Cathers:** The simple answer to the member’s question would be no. There was a significant issue heard in public consultations and the joint consultations conducted by the Department of Health and Social Services and by the Council of Yukon First Nations. This clause was particularly driven by wanting to allow the support for the parent to be provided to assist a child through support services aimed at preventing a reoccurrence of an offence under this area. It is also specifically aimed at enabling the involvement of the community in this area, and that would be encompassed by this clause referring to support services. It would allow for community supports and that involvement. That is the basic intent of this. The answer to the member’s concerns is that it would not necessarily place any additional liability on the parents, nor would it lessen the director’s responsibility.

**Chair:** Is there any further debate on clause 15?

*Clause 15 agreed to*

*On Clause 16*

**Hon. Mr. Cathers:** I think this area — agreement for support services for youth — is largely self-evident to members. What this provides for is for youth between the ages of 16 and 19 who have left their home and the director believes —

again, that could be the director of family and children's services or a First Nation service authority — they cannot be re-established with their family for safety or other reasons, and that they have no other parent or person willing or able to assist them. This may be, particularly for a mature youth, an option that enables supports that otherwise — as members will likely be aware, certain youth over the age of 16 may not be willing to live at a group home or in foster care, and this enables the director to make a written agreement to provide that youth support services and assistance between the ages of 16 and 19 to support their needs. This would address an issue that has been brought up for debate on the floor on previous occasions — the concern that youth may have issues with having a safe place to stay.

This is an additional ability to provide supports to youth who are not willing to access the supports currently in place through being in a group home or through foster care. This provides additional ability to enable those supports. There is some ability already, but this provides an additional legal mechanism to support such youth.

*Clause 16 agreed to*

*On Clause 17*

**Mr. Mitchell:** This is a very interesting clause in this bill. The minister has made a fair bit of reference to it. It is the transitional clause making it possible to provide transitional support to youth up to but not exceeding their 24<sup>th</sup> birthday.

In clause 17(1)(a) and (b) it makes reference to: "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;"

I am wondering if the minister could give us some examples of what such an agreement might contain.

**Hon. Mr. Cathers:** This area can provide the support services for youth between ages 19 and 24. The section is designed to be fairly flexible in that, but its main intent is to provide the ability in this area to support youth to achieve independence. It's basically aimed at providing support similar to that which a parent would provide to youth.

As we discussed earlier in debate and as members well know, it's quite common for kids to reach the age of 18 or 19 and set out into the world on their own, and they think they have the world by the tail and are eager to be out and away from mom and dad. They soon discover they need support with things such as basic skills, the ability to manage financial affairs, tuition — so this includes such things as life skills training, education, counselling, those types of support. They are the key intent of this clause, but the main focus of this is to enable the delivery of programs aimed at assisting youth between the ages of 19 and 24, whether they're leaving care or have left care, and wish to return for support.

The key objective of this clause is to enable the necessary supports to assist them in ultimately achieving independent living and self-sufficiency.

**Mr. Mitchell:** I thank the minister for the explanation. I'm going to ask a follow-up question. For example, when a youth is leaving the care of the director upon reaching the age

of 19 and doesn't have a suitable family home to return to, would this support include assisting the young person in finding suitable housing and in obtaining it?

I'm not specifically asking about paying a portion of the rent, because there are programs that do that, but right now it is very difficult in the Yukon housing market to obtain a lease of any sort for rental housing without some form of reference showing that you have sufficient funds or a job that will support you on an ongoing basis. Someone who has been in the care of the director might not have those sorts of things accumulated in that person's life. They might need some sort of referral — I'm not going to say guarantee — but some sort of endorsement that would assist them in finding housing. Without housing, everything else tends to fall apart. That is what I'm asking.

**Hon. Mr. Cathers:** Yes, that is the type of thing — in fact, some of those supports are already being provided; however, this does enable some new areas. The member is correct in identifying some of the challenges that youth can face in those areas. They may not know how to go out and find a house or what they should be asking for when they are looking at a house, either to buy or to rent or whether it be an apartment or other dwelling. If they are looking at housing, they may not know the questions they should be asking. They may end up then getting into bad financial agreements or being taken advantage of because of that lack awareness or their lack of ability to know where to look for the housing that they need. This does enable some enhancement to the supports already provided to help them find a home, enter into a lease agreement or whatever the case may be. It will enable them to nail down that housing and, of course, as the member noted, payment for such things is provided through other programs should they need assistance with the cost of doing so.

**Chair:** Is there any further debate on clause 17?

*Clause 17 agreed to*

*On Clause 18*

*Clause 18 agreed to*

*On Clause 19*

*Clause 19 agreed to*

*On Clause 20*

*Clause 20 agreed to*

*On Clause 21*

**Mr. Mitchell:** Would this include children who have been exposed to sexually explicit pornography? That is the question.

**Hon. Mr. Cathers:** Yes, it could. Much of this could be under the interpretation of the director and, ultimately, of the court.

There are shades of grey, of course, in this area, as the member will know, but it could include being exposed to seeing images that could be deemed emotionally harmful or abusive.

It certainly includes, of course, being encouraged or counselled to engage in prostitution. It would include being forced to engage in activities for child pornography. That would be covered in there.

I'm just looking down my notes here. The next clause of the act provides the requirement for duty to report, which does include child pornography.

However, child abuse and exploitation in this area does provide a fairly broad, encompassing area. As the member will note, in 2(a), it refers to "inappropriately exposed or subjected to". So, if they are exposed to that "sexual contact, activity or behaviour", that would also qualify with being forced — I believe that was the member's question — to watch certain graphic images or to watch graphic acts. It would cover them being forced to engage in activities for the purposes of filming, viewing or other — too distasteful to even discuss, frankly, but those things would all be encompassed by this area.

**Mr. Mitchell:** They are difficult to discuss; however, they are in the act and they are there to protect children, and it is just that 21(2)(a) makes specific reference to "exposed or subjected to" sexual contact which, without a definition of sexual contact, includes having been exposed to explicit pornography not only as, God forbid, the subject of, but just being exposed to — that is why I have asked the question, just to clarify.

If the minister assures me that is their view of what the legislation means, that will be sufficient.

**Hon. Mr. Cathers:** For legislative purposes, although sexual contact is referenced first, it includes inappropriate exposure or subjection to activity or behaviour that would fall under the broad definition of exploitation.

The member will note also that emotionally harmed is referred to in the clause below, and that includes a pattern of behaviour that is detrimental to the child's emotional or psychological well-being. So, yes, it is included in that definition and would enable action to be taken upon such activities taking place.

**Mr. Hardy:** I do have two questions. I will ask one, and then let the minister answer, and then ask the second one.

It is just about clarification again. Verbally — this talks a lot about physical activity, also viewing physical activity — but what about verbal sexual innuendo or dialogue? Would this also be included?

**Hon. Mr. Cathers:** That would fall under the area referred to above under clause 21(f) — emotionally harmed by a person's conduct. That could be covered — again it becomes words. Of course, as we know, in terms of what defines sexual harassment, sexual exploitation or abuse, it always becomes a very tricky legal matter for determining where the line is, but yes, it could be included in there.

**Mr. Hardy:** This is the last one I want clarification on. As everybody says, this is not pleasant stuff to talk about. However, many cultures, again, often do not have separate rooms for every person. You could have a situation where a young person is in the room with their older sibling, who happens to have a boyfriend or girlfriend, and sexual activity happens in that room. How do you judge that one? I just need some clarification on this. Where is that line drawn? We do live in a society that seems to assume that we have lots of rooms in houses, that people have money and there is space.

I grew up in a fairly poor family. The kids grew up together in a couple of rooms, five of us. You do become aware of your sexuality at possibly an earlier age. I know many families who don't have divisions around this.

I just want some clarification or thoughts from the minister in regard to this and if that has been considered in looking at this whole area.

**Hon. Mr. Cathers:** This is one area where the service delivery principles and guiding principles of the act are intended to provide some context. This becomes a very tricky area, as the member noted. It is a fact, of course, particularly in poorer families who don't have large houses, or in certain cultures or families where skinny-dipping or other activities may not be abnormal, and the intent is not to create a situation that makes everyone a criminal for walking out of the bathroom to their bedroom without wrapping a towel around themselves. Certainly, that would be going too far.

That is the area where the assessment by professionals becomes a difficult matter. If where the line is cannot be agreed in a cooperative planning or alternative dispute resolution manner — if it is the belief of a director that the line has been crossed and agreement cannot be reached in a cooperative planning or alternative dispute resolution process, this is the type of thing that may become a matter for the courts. However, in simple terms, the guiding principles and service delivery process refer to things such as cultural activities and normal activities. This is intended to use that umbrella area, which of course frames the act, to make it clear that this is not supposed to restrict activities that are culturally normal or normal within the context of a healthy family situation.

I'm not sure if that is a clear response to the member, but this is a tricky area of law and the member will know that nationally this can become a very tricky matter in legal issues of where exactly the line falls.

**Mr. Hardy:** One more thing for clarification: how has this been considered in relation to the sexual education that is taught in schools?

**Hon. Mr. Cathers:** It is dealing with the cultural context of the situation. The intent of this area of the act — this section of the act does not make it illegal for somebody to walk from the bathroom without a towel around them. For families from some cultures it is not abnormal to not always wear clothing or bathing suits at the beach or other things, and that is not intended to be considered now a prohibited activity under the legislation. That becomes where it crosses the line to where it is abusive or where it is inflicting either physical or emotional harm on the child by doing so.

Although it can be a tricky matter, as the members may not be aware, one of the things that is included in this legislation — much of the focus and discussion has been the collaborative process embarked upon, the joint public consultation, the joint policy development, et cetera. However, there have certainly been references by the legal experts and the policy people to look at Canadian legislation and try to ensure that our legislation meets the most modern and appropriate standard in these areas so that it is recognizing challenges other jurisdictions

have run into with their legislation, trying to follow best practices and best legislative drafting practices.

I think B.C.'s legislation has been borrowed upon for some of the wording, and the effect is very similar in some of these areas where there were similar desires expressed by the Yukon public.

This area I believe would be similar. I can confirm that for the member if he wishes, but to the best of my recollection, this area borrows from British Columbia's provisions.

*Clause 21 agreed to*

*On Clause 22*

**Mr. Mitchell:** I have one question. The duty to report — was this in any way existing in the previous legislation or is this all new?

**Hon. Mr. Cathers:** This is all new. It was not in the legislation. I believe the *Education Act* has a requirement for teachers to report suspected abuse, and the *Child Care Act* has that as well, but for the public as a whole and others, it was not in existence. We are actually the last jurisdiction in Canada to move forward with this type of measure. It is one of the significant and important reasons why this legislation needs to be modernized and needs to be brought to fruition. It provides that requirement.

In fact, as the member may be aware, teachers and doctors often run into those situations where they are likely to see it. They have actually asked for it, because it creates an ethical question for their members. Should they or should they not report it when it is suspected? If the law says you must do so, then it is a very clear requirement.

This was something that had widespread consensus and widespread support in the public, including First Nations, stakeholders and members of the general public. They agreed that this was a positive step forward.

**Mr. Mitchell:** Is there a specific penalty for failure to report under clause 22?

**Hon. Mr. Cathers:** Yes, there is a specific reference in clause 156, which is the offences section. A person who commits an offence under this section — failure to report — is liable on summary conviction, so it is determined by a judge. For a first offence it is a fine of up to \$10,000 or a term of imprisonment for as long as one year or both. For a subsequent offence the fine is up to \$20,000 or a term of imprisonment for as long as two years or both.

Again, that would be a court determination, and standard court practice in such matters is that the maximum is not the norm but is used in extreme situations.

*Clause 22 agreed to*

*On Clause 23*

**Mr. Mitchell:** This makes reference to receiving a report under clause 22, the clause we just discussed, or information from a peace officer under clause 40(1). A director shall assess the information and investigate the circumstances of the report to determine if the child is in need of protective intervention.

My question: is there any requirement that the director contact the First Nation? If not, why not? Obviously, this is if

the child in question or the people in question are members of a First Nation.

**Hon. Mr. Cathers:** Clause 27 applies in that case. "Initial contact" is the title of the clause. (1) "A director shall, as soon as practicable after commencing an investigation, make all reasonable efforts to contact the child's parents and, if the child is a member of a First Nation, the child's First Nation, to advise them of the investigation."

**Mr. Mitchell:** Just for clarity then, any action under clause 23 automatically triggers clause 27. That's the explanation?

**Hon. Mr. Cathers:** That is correct. Clause 27 applies to all initial contact and makes it clear that they — as soon as an investigation has commenced — must make all reasonable efforts to make that contact.

**Mr. Mitchell:** This brings me back to a question I asked during general debate. What constitutes "all reasonable efforts"? Are there any guidelines that exist? Is there case law? Are there specific policies?

**Hon. Mr. Cathers:** The First Nation child welfare policy guides what the understanding is — that provides some context and that is in existence right now. That is the one that was updated in 2007 following the consultations, but in advance of the formal act.

It states under section 01.07.04 subsection 2: "First Nations will be included in planning at the earliest time whenever Health and Social Services are providing child welfare services to their members. The First Nation will determine their level of involvement with the family while they are receiving services from Family and Children's Services."

So yes, it does create the requirement and provides some context to that. There is understanding between the director of Health and Social Services and the First Nations' director. They are responsible — or their agents are responsible — for how that contact exists and what the procedure and policy are around that. That can include things such as phone calls, et cetera, but those can change over time, which is why it's not spelled out in legislation.

Of course, at the time when this act was put in place, e-mail was not a form of communication that was available to most citizens, nor were many of our modern phone communication steps, so the desire in this legislation was not to preclude further forums and the evolution of agreements between family and children services and First Nations, nor to preclude with the First Nation service authority what arrangements might exist between that authority and the First Nation or other First Nations who might be affected.

I hope that has provided some clarity to the member. This is basically in general practices, policies and procedures between the department and First Nations. It is based on what is considered to be the normal understanding.

**Mr. Mitchell:** I do thank the minister for that explanation. I actually do have that clause in front of me, both the guiding principles, the policies and the procedures, thanks to the information we were provided at the departmental briefing.

I am not sure that 01.07.04 subsection 2 — it says — as the minister has read — "... will be included in planning at the

earliest time whenever Health and Social Services are providing child welfare services to their members.” But it doesn’t speak, in any way, to methods or efforts that need to be made.

Similarly, initial contact, under “Procedure”, 01.07.05(4), “The First Nation will be contacted as soon as possible after commencing an investigation and assessment.”

I am asking this specific question because I have been asked it by First Nations. The example that was provided to me was that if this all occurred over Easter or a Christmas holiday period, would it simply be voice mail that was left in a First Nation’s office where nobody might be picking up that voice mail for the next three or four days?

Is there anything more specific that exists somewhere else that I may not have in front of me, in terms of the level of effort to make sure that actual contact with the First Nation has been made, rather than voice mail left, or e-mail left, or a letter mailed but not necessarily being received in a timely manner?

**Hon. Mr. Cathers:** The procedure for that is one that, in this type of thing, is operational, understanding that the policy first and foremost was agreed to by the First Nation health directors in discussion with department staff. The procedure is that the First Nation health director ensures that department staff have their contact information or the contact information of their designate, whoever is appropriate at the time, and alternate contact information. So, that is done. They of course are concerned about this and they take the steps to ensure that, if they are going to be at a location that is not within their standard contact information, that it is provided to their counterpart or the individual they work with within family and children’s services branch.

Further information for the member: in noting that there are procedures identified further on about the requirement to send a letter to the chief or the identified designate and to the regional social worker confirming date of contact, nature of child welfare involvement, there is clarity around providing the information by telephone to the First Nation health and social services director or their designate with the name and number of the Whitehorse social worker, and for providing the offer to them and a time to invite them to the planning process involving the family — as well as the requirement to include them in all planning conferences and meetings, the first of which is required by policy to be held within the first two weeks of the involvement.

*Amendment proposed*

**Mr. Hardy:** Mr. Speaker, I move the following motion:

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 23 at page 27 by adding, immediately following subclause (1), the following:

“(2) The director shall make all reasonable efforts, if the child is a member of a First Nation, to involve the child’s First Nation in the assessment and investigation of a report of whether the child is in need of protective intervention.”, and by renumbering the remaining subclauses accordingly.

**Chair:** It has been moved by Mr. Hardy

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 23 at page 27 by adding immediately following subclause (1), the following:

“(2) The director shall make all reasonable efforts, if the child is a member of a First Nation, to involve the child’s First Nation in the assessment and investigation of a report of whether the child is in need of protective intervention.”, and by renumbering the remaining subclauses accordingly.

**Mr. Hardy:** Very simply, the reason this one has been brought forward very simply is this makes it necessary for a director to involve First Nations before setting up the process for apprehension from the start. The key word here is “involve” where, if you look at clause 27(1), which had been referred to already before I brought this motion forward, it just says to “advise”. I don’t think that is what we have been hearing from the First Nations. They want to be involved. It is easy to advise, and then continue with your investigation.

From our perspective, and from any of the First Nations we have talked to, involvement is crucial, especially at the beginning of any kind of investigation. The minister refers to 27(1) so much in regard to this; we feel that 23(1) should have more clarification right in that clause.

As I say, there is a huge difference between “advise” and “involve”.

**Hon. Mr. Cathers:** The member should also review other sections of the act to understand this. The service delivery principles, the guiding principles, and the section I referred to, already addresses this.

I would refer him to 2(j) of the guiding principles: “First Nations should be involved as early as practicable in decision-making processes regarding a child who is a member of the First Nation.”

This is already addressed. The other problem with the member’s motion he has made to amend it is that the member is not understanding the fact that assessments occur at different stages in the process, and the effect of the member’s proposed amendment would in fact create a situation whereby, when a call is made — a report to the director of family and children’s services or to a First Nation service authority, should one exist — the first step would be the assessment of whether the call merits follow-up and an investigation into the matter.

There are some that are obviously spurious at the start, and those assessments are of course made by trained professionals. The member’s amendment would require the involvement in all such matters and it would create an additional burden on the First Nation governments when you have a situation that the person receiving the report makes a determination that it does not merit an investigation. It certainly does not merit causing trouble to other individuals, and I remind the member that the people who work in this area take very seriously any report and investigate any situation. If there is any question as to whether an investigation is required, they take every reasonable and prudent step to follow up and protect the safety of children.

Again, I would refer the member to the guiding principles and to clause 27(1). It makes it clear that the First Nation is required to be informed and that they are required to be in-

volved in the decision-making processes at the earliest opportunity.

This amendment is not necessary, and the one line within the member's clause would in fact create an operational problem, both for family and children's services branch and for First Nations. As well, it would create a problem for any First Nation service authority that may be established.

**Mr. Hardy:** I can't agree with the minister opposite. It is making huge assumptions on what the First Nations feel when they should be involved. From our position and from our discussions with First Nations, they would like to be involved right at the start. Even in an assessment, they would like to be involved. We shouldn't be making assumptions as to what they are capable of doing. I think that is a decision that they would make within their own self-government.

The territorial government should not be saying, "Well, they can't do it," or "It is going to overload them." Let the First Nations make that decision.

I think the amendment brought forward only strengthens what the minister has said..

He always says "involvement in the guiding principles". Yes, that is what this says: involvement in it. It makes it clear throughout, in these clauses, that is part of it, and you don't have to search all over to find it. Unfortunately, clause 27(1) talks about advising them, but it is kind of a contradiction of involvement — you can advise them but you don't necessarily have to involve them.

To me, it is a little bit confusing. To many of the First Nations to whom I have talked, it is confusing. I would hope that the minister is not implying that First Nations aren't capable of being involved at this level. I hope we will see some cooperation in that area. I really do believe that this amendment that we brought forward only strengthens that.

**Hon. Mr. Cathers:** The member is misinterpreting this. In fact, First Nations are involved already at the earliest opportunity. This clarifies in law what is being practised in policy. The determination of whether it is necessary to involve a First Nation immediately prior to commencing an investigation is case specific. It depends on whether those receiving the report believe the report warrants any further follow-up. If it does not, then it is not worthy of further follow-up by its nature.

If they do believe that it requires follow-up, in some cases before an investigation, depending on the nature of the report and what it is reported about — whether the report identifies whether the child is First Nation or non-First Nation or is not specific — that all affects whether the First Nation is informed prior to an investigation or immediately after one is started. However, the guiding principles take precedence over this section of the act and make it clear that the First Nation is to be involved in decision-making at the earliest practicable opportunity.

**Mr. Hardy:** I just believe that, as the minister just pointed out, it's involvement at the earliest possible moment, which would be at the assessment level. That's where it would be.

Is the minister saying the investigation will start and, if they don't think there's anything there, they won't even inform the First Nation? Maybe the social workers within the First Nation governments also have information and that investigation needs to be shared. I'm not sure, but the way it's written, it doesn't seem to be clear.

This amendment is really about just clarifying that and being consistent all throughout. If the word "involved" in the guiding principles states it from the very beginning, then this motion just reinforces that.

*Amendment to Clause 23 negatived*

**Chair:** Is there any further discussion on clause 23?

**Mr. Mitchell:** I could ask this now or in 24, 25, 26 or 27, so I'll ask it now because we continue to refer to clause 27 as the overriding clause in each case. My question is, how is the determination made of exactly what First Nation either a child or the parents of a child are relating to? That is, we're talking about notifying a First Nation at the earliest practicable moment. Are we using as a standard that, for example, the child involved is a beneficiary of a First Nation? A citizen of a First Nation? Because in many cases the First Nations control the database, not the Yukon government.

How is the director to make that determination?

**Hon. Mr. Cathers:** The member is reinforcing the reason why the previous amendment we were discussing would have been problematic. I know we are not discussing the amendment any more, but the issue of when a report is made that requires follow-up, in some cases, those receiving the report know the child is a member of a First Nation and know which First Nation it is. In some cases they do not. If they do not know that, they are not going to pick up the phone and call the health directors of all 14 First Nations and ask if the child might be on the list, when they are dealing with a child — who to the best of their knowledge — could be of First Nations descent, or could be of another ethnicity with no connection to any First Nation. Then, upon initial investigation, the parents will be asked if they are members of a First Nation and which First Nation.

This becomes one of the problems where there have been some challenges in the past and will be in the future undoubtedly. If those receiving the report, the director of family and children's services and staff, do not know if the child is a member of the First Nations and the parents do not identify themselves as being members of a First Nation or identify themselves as being members of a different First Nation, then it is not possible to contact the right First Nation until a little later down the road when the problem will of course be discovered at some point.

This becomes a problem, as members will understand, if there is a report of a family violence situation. If there is a need for an immediate investigation, there may be embarrassment on the part of those who have been reported when they see officials either calling them or showing up at their doorstep, and this of course may involve the RCMP as well.

In some cases there have been problems with parents in abusive situations misidentifying the First Nation when they would appear to be members of a First Nation, or not identify-



ing themselves as a First Nation citizen. But those matters are straightened out at the earliest opportunity, and the First Nation will be informed immediately once that is identified. In some cases, of course, it may be known or strongly suspected in certain communities that somebody may be a member of a First Nation and that allows the ability to check with the First Nation if there is a belief they may be a member of a First Nation.

**Mr. Mitchell:** Mr. Chair, we can talk about it additionally when we get to clause 27(1), but it has come up because that is the section that has been referred to in clause 23, in answer to my previous questions. It appears to be very problematic at the very least. As we well know, it is not at all uncommon in Yukon for children to be of mixed parentage — that is, each of their parents may come from a different First Nation or there may be one First Nation parent and one non-First Nation parent, or the children may be actually in a home where, by definition we discussed earlier, a parent is another person — a grandparent, aunt, uncle or some other family member, who may be of yet another First Nation. It is supposed to be about the child, so presumably it is the child's First Nation that needs to be notified. It seems to me like this is well-intentioned, but not necessarily all that well thought out as to how it is going to work in practice as opposed to in theory.

I would look for some more specific answers than the ones we have had so far as to what steps are going to be taken to ensure proper notification to the correct First Nation at the earliest possible time, because the child themselves may not know.

**Hon. Mr. Cathers:** The member is partially correct; it is not a perfect system. It has been in practice already under child welfare policy, but if a child is not known to be a member of a First Nation and does not appear to necessarily be a member of a First Nation, and upon talking to them or their parents, or whomever was supervising them — if they do not identify them as being a member of a First Nation when asked, or identify the wrong First Nation, this can create challenges in informing the First Nation as early as staff would like to.

This has been worked out and discussed, and solutions have been worked out and will continue to be worked on between staff of the department and First Nations, particularly through their health and social services directors. This can also create a situation — there might be two First Nations for a child that need to be informed. One step that can be taken, if staff suspect that a child is a member of a certain First Nation, particularly because of where they reside, the First Nation may be contacted to see if a certain child is registered as a member. If they are, the problem is solved. If they are not, and they are known not to be a member of that First Nation — this is not a perfect situation. It does require knowing that the child is a member of a First Nation — or suspecting it — and contacting a First Nation in order to follow up on it.

**Mr. Elias:** I would like to engage in this debate a bit. This is key to this being successful. In my experience, some First Nation children can hold a status card that says Bella Coola, B.C. on it, but they may be a citizen of the Tr'ondëk First Nation and a beneficiary of the Vuntut Gwitchin First Nation. This is key to the initial contact, which is why we are bringing this issue up.

If there is a problem here, and the key to initial contact is which First Nation we contact, it is in the best interests of the child. One First Nation might exercise the opportunity to have the First Nation director — they might establish that opportunity here in the legislation — whereas another First Nation may not. I will use my own First Nation as an example. There may be mixed parents. The mother might be a beneficiary of the Champagne and Aishihik First Nations and the father may be a beneficiary of the Vuntut Gwitchin First Nation. The child resides in Haines Junction and has been receiving programs and services from that First Nation for the child's entire life, but they are a beneficiary of the Vuntut Gwitchin First Nation. In the best interests of the child for this initial contact, the answers that we are receiving are that there is no solution to the problem.

I know that many First Nations hold their beneficiary lists and databases with regard to citizens, status and beneficiary status. What is the department going to do to solve this problem for the best interests of the child? That is all we need to hear.

**Hon. Mr. Cathers:** I appreciate the member's concern. I was not saying there is no solution; I was saying there is no perfect solution that has no chance of having an issue occur where a child is not immediately identified as being a member of a First Nation.

However, there are some areas, for example, in the member's community of Old Crow, if there was a case that occurred — in such situations as this, where common sense comes in — it would be very easy to determine if there was any question about whether or not a child was a First Nation citizen. It would be very easy to know which First Nation to begin contacting. Not that the child might not be a member of another First Nation, say, the Tr'ondek Hwech'in First Nation and another one, but it's very easy to determine where to start contacting a First Nation. A key part in doing this determination includes contact and involvement of extended family and other key people connected to the family, as well as working with First Nations in this situation.

Of course, as the member is likely aware, the department does not have a listing of the beneficiaries for all First Nations. That is confidential to those orders of government — by their wish, as well. If this is largely dealt with through common sense and through the investigation steps, as would be taken by any investigator in any procedure — whether it would be this type of procedure or police procedure or others — when they contact those around the child, they would conduct it in an attempt to determine if there is a First Nation connection. If there appears that there is likely to be, but they are not dealing with responsive parties — the child does not know, the child is too young, or the parents are not providing that information — they can begin with a First Nation that would seem to be logical to contact and continue contacting other First Nations if they believe the child is a First Nation citizen, but have not yet been able to identify that First Nation. This is why the language refers to it as early as is practical and provides the ability in emergency situations for immediate action to be taken. If there is an imminent need to protect life and limb, it is necessary for the director of family and children's services or the director of

the First Nations service authority to have the ability to take that immediate action. Then, they can take all reasonable steps in a timely manner to try to identify if there are others who should be contacted who have not yet been involved.

**Mr. Elias:** On the same clause 23, another question for clarification would be, does the director's jurisdiction and responsibilities of the director follow the child in terms of, for example, if a child goes on a sports trip to Ontario to play hockey and they phone home, and the director is aware of an investigation that needs to occur — and the child is in Ontario — does the director have authority and responsibility for that child, who is a Yukon citizen and, if that child is a Yukon First Nation child, do the processes still follow in this legislation, or is there a requirement for the director to have an agreement with each and every province and territory in Canada for that, in the best interests of the child? Again, will the child be looked after if they receive a complaint and the child is on a sports trip in another Canadian province? Does the director have jurisdiction, and does the director have to follow the legislation?

**Hon. Mr. Cathers:** The Yukon's legislative authority doesn't extend beyond our borders so, no, the Yukon director does not have jurisdiction. The director of family and children's services or a First Nation service authority would not have jurisdiction in Ontario, or Alberta, or other places outside our borders; however, there are agreements in place between the Yukon and every other Canadian jurisdiction on the information-sharing surrounding this. The practices and agreements that are common between each and every Canadian jurisdiction in dealing with each other is that the director will inform their counterpart in another province or territory immediately upon becoming aware that it is a citizen of another territory. The legislation of that jurisdiction does apply but, as the member will understand, many of the steps in Canadian legislation have been done in similar manners. There are differences but generally across the country there are the same basic intents and desires to provide the ability for government to intervene when it is necessary to do so for the safety of a child without unduly interfering in the life of the child or the parents' ability to raise their children, and without taking any unnecessary steps in this area.

**Mr. Elias:** Is the minister aware that, in the situation that I presented to him, if there is an obligation for the jurisdiction that the child is in? Is there some agreement between the minister and the rest of the Canadian provinces and territories for them to inform the minister that one of their citizens is in need of help?

**Hon. Mr. Cathers:** Yes, I thought I had made that clear to the member in my response. Yes, if a situation occurred in Ontario, their officials would be required to immediately inform Yukon officials if the child about whom the report had occurred was a Yukon citizen. Conversely — I think the member was perhaps suggesting — if a child called home and reported to a family member and the report came via telephone to a family member in a community that they were having a problem, the Yukon still does not have jurisdiction in the Province of Ontario but the request would immediately be made

through channels from our family and children's services or a First Nation service authority — if one was established — to the jurisdiction having authority, whether that be Ontario or whatever. They would then act under their legislation pursuant to their powers and legal requirements.

*Clause 23 agreed to*

*On Clause 24*

**Mr. Mitchell:** Again, within the clause itself, there is no requirement to inform the First Nation. Perhaps the minister's response to previous questions is the same, that clause 27 applies, but I'll have him state it for the record. Does the child have the right to have a person they name present? Will the child, if of appropriate age, be given the opportunity to have a third party present during an interview?

If we had established the child advocate, for example, that would be a logical person — but we don't have that in this bill.

**Hon. Mr. Cathers:** This allows some flexibility in this area to have a representative of the child's First Nation or other individual to be present. However, because this type of investigation is dealing with what is essentially a criminal investigation, it may be dependent on who is being named or suspected in that investigation.

The whole intent of this clause is, for example, if a child is believed to be being abused by somebody, they have the right to speak to someone without the person who is suspected of abusing them in the room — that they be able to speak confidentially. But it does provide some flexibility for the child if they are not comfortable talking without someone present.

**Mr. Mitchell:** Yes, we well understand the intent is obviously to have the child interviewed in a safe environment and that safe environment would obviously not be a case if the very parent or person acting in loco parentis were present when they were suspected of committing an abuse.

I would ask for the minister to point out which clause in the four subclauses of clause 24 is the one he indicates provides that flexibility for the child to have another person present who may be able to help speak for the child.

**Hon. Mr. Cathers:** It is case specific and I would refer the member to other clauses that do allow some ability in that area. However, there is some flexibility in certain circumstances for a director to exclude others from the room. This is not about an advocacy area. For this type of interview to occur, it would likely occur in situations where there are questions of physical or sexual abuse.

If the member will look at the next clause: "If access to child denied," — so if there is some dispute in this matter, then the ultimate decision would be in the hands of a judge. If the judge is satisfied the director has reasonable grounds to believe the child may be in need of protective intervention and the director has been denied access to the child by a person, the judge may make one or more of the following orders:

"(a) that the person disclose the location of the child;

"(b) that the person allow the director or another person to interview or visually examine the child;

"(c) that the director be authorized to remove the child from the place where the child is located and transport them to a place for an interview or medical examination; and

(d) that a health care provider be authorized to examine the child.”

This is the case. The next clause provides some clarity around this. There is some ability for a director to make the determination that they believe no other individual should be in the room. However, if the child were disputing it, if the parents were disputing it, then it notes that the enforcement around this matter is in the hands of a judge to decide whether or not that occurs.

The beginning of clause 24(1) is referring to the obligations of the parents to allow this to occur. If they refuse to allow it to occur, it would be in the hands of a judge as to whether or not that should occur, and that would include whether or not other individuals should be present in the room.

**Mr. Mitchell:** With all due respect, I think the minister is putting the cart before the horse by referring to clause 25, which addresses the case where access to the child has been denied.

I am not speaking of the case where access to the child has been denied. This talks about interviewing a child, and it says

“24 (1) A parent or person who has been entrusted with the care of a child shall permit the child to be visited and interviewed in private by a director who is conducting an investigation.

“(2) The director may interview the child at the place where the child is located if the director believes it is appropriate to do so.”

Without reading chapter and verse, it says they can also do it elsewhere. What I am asking is, in the case where the parent or person who has been entrusted with the care of the child may not have objected to the interview process, but the director may deem that that person should not be present. So I am asking — you may have a very young child who may be completely overwhelmed by the fact that a stranger has shown up at the house and, at the same time, the parents have asked not to be present because that person, who is not necessarily known to the child, has reason to believe those people whom the child views as their parent, or who may be their parent, not be there because they may be suspected perpetrators of abuse. Now the child, who may be very young, has had that normal support system removed, and the child is on its own.

At the same time, despite all assurances that reasonable efforts will be made in clause 27 to notify a First Nation, this sounds to me for all the world like this is going to occur in a very immediate sense and that notification, which we have not yet had defined, is not necessarily going to have been completed. Again, it doesn't say that the First Nation has to be notified first. It doesn't specifically say that the child may request that there be another person present if the child is confused or intimidated by the process. I guess I am asking: who speaks for the child?

**Hon. Mr. Cathers:** What should be recognized when the member is referring to this is that the people who are conducting this are professionals. They do have training in these matters. These are very sensitive cases. What is referred to in the act is the current practice and has been there since the inception of the *Children's Act*. It certainly has been for many

years backed up in case law across the country. It is the practice, to the best of my knowledge, in every single Canadian jurisdiction — if not in every one, certainly the majority — and provides the ability for a child to be interviewed in these cases. With abuse and psychological matters, as experts in these matters can inform any of us here, things can be very sensitive. A child who has been abused may be likely to cling to the very person who is abusing them. The interview could not take place without the person being present and influencing it.

I can assure the member that these matters are not unique or new to the Yukon.

The new *Child and Family Services Act* does provide more clarity in the legislation, which is already occurring through regulation and policy. However, it spells out what is the current practice. These matters here, again, are very, very sensitive. They are understood by those familiar with these cases. They are exercised with discretion and with care, due to their sensitivity.

**Mr. Mitchell:** I'm not going to belabour this point too much further, except to say to the minister that we've been told that this bill is all about improvements. Now the minister is citing that this is existing present practice. No one on either side of this House, obviously, wants to see any child left in a dangerous situation. Everything that the minister has said is on the presumption that in every case where there is suspected abuse, there is in fact abuse.

The minister should be aware that there are times when somebody reports suspected abuse and after an investigation has occurred, it turns out that there was a misunderstanding. Somebody, well-meaning though they may have been, felt the need to report. In fact, there is going to be a greater need to report, based on clause 22. We also have to have something that also looks after the possibility that, after an interview or an investigation, it will be found that there was not an abusive situation in existence. That is why I was asking about notification of a First Nation and whether there is an opportunity for anybody else to be present to assist the child through the process.

Certainly in the case of removals, the parents may have been taken from the room in a way that is very disturbing to the child and so there is a great deal of emotional upheaval occurring. I will accept the minister's explanations — I know that he has officials with him — that there is provision in some way for there to be a possibility, at the director's discretion, of another person there, although I don't see it here within this clause of the bill. Perhaps when we come to that clause the minister will point it out.

**Hon. Mr. Cathers:** Again, as I pointed out, there is the ability for the director to interview the child in private and without the presence of the parents, or others who may be abusers. That is the intent of this act. This reflects current practice in the Yukon. It is practised across the country in every jurisdiction. This is not unique to the Yukon. This is not new to the Yukon, and although, as the member notes, a significant emphasis on this bill is in making improvements, the emphasis is on improvements. The first and paramount interest in this bill is, and will continue to be, the best interests of the child.

It has been recognized to a far greater extent than in the *Children's Act*. Of importance are achieving the best interests of the child, involving First Nations, involving extended family and involving community, but the paramountcy is the best interests of the child, and there continue to be clauses, including this one, which provide for the ability to intervene and take appropriate and strong action to preserve the safety, health and well-being of a child, and to investigate a report of abuse in the most appropriate way following national best practices in such matters.

This is the current practice; it is practised across the country, and the details around this matter are spelled out in the legislation. There is some discretion in some cases that may allow others to be present, but it is at the discretion of the director of family and children's services or of a First Nation service authority — the trained professionals in these matters — as must be the case.

**Chair:** Is there any further discussions on clause 24?

**Hon. Mr. Hardy:** Thank you, Mr. Chair. I may have missed this. I just wanted to clarify it.

Is there gender recognition when a child is visited or interviewed? I think the minister knows what I mean.

**Hon. Mr. Cathers:** Yes, there is, that occurs in policy and will continue to occur.

**Chair:** Is there any further debate on clause 24? Shall clause 24 carry?

*Clause 24 agreed to*

**Chair:** 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.

*On Clause 25*

**Mr. Mitchell:** Again, I just want to make the point that it says if a director conducting an investigation is denied access to a child, and so forth, the director may apply to a judge for an order under this section. We would suggest that if there is sufficient time to make an application to a judge, then there should be time to notify a First Nation, at least in many cases.

At what point would First Nation notification occur in clause 25? Would it be simultaneous to making a warrant or would it be after receiving a warrant? How is the wording of "all reasonable efforts" applied to clause 25?

**Hon. Mr. Cathers:** I would again refer the member to the guiding principles. I believe that is 2(j), without having flipped to the clause — yes, it is 2(j) that applies to this. I would remind the member that the guiding principles and service delivery principles provide the context, the umbrella, or the parameters for implementing the rest of the act. There must be some flexibility. In this section, it refers to applying to a judge. It still requires the ability to involve the First Nation at the earliest practicable opportunity, recognizing the challenges that we discussed previously around whether there is an issue

in knowing who the First Nation is or some challenge in that area.

It is already addressed. There is the requirement to inform a First Nation of such a process under clause 25 at the earliest practicable opportunity and to involve them as early as possible in that process.

**Chair:** Is there any further debate on clause 25?

*Clause 25 agreed to*

*On Clause 26*

*Clause 26 agreed to*

*On Clause 27*

**Mr. Mitchell:** Again, because this has been referred to so much — 27(1) says: "A director shall, as soon as practicable after commencing an investigation, make all reasonable efforts to contact the child's parents and, if the child is a member of a First Nation, the child's First Nation, to advise them of the investigation."

Because the minister has made reference to this section in answering the questions from clauses 23, 24, 25 and I didn't ask in clause 26 because I think the answer would have been the same. I just want to point out that it says, "...as soon as practicable after commencing an investigation..." The wording still appears to be vague as to how much time might elapse between commencing an investigation and actually contacting the First Nation.

**Hon. Mr. Cathers:** Some of the details of the arrangements — how contact is made, when contact is made, et cetera — are spelled out in the First Nation child welfare policy.

As I mentioned earlier in debate, because of things such as technology and the wishes of First Nations and others regarding in what manner they be informed, due to changing technology and other things, that can change over time. It would not be appropriate to be too prescriptive in the act and create a problem down the road.

However, this does again require — the principles are very clear. The efforts must be made to involve the First Nation at the earliest opportunity. That is clearly identified in many places in the act, including in the guiding principles and service delivery principles, so this matter is addressed.

In some cases, the initial investigation follows that report. As soon as the matter is being formally looked into, that is when the investigation is started. The trigger on this — there may not have been any contact with the family or the children prior to the First Nation being contacted, as I think the member fears there would be. The case is that as soon as something is being investigated, it's an investigation; therefore, again, it would be the earliest practicable opportunity to involve the First Nation.

However, we must not unreasonably fetter, by being too prescriptive, the ability of staff to take action that is necessary if it is urgently needed to protect the safety and well-being of a child. The physical and emotional well-being of a child are paramount and their safety must be paramount. Staff must be given the ability — whether it be staff of family and children's services branch or a First Nation service authority, they must have the ability to take action quickly if that needs to occur.

**Chair:** Is there any further debate on clause 27?

**Mr. Hardy:** Thank you. I don't want to take up a lot of time as we have discussed clause 27 already, and we did have an amendment that we intended to propose for this clause that would make it necessary to contact grandparents and extended family members in the event of intervention.

However, it's obvious that our amendments are not being well-received by the minister, or accepted in any way, shape or form by the government side. So what I will do is just simply file a copy of a proposed amendment to clause 27(1) with the Clerk. Is that all right? I think we can file a proposed amendment.

**Chair:** For motions to have any effect, they would actually have to be moved formally. You can always table a document, yes.

**Mr. Hardy:** Do I read it? Or do I just table it?

**Chair:** Just table it.

**Mr. Hardy:** OK, I have this for tabling under clause 27(1). Does that sound all right? There will be a few more. The choice is for me to get a motion for every one of these and talk for hours. I am trying to expedite it. You are shaking your head; okay.

**Chair:** Is there any further debate on clause 27?

*Clause 27 agreed to*

*On Clause 28*

### Committee of the Whole Motion No. 13

**Mr. McRobb:** I move

THAT Tracy-Anne McPhee, the Yukon's Information and Privacy Commissioner, appear as a witness in Committee of the Whole on Thursday, April 17, 2008 to discuss clause 28 of Bill No. 50, *Child and Family Services Act*.

**Chair:** It has been moved by Mr. McRobb

THAT Tracy-Anne McPhee, the Yukon's Information and Privacy Commissioner, appear as a witness in Committee of the Whole on Thursday, April 17, 2008 to discuss Clause 28 of Bill No. 50, *Child and Family Services Act*.

Is there any debate on this motion?

**Mr. McRobb:** Thank you, Mr. Chair, for the opportunity to express on the record for the benefit of all members of this Assembly the reasons why this motion is being brought forward at this time.

First of all, let's discuss applicability. This motion is applicable because we received a letter this afternoon from the Ombudsman/Information and Protection of Privacy Commissioner, a five-page letter. On page 4 it refers to clause 28, which is the current clause under debate by the Committee.

This letter is dated April 16, 2008. It was sent to the Speaker of the Assembly and it requested distribution to all members of the Assembly.

It was distributed by way of tabling at the commencement of today's proceedings. Consequently, we received it only after Question Period and the subsequent break had concluded, which was about 2:00 p.m. It is now about 4:30 p.m. There hasn't been a lot of time to fully digest this letter; however, it is very clear that this letter details some very important concerns that all members must consider before proceeding any further on this bill. In fact, the Committee should invite the Informa-

tion and Privacy Commissioner to appear as a witness this afternoon in order to further elaborate on her concerns, respond to our questions and provide us with answers to those questions before we proceed any further on this bill.

This letter raises a number of serious issues related to the *Child and Family Services Act* with respect to privacy and access to information issues. This motion would allow the Committee to hear directly from the Privacy Commissioner about these concerns, ask questions and get answers. Consequently, this would also provide members with an opportunity to properly propose amendments to remedy any shortcomings that are deemed legitimate with Bill No. 50.

Members should believe in the principle that this legislation should be done right. There has already been considerable discussion on that point. Allow me to now refer to the Privacy Commissioner's letter and put on the record some of the concerns she has expressed. The first paragraph is an introductory one that I will bypass and start with the second paragraph, which qualifies her concerns due to time limitations.

I will read it verbatim: "At this late date, I am not providing a clause by clause review of the proposed legislation but rather have included here what I think are the most obvious examples of how the proposed Act will adversely affect the privacy and access provisions currently in place to protect the personal information of Yukoners."

The third paragraph references the Privacy Commissioner's general concern. I will also read it verbatim: "The proposed *Child and Family Services Act* will govern work that involves the constant collection and use of personal information. The current privacy protections and access provisions set out in the *Access to Information and Protection of Privacy Act* (*Access to Information and Protection of Privacy Act*) will be significantly affected and in some instances removed completely by the proposed legislation. In addition, the proposed legislation may impact on the ability to access information necessary for an independent investigation pursuant to the *Ombudsman Act*."

The third paragraph sets out the Information and Privacy Commissioner's authority to comment, which I believe would also be good to put on the record, and I'll read it verbatim: "The *Access to Information and Protection of Privacy Act* contemplates that, as Information and Privacy Commissioner, I review and comment on proposed legislative schemes that have implications for access to information or for protection of privacy. Section 42(c) authorizes me to 'comment on the implications for access to information or for protection of privacy of existing or proposed legislative schemes, or programs of public bodies.' In my view, this is a broad responsibility, which requires consideration and monitoring of the privacy and access rights of Yukoners."

The fourth paragraph sets out the purpose of the *Access to Information and Protection of Privacy Act*.

The fifth paragraph explains the Information and Privacy Commissioner's expectations with respect to this bill, and I will read it on the record verbatim as follows: "Given the serious implications of this proposed legislation for the protection of privacy and access to information as well as my responsibilities

under the *Access to Information and Protection of Privacy Act*, I had a reasonable expectation that I would have the opportunity to comment on the specific provisions of the draft legislation which impact the administration of the two Acts.” This is serious stuff, Mr. Chair.

Her sixth paragraph reveals the limited nature of her involvement during the drafting of this bill, and I also feel it’s important to put that on the record verbatim.

“Although I was asked for comment by the *Children’s Act* project staff and Department of Health and Social Services (Department) officials in the fall of 2007, our discussions were limited to the concept of a child advocate and did not touch on protection of privacy and access to information issues in the proposed legislation.”

Mr. Chair, this is another serious concern. The seventh paragraph details when this bill was only provided to the Privacy Commissioner, and I will read it verbatim:

“Upon its introduction in the Legislative Assembly, a copy of the proposed legislation became available to me. As such, the following comments are being provided much later in the process than I would like and in a manner that in my view is not satisfactory.”

Mr. Chair, all members have had this letter for at least a couple of hours. Many members have had the opportunity to read it. There are a number of serious concerns that are set out in this letter. I won’t put them all on the record. I will just merely identify them by topic headings.

The first topic heading is entitled “Sections 179 and 180 Restrict Access to Information by the Information and Privacy Commissioner and the Ombudsman.”

There are a number of serious concerns in that section.

The next heading is entitled “Sections 179 and 180 Restrict Individual Rights to Personal Information”.

Again, Mr. Chair, some very serious matters are brought to the attention of members of this Assembly.

The next section is entitled “Permitted Disclosure of Personal Information with No Assurance of Continued Protection of Privacy.”

Mr. Chair, again there are some serious issues raised by the commissioner and that is the section that pertains to clause 28, which I have already mentioned.

Finally, the last heading is entitled “Paramountcy of the *Child and Family Services Act* over the *Access to Information and Protection of Privacy Act*.”

This section raises once again some very serious issues that must be considered before this bill is passed. The commissioner concludes her letter by saying, and I quote: “Thank you for providing these comments to the Members of the Legislative Assembly on my behalf. Should they have any questions arising from this correspondence I will make myself available to answer them.”

Now, that concludes my quotations from the letter. I will add that we have taken the opportunity to contact the Privacy Commissioner this afternoon. I want to thank the staff in the Liberal office for doing so. We have been advised she is listening to the debate this afternoon and I understand she would be available to appear on short notice.

I would conclude by restating that it is paramount we get this legislation right, not only to best provide for our children but also to ensure this bill does not compromise other existing legislation such as the *Access to Information and Protection of Privacy Act* and the *Ombudsman Act*.

I look forward to all members supporting this motion. Thank you.

**Mr. Hardy:** I appreciate the Official Opposition bringing this motion forward. I think it is timely.

Just as we, earlier on, tried to adjourn debate until people had a chance to look at the comments made by the Ombudsman and Information and Privacy Commissioner in regard to the concerns that have been raised in this letter — we have only just received it today, although it’s dated April 16.

The Member for Kluane has touched on a few of the initial paragraphs but there are other sections in it that raise a lot of serious concerns about access to information and the Ombudsman’s role in that. You have to remember that privacy of information and access to information has been a big concern for many people in this Legislative Assembly. We have to ensure that the department can do their job in this area. It seems that this bill challenges some of that ability.

I think it is really important that we have the person in to discuss her letter, so we can clarify and clear the air on some of the comments in the letter itself.

I am picking up where the member left off: sections 179 and 180. I am just going to read part of it. It gives the director authority to restrict and prohibit access to any “...information or document that is kept by a director that deals with personal history of a child or an adult and has come into existence through any proceedings under this Act or former Act.”

It goes on to say: “The operation of these two sections appear to give the director the discretion to decide whether or not to disclose certain information or documents. This power could significantly impact the ability to access information of documents necessary for me to conduct independent investigations under the *Access to Information and Protection of Privacy Act* and the *Ombudsman Act*”. I think we need a big explanation around this. We need the person who wrote it to be in here and explain that section. In “Sections 179 and 180 Restrict Individual Rights to Personal Information”. Again, I will read a paragraph out of here: “The specific wording of section 179 is curious and if it is intended to apply to only a specific type of record or information held by the director it should clearly say so. I note that the terms —”

#### **Chair’s statement**

**Chair:** Order please. The Chair has given a fair bit of leeway to the Member for Kluane’s explanation about how the Privacy Commissioner should appear before Committee to discuss clause 28. At present, we are not discussing or debating why the commissioner should appear for clause 28 — that is what the motion is. We should be discussing and debating the Privacy Commissioner appearing before Committee of the Whole for clause 28 only; that is what the motion is.

**Mr. Hardy:** Thank you, Mr. Chair. It is unfortunate that the motion is that limited. I think that might have been a

slight miscalculation, restricting our ability to discuss the whole paper. I will try to stay with clause 28.

Clause 28 of the proposed legislation dealing with notification illustrates a concern. The concern is that "... one can imagine many situations in which the department will be providing personal information to outside agencies or individuals who are not subject to the ATIPP act. In their hands, the collection, use, disclosure and control of that personal information will not be protected by the ATIPP act. Examples of such individuals or agencies are: treatment professionals, parents, relatives, foster parents, prospective adoptive parents, doctors, caregivers, community groups or associations and persons participating in family conferences or other co-operative planning process".

So that limits my discussion on the paper; however, it doesn't limit my discussion about having a witness before this bill. This is the discussion in regard to clause 28 that we should have the Privacy Commissioner appear to explain how this bill will impact her ability to do her job. She has indicated that she is ready and available to come before the Committee, just as the First Nations were willing to.

Once again, I think what this is showing is the need to have witnesses speak to the whole Legislative Assembly in order for us to make a good decision, a sound decision and get this act right. I am hoping that the members opposite will not treat these concerns, once again, as they treated the request for witnesses from the First Nations. I hope they will treat the request and the willingness to come before the Legislative Assembly as they treated the witnesses with WCB.

Saying that, I'm not going to go much further on this other than that we support this motion and we're looking forward to having a witness come before us to speak on the bill.

**Mr. Mitchell:** I will speak very briefly to this motion because the two previous speakers have covered most of the points I would make. In particular, I want to thank the Member for Kluane for bringing forward this motion in order to ensure that, if we pass legislation here, it isn't legislation that is going to find itself challenged for being in conflict with other legislation.

Clause 28, which is what the proposed motion addresses, talks about, "A director shall make all reasonable efforts to report the results of an investigation as soon as practicable to

"(a) the child's parents;

"(b) if the child is a member of a First Nation, the child's First Nation; and

"(c) the child, if the child is capable of understanding the information."

The concern expressed in the letter that we only received this afternoon when it was tabled by the Speaker, addresses this first in regard to clause 28, and that is why the Member for Kluane properly raised it at this point.

The concern is that the Ombudsman/Information and Privacy Commissioner has not had an opportunity to previously review the bill in its entirety, but only was consulted about the specific question of a child advocate, which as it turns out is really not included in this bill.

When we previously asked for witnesses to appear, the Health and Social Services minister went to great lengths to

suggest that there had been extremely adequate consultation over five years with the First Nation leaders who wanted to provide their expertise. We disagreed. When we suggested that they had something to offer this Assembly, in the interest of getting it right, however, they made the case, and the case has been made again by Grand Chief Andy Carvill today in a document entitled —

#### **Chair's statement**

**Chair:** Order please. The Chair commented earlier about staying on topic with regard to Committee of the Whole Motion No. 13. I will read the motion just so everybody is familiar with what the motion is:

THAT Tracy-Anne McPhee, the Yukon's Information and Privacy Commissioner appear as a witness in Committee of the Whole on Thursday, April 17, 2008 to discuss clause 28 of Bill No. 50, *Child and Family Services Act*.

**Mr. Mitchell:** Thank you, Mr. Chair.

I will conclude my remarks very shortly — that is to say that in this case, this very letter that we have on our desks, for those who have taken the time to read it — as the minister likes to say — speaks specifically to the concerns about this particular clause as well as other clauses.

The expertise of the proposed witness is not at issue in this Assembly, since the commissioner is actually hired by approval of this Assembly.

And finally, this is new input that was apparently not requested by the minister of the Information and Privacy Commissioner in the drafting, or the consultation to the drafting, of the bill. Therefore, I would suggest that the motion is very germane to the issue at hand. There is indeed information we can receive from an expert witness. The witness is available and would indeed like to address this Assembly, and we should avail ourselves of that offer in the interests of getting it right and not enacting legislation that will then be subject to future court challenges.

**Chair:** Is there any other debate on this motion?

Do members agree with the motion?

**Some Hon. Members:** (Inaudible)

#### **Count**

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

#### *Bells*

**Chair:** Order please. Committee of the Whole will now come to order. The matter before the Committee is Committee of the Whole Motion No. 13:

THAT Tracy-Anne McPhee, the Yukon's Information and Privacy Commissioner appear as a witness in Committee of the Whole on Thursday, April 17, 2008 to discuss clause 28 of Bill No. 50, *Child and Family Services Act*.

All those in favour please rise.

*Members rise*

**Chair:** All those opposed please rise.

*Members rise*

**Chair:** The results are six yea, nine nay.  
*Committee of the Whole Motion No. 13 negatived  
On Clause 28*

**Mr. Hardy:** In light of the concerns expressed by the Ombudsman relating to this clause, as well as clauses 42, 132, 177, 178, 179 and 180, which members have not had an opportunity to —

**Chair:** Order please.

**Mr. Hardy:** — I move that we report progress.  
Thank you, Mr. Chair.

I will file with the Clerk, two more documents to clause 28 that would make it necessary to report results of an investigation to grandparents or extended family members with custody, and provide information to people who make the original complaint.

**Chair:** Is there any further debate on clause 28?

**Mr. Mitchell:** I would like to ask the minister whether he has satisfied himself that clause 28 does not impinge on the authority of the *Access to Information and Protection of Privacy Act*, as has been suggested by the Information and Privacy Commissioner in her letter of April 16.

Has the Health and Social Services minister had discussions with the Minister of Justice and Justice officials and satisfied himself that the concerns expressed by the Privacy Commissioner are not real and valid concerns, and he has no additional concern that the bill in front of us will exert unnecessary authority over another piece of legislation, and will, as a result, cause a potential for members of the public to not be able to avail themselves of the access to information and privacy legislation, as a result of the actions we are taking here?

**Hon. Mr. Cathers:** I received the commissioner's letter today, of course, and Justice officials are reviewing it, and a comprehensive response to address the commissioner's concerns will be tabled by the Premier next week. Indeed, we are confident that the Justice officials, who spent almost a year on legal drafting related to this, have done their jobs, and that will be provided by the Premier in a letter next week.

**Mr. Mitchell:** Well, I believe what I just heard the minister say is that he doesn't know the answer to the question, but he's confident that the answer to the question will be the answer he's hoping to hear. Now, the Information and Privacy Commissioner is a known legal expert. She has a deep background in these matters and has served in various other capacities in her legal career prior to this, and that has led her to certain conclusions that are of great concern to those of us on this side of the House who are charged with reviewing this draft legislation and, at the end of the day, voting on it.

I, for one, would like my vote to be an informed vote, and I am concerned that what I just heard from the minister is: "Let's go ahead and vote on the bill and then, next week, we'll get a ruling — or, rather, we'll get an opinion from Justice officials as to the legality of what we've already passed." That would seem to not be the prudent way to pass legislation.

So, again, I would ask the minister if he has received an opinion — not hopes to receive one — from Justice officials on this matter.

**Hon. Mr. Cathers:** As I have already addressed this, I will be very brief.

Yes, the opinion has been received. A letter addressing the concerns will be presented to members by the Premier next week. Justice has done their work. Justice has confirmed that they have reviewed the matters related to information and privacy, and it involves senior legal drafters and a considerable amount of time by a number of legal experts who are very familiar with all matters related, not only to access to information and protection of privacy, but to standard drafting of child welfare legislation in Canada. I am certain that the letter will address the concerns. I have full confidence that Justice officials did their work and, yes, they have already reviewed and given an opinion on the matter.

With that, I would urge that we move on and continue further review of the clauses of this act.

**Mr. McRobb:** Thank you, Mr. Chair. I am going to try a slightly different tack here. The Privacy Commissioner's letter indicates a scenario; she goes on to express one, and I will just quote it. "However, one can imagine many situations in which the Department will be providing personal information to outside agencies or individuals who are not subject to the *Access to Information and Protection of Privacy Act*. In their hands the collection, use, disclosure and control of that personal information will not be protected by the *Access to Information and Protection of Privacy Act*. Examples of such individuals or agencies are: treatment professionals, parents, relatives, foster parents, prospective adoptive parents, doctors, caregivers, community groups or associations and persons participating in a family conference or other co-operative planning process."

There appears to be a significant concern with respect to the disclosure and control of that personal information. So much though — in fact it has reminded me of a similar concern I've heard from the same Health and Social Services minister and his predecessor. The issue that comes to mind is prescription tracking.

We have asked —

#### Chair's statement

**Chair:** Order please. I'd like to remind the member that we are debating clause 28, and discussing prescription drug tracking does not pertain to clause 28. Mr. McRobb, you do have the floor.

**Mr. McRobb:** Thank you, Mr. Chair. For your information, I am —

#### Chair's statement

**Chair:** Order please. The Chair is not to be interjected into debate. The Chair is a neutral party. Mr. McRobb, you do have the floor on clause 28.

**Mr. McRobb:** Yes, and I do recognize the Chair is interjecting in debate.



**Chair's statement**

**Chair:** Order please. Mr. McRobb, you just stated that the Chair is interjecting into debate. That communication toward the Chair is not warranted. You have to respect what the Chair says. All the Chair did was remind members to focus their debate on clause 28. I am not part of the debate, Mr. McRobb.

Mr. McRobb, you do have the floor.

**Mr. McRobb:** Thank you, Mr. Chair. I must have misunderstood.

Now, for the information of all members, what I am doing here is giving a comparative example. This comparative example does not pertain 100 percent to this clause because it cannot; otherwise it would be talking to this clause —

**Chair's statement**

**Chair:** Order please. The Chair isn't here to debate with members on the rulings the Chair has made. If the members feel that the Chair has not made a proper ruling they can bring it up with the Speaker in writing. At present, the Chair has ruled that the debate should be focused on clause 28.

Mr. McRobb?

**Mr. McRobb:** Thank you, Mr. Chair.

A concern I have with this matter in clause 28 is reminiscent of another clause of another matter that I will not identify. Here is the comeback from the government of the day, which happens to be the Yukon Party, to that clause. They could not implement this other one that I cannot mention.

**Some Hon. Member:** (Inaudible)

**Point of order**

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

**Hon. Mr. Cathers:** It's a standard principle of this House that one may not do indirectly what they will not do directly. The Member for Kluane is clearly attempting to challenge a ruling by the Chair.

**Chair's ruling**

**Chair:** Order please. There is no point of order, but the Chair does want to clarify something. The Chair is not describing what you can and cannot talk about. I just don't want members to debate what the Chair's ruling is. That is what I was referring to earlier, in the previous discussion.

Mr. McRobb, you do have the floor.

**Mr. McRobb:** Now, I do recall the Yukon Party government's response to this other matter that I won't identify. That response, which was related to privacy issues, including one that sounds quite extreme and outlandish but is one the Yukon Party gave, is that any information going Outside can actually get in the hands of the CIA. That is correct. That is what the government said. That is why I wouldn't introduce this other —

**Some Hon. Member:** (Inaudible)

**Point of order**

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

**Hon. Mr. Cathers:** Mr. Chair, I believe that the Member for Kluane is not only confused, but lost. He does not realize what we are debating. I would ask that —

**Chair's ruling**

**Chair:** Order please. There is no point of order. I would like also to inform all members that if they are standing up on a point of order, please state which Standing Order is being broken.

Mr. McRobb, you have the floor.

**Mr. McRobb:** Thank you, Mr. Chair.

Now, my point again was one that was made by the government in response to this other matter I will not mention. Part of the reason we were provided was that if information goes outside our border, we lose control and it could even fall into the hands of the CIA. This came from the Yukon Party Health minister and/or his predecessor.

I am wondering why this government now feels it can have it both ways. Why does it now feel this privacy matter is no longer a concern when it comes to this bill, when it is on this other matter that I won't mention?

I would like to ask the minister why he does not have a concern with this information once it goes outside our borders for the reasons expressed here by the Privacy Commissioner?

**Some Hon. Member:** (Inaudible)

**Chair:** Is there any further debate on clause 28?

**Mr. McRobb:** Let the record show, Mr. Chair, that the minister refused to stand and defend his bill and defend the record of the Yukon Party. He sat in his chair and called "clear".

Well, Mr. Chair, so much for a transparent and accountable government. The only recourse we have is to try to expose them for being not so transparent and not so accountable. This is one more example that clearly demonstrates how notorious this government is.

I want to ask again to the Health and Social Services minister: is he not concerned about these privacy issues as clearly set out by the Privacy Commissioner in this letter dated yesterday that we got but three hours ago? Is he not concerned?

**Some Hon. Member:** (Inaudible)

**Mr. Mitchell:** I previously asked the question about whether the minister had satisfied himself that the concerns were not warranted. The minister responded at that time that they had sought a legal opinion from the Department of Justice. He then went on to say that that legal opinion would be provided to the members of this House next week.

My question for the minister is — and I hope he is paying attention, because it is not a laughing matter — if we are supposed to make an informed decision in this House on this legislation today, on Thursday, April 17, and the minister has stated he has an opinion that would answer this question, why will the minister not make the opinion available to us today, but rather say he will make it available next week? Is there some reason why the opinion, which he says is already in hand and his office is close by, can't be made available to us now so that we can see how it impacts clause 28 and the other cited clauses?

**Chair:** Is there any further debate on clause 28?

**Mr. Mitchell:** Yes, Mr. Chair. I'm asking a reasonable question. It's a follow-up question to the minister's response that he has a legal opinion and that he will make it available.

I would understand if he said, "We have a legal opinion, but we cannot make legal opinions available." There is some precedent for that. But I will ask the minister again — instead of sitting in his chair and saying, "clear, clear, clear," — it would be clear if he would make available the legal opinion.

Will he stand on his feet and tell us he is going to provide the legal opinion?

**Chair:** Is there any further debate?

**Mr. Edzerza:** I have listened to this with a lot of interest because there is a major concern here — a major concern. Once again, the government is choosing to take it at leisure and to bank on their numbers to be able to push things through. At the end of the day, they have to live with that.

I would just like the minister to explain one thing to me, and that is "reasonable efforts." Could the minister explain what "reasonable efforts" would mean for the director? It says, "The director shall make all reasonable efforts..."

I'm concerned about the word "reasonable" here.

**Chair:** Is there any further debate on clause 28?

**Mr. Edzerza:** If the minister and the government side are unwilling to answer any questions, I move that we report progress.

#### Chair's statement

**Chair:** On the motion to report progress, that is not in order at present. The motion to report progress cannot be moved until some intermediate proceedings have occurred. Intermediate proceedings do not include debate; they include procedural matters such as moving a motion or amendments.

Is there any further debate on clause 28?

**Mr. Mitchell:** I have a question for the Health and Social Services minister. In clause 28(3), it states: "The director shall make all reasonable efforts to provide the person who made the initial report with information about the results of the investigation as the director determines reasonable in the circumstances."

Can the minister illuminate us on how that can be done without causing personal information to be provided to individuals who are not subject to the *Access to Information and Protection of Privacy Act*?

**Chair:** Is there any further debate on clause 28?

**Mr. Edzerza:** I find this quite disappointing, actually, and I believe that the minister does have an obligation to enter into debate here. There are still a lot of questions that are unanswered here. And this is exactly the reason why a lot of the First Nations are not supporting this legislation. I believe the minister used the same attitude when the consultations were taking place. That's what's happening here today — "It's my way or the highway. We don't have to do anything; we've got the numbers. You can lump it or leave it. We're not going to be concerned. Who is the Information and Privacy Commissioner to tell us that we made a mistake?"

I believe that, with this concern being brought in here, it probably now makes five legal counsel who have expressed grave concerns about things in this act, yet the minister chooses to snub everyone and say, "Well, we're going to do it our way, and we don't have to listen to anybody else out there."

Maybe the message he is sending is, "If you don't like it, don't vote for us next time." I hope a lot of people are paying attention to this because that might happen.

This act just so happens to be one act that is going to have the most impact on a group of people in this territory; it could be positive or very negative. When it is tipping the scales toward the negative side, I believe that the government has a moral obligation to show a little humbleness. You know that it is possible that they can make a mistake. As much as they would like to believe they are mistake-proof, I don't believe anybody is.

The minister refuses to enter into debate on the very reasonable request from the opposition. Reasonable efforts could mean anything. Reasonable efforts could mean that they made one phone call and no one was home. Reasonable efforts could mean they sent a letter to somebody's mailbox when they were on holiday in Hawaii and never got back for a month, so they got no response in the required time. It could mean that they had given reasonable effort into trying to get a response from some of the parties in question. Again, like I said, those individuals could be on holiday. They could be in Europe. They could be anywhere.

Because the director did not get a response within a week or two weeks, it could be deemed that there is no interest there to be able to really warrant any more consultation whatsoever or efforts to try to get in contact with the person in question.

Again, Mr. Chair, I have grave concerns about this because when we are talking about investigations, we are talking about the possibility of totally destroying a person's life — whether there is substantial evidence or whether it is malicious reporting; who knows, it could be a number of things.

Reasonable efforts are not good enough when it comes to investigating any kind of abuse that might be happening to a child, whether it is in the school, or the community — regardless of where it is.

The other part in here that concerns me is we go to where the director "shall", and then a couple of lines down we undo all of the meaning to "shall". For example, subclause (4): the director "may" report the results of the investigation. Again, that word "may" — the word "may" that has caused so many problems within First Nations. We know all too well what it means to have dealings with family and children's services with regard to our children. The "may" word has always worked against the First Nations — always.

As an advocate for 20 years plus, I have always had a problem with this word: may. It has been used negatively too many times. When we go back to question some decision that was made, it's always brought to our attention that it says that the director may do something, which does not give specific direct orders that a director has to do it. All it's saying is that it's at the director's discretion.

Sometimes, the director is not perfect — nobody is — so, again, it is a very serious issue and the minister has to at least show some concern. It's starting to look as though the only concern the Yukon Party has now is to make sure that they can have somebody to pair with them when they go on a trip. That's important.

When it comes to something that is as serious as the *Child and Family Services Act*, they are going to make sure that everyone is here so they can vote down anything — any amendment, any improvement that the opposition may be able to recommend. It is unfortunate.

I think that many First Nation people are really going to remember this for the future. I certainly hope they do, because the attitude that is being demonstrated is pretty well on par with the federal Conservative Party toward First Nation people: it is not important until election day, and that is unfortunate. We are not partners. This word that is scaring the Yukon Party and the Conservative Party to death is “co-governance”. It is just a word. It means that you are willing to share something.

I never heard one First Nation government say that they want to have veto power over the Yukon government and totally annihilate any kind of initiative that they might bring forward. Mind you, it would be a good idea. As a First Nation person, I would say it would be a marvellous idea if they were able to do that, especially when the Yukon Party is going to come in and totally take over their lands without proper consultation and then take them to court to prove a point. The only point that they are proving is that they've got a lot more money and a lot more access to legal counsel than most.

So again, this whole attitude — and that's all it is. It's an attitude, because it doesn't make any common sense. For the director to simply holler out “clear” is not being responsible. I know the Yukon Party and I know quite well what drives them, because I was on that side and that's why I'm not there anymore. It is to follow the party line. Some people will dance when the strings are pulled and others will cut the strings.

Again, I think that it is just not acceptable that the minister could actually just sit across the floor and grin and smirk at questions asked that are very reasonable. They are very legitimate and it is unfortunate that all the citizens in the territory can't watch this, because maybe there would be a lot more seriousness put toward this very important act, and clause 28 is

**Chair:** Order please. Seeing the time, the Chair will rise and report progress.

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

**Speaker:** You have heard the report from 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 p.m., this House now stands adjourned until 1:00 p.m. Monday.

*The House adjourned at 5:30 p.m.*

**The following Sessional Paper was tabled April 17, 2008:**

08-1-71

Child and Family Services Act (Bill No. 50): letter (dated April 16, 2008) to the Speaker, the Hon. Ted Staffen, from Tracy-Anne McPhee, Ombudsman and Information and Privacy Commissioner (Speaker)