

Whitehorse, Yukon
Monday, April 21, 2008 — 1:00 p.m.

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

Prayers

DAILY ROUTINE

Speaker: We will proceed with the Order Paper. Are there any tributes?

TRIBUTES

In recognition of HMCS Whitehorse and crew

Mr. Inverarity: I rise today on behalf of Members of the Legislative Assembly to pay tribute to the 10th anniversary of the commissioning of the *HMCS Whitehorse*. The *HMCS Whitehorse* is the second ship to proudly carry that name. The ship was commissioned on April 17, 1998 in Esquimalt and now serves proudly as part of Canada's Pacific fleet. The Hon. Ione Christensen is the sponsor of the *HMCS Whitehorse*, or "ship's mom" as the crew affectionately call her.

The *HMCS Whitehorse* is one of 12 Kingston class maritime coastal defence vessels that provides the naval reserve the capability to fulfill its vital role in providing national security and enforcing Canadian sovereignty in waters that are under Canadian jurisdiction.

The fleet is crewed primarily by naval reservists from the reserve divisions across Canada. All but two of the positions of the crew of approximately 35 are filled by these naval reservists.

The ship is a multi-role vessel and is used in a variety of missions, including costal surveillance and patrol. Payloads can be added to provide ocean-floor mapping and mine counter-measure capabilities, including mine-sweeping and bottom-object inspection.

Ships' crews always bond with the city they represent. Each year the commanding officer and a number of the crew members make their annual visit to Whitehorse, which enables them to further enhance the relationship between the city and its namesake ship.

It also allows citizens of Whitehorse to meet with the sailors and to gain a better understanding of the objects of the job that they perform. The *HMCS Whitehorse* crew is proud of their namesake and are great ambassadors for our city.

Whitehorse's crew take part in many special events and activities that go on in our capital city. In 2007 some members of the crew had volunteered for the Canada Winter Games and also participated in the closing ceremony of the games by taking down the games official flag.

Two members of the crew stayed on in the city for an additional week to assist with the preparations for the cadet national biathlon that was being held in Whitehorse.

Earlier this year, Lieutenant Commander Brad Henderson, along with Whitehorse mayor Bev Buckway, presented the prizes for the 2008 snow sculpture challenge during Sourdough Rendezvous.

This past Friday, there was a reception held on board the ship in Skagway. On Saturday afternoon, the City of Whitehorse hosted an anniversary celebration in Shipyards Park to meet the public or have the public meet with the crew, and also hosted an anniversary dinner on Saturday night. At the dinner, the City of Whitehorse was presented with a gift of the ship's coat of arms. The ship's motto is "Fortune favours the daring".

We appreciate the bond that the ship and its crew have with our community and, on behalf of all Yukoners, we thank you for being goodwill ambassadors for the Yukon. Thank you for your service to our country. We wish you well. May God bless all of the *HMCS Whitehorse* crew and all those who sail upon her.

Speaker: Are there any further tributes?
 Are there any introductions of visitors?
 Are there any returns or 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. Nordick: I give notice of the following motion:
 THAT this House urges the Government of Yukon to share the past experiences and best practices that it garnered in providing bilingual services in the 2007 Canada Winter Games with the Vancouver organizing committee for the 2010 Olympic and Paralympics Winter Games.

Mr. Mitchell: I give notice of the following motion:
 THAT it is the opinion of this House that the Yukon Ombudsman and Information and Privacy Commissioner be invited to appear as a witness in Committee of the Whole to provide input relating to the *Child and Family Services Act*; and that this bill not proceed any further until such an invitation has been issued.

Mr. Edzerza: I give notice of the following motion:
 THAT this House expresses its opposition to war and militarism for their disastrous impacts on people and the natural environment.

Mr. Cardiff: I give notice of the following motion:
 THAT this House urges the House leaders to renegotiate the length of the current legislative sitting so that major pieces of legislation and the massive budget that the Yukon government has introduced can be thoroughly and adequately debated.

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

QUESTION PERIOD

Question re: *Child and Family Services Act*

Mr. Mitchell: I have a question for the Minister of Health and Social Services on Bill No. 50, the *Child and Fam-*

ily Services Act, which is currently being considered by this House. Many Yukoners have expressed their concern with this piece of legislation. Yukon First Nations have identified areas that they feel need to be addressed. Members of both opposition parties have attempted to make constructive amendments, and last Thursday we heard from Yukon's Ombudsman and Information and Privacy Commissioner regarding her concerns with sections of this bill.

The opposition has real and genuine concerns with this legislation. Yes, there are good things in the bill and we acknowledge the hard work of government officials and others who worked on it. However, there are problems with this legislation that should be addressed. Will the minister take back his bill, review the identified parts and resubmit an improved version in the fall sitting?

Hon. Mr. Cathers: I would again point out to the member opposite that this bill is the result of a significant amount of work over almost five years. In fact, the clauses to which the member was referring were consulted on with the previous Information and Privacy Commissioner. Those matters have also been drafted by the Department of Justice. We're confident the officials have done their work. They have expertise in information and privacy legislation as well as in child welfare legislation. Officials from Justice will be working with the Information and Privacy Commissioner.

Again, coming back to the legislation, I would point out to the member opposite that, through the good work of officials, representatives of the Council of Yukon First Nations, through the joint public consultations, joint policy development and joint informing of the legal drafting, we have got it right. This is a significant step forward in legislation for Yukon children and families.

Mr. Mitchell: The minister is quick to praise the good work of the Council of Yukon First Nations but ignores their request to have this bill set aside. As was pointed out by Yukon First Nations and the Ombudsman, this bill is flawed. It does not represent the desires of many Yukoners and possibly will contravene existing legislation. It needs to be fixed.

We're not going to criticize this minister if he stands today and tells this House he will take the bill back and have another look at it. In fact, we will be the first to give him credit.

What I am promising this minister, however, is that the Official Opposition will be merciless in our criticism if he persists in moving forward, despite the issues that have been raised, and uses the government's majority to pass this flawed bill.

Again, I ask the minister to display his responsibility to Yukoners and simply take the bill back until the fall sitting. Will he do that?

Hon. Mr. Cathers: Well, Mr. Speaker, I will accept the Leader of the Official Opposition's word on that. In fact, the Official Opposition is nothing if not merciless in their approach in this Legislature.

This legislation has been the result of a significant amount of work by officials, not only within the Yukon government's Department of Health and Social Services and Department of Justice, but also with the Council of Yukon First Nations, the

joint public consultations, joint development policy, and joint informing of the legal drafting.

The work has been done. This is good legislation. The drafters in Justice who dealt with this legislation are familiar not only with information and privacy legislation, but child welfare legislation. The concerns to which the member refers, brought forward by the Ombudsman — I again remind the members that these matters were consulted on with the current Ombudsman's predecessor in that role. That discussion occurred and officials have done their good work, as they should do. We have confidence that they have done their job.

Mr. Mitchell: This government consults and listens to Yukoners when it is in their political best interests to do so, but in all other matters it merely dismisses it as an opinion that is best disregarded.

They are now telling us that they consulted with the previous Ombudsman. It is the current Ombudsman who has brought these concerns forward, and while it is the eleventh hour, it is not too late.

I can only describe this attitude as being arrogant. It is an attitude that was displayed to Yukon First Nation leaders in refusing to allow their voices to be heard, and now this top-down model of governance is being displayed in ignoring the current Ombudsman.

There is no better time to stop and change and mend their ways than to do so today. It is important not only to get this bill right, but also for it to be seen and perceived by all Yukoners as being right. That is this minister's responsibility.

Will this minister simply stand on his feet and say that, in the best interests of Yukoners, he will take Bill No. 50 back and promise to bring it forward in the fall, improved?

Hon. Mr. Fentie: Mr. Speaker, it's clear that the Leader of the Official Opposition is really emphasizing the Privacy Commissioner's presentation here by way of letter through the Chair. The government has done the appropriate thing. We are quite sure that in the drafting of this bill all care and caution was taken in all clauses of the bill, as always when drafting takes place.

Furthermore, what is paramount here is indeed the protection of children, and the appropriate consultation with the Information and Privacy Commissioner has been taken. The Department of Justice is working with the Information and Privacy Commissioner to address the commissioner's concerns, as they should. We'll leave that in their hands and the bill will go forward because it is a drastically improved bill from the one that we have in place today. This is about the best interests of children.

Question re: *Child and Family Services Act*

Mr. Mitchell: Mr. Speaker, Bill No. 50, which is now before this House, is very important to our children. It is imperative that we get it right. It should have been amended years ago but this government was busy consulting, but not listening to what they heard.

It has been the practice to consult with the Ombudsman's office prior to bringing forward new legislation. If this government had done that, it would not be in the mess that it finds itself in today where it is now holding those consultations while

we debate the bill. If it had reflected more on what it heard from First Nations, then it would not be in the mess it is in today. If it were not so arrogant and cavalier in its attitude, it would not be where it is at today. Unfortunately, it is guilty of all three, Mr. Speaker, and that is where it finds itself today.

Take the bill back and do it right. Will the minister do that?

Hon. Mr. Fentie: The Member for Copperbelt is using a lot of adjectives, except the one of “empty of substance”, and that is the substance of the question. We are doing the appropriate thing. The consultation with the Privacy Commissioner — that’s not happening. We’re addressing the Privacy Commissioner’s concerns as they are addressed in the bill, as they should be. Again I repeat: great care and caution is taken when drafting legislation of this nature — of course. In all the legislation that is drafted, we must ensure we do our due diligence, when in this case that has been done. What is paramount is the protection of children, and the appropriate process is being taken by the Department of Justice in dealing with the Privacy Commissioner’s concerns. They have been addressed in this bill as they were in the previous bill.

Mr. Mitchell: Well, Mr. Speaker, I have news for the Member for Watson Lake. What’s empty of substance is a commitment to consult after the bill is tabled and while it’s being debated. That’s what is empty of substance. I do not know why this Premier and this Health and Social Services minister insist on digging this hole deeper. Everyone is wrong from time to time. A real leader recognizes that and accepts responsibility for his or her actions. This minister must take a break, because he’s digging non-stop. All Yukoners want is the best legislation possible for the protection of their children. This top-down attitude that we’ve seen so far from this government, of telling us “Don’t worry, we’ll look into it after the fact,” is simply wrong. Under this government the courts are wrong, the Auditor General is wrong, the Ombudsman is wrong — who will be next, Mr. Speaker?

Will the Premier stop his government’s autocratic approach to governing and listen to the people? Will he instruct his minister to fix Bill No. 50?

Hon. Mr. Fentie: The only thing wrong here is the Member for Copperbelt’s assertions — they’re all wrong, incorrect, empty of substance, and they are not supported by the facts.

I will repeat the answer to the member. Great care and caution is taken in drafting legislation and in this one due diligence was done to the greatest detail. The paramountcy here is the protection of children. The Privacy Commissioner’s concerns are addressed in the bill; the Department of Justice is working with the Privacy Commissioner on those issues as they should. That is the appropriate approach — not listening to the incorrect information the Leader of the Official Opposition is now putting on the floor of the Legislature.

Mr. Mitchell: For the benefit of the Member for Watson Lake, the information on the floor of this Legislature is the information that was tabled here last week from the Privacy Commissioner and the information that was tabled here last

week from the Grand Chief of the Council of Yukon First Nations — that’s the information that he now says is wrong.

This minister must realize that there are several areas under the Health minister’s watch where he simply hasn’t been able to get the job done. It appears that no amount of persuasion is going to change this minister’s attitude or this Premier’s attitude.

Perhaps the minister will approach his Premier and ask to be relieved of his responsibility for this bill, so that another minister may bring it forth in the fall sitting, reflecting the input of First Nations, the Ombudsman and any other Yukoner with a concern with this proposed act.

Will the Health and Social Services minister do that?

Hon. Mr. Fentie: Once again, the Member for Copperbelt is wrong in his assertions. There has been a great deal of input by all involved in this process — five years of input, Mr. Speaker, which has brought us here today with an act before the Legislature that dramatically improves our ability to take care of children. The paramountcy here is children.

If the members want to do the appropriate thing, as they should, they should debate the bill constructively. Amending semicolons, commas and periods is not constructive debate, or amendments that improve or change the bill in any way, shape or form.

What has to happen here is the Official Opposition — the opposition in this House — had better get it straight. It’s time for constructive debate instead of political gamesmanship.

Question re: *Child and Family Services Act*

Mr. Hardy: On Thursday we tabled a letter from the Yukon’s Ombudsman and Privacy Commissioner, expressing serious concerns about the *Child and Family Services Act* that is currently under discussion. In that letter, she pointed out that one of the duties of her office is to review proposed legislation to see how it would interact with the existing *Access to Information and Protection of Privacy Act*. She also identified several areas where she feels the proposed *Child and Family Services Act* could be in conflict with the ATIPPA act.

Can the Minister of Health and Social Services explain why this Privacy Commissioner was kept out of the loop when this act was being drafted and why she was not allowed to see it until it was already tabled in this House?

Hon. Mr. Fentie: That has been answered already, Mr. Speaker. As I said, due diligence was taken in this matter, and that addresses all possible impacts with all other acts that may be related to the *Child and Family Services Act*.

I think it is clear here that the members opposite are taking this in an inappropriate direction. The appropriate approach is exactly what is happening today. The Department of Justice is working with the Privacy Commissioner’s office addressing those concerns to point out where they are being addressed and met in the act itself.

Mr. Hardy: The minister has said that the Justice officials are reviewing the Privacy Commissioner’s concerns, and we will have a response sometime this week, and yet the minister wants the act to be passed before that is done.

At the same time he wants MLAs to continue discussing the bill as if the Privacy Commissioner’s concerns don’t matter.

This is not making sense. Once again we have the government deciding in advance what conclusion they expect their lawyers to reach, just as they did with the asset-backed commercial paper review.

The trouble is these are the same people who drafted the bill. How can we expect them to recognize it may be flawed? Will the minister now reconsider his position and allow the Privacy Commissioner to appear as a witness before Committee of the Whole, even if it means having a special sitting for that purpose some evening this week? That is the question. That is all I really need an answer on.

Hon. Mr. Fentie: On behalf of Justice staff and those who bear the responsibility for drafting legislation, I am sure they appreciate the faith that the Leader of the Third Party has just placed in their abilities — truly unfortunate.

As I have said, and I will repeat, the appropriate approach to the matter is being taken. The Department of Justice is pointing out to the Privacy Commissioner the areas that address her concerns. What is clear here, though, is that there is a misunderstanding by the opposition members on why the act is structured as it is in those sections. Let me help the members opposite understand that. What is paramount here is the protection of children.

Mr. Hardy: That's why I question this bill. It is for the children. That's why we on this side of the House have the right to ask these questions, no matter how much the government feels we don't. But I also can understand the box the minister is in. How could he possibly allow the Privacy Commissioner to appear as a witness when he refused to hear the First Nation leaders who have very serious concerns about this bill? What Yukoners want to know is why the government insists on ramming this legislation through when it is obviously flawed. The minister won't allow witnesses. He won't accept any opposition amendments to improve the bill. I do not agree with delay until fall, as the Liberal leader wants. I want to see evening sittings or an extended sitting, so we can do the job properly. Will the government at least allow that?

Hon. Mr. Fentie: What would really contribute positively to the overall situation is if the members opposite would at least attempt to constructively debate the bill. If they did so, they would find that all these issues that they are bringing forward are addressed in the bill. There are significant changes in this bill that they appear to be afraid to debate. That's the problem here. The fear the opposition has is that the hole being dug is their hole.

Question re: Faro as an industrial training centre

Mr. Edzerza: The Minister of Education stated he would encourage recommendations from the opposition benches, so I have one for him.

Reclamation of the mine site in Faro is expected to go on for many years at a cost to Canadian taxpayers of several million dollars. As someone who is familiar with the Faro operation, I think we may be missing out on a golden opportunity to use that site for a positive purpose. Would the minister consider approaching the Yukon College Board of Governors to discuss the possibility of using Faro as a base for an integrated industrial training centre, especially for courses related to mining,

pipeline construction, highway building and the oil and gas industry?

Hon. Mr. Rouble: As the Minister of Education, I believe it is my number one role to ensure that Yukon students have the opportunities that they need to succeed. That means learning in the public schools, learning at post-secondary institutions and consistent lifelong learning.

We are also working very closely with Yukon College to ensure that their strategic plan is responsive to the needs in the community, that they're looking out for the opportunities that are becoming available and identifying where we have needs in our community. That means identifying things like a licensed practical nurse program or putting in place the survey technician program.

We will work with all our partners, including First Nations and some of our not-for-profit organizations to ensure that we have the best training to prepare Yukoners for Yukon opportunities.

Mr. Edzerza: Obviously, the minister never saw this vision.

Just taking heavy equipment training as an example, this is something that involves a variety of machines such as scrapers, cats, loaders, packers, shovels, cranes and so forth. It also needs a lot of space with the kind of terrain that won't be adversely affected by big machines. The abandoned benches at Faro would provide an ideal location where students could learn in a safe, controlled environment that is very similar to what they would actually find on the job.

There are also shops where heavy-duty welding, mechanics and hydraulics could be taught, for example. There are essential skills for many industries including mining, pipeline construction on the oil patch and even highway construction.

Would the Minister of Energy, Mines and Resources agree to explore this idea with his Cabinet colleagues, First Nation governments and the federal government as well as with industry and labour representatives?

Hon. Mr. Rouble: I think it's very important that the member opposite become aware of some of the work that's ongoing right now. I'm not sure if he's aware of the Yukon Mine Training Association. The association is a great group made up of mining industry people and Yukon First Nation people. The Department of Education advanced education branch is working very closely with them, as are different branches of our government, and they are also working with Human Resource Development Canada to ensure that the Yukon Mine Training Association receives some of the Canadian training dollars so we can provide Yukoners — as the member said — with the training they need to take advantage of Yukon opportunities.

Mr. Edzerza: The students still have to leave the Yukon for this training. Mr. Speaker, Dawson City is an example of what can happen when people get together to act on a vision. Ten years ago, who would have thought that Dawson would have a widely recognized school for the arts? In many ways, Faro offers advantages that weren't immediately available in Dawson.

It's in a more central location; it has well-developed infrastructure and a great appeal to people who are interested in outdoor recreation. An industrial training centre would eventually offer such things as mine and mine rescue training, industrial safety, drill courses, even research into new ways to approach mine site reclamation. It has the potential to attract people from all over northern and western Canada, maybe even from overseas.

Given the huge economic potential of such a venture, will the Minister of Economic Development agree to provide some seed money for a study to look into the feasibility of this project?

Hon. Mr. Rouble: Mr. Speaker, we certainly recognize the need to train Yukoners for Yukon opportunities and that is why we're working with all of our training arms — with Yukon College, with advanced education branch and with some of our other partners, whether they be schools from Outside or Yukon College here.

Yukon College, for example, is now setting up a licensed practical nurse program and the survey technician program, in addition to programs that they currently have such as the social work program and the Yukon native teacher education program.

Mr. Speaker, we are working with Human Resource Development Canada and with our partners like the Yukon Mine Training Association which is working with industry people and First Nation organizations. Mr. Speaker, they have come to us saying they know the training that they need and that they know the best ways to deliver them.

We're going to continue to work with all of our partners, those not-for-profit organizations, as well as Yukon College, which is putting forward a new strategic plan right now to ensure that Yukoners are trained for Yukon opportunities.

Question re: Air quality in government buildings

Mr. Mitchell: My question is for the Minister of Health and Social Services. On Thursday I asked a question of this minister concerning the Whitehorse General Hospital and an air quality survey and the whereabouts of a report from the survey. The minister at that time stated that he would undertake to look into the matter for me. I know that he meant he would contact the hospital board immediately to find out the whereabouts of this report. I'm quite sure he has placed a phone call to the chair of the hospital board by now and I would like to know, along with the nurses and other hospital staff, what the minister was able to find out.

Does the minister now have the report and will he table it?

Hon. Mr. Cathers: The member raised this issue on Thursday. I undertook to look into it while reminding the member that, contrary to his assertion that it was somehow a unique or problematic circumstance that an air-quality test was being done, this is done in all government buildings on an ongoing basis, and in the buildings of government corporations such as the Hospital Corporation.

I have made the request. I do not have a copy of the report as yet, but as I indicated to the member earlier, I am confident that if there were issues in there, they would have been brought to my attention expeditiously. We will look into this matter. I

do not have a copy of the report; therefore, I cannot provide the member a copy of it. I can assure the member that if there are issues, as soon as they are brought to my attention by the Hospital Corporation, if that requires any assistance from the government, recognizing that the board is set up to manage the affairs of that corporation — or me or my colleagues, certainly we will take the appropriate action in a timely manner.

Mr. Mitchell: Mr. Speaker, the hospital board has been in possession of this report for almost two years. This report should be public, whether it contains good or bad news.

All hospital employees have a right to know if the air they are breathing is good quality or if it may create a health hazard. They have a right to know if they are getting sick from what they are being exposed to in their everyday working environment.

All Yukoners deserve to know their risks, as they enter through the doors of the hospital, whether they are employees, patients or visitors — so I will ask again. When will the minister obtain this report and table it so that all Yukoners can see for themselves the state of air quality at the hospital? It does not seem to be a priority for this minister.

Hon. Mr. Cathers: Again, the member is bringing up this issue and is somehow trying to create the impression that there is an issue of concern.

Speaker's statement

Speaker: Order please.

The Chair has allowed a fair amount of latitude all day here. If the honourable members don't want to keep hearing me in debate, be very careful with what you say. Minister of Health and Social Services, you have the floor.

Hon. Mr. Cathers: Thank you, Mr. Speaker. Allow me to rephrase.

The member is unnecessarily and needlessly bringing forward comments in a manner that is likely to raise public concerns.

I point out to the member opposite that air quality monitoring is done in government buildings regularly. If there were issues with the hospital that required action or assistance from the government to address, I am sure that the board would have informed me of such a matter. They are set up to manage the affairs of the Hospital Corporation.

I have requested — based on the member's request on Thursday — that they inform me of the results of this testing. Again, I would have to remind the member opposite that if there were issues, certainly the board would take the appropriate action. It's unfortunate that he doesn't appreciate the work of the citizens on that board and have confidence in their ability and dedication.

Mr. Mitchell: The public concerns already exist and they've been expressed by hospital workers.

The minister is basically saying to those hospital workers: "Don't worry, be happy." I would suggest it's a better title to a song than an approach to ministerial responsibility.

I would like to touch on the comments made by the minister in the House on Thursday. He stated, "...I am quite certain that if there were any issues with that air quality review, they

would have been brought immediately to my attention,” and he has now said so again today.

This minister has had three days since then to look into the matter and become better informed.

Will the minister please inform the House of the good or bad findings of this report and what actions will be taken from those findings to ensure the air quality is not a health and safety issue, instead of telling us that if there were any problems, he is sure he would have heard of them?

Hon. Mr. Cathers: What I hear from the member opposite is a lack of faith on his part in the board and the CEO of the Hospital Corporation. I am appalled that the member again takes his self-described merciless approach in this questioning, and does not have faith that the board of the Hospital Corporation would do their job. That is the member's assertion. Furthermore, Mr. Speaker, the member says there were three days. Two of those days were weekend days. I have requested that report, but the board of the Hospital Corporation, the CEO and the staff are busy people doing their job of delivering health care to Yukon citizens, and they have better things to worry about than jumping at the member's whim.

I undertook to get that report, and undertook to see if there were any issues, but again I remind the member I have confidence the board and the CEO will do their job and, if there were issues that needed to be brought to the government's attention or needed to be addressed, that those matters would be addressed and brought to my attention, if necessary.

I have faith in the citizens on that board, unlike the member opposite.

Speaker's statement

Speaker: Before the honourable member asks his question, I would just like to remind all members that, when one member is speaking, the other members please keep the chatter to a minimum. Member for Kluane, you have the floor.

Question re: Electrical rate relief

Mr. McRobb: Last week I asked the Energy minister to act on behalf of Yukon consumers by postponing his decision to cancel the popular rate stabilization fund, but he refused.

Last July the minister increased consumers' power bills by 15 percent, and he is planning a repeat performance this July.

Many consumers are hurting badly from paying record high gasoline prices and power bills. The Yukon Party has done nothing to offset the higher prices at the pump, and it has created this hike to power bills, which will cost electrical rate-payers up to \$500 more per year.

Last Thursday the minister wavered a bit, saying he has until July to make a final decision. Now that he has had the weekend to think it over, when can we expect this announcement?

Hon. Mr. Lang: Of course, we did extend the rate stabilization plan last year for another 12 months, which we've been doing over a period of time for the six years that I have had the portfolio. Certainly, we are aware of the rising costs of energy in the territory and across Canada. This government is concerned about that.

In turn, the rate stabilization plan does nothing to address those increases. I think what we have to look at as a government and as a community is our energy consumption and how we can curb that energy consumption. I think rate stabilization is not the answer, Mr. Speaker. I think that what we have to do and what we're doing as a government is looking at ways that our communities can better manage their energy.

Mr. McRobb: It looks like the Health minister is not the only one who took the weekend off.

I've got news for the Energy, Mines and Resources minister. The electrical company is normally required two months' lead time to make such changes to the monthly billing cycle. The deadline for a decision is nigh. Time is running out. Paying higher energy bills is hurting many Yukoners and they deserve better protection from their own government and this Energy, Mines and Resources minister in particular.

Not only has he refused to help with the bill hikes, he has refused to implement energy conservation programs to help consumers reduce their consumption. He has refused to lower taxes on gasoline, which was something the Yukon Party promoted when in opposition. He has refused to empower those who would like to generate their own power by filibustering the net-metering bill.

What will the minister do to help the energy consumer or is he satisfied with being part of the problem instead of the solution?

Hon. Mr. Lang: The member opposite has again pulled figures out of the air, which I appreciate and understand. This government is very concerned about the power and the cost of energy in our jurisdiction. I remind the member opposite that we have some of the lowest taxes in Canada, but that's not going to solve the issue. Our petroleum products are going up every day and every week — that's a concern to all communities. Subsidizing those increases doesn't do the community any good.

What we are doing is the right thing; we're on the right track. We're looking at energy conservation and we're working on that in the Department of Energy, Mines and Resources, in the Energy Solutions Centre and throughout our communities. This is a big concern.

The increase in our petroleum products is a concern. We are expanding the hydro potential for the territory; we are going ahead with the GRA. Both corporations are applying and moving forward, and that will reflect lower bills for the consumer. Mr. Speaker, subsidizing individuals does not cure the problem.

Mr. McRobb: The minister has nothing to offer those who are being hurt by this government's own policies and lack of action. If the minister truly understood how the rate stabilization fund worked, he wouldn't have cancelled it. In fact, it can still exist simultaneously with rate increases; it's just that the cost of funding the program would decrease proportionately to the rate decrease — but he doesn't understand that. He's not on the same page; he's not in the same chapter; he's not even in the same book.

This minister doesn't care about poor Yukoners who are having —

Speaker's statement

Speaker: Order. Did we not just discuss this? The honourable member is personalizing debate. Please be careful what you say.

Mr. McRobb: This minister is ignoring the concerns of Yukoners. He is ignoring the concerns of those who can least afford it. Mr. Speaker, he's doing nothing to help them out. His promise of the rate decrease in February turned out to be hollow. It has been postponed for at least a year.

What's the minister doing to help consumers in the here and now?

Hon. Mr. Lang: Thank you, Mr. Speaker. We are certainly doing more than the member opposite.

The subsidization — the rate stabilization plan fund — over the last period of time was in excess of \$30 million. That is subsidization. I don't think that is the way Yukoners or Canadians are going nowadays with energy. I think we have to conserve energy. We can't subsidize it and hide the real cost.

What we have to do for the ratepayers in the territory is to go forward, get our GRA done, get the mining community up and running on hydro — the community of Pelly — and get a realistic rate reduction from the real industry that is out there.

The member opposite is in opposition. On this side of the House, we actually have to produce some product, Mr. Speaker, and that is what this government is doing.

Speaker: The time for Question Period has now elapsed. We will proceed to Orders of the Day.

ORDERS OF THE DAY

Hon. Mr. Cathers: Thank you, Mr. Speaker. 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 (Mr. Nordick): 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.

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

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

Before we proceed today, I would like to remind all members that we are debating Bill No. 50 clause by clause. Presently we are on clause 28.

On Clause 28 — continued

Mr. Edzerza: Mr. Chair, I would like to start today by voicing some concern about how the debate ended in the last sitting. We left debate with the minister refusing to answer questions and enter into constructive debate with the opposition. On numerous occasions I asked questions of the minister, and the only response was "clear", and the same with the other opposition party. As I sat here, I heard many, many responses as "clear" with no respect or the courtesy of a response or any kind of an answer whatsoever.

However, I believe that today maybe that position will temporarily change because we have a camera here, and I don't believe that kind of conduct will be put on camera.

I certainly hope today that the minister is going to be a little more cooperative and is going to enter into debate with the opposition parties and me.

Mr. Chair, four First Nations conducted independent legal reviews of this act, simply because it's law that they are going to have to live with for years and years to come. In their opinion, there were serious concerns with respect to this act. The opinions are coming back from other legal counsel, and there are serious concerns, such as the director having too much discretion.

Again, Mr. Chair, that is all part of what we are talking about today in clause 28 when we say, "A director shall make all reasonable efforts..." It is that kind of language that is of concern.

Most recently, the Ombudsman has stated similar concerns. She stated very clearly that it is her opinion that there are problems. The *Access to Information and Protection of Privacy Act* may be conflicting with the *Child and Family Services Act*.

Mr. Chair, can it be that all five legal counsel outside of the government are wrong?

That's a question that has a lot of discussion happening around it right now. I want to state for the record right now — because the minister is going to come back and say that this side of the House has no confidence in the officials in Justice, but that is not what is being said here. I would like to clearly make a statement: there is a lot of other legal counsel in the private sector who believe there are flaws within this act. This raises a very serious question: should the act proceed without addressing or verifying the concerns of the legal counsel outside of government?

The government has no resistance to taking court action on other issues. I would think — do they want a court action on this one too?

Maybe that's the way to do it; maybe that's the avenue that has to be taken. Maybe there has to be a court action to determine whether or not this proposed new act conflicts with the privacy act.

That's a question that should definitely have a very clear definition before we go forward with this legislation.

Again, it's no secret — it's common knowledge — that a very high percentage of children in care are First Nation. The gallery was full here when this act first came up for discussion on the floor of the Legislature. The people in the gallery were here for a purpose, and I believe it wasn't just to applaud the act. There were serious concerns. They would have appreciated this act being put off until the fall.

I know the government will stand up and say they have consulted until the cows came home — over five years. However, there were a lot of stops and starts, a lot of ups and downs. People were involved; people were engaged and then disengaged.

Chair's statement

Chair: Order please. The Chair would like to remind members that we are actually debating, clause by clause, Bill No. 50. We've passed general debate on the bill. We're debating clause 28. I would like to ask members if there's any debate on clause 28 only, please.

Mr. Edzerza: Mr. Chair, clause 28(b) refers to First Nation children, and that is what I am speaking to. I am speaking to the fact that —

Chair's statement

Chair: Order please. I would like to remind the member that once the Chair has made a statement, I don't expect members to debate what the Chair has actually put forward. I am encouraging the member to speak to clause 28.

Mr. Edzerza, you have about two minutes left.

Mr. Edzerza: Thank you, Mr. Chair.

There is major concern with this clause. As I stated previously, upon asking the minister questions on several occasions in the last debate when this ended, he refused to answer. What does a person do when you come and try to debate something that the government side is not going to get serious about, and they are going to continue to — like the old saying goes — rag the puck?

It is very difficult to get engaged here on really constructive debate when you are told "clear" every time you ask a question. It kind of defeats the purpose of wanting to debate any of this legislation. At one point, a person might want to ask: what is the sense of debating this if you are going to be talking to yourself on this side of the House?

Those are things I would like to have the minister address. I would like to ask him to become very serious about the questions from the opposition. The questions that are being asked are very legitimate with regard to this bill.

Again, the question I will leave with the minister: should the act proceed without addressing or verifying the concerns of the legal counsel outside of government? Are they simply all wrong?

Hon. Mr. Cathers: To begin, I would like to point out that the Member for McIntyre-Takhini was making statements in front of the camera with regard to our debate on Thursday,

and I would remind him of the fact that I did answer questions from the opposition. However, when it became clear that the opposition was asking the same questions and it appeared there was an opposition attempt to simply filibuster debate, at that point I was not going to rise and answer the same question for the fifth, sixth or seventh time in debate. The question was answered; I do appreciate the concerns and I did respond to those concerns.

The member brought up the issue of lawyers having different legal opinions. I would ask the member and anyone listening to this debate the question, rather facetiously, whether lawyers ever disagree with each other. Well, of course, this is a standard matter or situation within our legal system. There are always differing opinions among lawyers. If the government were to put in place a policy whereby we could not bring forward legislation — if anyone had a lawyer who came forward with a differing opinion then government would be gridlocked and nothing would move forward.

The officials in the Department of Justice have the expertise in legal drafting and in government policy. They have done their work. I have confidence in that work. I would point out to the members opposite, with regard to the debate about concerns of the current Information and Privacy Commissioner, that areas of the act were discussed with her predecessor and those matters, through the appropriate process by the legal drafters, have been considered and addressed. Officials from Justice will be working with the new Information and Privacy Commissioner on resolving her concerns with this legislation.

It is good legislation. Officials did their good work, followed the appropriate process and followed a process that took almost five years through jointly going out with the Council of Yukon First Nations and doing public consultations, jointly developing a policy and jointly informing the legal drafting.

That good work has been done by officials and we have confidence that this legislation meets the high standards necessary in such matters. It strikes the appropriate balance between access to information and the protection of personal privacy.

I would remind members opposite that it is standard in child welfare legislation for that legislation to have its own specific provisions related to such matters in the disclosure of personal information. Issues related to child welfare — investigations by a director under this legislation are considered law enforcement under the purposes of the *Access to Information and Protection of Privacy Act* legislation.

It requires some limitations in disclosure of information to protect the identity of individuals, to prevent disclosure that would interfere with an investigation, to prevent revealing the identity of a confidential source or steps that would endanger the life of a person or interfere with gathering information.

This legislation has followed the practices that were in place under the *Children's Act* and has new provisions based very heavily on legislation within the Province of British Columbia. I am confident that officials have done their good work. We look forward to continuing further debate.

If the members have any substantive concerns or questions with regard to any of the clauses, I look forward to those questions. I would hope that today they would have an appetite to

proceed with debate, to do their jobs as members of the Legislature, as we on this side will do ours, to engage in substantive debate on the clauses, debate the policy implications, ask the questions, discuss their concerns — if indeed they have any — and if their concerns are addressed, to move forward.

I have to reiterate that officials followed the appropriate process and that the appropriate steps have been taken and are being taken to resolve any outstanding concerns.

This is a good piece of legislation; it is a significant step forward and, therefore, with regard to the current clause under debate, clause 28, and subsequent clauses, I would look forward to positive, constructive debate with members opposite of what is a very important piece of legislation for Yukon children and families. It provides far greater involvement of First Nations, extended family and of individuals affected in cooperative planning, alternative dispute resolution and other measures aimed at avoiding proceeding to court, unless absolutely necessary.

The provisions around disclosure and reporting the results of an investigation, such as in the clause under discussion, must be dealt with in keeping with the standard of child welfare legislation from coast to coast. That is what this legislation does.

I am confident this legislation is one of the best pieces of child welfare legislation in the country. I look forward to constructive debate with members opposite.

Mr. Mitchell: I've listened attentively to what the minister had to say and I was also here Thursday afternoon when I attempted to ask the substantive question on clause 28, based on the letter we had just received a few hours earlier from the Ombudsman and Privacy Commissioner. At that point, the minister did not choose to enter into that debate. The minister should be careful whom he chastises for not having constructive debate.

I will ask the question again today. The minister has had the weekend to consider the answers to this question. It relates to clause 28, particularly subclauses (3) and (4), which say:

“(3) 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.

“(4) The director may report the results of the investigation to the child's school and any community group or person with an interest in the child that the director thinks should be notified.”

Then, we look at the letter that came from the Privacy Commissioner and Ombudsman where she says — starting at the bottom of page 3 of her letter, if the minister has it in front of him: “The importance of protecting personal information is recognized and addressed in clause 172 of the proposed legislation which designates a First Nation service authority as a public body subject to the ATIPP act. 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 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 a family conference or other co-operative planning process.

“Sections 28 and 42 of the proposed legislation, dealing with notification illustrate this concern.”

Again, my question for the minister — which I did ask on Thursday; I didn't get a response, so I will ask it again now: how has the minister satisfied himself that the concerns expressed by the Privacy Commissioner and Ombudsman in her letter regarding this very clause, clause 28, about confidential information going to third parties who are not subject to ATIPP will be addressed by this act?

Has the minister consulted with officials? He says he has, but he is still awaiting some of the opinions. Last week he said that he would have opinions to share with us today.

What we tried to say on Thursday was that we were very wary of passing legislation with a promise to receive an opinion that would support the minister's assertions at a later date. What we felt was that we should have the opinions or the reply from Justice officials to this letter that raises the concerns I just outlined, as well as other concerns in front of us, so that we could either: (a) agree that there is no concern and all of the concerns have been answered, or (b) work constructively with the minister to look at possible amendments to address the concerns that have been raised by the Yukon's Information and Privacy Commissioner and Ombudsman.

I'm hoping that the minister has in front of him the answers, and we certainly would have preferred to hear these questions on the floor of the House explained in greater detail than this letter from the Ombudsman goes into. Earlier today in Question Period, the Premier made reference to the current Ombudsman's predecessor, the former ombudsman, having been consulted on this act. We would point out that the current Ombudsman/Privacy Commissioner has been in place for some time now. She is a well-known legal scholar. She has certain abilities because of her legal background beyond those which, able though he was, her predecessor had available to him because he was not a lawyer. When she brings these concerns forward, we take them seriously.

I look forward to the minister's constructive response to this question.

Hon. Mr. Cathers: It is a little disturbing to hear what I think the member was implying about the abilities of the previous Ombudsman/Privacy Commissioner.

Some Hon. Member: (Inaudible)

Point of order

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

Mr. Mitchell: I believe that the minister is now about to impute —

Chair's ruling

Chair: Order please. There is no point of order.

Hon. Mr. Cathers: It is interesting that the member appears in his mind to have a new standard of debate where it is not a breach of the Standing Orders: it is when he believes they are about to be breached that he then rises on a point of order.

Mr. Chair, in moving on to the member's concerns, I would point out again the former Information and Privacy Commissioner was consulted on the provisions of the legislation that interact with ATIPP and the *Access to Information and Protection of Privacy Act*.

In this area, particularly in clause 28, which we are now under, one of the things under "Reporting back", which is referred to in this area is that a director shall make all reasonable efforts to report the results of an investigation back to the child's parents, the First Nation if they are member of a First Nation, and the child, if they are capable of understanding the information, while providing some ability for making it clear that the director does not have to report the results of the investigation if reporting the results is likely to endanger the child's safety or cause physical or emotional harm to any person, or if a criminal investigation into the matter is underway or contemplated.

This is a standard provision in child welfare legislation. For the member's reference, I would note that this was also requested through the consultation and this is similar to and consistent with child welfare legislation in other jurisdictions, such as British Columbia's *Child, Family and Community Services Act*, wherein section 16 has similar provisions. This is, again, standard procedure in child welfare legislation. It is standard to provide discretion to the director and place, under the director's authority, matters relating to the disclosure of information.

I would point out to the member that although this legislation places the control around information largely in the hands of a director, it does not mean that the information is at risk or is not dealt with appropriately. In fact, as the member ought to know by now, it is not unusual in Yukon legislation. Some legislation, such as the *Statistics Act*, for one — and there are a number of others — have provisions and ATIPP does not cover those areas of the legislation. Again, this is a fairly standard matter.

This area, clause 28, is specific to reporting back. It is consistent with other jurisdictions, as are the other provisions about which the member was expressing concern. Some of those matters exist in current legislation, and the other provisions are based on legislation in the Province of British Columbia.

Again, these matters have been dealt with. The process was followed appropriately by officials with the Department of Justice. I have confidence in the ability of the legal drafters in the Department of Justice. They are familiar with both access to information legislation and child welfare legislation.

They have done their good work. This legislation is one of the best pieces of legislation in the country. It is a significant step forward, and appropriate protection for personal information is provided.

As is common in other legislation of this type, the individual tasked with the responsibility for that information and disclosure — or decision not to disclose it — is the director. That is standard in child welfare legislation, and it is appropriate that we follow the same model. I trust this has addressed the member's concerns.

The member noted, and others referred to, certain professions not specifically under *Access to Information and Protection of Privacy Act*. I would point out that while they are not covered under the ATIPP act, it does not mean they have no obligation under this legislation and secondly, the fact that a number of those professions, such as doctors, have their own specific regulations and oaths that they must take around confidentiality of information. I would certainly hope the member is not suggesting that doctors and members of the legal community would break the obligations around confidentiality to their patients and clients that they swear to upon taking those offices and are required to fulfill under different pieces of legislation.

This matter, clause 28, is a very simple clause and very similar to matters in other jurisdictions. We have discussed this matter at some great length, and I would encourage the members to engage in debate on the further clauses of this legislation.

Mr. Mitchell: In response to what the minister has just said, we are engaging in debate. It happens to be we are debating a particular clause, and we'll debate it until we hear answers that we think are satisfactory to explaining or responding to the questions we raise.

The minister has suggested that he would hope we would not be questioning the judgement that would be used by physicians, for example. I can't use the adjective behind the word "shot" that the minister is taking. The minister can fill in the blanks for himself.

First of all, the minister well knows that doctors take an oath and are dealing with confidential matters on a regular basis, based on the oath they take. That's not what we were implying, and the minister should not worry about it or imply that we might be.

The wording of subclause (4) does end saying "... any community group or person with an interest in the child that the director thinks should be notified." Those are very broad words and are not necessarily referring to professionals. They can refer to anybody in the community. Those people may then have access to very personal and private information. That's the nature of the question we are asking and the nature of the concern that was expressed by the current Information and Privacy Commissioner.

I want to point out for the minister that these are not questions we developed on our own when reading the act, because we're not legal scholars, as the minister would no doubt love to point out. These are questions we're asking because of the letter the Hon. Speaker tabled in this House last Thursday from Yukon's Ombudsman and Information and Privacy Commissioner.

That letter, which was very well laid out, raised some specific questions and we're looking for answers. We're not looking for the minister's assurances that he has every confidence the officials have thought of these concerns prior to receiving the letter. We're looking for answers, but we're not getting answers. We're getting entreaties to carry forward debate from the same minister who sat here for the last 15 minutes of Thursday afternoon, saying, "Clear", and not having debate.

The minister compared Bill No. 50, which is before us, with British Columbia's legislation. I don't have in front of me the number of their act that he referred to, but the minister did refer to it.

I took the opportunity to have some discussions over the past few days with the Privacy Commissioner, unlike the minister, who found it difficult to have discussions with officials on various matters. She indicated to me that you cannot compare one clause in one act with one clause in another; you have to look at the acts as a whole. In her opinion, British Columbia's act made the provisions she is concerned about elsewhere, and ours did not, by the wording.

In other words, you can't cherry-pick, Mr. Chair. One clause impacts on another and so, if you are not going to copy whole lists from another act but use portions of one act from one jurisdiction and portions of another act from another jurisdiction and write some more of it within Yukon, you may have unintended results.

The Privacy Commissioner also pointed out that, well-intentioned though the officials in the department are, and the officials who drafted the bill — and she has a very good working relationship with them — they are looking through this with a different lens. Her lens, her expertise, is that of a privacy commissioner and ombudsman, and that is the lens she uses in testing, so to speak, various clauses in the act.

In this case there may be too much power in the hands of the director, which could impact on the security of the private information of individuals.

I am going to try another approach with the minister, because he has not answered the questions to our satisfaction in clause 28.

Amendment proposed

Mr. Mitchell: I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended after clause 28 at page 32 immediately after the heading, "Division 2 – How Children Are Protected" by inserting a new clause numbered 29 and renumbering all subsequent clauses so as to read:

"That for greater certainty, nothing in this act shall be construed so as to affect any provision of the *Ombudsman Act*."

Chair: It has been moved by Mr. Mitchell

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended after clause 28 at page 32 immediately after the heading, "Division 2 – How Children Are Protected" by inserting a new clause numbered 29 and renumbering all subsequent clauses so as to read:

"That for greater certainty, nothing in this act shall be construed so as to affect any provision of the *Ombudsman Act*."

Mr. Mitchell: I am not going to spend a great deal of time explaining this. I think it's self-evident, based on the debate here this afternoon, why I have asked that the act be amended in this manner. I will use an example. If members will turn to page 18 of Bill No. 50, the top of the page, which is the very end of a section prior to Part 2, there is a heading that says "Does not affect self-government agreements".

"5 For greater certainty, nothing in this Act shall be construed so as to affect any provision of a self-government agreement."

This is much in the same spirit as that; it's to provide clarity to ensure that this act will not be interpreted as superseding the *Ombudsman Act*. This would address some of the concerns that the Ombudsman provided in her letter.

I will point out that, when we were working on drafting this, we did contact the Ombudsman, thinking that perhaps it should say "of the ATIPP act" — which would have seemed logical to me — but the Ombudsman assured us that it would be better to say "of the *Ombudsman Act*" in this particular clause to be between existing clause 28 and previously numbered clause 29.

So, again, it would clarify that powers aren't being given to the director to override the *Ombudsman Act*. What we are seeking here is clarity, and this would go a long way toward alleviating some of these concerns.

Hon. Mr. Cathers: The member is wrong. This provision would change it from the standard of child welfare legislation in this country. I realize — and I am trying to be patient with the member opposite — that he does not have a knowledge of child welfare legislation, and he does not have the same access to those who do, as I do as the minister responsible.

To accept the member's amendment would be a significant departure from the standard procedures. What the member is saying — and it's unfortunate that he's taking this approach — I would again point out regarding the provisions around information, protection of privacy, access to information, et cetera, whether it is under the discretion of the Ombudsman and Privacy Commissioner, or under the discretion of the director of family and children's services or the director of a First Nation service authority, those individuals are in positions of trust. They have a legal and moral obligation and they take on that responsibility to fulfill the roles and their duties. There are others in society in different roles, such as judges, who take on specific responsibilities, legal obligations and positions of trust.

If the member would read through the legislation, the member will also understand that the director of family and children's services or the director of a First Nation service authority is one of those positions within government that is set up with responsibilities and discretions that are placed at that level by law. They are not decisions made by the minister or by Cabinet in the course of operations. By law, those matters are placed in the obligations of these individuals who have these significant positions of trust. I have faith that these individuals do their job.

I have to remind the member, with regard to his change, it may seem fine while drafting it on the back of a napkin, but this would be a departure from the standard for child welfare legislation across the country, which vests this authority and responsibility in the director of family and children's services or their counterpart. These individuals are the ones who have the legal responsibility.

I would point out to the member that in certain areas, these are matters of law enforcement under the director's authority. These matters and the trust that is placed in them — they are

the ones who have the information. Some of this information is highly sensitive and in some cases, confidential matters that may affect the safety of individuals. For very good reason, it is kept confidential and not widely shared because, the more widely it is shared, the more the potential for an error and someone's safety to be compromised and their life to be endangered.

So the member's amendment that he proposes would be bad policy. It is a bad departure from the standard for child welfare legislation. I appreciate his concerns, but I point out that I have confidence, unlike the member opposite, that the director of family and children's services fulfills her obligations and that the director of any First Nation service authority would follow their legal obligations in exercising these matters.

Mr. Mitchell: I think the minister has completely missed the point. It is not the director of family and children's services we are concerned about here. Yes, we too have confidence that the director will be using her/his best judgement in revealing private and confidential information to third parties. However, once that information has been provided to a third party, under clause 28(4), there is a loss of control by the director at that point, because third parties who may not be subject to the act may be in possession of it.

The purpose of the proposed amendment is to ensure that any person who then receives that information has recourse under the *Ombudsman Act* to make certain that their information will continue to be protected under existing statute and that they will have recourse, if necessary, to the ombudsman — that it will still apply. That was the purpose of it, not to question the judgement of either the present or any future direction.

This act gives the director a fair bit of power and discretion. The minister says that it is vastly reduced, in his opinion, from the predecessor legislation. Others feel that it may still be very extensive and perhaps too extensive. Our concern here is also what happens once information has been disseminated. That is the purpose of the amendment, to make sure that this has been clarified.

I'm hoping that the minister will, as he says, "Mend the error of his ways," and not be questioning our confidence in any public officials, just because we ask questions.

Chair: Is there any further debate on this amendment? Shall this amendment carry?

Some Hon. Members: Disagree.

Count

Chair: Count has been called.

Bells

Chair: Order please.

It has been moved by Mr. Mitchell

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended after clause 28 at page 32 immediately after the heading, "Division 2 – How Children Are Protected" by inserting a new clause numbered 29 and renumbering all subsequent clauses so as to read:

"That for greater certainty, nothing in this act shall be construed so as to affect any provision of the *Ombudsman Act*."

Would all those in favour please rise.

Members rise

Chair: Would all those opposed please rise.

Members rise

Chair: The results are six yea, nine nay.

Amendment to Clause 28 negatived

Chair: Is there any further debate on clause 28?

Clause 28 agreed to

On Clause 29

Clause 29 agreed to

On Clause 30

Clause 30 agreed to

On Clause 31

Mr. Edzerza: We think the act should be improved by amending the subclause to say, "...the director or peace officer should make all reasonable efforts to locate the person or persons with custody of the child." That would recognize that it is not always a parent who has custody.

However, since the minister had made it clear that he won't listen to any suggestions from this side, I will just leave this idea with him to consider.

Hon. Mr. Cathers: What I can provide comfort on to the member opposite is, if he looks at the definitions, he will see that the definition of parent includes someone other than the mother or father. It includes a person to whom custody of a child has been granted by a court of competent jurisdiction or by an agreement. It also includes a person with whom a child resides and who stands in place of the child's mother or father. Therefore, the amendment that the member suggested but did not formally propose would be unnecessary. I trust that will address the member's concern, as the requirement of which he spoke is already in place.

Clause 31 agreed to

On Clause 32

Clause 32 agreed to

On Clause 33

Mr. Mitchell: I have a question for the minister regarding clause 33(1), which says:

"Despite the *Care Consent Act*, a director may apply to a judge for an order under this section if

"(a) in the opinion of two health care providers, it is necessary to provide health care to a child to preserve the child's life, prevent serious physical or mental harm, or alleviate severe pain; and

"(b) no one is able or available to consent to the health care..."

My question is this: has the minister had the Department of Justice look into the implications of this in terms of potentially coming into conflict with some religious beliefs? I don't want to get into a great deal of detail — we've seen court cases with, for example, blood transfusions and such. I am simply asking the question: what opinions has the minister sought in drafting this particular clause, just to ensure that it is not subject to challenge?

Hon. Mr. Cathers: With regard to the concerns of the member, of course, as I believe he himself noted in the reference, a judge must make the determination of the section. It

does allow for an order to be applied, but as far as conflict with certain religious beliefs, I think the member is referring to a specific court case in the Province of British Columbia. Such a thing, subject to a judge's determination, could lead to the potential for a judge to make a similar finding — that despite religious beliefs of the parents, it was in the best interests of the child and, if it were a requirement in saving a child's life, such action could be taken. That would require a judicial order and it does give that power to the court.

Chair: Is there any further debate on clause 33?

Clause 33 agreed to

On Clause 34

Clause 34 agreed to

On Clause 35

Clause 35 agreed to

On Clause 36

Clause 36 agreed to

On Clause 37

Clause 37 agreed to

On Clause 38

Mr. Mitchell: This has to do with the warrants to bring a child into care. In clause 38(1) it says, "If a director or peace officer has reasonable grounds to believe that a child is in need of protective intervention, the director or peace officer may apply to a judge for a warrant to authorize bringing the child into the care of the director."

In 38(2), it says, "The application for the warrant may be made without notice to any person."

We've had a fair bit of discussion already within debate on this bill over clauses where time is truly of the essence and clauses where there may be sufficient time to also notify the appropriate First Nation.

If there is an application for warrant being made, there is at least some degree of time available, rather than in the following clause, clause 39, where they may even do it without a warrant because time is of the essence.

Amendment proposed

Mr. Mitchell: Considering all the debate we've had around this, I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 38(2) at page 38 by deleting the clause and replacing it with: "The application for the warrant shall be made with notice to the appropriate First Nation where the child is a member of the First Nation."

Chair: It has been moved by Mr. Mitchell

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 38(2) at page 38 by deleting the clause and replacing it with: "The application for the warrant shall be made with notice to the appropriate First Nation where the child is a member of the First Nation."

Is there any debate on the amendment?

Mr. Mitchell: I just want to speak to it for a minute or two, Mr. Chair.

The reason I am moving this amendment is because of the input we've had from First Nations about how they place such large importance on notification of the First Nation so they

have the opportunity, if they feel it would be beneficial to the child, to appear in front of any court proceedings, and so they are aware this process will become imminently underway.

I have looked at this bill and, when we get to the next clause — and I know we are not at that clause yet, Mr. Chair, but if you would just indulge me, so I can point out the difference — clause 39 says, "If a director or peace officer has reasonable grounds to believe that the life, safety or health of a child is in immediate danger..." That speaks to the immediacy of the danger and, therefore, notification becomes something that one would not spend the time doing at clause 39, because the immediate danger to the child is of utmost, paramount importance.

In clause 38, the wording is quite different. It says, "...has reasonable grounds to believe that a child is in need of protective intervention..." It does not speak to life, safety or health. Therefore, we feel that in this case there is a warrant that will be sought and it would be appropriate to notify the First Nation, as is the spirit — from what we have been told — of this bill. That's why I moved that it be amended to say that's what will happen, rather than it being without notice to any person.

Hon. Mr. Cathers: I understand the member's objective and, purely in theory, if one does not have an understanding of legal provisions and standards, I would not disagree with him. However, what the member is missing — and I am trying to say this, Mr. Chair, with due respect to the Leader of the Liberal Party. I think that he is trying to bring forward a valuable amendment. The problem with that — in reading the plain English of the bill in clauses 38 and 39 without understanding the case law around such matters, it would appear that clause 39 provides a reasonable ability for a director to act under emergency circumstances. However, what the member is missing, without understanding the case law around such matters, is that this ability is very similar to the ability that an RCMP officer has to enter a dwelling without a warrant in very specific circumstances.

An extremely high standard is applied to such matters because the rights against unreasonable search and seizure and entering without a warrant are very key rights within our constitutional system.

What the member is missing with that is that executing the action under clause 39 would have to be to an extremely high standard. There is a very high standard of proof that must be applied that might not address all matters, because there is some risk to the official or officer acting under such a clause — both in this legislation or for an RCMP officer under the Criminal Code — and they place themselves at some personal risk because of that extremely high standard and because of the very fundamental issue of the type of right that is being described. It is something that they would only do in the rarest of circumstances.

What is becoming more common in child protection matters and in other matters for police officers is the application using modern technology for a telewarrant — a warrant typically through telephone or through measures such as a fax machine. This ability is what is envisioned in clause 38 — allowing that ability as is common and current practice to allow an

individual in a case where it is clear that immediate action must be taken but it is questionable or a greyer area of whether the very dire step of entering without a warrant would be fully justifiable. As I pointed out, there is some risk to that official for taking that very severe step.

The amendment proposed by the member opposite would limit some situations where a telewarrant is urgently necessary.

In practice, the First Nation is usually involved in discussion already. That involvement would be strengthened and affirmed by provisions in the act, such as the guiding principles. In practice, they are typically involved prior to a decision to execute a warrant. Usually the case that requires the execution of a warrant is not the first involvement the system has with that family and with that child. Even if it were the first involvement, again, in most cases, already to date, and further strengthened through the provisions of this act, typically the First Nation is informed, and typically they will be informed prior to the execution of a warrant.

I point out that the guiding principles, particularly under clause 2(j), place an obligation to involve the First Nations in decision-making processes regarding a child who is a member of a First Nation “as early as practicable”. That is the wording that applies.

I think the member’s concern is that an official might simply choose not to inform the First Nation. I would point out to the member that if a First Nation wished to challenge the process that was followed, if there was ample time to inform a First Nation and the First Nation is not informed, under the “Guiding principles”, which take precedence over this clause of the act, the First Nation could challenge that, in fact, the director had not involved First Nations as early as was practicable to do so in the decision-making process, so it potentially would be subject to a court challenge in such a circumstance. I don’t disagree with what I think is the basic principle the member is trying to get at; however, it would, as I point out, restrict the ability to execute a telephone warrant under urgent circumstances. I reiterate that the guiding principles make it very clear that if it is practicable or if there were reasonable opportunity, in laymen’s terms, to involve the First Nation prior to the execution of that warrant, that must take place.

I trust the member’s concerns will be addressed by that. I hope they will be, but for that reason we cannot support the amendment proposed by the Member for Copperbelt, the Leader of the Liberal Party.

Mr. Mitchell: I thank the minister for his explanation and his understanding of our reasoning for proposing this amendment. I tend to agree with him that we’re not that far apart on the issue, other than the fact that he stands in support of not making this amendment to the bill and, obviously, having moved it, I’m taking the other position.

He does refer to 2(j) in the guiding principles. Of course, 2(j) goes back to those somewhat troublesome words “whenever practicable First Nations should be involved as early as practicable in decision-making processes regarding a child who is a member of the First Nation.” We get into this very subjective grey area of what we mean by “practicable”.

In the minister’s explanation for why he couldn’t support the amendment, he noted that, in many cases — I think he said “in most” — the First Nation is already involved although obviously, if it were a first-time complaint that led to this, they would not have been previously involved. The concern we have is in those cases where the First Nation hasn’t been involved and, even when they’ve been previously involved, without notification they will not know that now a warrant being sought.

I can’t agree with the minister’s reasoning on this. I will say, of course, the minister is right that we don’t have access to all the experts within the department or to case law provided by lawyers, but we have had access to meetings with an attorney who is acting for five Yukon First Nations. This is one of the sections she found very troublesome as well, so we’re not just pulling this out of thin air. As the Chair might say if he were ruling on something, “This is truly a dispute among members.” In this case, we think there’s a reason for moving this, so I hope that all members will give it careful consideration and support this amendment so we can satisfy the First Nations that we are truly going the full nine yards in trying to be inclusive of their concerns and the cultural priorities they want to make sure are supported when someone goes to execute such a warrant.

I previously noted in debate that I was told by the chief of one of the First Nations that he was called very late in the day and rushed down to a court proceeding. The people involved apologized to him after the fact, so the current system is certainly not without its flaws. That’s why we thought it would be better to ensure the First Nation is notified.

Hon. Mr. Cathers: To answer the member’s concerns and the concerns that First Nations and others may have around this, I point to clause 2(j) under “Guiding principles” that there is a requirement to involve a First Nation in decision-making as soon as this is practicable. I would point out to the members that although the definition of “practicable” may not provide as much detail as they would think should be included in the legislation, if legislation is too prescriptive instead of implementing it as a principle as this does, it in fact has the result of limiting the extent of that involvement.

This expresses, as a guiding principle, how the legislation must be interpreted, how its operations must be interpreted, and the requirement to involve First Nations in decision-making regarding a citizen of that First Nation as early as practicable to do so.

I point out to the member opposite that if a First Nation felt that indeed there was ample time to inform them and that did not occur, and the government or a First Nation service authority was not living up to its legal obligations, they would — if those matters could not be resolved through discussion — have recourse in the court to argue that those legal obligations were not being followed.

The principle is very clearly stated that First Nations must be involved as early as is practicable, and therefore, I have to express the very strong opinion that, while appreciating the member’s intention, this amendment would have a negative impact on the act by reducing the situations in which telewarr-

rants could be urgently executed. I would rather have the judge able to exercise that discretion.

I would also note for the member the fact that because the legislation clearly states under clause 2(j) the requirement to involve a First Nation as early as practicable, a judge would and will have the discretion of asking the individual applying for the warrant whether the First Nation was involved.

If the judge felt there was not ample evidence that this clause required action without further delay, then the judge could require that individual to contact the First Nation or others they felt necessary, prior to the judge approving that application for a warrant.

Again, there is control — because a warrant is issued by a judge, a judge would clearly have the ability to look at the “Guiding principles” and make the determination — if they felt it appropriate that the director of family and children’s services or the director of a First Nation service authority had not fulfilled the obligation to involve a First Nation in decision-making as early as was practicable to do so.

Mr. Edzerza: Mr. Chair, I would just like to put a couple of comments on record here with regard to this issue, because the minister appears to really downplay the concerns First Nations have with wording like this. “As early as is practicable” — I think the minister would probably be singing a different song if he had to deal with an act that is written like this. I know from experience over the years that First Nations have had nightmares about wording in acts, and it is because of phrases like this one: “early as is practicable” or “the director may” — those kinds of words.

The only time you realize the power of those words is when you as an individual have to deal with the director or deal with an apprehension of one of your children or grandchildren. Only then do you know the power of these kinds of words. Probably the minister will never experience that in his lifetime. Everyone else who may be engaged with this act at one point or another will be the ones who have to deal with it.

Hon. Mr. Cathers: I think I have addressed the concerns brought forward by the Member for McIntyre-Takhini. I think I have addressed them in past debates, so I won’t spend a lot of time on that.

The member suggested I was downplaying First Nations’ concerns, and that is certainly not my intention. What I am attempting to do is provide the clarity to members with the explanation of the legal provisions around this, the safeguards that are put in place through judicial processes, among others, and through the new “Guiding principles” and “Service delivery principles” that occur in this legislation and are not in its predecessor, the *Children’s Act*. Those “Guiding principles” provide a clear lens within which the legislation must be viewed to provide clarity and will provide guidance to a judge, should it ultimately get to a court case, on how this legislation must be viewed.

However, I point out to members that there are significant provisions, particularly in part 2 of the act, that are aimed at reaching agreements through voluntary processes such as cooperative planning and alternative dispute resolution.

In answer to the Member for McIntyre-Takhini, I appreciate that he has significant concerns with the act, and the importance that such provisions have, and his references to experiences and involvement in such matters.

I point out that we have the greatest respect for the concerns of all and the opinions of everyone regarding this legislation, but at the end of the day, we have followed an excellent process. There has been tremendous involvement and it is very important that we move forward with legislation that is a significant improvement over its predecessor, the *Children’s Act*.

This legislation will do far more involving First Nations, involving extended families and in addressing the interest of the child through cooperative planning and alternative dispute resolution processes.

Chair: Is there any further debate on this amendment? Shall this amendment carry?

Some Hon. Members: Disagree.

Count

Chair: Count has been called.

Bells

Chair: Would all those in favour please rise.

Members rise

Chair: Would all those opposed please rise.

Members rise

Chair: The results are five yea, nine nay.

Amendment to Clause 38 negatived

Chair: Is there any further debate on clause 38?

Clause 38 agreed to

On Clause 39

Mr. Mitchell: I just want to rise in support of clause 39, really for the opposite reasons of what I said about 38. Clause 39(1) speaks to, “If a director or peace officer has reasonable grounds to believe that the life, safety or health of a child is in immediate danger, the director or peace officer may, without a warrant, bring the child into the director’s care.”

As much as one never wants to see warrantless actions taken — meaning without the use of a warrant — they are not warrantless in terms of protecting the safety of the child, so we recognize the reason for clause 39 and we support it in the interest of the child.

Chair: Is there any further debate on clause 39?

Clause 39 agreed to

On Clause 40

Clause 40 agreed to

On Clause 41

Mr. Mitchell: We just want to point out that, considering that clause 41 speaks to, “If a child has been brought into the care of a director under sections 38 or 39, the director shall make all reasonable efforts to notify as soon as practicable (a) the child’s parents; and (b) if the child is a member of a First Nation, the child’s First Nation.”

Once again, this is notification after the fact, and that relates to the points that we have been trying to make all along —

while 2(j) speaks to the earliest moment practicable, in this case, it is after the fact.

Hon. Mr. Cathers: The member does not understand the provision. What this makes clear — I would go back and note to the member opposite previous debate we had some days ago; I believe it was in general debate on this legislation. In some cases, there may be a situation where action must be taken for the safety of a child. Its in situations where the child's parents are not in the area, not available, or perhaps not known — and the identity of the child may not be known, particularly with a young child — and further, if the identity of a child is not known, the connection to a First Nation — and which First Nation the child is a member of — may not be known.

What this clause does is provide further certainty that, if the situation occurs when a child is brought into care, and a First Nation has not been involved in that, formal notification must be given. This is also a situation whereby, if a First Nation was involved prior to the application for a warrant and was involved in and understood the decision to apply for a warrant, this is the formal notification that makes it clear to them that the warrant was approved and successfully executed — or, in the case of intervention without a warrant, that that occurred. Particularly in an intervention without a warrant in such emergent and clear situations, there would, by nature, be very little time involved to inform others.

This is just a matter for further certainty that if this is not as already occurred — I trust that will address the member's concern.

Again, clause 2(j) of the guiding principles makes it very clear that the First Nation must be involved in decision-making at the earliest practical opportunity.

Mr. Mitchell: I think as the minister stumbled within his explanation he almost made our point for us, which is: he meant to refer to when it was exercised without a warrant, but he started to say, after the fact, when there had been a warrant, it would be the first practicable moment. It's unfortunate that the minister is implying this is the first practicable moment, after the fact, although he did correct himself toward the end of his explanation.

Hon. Mr. Cathers: We could spend a lot of time debating the manner in which we debate and whether we trip over our words or not. I think in fact the member misheard me while talking to his colleague behind him.

This matter has been covered. To clarify for the member opposite, in the situation where, due to a lack of knowledge of a child's First Nation, the lack of knowledge of their parents or the lack of opportunity — due to circumstances — to inform them prior to applying for a warrant, this clause gives certainty that the First Nation must be notified that that has occurred. Under clause 39, if a child has been taken into custody without a warrant — in those very rare circumstances where that might occur, that would by its nature be a very urgent situation — in that situation, it would be unlikely that there would be time to provide notification to others prior to taking that step.

This clause makes it clear that the step must be immediately taken.

Mr. Edzerza: I would like to put on record some of the wording here — there is a double whammy here. The directors shall make all reasonable efforts — “reasonable efforts” again — and to notify as soon as is practicable. Both of them are far-reaching with no real concrete direction, all at the discretion of the director, again.

Hon. Mr. Cathers: Well, Mr. Chair, the Member for McIntyre-Takhini is mistaken in that assertion. “Practicable” and “reasonable” do have clear legal implications and, if disputed, it would be left to the determination of a judge as to whether reasonable efforts had been taken.

It is very common in legislation to refer to “reasonable efforts”. I hope the member would not suggest that unreasonable efforts need to be taken, or that it requires all efforts, because all efforts could include — there is no limitation when it says “all or any efforts” — all sorts of ridiculous proposals and the requirement to track someone down outside of the territory to inform them by foot, in person, et cetera. There is no point in engaging in further debate on this. The member was the Minister of Justice. He ought to be well aware that this is standard legal drafting. It is in the hands of courts. Clear interpretation is provided to this through case law of what is a reasonable effort.

Mr. Edzerza: I would like to point out for the record that the minister is again minimizing concerns of First Nations. It's historical in the fact that this has always been an issue with First Nations — always. The minister doesn't seem to think it's a big issue, but like I said earlier and I'll state for the record again: it's only when you have to deal with it that you realize the impact of these words.

Thank you.

Clause 41 agreed to

On Clause 42

Mr. Mitchell: I have a question for the minister. The wording refers to “...the director may notify the child's school and any community groups or other persons who the director thinks should be notified.”

The thought would be that, with the exception of special circumstances that could prevail, in fact there should be notification of the school. Is that how the minister would interpret this — although it says “may” — because it can't make it mandatory? Is that how, in practice, this would be carried out?

Hon. Mr. Cathers: If a child comes into the care of a director, the director, of course, may notify the child's school and any community groups or other persons the director thinks should be notified. These could include, for example, if the child was engaged in part of a team or was part of a Boy Scout or Girl Guide troop, it might be deemed appropriate to allow the leader of that organization to know that the child is going through a very sensitive time and why the child might be overly sensitive to certain things going on, or might be acting out or engaging in behaviour that they should be particularly sensitive to under the circumstances.

I suspect the member understands that objective there.

However, the intent in this is to provide information to the teacher, unless for some reason the director believes it would be inappropriate to do so. It is important to be able to share that information. This is something that was requested in the con-

sultation. To address the member's concern, the intent would be that, unless it was deemed inappropriate to do so, the information would be shared.

Chair: Is there any further debate on this clause?

Clause 42 agreed to

On Clause 43

Clause 43 agreed to

On Clause 44

Amendment proposed

Mr. Edzerza: Mr. Chair, I move

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 44(1) at page 41 by deleting all words after the expression "section 6" to and including the expression "and the director" and substituting for them the following:

"as soon as practicable after a complaint of a child in need of protective intervention is made and before the director".

Chair: It has been moved by Mr. Edzerza

THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 44(1) at page 41 by deleting all words after the expression "section 6" to and including the expression "and the director" and substituting for them the following:

"as soon as practicable after a complaint of a child in need of protective intervention is made and before the director".

Is there any debate on this amendment?

Mr. Edzerza: The reason that I brought this forward is that, once again, First Nations have really been trying to get this part of the old act changed to where they are contacted and have the right to be involved before the director begins any process for taking the child into care.

Again, I will state for the record that only those who have had to deal with an apprehension will know how difficult it is to reverse a decision of a director or social worker who feels the child is in need of protection. I know of numerous cases in the past where the Kwanlin Dun First Nation felt that the social worker jumped the gun and that the child was not really in need of protection. There was nothing to support that, and the child's life was not in danger; there were a lot of things that the First Nation uncovered after the fact. And, once the child is taken into care, it seems like almost an impossible task to have the child returned.

Certainly my involvement with children who were apprehended, and speaking from an advocate position — a lot of the family spent two years — first, they have six months to develop a case where they can prove their point, and they are allowed to get extensions every six months, up to a period of two years, at which time, after the child has already been gone for two years, the bond is somewhat broken and it becomes very difficult to try to bring the family back together.

Again, this is to try to get some kind of intervention before the director begins any process for taking the child into care. We believe this is really critical with regard to apprehensions, and I would like to hear what the minister has to say on this.

Hon. Mr. Cathers: Mr. Chair, the problem we have here is that the member is misinterpreting or does not understand what the act is doing.

The member is talking about past cases and challenges. I am not diminishing what challenges might have occurred while recognizing that the member is referring to his perception or the perception of a family of what occurred may or may not reflect the facts — and I state again: may or may not reflect the facts of the situation. I note that such matters are often very emotional and if there is a genuine case where intervention by the director is needed it would, in most cases, likely be disputed by an individual or parent who had not accepted the personal responsibility for the inappropriate actions they were taking.

Without spending a lot of time dwelling on such areas, I would note for the member that the entire section — he is making an amendment or proposing an amendment under the section related to cooperative planning when a child is in need of protection intervention, and saying that First Nations have been after having this changed and having this included. Mr. Chair, he is wrong in that assertion. Cooperative planning was not part, and is not part, of the *Children's Act*. This is a new section. The member is wrong; First Nations have not been after having these provisions to the act amended because there were no provisions in the act reflecting cooperative planning before.

Cooperative planning is a significant step, and at the request of First Nations and other members of the public it is being included in the act. In fact, there is recognition by the department that it is good practice and a way of improving the process and engaging in cooperative planning versus court procedure when possible to do so.

Again the member is mistaken in his assertion. The amendment moved by the member was — I don't want to be rude in pointing it out — not even worded properly. We had to take a brief break while the members tried to figure out how to revise their amendment. It has not been well thought out; it does not acknowledge that the act already provides for the appropriate involvement.

This is a new section of the act to even allow such involvement to occur, to require it to occur and this is not a necessary amendment. It's the type of amendment we saw on Thursday, the revisions to semicolons, "and" and changes like that. This is not a substantive amendment; it is not an effective one either. With that, I would encourage the member to take a look at the act a little more closely, recognize cooperative planning is a new provision and the early involvement of family — of First Nations — is provided for far greater in this act than occurred before.

The cooperative planning will commence at the earliest opportunity. If the member would refer to the service delivery principles and guiding principles, he would understand this is a needless amendment, and we would be able to proceed forward to what we hope will be ultimate passage of this important piece of legislation.

Mr. Edzerza: Once again, the minister is minimizing the concerns of First Nations, and his comments clearly state that.

Some Hon. Member: (Inaudible)

Point of order

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

Hon. Mr. Cathers: The member is imputing motive to me, contrary to our Standing Orders. Mr. Chair, I would ask you to have him withdraw his statement and refrain from such characterizations.

Chair's ruling

Chair: There is no point of order, but I would like to encourage members not to personalize the debate.

Mr. Edzerza: I am sure that First Nations who are following this will in fact come to conclusions of their own. I think if you look in the paper today, you'll see evidence of how they feel about this act. To buy a whole-page ad obviously does mean something; it has some meaning to it. The minister can downplay these concerns as much as he chooses. The fact is that these are really legitimate concerns from First Nations.

This is a major one because, as I stated earlier, once the child is in care, it is a very, very difficult process to undo that. To the best of my knowledge, I know a lot of families who have tried as long as two years and have never succeeded. This is an important part of the act.

Thank you.

Chair: Is there any further debate on this amendment? Shall this amendment carry?

Some Hon. Members: Disagree.

Some Hon. Members: Agree.

Count

Chair: A count has been called.

Bells

Chair: Order please.

All those in favour of the amendment, please rise.

Members rise

Chair: All those disagreeing with the amendment, please rise.

Members rise

Chair: The results are six yea, nine nay.

Amendment to Clause 44 negatived

Chair: Is there any further discussion on clause 44?

Clause 44 agreed to

On Clause 45

Clause 45 agreed to

On Clause 46

Mr. Mitchell: In 46(2), it says, "In an application under subclause 39(4) for an order that a child brought into care without a warrant is in need of protective intervention, a director shall attend before a judge for a presentation hearing no later than 7 days after the child is brought into care."

We previously expressed our support for the purposes of clause 39, but I have to question this: seven days seems like a very long time indeed, given that a child was taken into custody without a warrant. I am wondering how that number is arrived at. Is that a reasonable number based on legislation elsewhere? Is that the thinking behind it? I'm just asking the minister if he can explain that.

Hon. Mr. Cathers: Yes.

Chair: Is there any further debate or discussion on clause 47?

Mr. Mitchell: I thought we were just talking about clause 46. It went by very quickly.

In clause 47(1), there is no time restraint; it's too long a time frame.

Chair: Thank you for pointing that out. The Chair made a mistake. We are debating clause 46.

Clause 46 agreed to

On Clause 47

Mr. Mitchell: In 47(1) there is no time restraint, Mr. Chair, and it would appear that there should be.

Hon. Mr. Cathers: It does elaborate further in the subclauses of this clause on the provisions — under subclause (2), it refers to a seven-day timeline; under subclause (3), another seven-day timeline; under subclause (4), to a three-day timeline, et cetera. So it is spelled out in those subclauses.

Mr. Mitchell: But it would appear that 46(1) is not addressed. I agree with the minister that (2) and (3) are addressed. It's addressed under clause 35; it's addressed under clauses 38(7) and 39(4).

Hon. Mr. Cathers: Clause 46 is entitled "Application and presentation hearing." Clause 47 is with respect to serving documents and it refers to subclauses 46(1), (2) and (3), "...shall serve the following documents on the child's parents and if the child is a member of a First Nation, the child's First Nation".

It lists out the documents there, then in clause 47(2) it refers to a "supervision order," subclause (3) refers to an apprehension with a warrant having occurred, and subclause (4) refers to if it occurred with a warrant.

Chair: Is there any further discussion on clause 47?

Clause 47 agreed to

On Clause 48

Clause 48 agreed to

On Clause 49

Clause 49 agreed to

On Clause 50

Clause 50 agreed to

On Clause 51

Clause 51 agreed to

On Clause 52

Clause 52 agreed to

On Clause 53

Clause 53 agreed to

On Clause 54

Clause 54 agreed to

On Clause 55

Clause 55 agreed to

On Clause 56

Clause 56 agreed to

On Clause 57

Mr. Mitchell: Just to point out, in clause 57(3)(b), this would be another opportunity to look for wording that would indicate that grandparents, when practicable, should be afforded first consideration.

I am asking whether the minister gave any consideration to doing that.

Hon. Mr. Cathers: Under this clause 57(3)(b), it says that the child may be placed in the custody of another individual with that individual's consent. Of course, in the situation referred to in 57(3)(a), that a child be returned to or remain in the care of a parent apparently entitled to custody, in that case the definition of parent encompasses someone who is not the birth parent to whom custody has been assigned. So if the grandparents had custody of the child, they would be considered — for the purpose of the act as laid out in the definitions — the parent for the purpose of that clause. Subclause (b) does allow for grandparents or other members of the extended family or friends, et cetera, to have the child placed with them at their consent, under the supervision of the director.

Clause 57 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. We are now proceeding with general debate on clause 58.

On Clause 58

Clause 58 agreed to

On Clause 59

Clause 59 agreed to

On Clause 60

Clause 60 agreed to

On Clause 61

Clause 61 agreed to

On Clause 62

Clause 62 agreed to

On Clause 63

Mr. Mitchell: Once again, in clause 63(3) where it says, "If the director or other individual consents to health care for the child, the director or other individual shall, if practicable, notify the child's parents." In this case, it doesn't say "when practicable" or "as soon as practicable". It just says "if practicable". I would suggest that seems somewhat vague, because it is leaving it up to the director or another individual to determine whether or not it even is practicable.

We would appreciate it if the minister could just explain why that particular wording was chosen.

Hon. Mr. Cathers: To answer the member's concerns, this is intended to leave some leeway if there is a situation whereby the parent cannot be contacted — if they are out of the jurisdiction, if they are undergoing treatment perhaps, or for some other reason it is not possible to contact them, as I indicated.

This is in cases where the director cannot do so within a reasonable amount of time and it's necessary for the health of the child and, again, it notes, "The director or other individual may only consent to health care for the child that, in the opin-

ion of a health care provider, is necessary to provide without delay."

So, that's recognizing that. Another example could be if a parent was working out at a mining camp, or was out doing mine exploration or if, for some reason, was not contactable within a reasonable length of time. The clause is specific to areas where it is necessary to do so without delay and, therefore, would be necessary to do for the health of the child in a timely manner.

Mr. Mitchell: I thank the minister for the explanation and I do understand the intent being that there may be times where it is not practicable.

I just wonder if in the minister's review of legislation from other jurisdictions — if wording of a clause like this is ever worded in the negative? In other words, has it been said, "unless it is not practicable" or something to that effect, or is it always worded this way?

Hon. Mr. Cathers: The net effect would be the same.

Mr. Mitchell: The emphasis would be different. The burden of proof would be upon the director or other individual to prove that it was not practicable, rather than on the parent after the fact to prove that it would have been practicable. The net effect might be the same, but how it would be employed might be different in reality.

Hon. Mr. Cathers: In answer to his concerns, I would remind the member that in a practical manner all efforts would be made to contact the parents. In this case, it refers again to health care, that "...in the opinion of a health care provider, is necessary to provide without delay."

That would include a child bleeding from a wound. If a child sustained a body wound, head wound or any other type of wound, where it was necessary to take action quickly — stitching them up, for example, would be a case where this consent would be required.

There could also be a situation that was life-threatening and it would be necessary to provide immediate action. The key clauses here are that it refers to a "health care provider" who believes it is necessary to do so "without delay", and that is the trigger on that.

All reasonable efforts would be taken, but the key decision in that part is not so much the director's opinion as the opinion of a capable health care provider — that it's necessary to provide that without delay.

Clause 63 agreed to

On Clause 64

Clause 64 agreed to

On Clause 65

Clause 65 agreed to

On Clause 66

Clause 66 agreed to

On Clause 67

Clause 67 agreed to

On Clause 68

Clause 68 agreed to

On Clause 69

Mr. Edzerza: Mr. Chair, I would like the minister to explain why it wouldn't improve this bill to have an expression

added after the word “parent” to give a grandparent or other extended family members the ability to apply for termination of a temporary order.

We think that ability should be included in this subclause, but I realize the minister isn’t accepting any amendments, so I bring it up as a point of interest.

Hon. Mr. Cathers: I would point out to the member that this is referring to an application to terminate a temporary or continuing custody order. If custody had been awarded to the director of family and children’s services of a First Nation service authority and the child was placed under their area of responsibility, then if the parent to whom custody would be returned would not be willing to consent to once again taking on custody of that child, it would be pointless and ultimately ineffective to engage in this type of pursuit to try to terminate that order.

So the person who wanted to reassume custody would be one of the persons who could initiate that. It could be the director, the parent of the child, or the child, if they’re over the age of 12.

I would again remind the member opposite that “parent” under the definitions is inclusive of a mother or father who has custody of the child, a mother or father who does not have custody of the child but who regularly exercises or attempts to exercise rights of access, a mother or father providing financial support for the child or a person to whom custody of a child has been granted by a court of competent jurisdiction or by an agreement. That is the clause that would cover grandparents and other members of the extended family.

Also, a person with whom a child resides and who stands in the place of a child’s mother or father would encompass others who might be temporarily taking care of a child.

Therefore, the legislation does sufficiently address the matter without amendment.

Clause 69 agreed to

On Clause 70

Clause 70 agreed to

On Clause 71

Clause 71 agreed to

On Clause 72

Clause 72 agreed to

On Clause 73

Clause 73 agreed to

On Clause 74

Clause 74 agreed to

On Clause 75

Clause 75 agreed to

On Clause 76

Mr. Mitchell: In looking at clause 76(1), it says, “For the purposes of an application made or proposed by any person to a judge under this Part, the official guardian has the exclusive right to determine whether a child requires the appointment of a guardian, or separate representation by a lawyer or any other person, that will be paid for at public expense chargeable to the Government of Yukon’s consolidated revenue fund.”

Has the minister considered whether this clause could have been or should have been worded to also allow a First Nation to apply under this clause for the appointment of a separate representation by a lawyer or another person to be paid for at the public expense?

Hon. Mr. Cathers: In this case we’re talking about the office of the official guardian. Because this is an area regarding authority to appoint a lawyer that must be paid at public expense — chargeable to the Government of Yukon consolidated revenue fund — it would be highly out of order to designate that authority to an individual in any government, whether it be First Nation, federal, municipal, et cetera. That is an obligation that must remain vested with an employee of Government of Yukon.

It does not eliminate the ability for someone to have separate representation paid for by a source other than the Government of Yukon’s consolidated revenue fund but it is, and should be, only employees of the Government of Yukon who have such power over government funding.

As the member will be aware, giving even an official of the Government of Yukon that type of clear language, that they can do that and it must be paid, is not a common thing in legislation and only occurs with positions of special trust, such as the official guardian.

Chair: Is there any further discussion on clause 76?

Clause 76 agreed to

On Clause 77

Clause 77 agreed to

On Clause 78

Clause 78 agreed to

On Clause 79

Clause 79 agreed to

On Clause 80

Clause 80 agreed to

On Clause 81

Clause 81 agreed to

On Clause 82

Clause 82 agreed to

On Clause 83

Clause 83 agreed to

On Clause 84

Clause 84 agreed to

On Clause 85

Clause 85 agreed to

On Clause 86

Clause 86 agreed to

On Clause 87

Clause 87 agreed to

On Clause 88

Mr. Edzerza: I would like to ask the minister if he’d be willing to delete this clause altogether. The reason I ask this is that it doesn’t seem fair that a child who has been placed for adoption should lose their right to have visits from extended family members.

Some Hon. Member: (Inaudible)

Mr. Edzerza: To clarify, this would be under clause 88(3). That's the one I would ask that the minister consider deleting altogether.

Hon. Mr. Cathers: Well, the simple answer to that is no. Court orders cannot be made for visits with family members where a child is placed for adoption and there is no agreement for contact. Cross-referenced with clause 138 of the legislation, this provides increased openness arrangements under this legislation. When compared to the current *Children's Act*, this allows for far more contact and far more access.

To delete this clause altogether would be a very bad move because, in some cases, it must allow the provisions to avoid contact.

Again, what the member is not recognizing is that, when a child is placed for adoption, whether through agreement or decision of the court, they are no longer a "child in care". They have had the custody transferred to someone else. And this would apply — adoption can take place in situations — and does — when there have been no child custody references.

Therefore, what the member would propose would have the net effect of giving adoptive parents fewer rights than birth parents, and that would be a very marked shift in legislation versus the standard in every Canadian jurisdiction.

I would hazard a guess that it might not even stand up to a challenge in the Supreme Court because of the well-established rights of adoptive parents being equivalent to those of a parent, once that jurisdiction has been granted.

A simple answer to the question is no. The more complex answer to the question is no, for the reasons I have already listed.

Clause 88 agreed to
On Clause 89
Clause 89 agreed to
On Clause 90
Clause 90 agreed to
On Clause 91
Clause 91 agreed to
On Clause 92
Clause 92 agreed to
On Clause 93
Clause 93 agreed to
On Clause 94
Clause 94 agreed to
On Clause 95
Clause 95 agreed to
On Clause 96
Clause 96 agreed to
On Clause 97

Mr. Edzerza: Thank you, Mr. Chair. I have a suggestion for the minister that would improve and strengthen this bill.

If he would be willing to add a new subclause (c) requiring the director to advise the birth grandparents of the possible adoption and of their rights, whether or not they have custody, it would recognize the real fact that grandparents have a special bond with their grandchildren and a right to know what is happening in their lives.

Would the minister be willing to have such a clause drafted before we decide on this clause?

Hon. Mr. Cathers: Mr. Chair, that's already provided for in the next clause. Clause 98, "Cooperative planning" does provide for the involvement of a grandparent. I would encourage the member to give his support for clearing this clause and moving forward.

Clause 97 agreed to
On Clause 98
Clause 98 agreed to
On Clause 99
Clause 99 agreed to
On Clause 100
Clause 100 agreed to
On Clause 101
Clause 101 agreed to
On Clause 102
Clause 102 agreed to
On Clause 103
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Clause 135 agreed to
On Clause 136
Clause 136 agreed to
On Clause 137
Clause 137 agreed to
On Clause 138
Clause 138 agreed to
On Clause 139
Clause 139 agreed to
On Clause 140

Mr. Edzerza: Mr. Chair, we'd like to see the minister add a new subclause (c) to this clause to include "and social and health history that is available". The reason for this is that it is very important for people who have been adopted to have as much knowledge as possible about their social and cultural roots, as well as any medical conditions in their birth family that could affect their own health down the road.

If the minister shares these concerns, perhaps he would be willing to make that addition to this bill. If he isn't willing, then perhaps he could explain why.

Hon. Mr. Cathers: Mr. Chair, what the member is referring to is already in best practices that occur across the country and is, in fact, provided for in this legislation. The provisions around open adoption, et cetera, provide increased rights for an adopted child to access information and make more openness in adoption a default position, rather than a rare situation. The member's suggestion is not a bad one but it is unnecessary because it is already addressed.

Clause 140 agreed to
On Clause 141
Clause 141 agreed to

On Clause 142
Clause 142 agreed to
On Clause 143
Clause 143 agreed to
On Clause 144
Clause 144 agreed to
On Clause 145
Clause 145 agreed to
On Clause 146
Clause 146 agreed to
On Clause 147
Clause 147 agreed to
On Clause 148
Clause 148 agreed to
On Clause 149
Clause 149 agreed to
On Clause 150
Clause 150 agreed to
On Clause 151
Clause 151 agreed to
On Clause 152

Mr. Edzerza: It was our intention to propose an amendment to this subclause after the word "unless" to add the expression "the placement is a custom adoption as defined under this act".

Our reason for suggesting this is that we would like to see this bill give more recognition to First Nation custom adoption as an integral part of child welfare in the Yukon.

The old adage that it takes a community to raise a child is still very valid, and we would like to see this bill better reflect that principle.

The existing clause makes reference to persons that are authorized by clause 95 to arrange the placement of a child, but clause 95 does not explicitly deal with custom adoptions.

Is the minister willing to set this clause aside for consideration later so that an amendment can be brought forward to meet this concern?

Hon. Mr. Cathers: Mr. Chair, the member is misunderstanding the legislation.

This is referring to who may place a child for adoption and whether or not they have the authorization to do so. It is a different clause that provides the ability for recognition of custom adoption and it is provided for in this legislation as it was not, and is not, in the *Children's Act*.

Again, this bill actually recognizes and creates the room to recognize First Nation custom adoptions and to accommodate those practices. It provides the ability, as we have debated before, that when placing a child into adoption or into care, extended family must be given first consideration and members of the child's cultural community given next consideration. That would include, for a First Nation child, the First Nation of which they are a member.

The member is mixing up his clauses here. What he is asking for is already provided for in the legislation.

Clause 152 agreed to
On Clause 153
Clause 153 agreed to

On Clause 154
Clause 154 agreed to
On Clause 155
Clause 155 agreed to
On Clause 156
Clause 156 agreed to
On Clause 157
Clause 157 agreed to
On Clause 158
Clause 158 agreed to
On Clause 159
Clause 159 agreed to
On Clause 160
Clause 160 agreed to
On Clause 161
Clause 161 agreed to
On Clause 162
Clause 162 agreed to
On Clause 163
Clause 163 agreed to
On Clause 164
Clause 164 agreed to
On Clause 165
Clause 165 agreed to
On Clause 166
Clause 166 agreed to
On Clause 167

Mr. Edzerza: Mr. Chair, this clause is another example of the concern regarding too much discretionary authority in this proposed act. In this case, at least it's not the director's discretionary authority in question; it's actually a minister's. The easiest way to correct that would be for the minister to change the word "may" to "shall". However, given the minister's refusal to consider any changes — not to mention the low regard this government seems to have for advisory committees — I don't really expect the minister to take a course of action on this issue.

However, since we are dealing with this clause right now, I would like to ask the minister if he would consider including the word "evaluative" along with the words "advisory, investigative and administrative". Having a committee, or committees, that can help in evaluating how this act is working would be quite helpful and would certainly make the system more inclusive of ideas from government. I am just wondering if the minister would consider that.

Hon. Mr. Cathers: Again, the functions the member asked for are already provided for under clause 167(1) — the reference to administrative reviews. That is already provided for. So the areas the member is referring to are included under that blanket definition.

I'd remind the member of his statement, "Well, this is just another area that says "may" rather than "shall," et cetera, et cetera. For the member to make those suggestions — I won't even dignify his claims that the government doesn't respect advisory committees. The member ought to know that's not the case.

Under clause 183(1), the legislation states: "The operation of this Act shall be reviewed every 5 years by an advisory committee established by the Minister." And it goes on for six subsequent clauses, including subclauses, noting who must be a member of such a committee, how the committee shall be appointed, and how it shall report: "The Minister shall present a copy of the committee's report not later than 30 days after receiving it and if the Legislative Assembly is not then sitting ..., " et cetera, et cetera. So it is provided for.

What the member is not noticing, or not reflecting in his comments, is that clause 167 provides the ability for other committees to be established. It is permissive to allow other areas to be reviewed beyond what is the statutory obligation for review of the act every five years. So, again, the member is not recognizing what this clause does and is not recognizing that this provides for abilities beyond that which are stipulated as a requirement in clause 183.

Clause 167 agreed to
On Clause 168

Hon. Mr. Cathers: I would note again for the members opposite — for those who have said that there is too much reference to "may," instead of "shall," — clause 168(1) requires: "The Minister

(a) shall, at the request of a First Nation, enter into negotiations with the First Nation or other legal entity, respecting the proposed designation of a First Nation service authority to provide services under this Act."

It places obligation to enter into that negotiation and to establish a First Nation service authority if so requested by a First Nation.

Clause 168 agreed to
On Clause 169
Clause 169 agreed to
On Clause 170
Clause 170 agreed to
On Clause 171
Clause 171 agreed to
On Clause 172
Clause 172 agreed to
On Clause 173
Clause 173 agreed to
On Clause 174
Clause 174 agreed to
On Clause 175

Amendment proposed

Mr. Edzerza: Mr. Chair, I move THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 175(1) at page 110 by replacing the word "may" with the word "shall".

Chair: It has been moved by Mr. Edzerza THAT Bill No. 50, entitled *Child and Family Services Act*, be amended in clause 175(1) at page 110 by replacing the word "may" with the word "shall".

Is there any debate?

Mr. Edzerza: This again would be an important word change with regard to speaking directly to some of the wishes

of the First Nations to be more closely involved in the decision-making surrounding their children.

It is also a very clear example of the kind of discretionary authority that is vested in the hands of the director. Instead of merely allowing the director to set up community advisory committees, this amendment would make it necessary for the director to do that. It's not a big amendment in terms of any wording changes that are needed, but if the minister will support this amendment, it would go a long way toward reassuring First Nations that their voices are not falling by the wayside.

Thank you.

Hon. Mr. Cathers: Mr. Chair, we already debated this previously, pointing out that clause 183 requires a committee to be established to review the operations of the act every five years. This is another area that provides for a broader ability to allow the minister to establish these committees for such purposes and to report on the functioning of this area.

Previously, we were discussing ministerial committees; this is an area whereby a director may establish an advisory committee. Again, the member is missing the point. This amendment is not necessary and it is in fact counterproductive to be spending more time in the Legislative Assembly discussing it again.

Chair: Shall this amendment carry?

Amendment to Clause 175 negatived

Chair: Is there any further discussion on clause 175?

Clause 175 agreed to

On Clause 176

Clause 176 agreed to

On Clause 177

Mr. Mitchell: Specifically, in the letter that we all received from the Privacy Commissioner and Ombudsman, on page 4 of 5 it states: "Sections 177 and 178 give the Director unprecedented powers of collection, use, and disclosure of personal information from any government department. This is a fundamental shift in how personal information flows between government departments, as the Director has the right to obtain information without the consent or knowledge of the individual. By way of example, the Department could seek personal information about a proposed foster parent from the Motor Vehicles Branch or from Yukon Housing Authority."

The concern I have, obviously, is reflective of the concern that the Privacy Commissioner has expressed in her letter. The minister had promised us last week that he would be providing this week an opinion that he was seeking from Justice officials — presumably a legal opinion. Here we are debating the relevant clause, and no such opinion has been provided.

As we near the end of Committee debate on this act, it would seem rather pointless to provide us with an opinion after we have voted on the relevant sections, as the opinion, presumably, would be to eliminate the debate at the time, not after the fact. Does the minister now have additional information that he can provide to the members on this side of the House?

Hon. Mr. Cathers: Mr. Chair, I addressed that earlier in debate today.

Again, the member is referring to a legal opinion. Of course, it is standard practice not to table legal opinions in the Assembly for the obvious reason that they are privileged information. Again, I anticipate that there may be some information provided in due course that further clarifies to the member the response to the Ombudsman's concerns, or the Information and Privacy Commissioner, rather. But, as I indicated, Justice officials have already addressed this matter with her. These matters and all these areas of the legislation were reviewed with her predecessor as Information and Privacy Commissioner. We certainly have respect for his opinion, his experience and involvement in that process.

So, Mr. Chair, I addressed this at greater length earlier this afternoon, and I don't think it's worthy chewing up a lot more House time debating what we have already debated.

Mr. Mitchell: You see, there is where we disagree because, first of all, the minister now says that it's normal not to provide legal opinions. I acknowledged that last Thursday, if the minister was listening, when I requested what information he would bring forward next week. He had promised that he would bring forward information. In fact, he then said he already had the information.

Now, the minister actually went pretty far toward indicating he would bring forward the legal opinion but, if he is not able or prepared to do so, based on a precedent, I understand that. However, without bringing forward the opinion itself, he could bring forward a précis or some other format of summary to provide assurances to this side of the House that these issues have been properly addressed.

What he's now asking us to do is accept his assurances that he will do so in due course. We're not certain whether due course means tomorrow, Thursday, next Monday or next year. He hasn't been very precise in his answers. He has not provided us with a single piece of information other than the assurance that he has been assured by some officials at some time that everything is fine. That is not sufficient comfort to the members here as we debate this bill.

Secondly, the minister continues to make reference to the former Ombudsman and Privacy Commissioner and indicates that he held that person in high regard — so did we — but there is now a new and currently serving Privacy Commissioner and Ombudsman. We think that this minister should be paying careful attention to what the person who is currently in the position has to say.

I'm not certain whether the minister is implying that he prefers the advice of the former Privacy Commissioner to the advice of the current Privacy Commissioner, but that's not how it's done. I might prefer the opinions of a former Premier to the current Premier or a former Health minister to the current Health minister, but it's this minister who is the minister of the day, and we have a currently serving Privacy Commissioner and Ombudsman who has expressed serious concerns.

That is why we have asked for either: (a) that person to appear as a witness so that we can hear the Privacy Commissioner's concerns firsthand, and the minister can engage in discussion with the witness and refute the witness's concerns, answer them, address them or alleviate them as he sees fit; or

(b) that the minister provide us with some sort of documentation that all of these issues have been dealt with and are moot.

To date, the minister has done neither of those. He has not called the person, or his side of the House has not agreed to allow the Privacy Commissioner to appear as a witness, so that we can be satisfied what these concerns are and ensure we're passing legislation in the best possible way. Nor has he answered the questions by providing us with any opinions or even a summary of opinions by his officials, other than to say, "Don't worry, I've looked into it."

That's not the normal course of events when debating legislation. Again, what can the minister bring forward to alleviate our concerns with this clause?

Hon. Mr. Cathers: Well, it appears that the member was not paying attention earlier this afternoon when I addressed this matter. But I'll repeat myself for the member, noting that, first of all, I recognize and appreciate the legal drafting expertise of the officials from the Department of Justice. They are familiar with Yukon's access to information and protection of privacy legislation. They are familiar with Yukon's child welfare legislation, the *Children's Act*, and the newly drafted act that is presently before this House: the *Child and Family Services Act*. They are also familiar with legislation of a similar nature in other jurisdictions, specifically in the area of child welfare. These officials have done their work, and I appreciate that that work has been done.

Mr. Chair, I'm just waiting for the member's attention, as I hope that his objective is to gain the information and not simply to engage in what he referred to earlier today as "merciless questioning".

Now, moving on to the member's questions, again, I would point out that the officials from Justice — the legal drafters — followed the appropriate process, including consulting on provisions related to access to information and protection of privacy with the individual who then held the office of Privacy Commissioner.

The fact that there has been a change of Privacy Commissioner since that time does not negate the fact that the appropriate process was followed. We don't go back 10 squares because there has been a changeover in officials. As within government — simply because there has been a change in staff of a department when a project or any initiative is underway, you don't go back to the drawing table. If we were to do that, nothing would ever get done.

Perhaps that is what the members are encouraging: that we simply don't move. Nobody moves and nobody gets hurt is the facetious statement on the topic.

So again, on this clause that the member is referring to, the officials did their work. The legal drafters who have knowledge of these matters did their work. I have informed the member opposite, again, that the provisions in the legislation that are applicable here are in line with what has been the past practice in Yukon and what is the standard in other jurisdictions.

As I have noted to the member, it is common to have a director tasked with this power and the decision-making around confidential information in other areas. The member may note that, as we went through clause by clause earlier, we passed a

clause that referred to an action of a director in accordance with this clause would be considered a law enforcement matter for the purposes of ATIPP.

This is an area that is a special situation. The decisions around confidential information are in the hands of a capable individual. They are a sacred and important trust in the hands of the director. I remind the member opposite that this is one of these unique pieces of legislation that entrusts a director with specific powers and provisions that are not subject to ministerial decision-making or to the decision-making of Cabinet, unless Cabinet brings forward regulations or amendments to the legislation.

These matters are put in the hands of very capable officials who have expertise in these matters. They carry a sacred trust. If the member does not have sufficient trust in their ability, I would point out that, ultimately, it is all subject to judicial determination. If someone feels that the judge or, for that matter, the Information and Privacy Commissioner, has not exercised their obligations or their trust in accordance with the law, that individual can take either the director of family and children's services or the director of the First Nation service authority, pursuant to this act — or, in the case of the Information and Privacy Commissioner, that individual pursuant to that act — to court to challenge their decision. Those are just a couple of examples.

My ultimate point for the members opposite is that these matters are subject to appeal to the court that has the jurisdiction in this matter.

So this is not — as the member seems to be expressing — a case where the director has carte blanche to make whatever decision he or she wishes to make without any possibility of appeal. The director will act in accordance with the obligations and, while it is critical that the privacy of this information be respected, it is also important the information be shared to ensure the most effective supports for children and families.

I point out that this is in line with the standards of the best child welfare legislation across the country. It is not uncommon — contrary to the assertion by the member — that Yukon legislation makes it clear that the jurisdiction over information and privacy under a specific act is not subject to ATIPP. However, if the member reads the *Access to Information and Protection of Privacy Act*, it states that the act must clearly identify that for it to be exempt from the provisions of ATIPP.

The responsibilities and obligations placed upon a director under this legislation are similar in nature — particularly in the nature of the level of trust placed upon them — to that placed upon the Information and Privacy Commissioner. I respect both in the execution of their job, in accordance with their obligations, their legal requirements, et cetera. I would urge the member to do the same.

Justice officials and, particularly, legal drafters followed the appropriate process; consultation did occur with the individual who — at the time of that consultation — was then the Information and Privacy Commissioner. Officials who were doing the drafting have significant knowledge and expertise in matters relating not only to information and privacy legislation, but also to child welfare legislation.

They have done their good work. I have confidence in the work they have done and I would make the member aware — in reference to his questions about where the response is on this — that officials from Justice are working directly with the Information and Privacy Commissioner. At such time as they provide documentation related to that which can be made publicly available, I am sure it will be made publicly available.

A letter is not being written on my desk for my signature, in answer to the member's question.

These matters will be addressed appropriately in the future, as they have been in the past. Discussion has occurred and officials will do their good work with the individual who is now the Information and Privacy Commissioner. Again, I would encourage the member to cease ragging the puck — a common terminology in this House — and to move on and to respect the good work these officials have done.

Mr. Mitchell: Well, Mr. Chair, let's make a few things very clear here for the minister. First of all, the minister persists — despite anything we say to the contrary — in putting misinformation on the record.

Some Hon. Member: (Inaudible)

Point of order

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

Hon. Mr. Cathers: Mr. Chair, the term "misinformation" has been ruled out of order on many occasions.

Chair's ruling

Chair: There is a point of order. "Misinformation" is okay, but "persists" is the part that actually causes it to be a point of order. Mr. Mitchell, I would ask you to refrain from those comments, please.

Mr. Mitchell: Thank you, Mr. Chair. The minister has put misinformation or inaccurate information on the record.

Chair: Order please. Mr. Mitchell, I just ruled that out of order. On the point of order, please don't refer to that again. Mr. Mitchell, you have the floor.

Mr. Mitchell: The minister continues to state that members on this side of the House do not have confidence in public officials, including the director and/or Justice officials. That is not the case. That is not what we have said. What we have said is we find ourselves on this side of the House in a difficult position, based on a letter that is dated April 16, 2008, which we first received on April 17, 2008, from Yukon's one and only currently serving Ombudsman and Privacy Commissioner.

Now, I'll try to use small words here and we'll try to be very clear for the minister. On page 1 of the letter, in the first paragraph, the ATIPP commissioner writes, "I write to advise you of a number of concerns I have regarding Bill 50, the *Child and Family Services Act*, and the implications for the protection of privacy and access to information contained in that proposed legislation."

On page 2 of the same letter, in the middle of the page, in a stand-alone paragraph, she says, "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."

Later, on the same page, under a heading entitled, "Sections 179 and 180 Restrict Access to Information by the Information and Privacy Commissioner and the Ombudsman" she states, "The spirit and important public policy objectives of the ATIPP Act and *Ombudsman Act* should be respected and only restricted in the rarest of circumstances."

Further, on page 3 of 5, she states, "Sections 179 and 180 Restrict Individual Rights to Personal Information". It states, "Currently an individual has the right to access personal information under the ATIPP Act. Sections 179 and 180 seem to erect significant barriers for individuals seeking access to their personal information."

She lays out quite a few reasons in this letter. On page 4 of 5, she states, "In addition, Sections 177 and 178 give the Director unprecedented powers of collection, use, and disclosure of personal information from any government department. This is a fundamental shift in how personal information flows between government departments, as the Director has the right to obtain information without the consent or knowledge of the individual. By way of example, the Department could seek personal information about a proposed foster parent from the Motor Vehicles Branch or from Yukon Housing Authority.

When we receive a letter like that from a high public official, such as the Privacy Commissioner or the Ombudsman, we certainly take it to heart. We hadn't recognized all of these difficulties until she brought it to our attention.

The Premier thinks this is funny. He thinks it's funny; he thinks it's amusing. Well, we don't. The minister has continued to say that he prefers the input he received from the former Privacy Commissioner. Well, we now have input from the current Privacy Commissioner. She indicated that there was consultation with her during the drafting of the act —

Some Hon. Member: (Inaudible)

Point of order

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

Hon. Mr. Cathers: There have been numerous discussions in the past on the Chair's rulings regarding members putting words into others' mouths. The Member for Copperbelt, Leader of the Liberal Party, ought to know very well that is not what I said.

Chair's ruling

Chair: Order please. There is no point of order. It is just a dispute among members.

Mr. Mitchell: The point I'm making, Mr. Chair, is that this government consulted with this Privacy Commissioner. They didn't only consult with the previous Privacy Commissioner; they consulted with this Privacy Commissioner. They have apparently not paid attention to the advice, or did not feel it was necessary to address the issues raised.

We are asking for the reasons they feel this way, and the only thing I've heard to date is, "We think it has been covered

by officials, and the previous Privacy Commissioner said it was okay.” Well, this letter doesn’t say it’s okay.

The minister was also telling us, “We’ll eventually come up with answers, and we’ll provide them to you.” At that point, this bill will be law. That’s quite obvious, Mr. Chair. It will be after the fact, or it will be when there is a court challenge. We don’t understand why the minister wouldn’t want to get it right the first time. That’s why we’re asking these questions.

The minister hasn’t answered the questions to anyone’s satisfaction on this side of the House, other than to say, “We’ll have some information eventually.”

That’s why we’ve asked them. We’re not going to get answers; it will pass. The record should show the minister did not see fit to avail himself of the expert advice that we have, by an individual who has been hired with full agreement of all sides of this House.

Thank you.

Hon. Mr. Fentie: I’m compelled to enter into this debate. I think the Leader of the Official Opposition should re-think what he has just said.

The information that came from the Privacy Commissioner is not something to take to heart; it’s something to take under advisement.

By the way, the appropriate process has been conducted all along. Now that the Privacy Commissioner has chosen in this manner to bring forward concerns, the Department of Justice has worked with the Privacy Commissioner addressing those concerns, as they have already been addressed in the bill. They’re pointing that out to the Privacy Commissioner.

But I think it’s also important that the member recognizes that we in this Legislative Assembly aren’t expert legal drafters. That’s why the government has chosen to do the appropriate thing and ensure those who have the expertise, who have the credentials, are now working with the Privacy Commissioner, addressing the concerns that are already addressed in the act.

By the way, I agree with the member opposite that the bill will pass, as it should. It is a dramatic improvement on our ability to deal with the unfortunate circumstance where children must be put in the care of public government. So we move on.

If the member has anything further on this, I have some sage advice: why doesn’t the member take it directly to the Privacy Commissioner — not here, but go directly to the Privacy Commissioner — and maybe get a clearer understanding of exactly what the Privacy Commissioner is alluding.

Mr. Mitchell: I certainly thank the Premier for his sage advice; I have already taken it. I did just that: I phoned the Privacy Commissioner and asked her if she could elaborate on her concerns, and she did so. There is no doubt — and I know the Premier will feel this way — that the person who could best and most clearly elaborate on her concerns and her issues from a legal perspective would be the Privacy Commissioner. Unfortunately, that Premier and that Health minister voted to prevent that from occurring on the floor of this House.

That would have cleared it all up days ago. The Premier is suggesting we seek the advice of the Privacy Commissioner. We did; we sought to have the advice in a timely manner on the

floor of this Assembly, but the Premier wasn’t interested in having the advice of the person — who he indicates he has so much respect for — at that point in time. Now his point is to say that this will all be cleared up in a matter of time and explanations will follow after discussions between the Privacy Commissioner and Justice officials.

When I phoned the Privacy Commissioner, she related to me that she had a very good meeting with Justice officials. It was certainly a cooperative meeting where views were exchanged but, on this issue, she and the officials don’t see eye to eye. They have a different view based on a different perspective — or, as she would say, it is a different lens they are seeing it through.

That is why, if we are going to be legislators and actually vote on clauses and on a bill, we should have that perspective made available to us. That’s why we have this person, because it says right here in her letter — she cites that she has jurisdiction insofar as, I’ll quote, “The ATIPP 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.”

That’s why she wrote the letter to this Assembly. Now what are we doing with this letter? We’re saying, after the act has become law, we’ll look into it. It seems to be backward.

It seems the Premier knows better than the Auditor General — we’ve heard that before. He knows better than the Privacy Commissioner.

I guess we do agree. It will become law. It is very unfortunate, from our perspective, that it will become law without the advice of the Privacy Commissioner on how we could remedy the concerns she has raised.

Hon. Mr. Fentie: I think what’s backward here is the Official Opposition’s position. What’s paramount in the bill is the protection of children.

The Privacy Commissioner, in this matter, has brought forward some concerns. The appropriate approach has been taken. The Department of Justice is pointing out to the Privacy Commissioner where her concerns are being addressed in the bill, always with the underpinning that the protection of children cannot be compromised. That’s why the bill is structured the way it is.

The member’s assertions are incorrect. The member has all the information from the Privacy Commissioner right there in his hands. He has been reading those sections into the record. I am not sure what else we can do for the member. I think my sage advice, moments ago, was that the member should reconsider and allow the Department of Justice do their work. The member could always get in contact with the Privacy Commissioner and have discussions with the commissioner at his choosing.

Mr. Edzerza: Mr. Chair, as I listen to this debate, I feel that it is important to put some issues on record here. After listening to the minister and the Premier talk, it's almost worth mentioning that they must see a concern here. They must recognize that there is an issue here, because why would they instruct the government's Justice department to sit down with the Privacy Commissioner? They never did it with anybody else who had concerns. Why instruct the Justice department to do it?

Mr. Chair, all of these concerns that were brought out by the Privacy Commissioner are good, and the timing with which they came out was also good, actually. This would have slipped right through everybody's fingers, had the Privacy Commissioner not been doing her job.

It is good that the Privacy Commissioner happened to pick up on this. All of these concerns were brought out and tabled by the Speaker of the House. Now the Premier and the minister both are saying that there are discussions going on over this issue between the Privacy Commissioner and the Justice legal department.

Would it not be respectful — because that letter was tabled on the floor of this Legislature by the Speaker — that the same respect is shown with the outcomes of the talks by the Privacy Commissioner and the Justice legal counsel?

I find it very unbelievable that a government would do half a job here and allow a letter to be tabled — bring it out and table it with all very, very serious concerns — and then turn around and say that we have the Justice department trying to have talks with the Privacy Commissioner to ensure that the Privacy Commissioner has nothing to worry about, everything is copasetic and all the concerns that the Privacy Commissioner has have no basis to be concerned about.

Well, I believe that the Legislature is going to be left hanging here without MLAs having full disclosure — all information with regard to the discussions between the Privacy Commissioner and the Justice officials.

Therefore, I think that the government shouldn't even pass this legislation until we do hear, and get an answer back, from the Privacy Commissioner and the Justice department. We can't accept what's being proposed here today. It's doing half a job — again bringing forth all the suspicions, concerns, and interest and then chopping it off — so until such time as the Privacy Commissioner and Justice officials have come to a recorded conclusion, outlining for the Legislature that all of the concerns raised by the Privacy Commissioner in this letter to the Legislature are not anything to worry about, along with all the documented proof behind the facts — there is nothing to worry about. At this point in time, that information has not come forward; the minister and the Premier both, in their previous addresses to this Legislature —

Chair: Order please. The time being 5:30, 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: Committee of the Whole has considered Bill No. 50, entitled *Child and Family Services Act*, and directed me to report progress.

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

Some Hon. Members: Agreed.

Speaker: I declare the report carried.

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

The House adjourned at 5:32 p.m.