

**Yukon Legislative Assembly
Whitehorse, Yukon
Wednesday, May 9, 2012 — 1:00 p.m.**

Speaker: I will now call the House to order. We will proceed at this time with prayers.

Prayers

DAILY ROUTINE

Speaker: We will proceed at this time with the Order Paper.

Tributes.

TRIBUTES

In remembrance of James Bytelaar

Hon. Mr. Kent: Mr. Speaker, I rise on behalf of all members of this Legislature today to pay tribute to James Nicholas Bytelaar. James Bytelaar, who was known to many as “Uncle Jimmy” or “Jimmy Gough”, passed away on January 25, 2012. Jim, who was the oldest of 11 children, was born on August 27, 1929, in Vancouver, to Ernest and Ethel Bytelaar.

At the age of 14, he left home to make his way in the world. After working in various jobs, Jim settled on a career working for Gough Electric, where he would remain for 46 years. He worked for Gough in Vancouver, Castlegar and then transferred to Whitehorse as the manager of the Yukon branch in December 1968, where he remained until he retired. After retiring, Jim remained in the Yukon splitting his time between his home in Whitehorse and his cabin at Tagish Lake.

Jim was known for his laugh and his kindness to others, and he could often be heard saying, “By helping others, you help yourself,” or “You only get out of life what you’re willing to put into it.”

He was also always willing to lend a hand and was active in the community by donating his time to various charities, umpiring ball and later as a member of the Grey Mountain Lions Club. For those of you who don’t recognize Jimmy by name, I’m sure that at some point he sold you a ticket for a various draw of some kind that the Grey Mountain Lions Club was putting on.

Jim loved to garden and fish and his favourite place to spend his time was at his cabin at east Six Mile River in Tagish. In the summer, usually around 3 p.m., Jim could often be found sitting on his patio having a beer, enjoying the quietness around him or visiting with whomever came along.

Jim is survived by his son Kim, and his grandsons — Michael, Christopher and Andrew — many great-grandchildren, nieces, nephews, other relatives and close friends, as well as his sisters — Janet, Ethel, Vivian, Audrey and Christine — and his brothers, Edward and David.

He is predeceased by his wife, Elinor; his parents, Ernest and Ethel; his sisters, Marguerite and Alice; and his brothers, Ernie and Oliver.

When I was researching this tribute to Jimmy — I’ve known Jimmy for a number of years as well — the best description that I could find is really from the Lions Club website,

and I’ll quote that and read it into the record: “Whenever a Lions club gets together, problems get smaller. And communities get better. That’s because we help where help is needed — in our own communities and around the world — with unmatched integrity and energy.” That certainly typifies Jimmy and the way that he led his life.

I would ask members of the Legislature to join me in welcoming some guests to the gallery: Kim Bytelaar, Jim’s son; Vivian Henderson, Jim’s sister; close family friends, Glenis and Martin Allen, and neighbours at east Six Mile out at Tagish; and so many of his friends, family and fellow Lions who have joined us here today.

Applause

In recognition of National Nurses Week

Hon. Mr. Graham: I rise in the House today in honour of National Nurses Week. This time is set aside to reflect on the positive impact nurses make to the lives and well-being of all Canadians. This week was chosen to commemorate the May 12 birthday of Florence Nightingale, who is widely considered to be the founder of modern nursing.

Almost all of us have interacted with nurses at one time or another. Nurses follow us through the course of our lives, from birth to death and at many stages in-between. Nurses are often our first point of contact at the emergency room. They are the ones we turn to at the community health centre when we are sick. They immunize our children, weigh our babies and provide us with expert care for our chronic conditions. They look after us before, during and after surgery and stand with us when someone we love dies in the hospital.

In the communities, nurses are the ones who respond to medical emergencies and warn us when illness is running through our community. In addition, nurses are great believers in equality — street or mansion, they don’t care where we live. They are here to look after our health.

While the hands-on work of nurses is vitally important, we can’t forget also the behind-the-scenes work they do, from writing policy for government health departments to running programs such as the chronic disease management program and palliative care.

Nurses bring their experience and expertise into every aspect of their work. The Government of Yukon employs roughly 250 registered and licensed practical nurses in community nursing, community care, Yukon communicable disease control and in Justice. That doesn’t take into account the number of nurses working for the hospitals or in private practice.

Nursing is a challenging profession, one in which the nurse must constantly stay up to date with the latest training and information. The role of the nurse is constantly evolving, Mr. Speaker. As I speak, Yukon is continuing to work on regulations to accompany the *Act to Amend the Registered Nurses Profession Act*, which will pave the way for nurse practitioners to practise in the territory, as they do in most other Canadian jurisdictions.

In closing, Mr. Speaker, I would like to extend my gratitude to all nurses, but especially to our own, very valuable, Yukon nurses. Thank you very much.

Mr. Barr: Mr. Speaker, I rise on behalf of the Official Opposition to pay tribute to National Nursing Week. The second week in May was proclaimed National Nursing Week in recognition of Florence Nightingale's birthday of May 12. Ms. Nightingale would be amazed at the range of services nurses provide today. Today we recognize not only registered nurses, but also nurse practitioners, certified nursing aides and licensed practical nurses.

All of these professionals contribute enormously to the health of Canadians. The instant we are born to the world, a pediatric nursing specialist greets us. Throughout our lives, we rely on nurses to care for us in many different ways and in many different medical situations, from the doctor's clinic to the surgical ward. In our last days, a palliative nurse will likely be at our side providing compassionate care. Nursing is a challenging profession. It is hard physical work and demanding emotionally. They work around the clock and on holidays. Nurses also face danger. The rate of assault of nurses is twice that of police officers.

The aging workforce is very noticeable in the nursing professions, and the shortage of personnel makes for even harder work for nurses as they fill in shifts. Through all these hardships, our nursing professionals put the interests of their patients first. Through the Yukon Registered Nurses Association, nurses in the Yukon are showing leadership in promoting preventive measures in health care and recommending innovative approaches, such as a collaborative clinic.

I was speaking with a colleague prior to coming in here, and just reflecting on my own experiences, from my grandmother passing, to getting my tonsils out when I was a young guy, to various family members — I have an aunt, nurse and a cousin who are all nurses, and they have retired.

In all of my experiences, whenever I have been in their immediate presence — I was thinking that I have never seen a nurse not show care and compassion, even in the most trying of times, and that is a rarity in our world today. In closing, I would like to thank our nursing professionals for the devotion they show to their calling. Our lives are very much healthier and happier because of them.

Mr. Silver: I rise today on behalf of the Liberal caucus to also pay tribute to National Nurses Week 2012. National Nursing Week runs from May 7 to 13. As the Minister of Health and Social Services and Member for Mount Lorne-Southern Lakes both mentioned, it includes May 12, which is the anniversary of Florence Nightingale's birthday and International Nurses Day. Florence Nightingale was best known around the world as "The Lady with the Lamp," who nursed British soldiers during the Crimean War and is credited with turning nursing into a profession.

National Nurses Week began in 1985 to recognize the commitment and achievements of the nursing profession.

The theme for 2012 is "Nursing: the Health of our Nation". The nursing profession is a cornerstone of our health care system and National Nurses Week is a chance to acknowledge and recognize the important contributions nurses make daily to patient care in Canada.

National Nurses Week helps us honour our local nursing profession and understand and appreciate the significance of the service they provide to our health and well-being on a daily basis. They work in the emergency rooms, in hospitals, community health care centres, public health clinics, medical health clinics, schools, seniors assisted-living centres, as flight nurses, home care nurses and in correctional institutions. They also serve with the Canadian Armed Forces and with the Red Cross. They serve with a passion for the profession and work tirelessly on the front lines of the health care system. Nurses are essential to the health care system, as they work with individuals and communities on different levels. We value the public service and their continued efforts to promote health and wellness in their role in primary health care.

National Nurses Week is an opportunity to celebrate Canadian nurses for their provision of outstanding patient-centred care and dedication. We recognize and value all of the nursing professionals from all levels of health care. On behalf of all Yukoners, I thank you for your unwavering professionalism and your involvement, not only in our health care, but in the health care of our families and of our community. You make a difference in someone's life every day. You deserve recognition and our thanks, not only during Nurses Week, but every day of the year. Thank you, Mr. Speaker.

In recognition of Police Week

Hon. Mr. Nixon: Mr. Speaker, it's a true honour and a privilege to rise today to pay tribute to Police Week in Canada. This year, Canadians will honour those who serve to protect the community by celebrating Police Week from May 13 to 19. Police Week is dedicated to increasing community awareness and recognition of police services while strengthening police-community ties. Police Week encourages community involvement and initiation of activities through media awareness and community-sponsored events.

Police Week is governed by four specific objectives: to act as a vehicle with which to reinforce ties with the community; to honour police officers for the public safety and security they provide to their communities; to promote the work police do in their communities; and to inform the community about the police role in public safety and security.

Every day RCMP members police our communities and work to prevent and deter crime. They are first responders to situations of crime and conflict, which often put them in harm's way.

While our expectations of the conduct of territorial police service must be high, we must also recognize the challenging and stressful role members of the RCMP fulfill when policing our communities. I would like to personally thank Commanding Officer Peter Clark and the members and support staff who make up M Division for their diligence in protecting public safety and for their willingness to sacrifice. Currently, there are 195 employees in Yukon M Division. These consist of 135 regular RCMP members, 23 civilian members and 37 public service employees.

The work of the RCMP is aided by many community volunteers who are actively involved in crime prevention in their neighbourhoods. These volunteers work as auxiliary constables.

bles, as victim assistance volunteers and as citizens on patrol. This is a true partnership between the police and the public.

The Government of Yukon will continue to support Yukoners and the RCMP in their efforts to make communities, neighbourhoods and homes safe and healthy. In order to ensure that the hard work and commitment of Yukoners, including our police service, is properly recognized, it's my pleasure to announce that this September, we will be hosting an event to pay tribute to police members, citizens and youth who contribute to community safety. This event will be held in Whitehorse in conjunction with the national policing conference, which focuses on policing in northern and remote communities.

Over the coming months, information will be provided through the Department of Justice website and other media on the Minister of Justice community safety awards and the nomination process. In the context of the upcoming Police Week, I wish to invite Yukoners to recognize the RCMP members who they believe build bridges in their communities, excel in delivering police services, and help to inspire and mentor our youth.

I ask that all members of the Legislature join me in expressing our sincere appreciation to all the police officers and support staff at RCMP M Division. Since being appointed as Minister of Justice for Yukon, I've had the opportunity to visit several detachments throughout Yukon, including Carcross, Dawson City, Carmacks, Faro, Ross River, Beaver Creek, and of course, Whitehorse. I've also had the opportunity to spend time on ride-alongs and traffic stops. I personally am extremely proud of the work that our members are doing in Yukon under the leadership of Commanding Officer Clark.

I would like to express my gratitude for all the hard work of the members of the RCMP M Division and feel that both Police Week and the upcoming awards are an opportunity for us to recognize the difficult but rewarding job the RCMP has in ensuring that Yukon remains a safe place to live and visit.

Mr. Speaker, as Minister of Justice, it's a real privilege and honour for me to introduce a few visitors to the gallery. If my colleagues in this Assembly could join me in welcoming to the gallery a few of the members and staff of RCMP M Division: Chief Superintendent Peter Clark, Inspector Will Tewnton, David Gilbert, Constable Kelly MacQuarrie, Lorraine Rousseau, and Constable Walter Wallingham.

Applause

In recognition of Emergency Preparedness Week

Hon. Ms. Taylor: Mr. Speaker, I rise today on behalf of all members of the Yukon Legislature to recognize Emergency Preparedness Week. Natural disasters like forest fires or floods may be beyond our control, but there are many ways to reduce the risk and the impact of emergency events, whether natural or human caused.

Emergency Preparedness Week serves as an annual reminder for all of us to be prepared to cope on our own for at least the first 72 hours of an emergency while rescue workers help those in urgent need.

Every year, Yukon experiences wildfires, floods, avalanches, extreme weather conditions and other emergency events. By taking a few simple steps, individuals and their families can become better prepared to face a range of emer-

gencies any time and anywhere, starting with knowing the risks. Although the consequences of disasters can be similar, knowing the risks specific to our community and our region can help us better prepare by making a plan to help us and our families know what to do and to prepare an emergency kit.

During an emergency, we all need basic supplies. We may need to get by without power or drinking water. Be prepared to be self-sufficient for at least 72 hours in an emergency. This week, the Emergency Measures Organization encourages Yukoners to take concrete actions to be better prepared. Individual preparedness goes a long way to help people during and after a major disaster. The Yukon's Emergency Measures Organization can help and has information available about what goes into a basic kit, how to write an emergency plan and details on hazards across our territory. Yukon Emergency Measures Organization is also using social media to keep people better informed about emergency preparedness, distributing wildland fire activity reports, flood risk reports and more. I urge all Yukoners to sign up for regular Twitter feeds and to follow Yukon EMO on Facebook for the latest on emergency events and risks.

Mr. Speaker, we cannot talk about emergency preparedness without also acknowledging the efforts of Yukon's emergency responders, including our community volunteers, and thanking them for their personal commitment to public safety and support in our times of greatest personal need.

Our career and volunteer emergency responders willingly take on the responsibility for safeguarding our communities and, in doing so, make Yukon a unique place to live. Emergency preparedness is a shared responsibility. While individuals and responders have a role to play, so do governments at all levels. Yukon government's Emergency Measures Organization coordinates and maintains government-wide emergency plans, business continuity plans and, during an emergency, brings together the people and the resources to manage those events. Emergency Measures Organization also helps ensure that Yukon government staff receive regular emergency management training, practise our plans through tabletop exercises and share information with neighbouring jurisdictions.

We have developed, tested and updated our government-wide and departmental emergency coordination plans and we will continue to refresh our plans to stay current.

We are confident in the people, expertise and resources in place to keep our communities safe from flood and fire, and other emergency events throughout the year ahead.

With this, I would like to recognize and thank those who contribute to public safety and emergency response through the delivery of emergency medical services, wildland fire management, emergency measures and structural fire protection through the Fire Marshal's Office.

Likewise, I would also like to thank all members of M Division of the RCMP and, of course, the many men and women of the service who contribute their time every day throughout the year to each of our respective search and rescue teams.

Emergency Preparedness Week serves as a reminder that emergencies can happen any time, anywhere. Prevention and preparedness are paramount. Thank you.

In recognition of Tourism Week

Hon. Mr. Nixon: On behalf of the Legislative Assembly, I rise today and pay tribute to Tourism Week, which will be celebrated throughout Canada from May 14 to 20. Spearheaded by the Tourism Industry Association of Canada, Tourism Week provides an opportunity to kick off the summer season with special events hosted by businesses, the Tourism Industry Association of Yukon, and others. Tourism Week is a time for us to focus on what we already know. Tourism is a key economic driver that contributes to our quality of life and the well-being of communities.

This year, tourism organizations, businesses and other partners are being called on to be tourism champions by showcasing the economic and social benefits of the sector. In my view, Yukon has no shortage of tourism champions, and Tourism Week will be a great success here in the territory.

In my travels as Minister of Tourism and Culture, I have had the opportunity to meet many people who work in the tourism industry, from tourism operators to retail clerks, to interpretive and wilderness guides. These friendly, energetic, dedicated individuals provide exceptional, memorable experiences and quality products for visitors throughout the year.

I have also met many folks involved in the cultural industries — artists, volunteers, people working in cultural institutions, museums and heritage attractions — who bring our stories to life and capture the imagination of travellers. Yukoners are a proud bunch, and it comes naturally for us to champion our home and to sing the praises of its natural beauty and cultural abundance. Thank you to all the committed, enthusiastic individuals who make Yukon “larger than life”.

The Government of Yukon truly appreciates the tourism sector’s contribution to building thriving, vital communities and a prosperous territory.

Finally, since the Tourism Week theme is “Tourism Champions,” I’d also like to remind everyone that the fourth Yukon Tourism Champion Award will be presented next month, so now is the time to nominate someone you know who promotes Yukon as a must-see destination. Links to the nomination form are on the Tourism and Culture website home page.

Tourism Week celebrates all Yukoners and their contribution to enhancing the experience of visitors. I encourage everyone to come out next week to take part in the festivities. Thank you.

In recognition of National Hospice Palliative Care Week

Hon. Mr. Graham: I rise today on behalf of all members in honour of National Hospice Palliative Care Week, which runs from May 6 to 12. This week is an opportunity to recognize, share and celebrate the accomplishments in the field of hospice palliative care, both nationally and here at home.

Hospice palliative care alleviates the suffering of patients and their families and helps the dying person live as fully as possible until the end. It addresses the physical, psychological, social, spiritual and practical issues surrounding dying. It brings comfort and helps us cope with loss and grief when we

are dying or when someone we love is dying, and that is an amazing service to provide.

We live in a culture that seems to have lost touch with the natural process of dying. We fear it as we fear the unknown and shy away from talking about it. Hospice palliative care workers guide us through this process, easing our fears and our pain with knowledge, experience and compassion. In Yukon, we understand the importance of excellent end-of-life care for our citizens. We are fortunate to have many skilled health care professionals and volunteers who provide palliative care in a variety of settings, including private homes, hospitals and long-term care facilities.

In Whitehorse, Hospice Yukon provides one-on-one supportive care for those who face a terminal illness. They help prepare friends and family for the coming death and provide bereavement support once the friend or family member has died. Hospice Yukon volunteers are screened and training and work closely with Hospice Yukon staff. Territory-wide, the Department of Health and Social Services funds a resource team to support caregivers. Set up in 2008 under the territorial health access fund, the palliative care program is now a permanent part of the regular functioning of the department. Since its inception, the Yukon palliative care program has delivered services to 207 people across the Yukon. The team consists of a program manager, palliative care physician, registered nurse, social worker and an education and community liaison coordinator.

So far, this team has provided training to close to 1,000 individuals from Whitehorse and across the Yukon. Those receiving training include volunteers, nurses, home support workers, therapists and physicians. Together, the Yukon palliative care program and Hospice Yukon provide invaluable assistance to Yukoners and I would like to take advantage of this occasion to thank them for their very valuable service.

In recognition of 20th anniversary of Westray mine disaster

Ms. White: Today, on behalf of the Legislative Assembly, I pay tribute to the 26 men who lost their lives in the Westray mine disaster on May 9, 1992, in Plymouth, Nova Scotia. Curragh Resources Incorporated opened the mine on September 11, 1991, to much local fanfare. They were to supply the local electrical power utilities with coal and the neighbouring communities with 300 jobs. Even prior to its opening, safety concerns were raised. Curragh Resources had been given a special permit to use potentially dangerous mining methods not approved for coal mining. They were permitted to use these methods until they reached the coal seam, but no further. They weren’t to use it to mine the coal. Unknown to authorities, Curragh Resources continued to use these methods three months after they reached the coal seam. Once the mine opened, accusations remained by mine workers of company cutbacks in safety training, equipment maintenance and of negligent and outright criminal behaviour toward safety inspections.

In November 1991, a brave miner made safety complaints to safety inspectors. Sadly, his complaints were ignored. He was fired in January 1992 for voicing his concerns.

On March 9, 1992, Mike Piché, and organizer of the United Steelworkers of America said in a report on the safety of the mine: "I strongly feel there will be someone killed in the near future." Two months later, in the early morning hours of Saturday, May 9, 1992, a spark deep in the southeast corner section of the mine ignited an invisible cloud of methane gas and led to some subsequent coal dust explosions that rocked the underground tunnels of the Westray mine. Twenty-six miners were underground.

In the wake of the explosion, Canadian and international media outlets descended upon the tiny hamlet of Plymouth and the nearby towns of New Glasgow, Stellarton, Westville and Trenton. Every one of these small communities was touched by the tragedy that had been brought to their front doors. Canadians held their breath for days as teams of draggers searched the debris-strewn depths of the tunnels in search of survivors.

Our collective hope that even one survivor would be found was dashed when the bodies of 15 miners were discovered. The operation sadly changed from search and rescue to search and recovery. As underground conditions worsened, the heartbreaking decision was made to abandon recovery efforts, entombing the bodies of 11 miners who would never again see the light of day.

Six days after the explosion, the Nova Scotia provincial government created a royal commission into the Westray mine and the safety issues resulting from the explosion.

Despite the refusal of top executives from Curragh Resources to participate, Justice Kenneth Peter Richard released a report on December 1, 1997, that recommended a sweeping overhaul of all provincial labour and mining laws and departments. Most of the report's recommendations were implemented.

As a result of the failure to successfully prosecute the mine's owner and managers, the Canadian Labour Congress and some affiliates initiated an intense lobbying campaign in the mid 1990s to amend the *Criminal Code* of Canada. The key amendment now reads: "Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

Today a memorial sits in the park in nearby New Glasgow, above ground where the remaining miners lie buried in the rubble that has long since fallen. The central monument is engraved with the names and the ages of those 26 men who lost their lives that fateful May morning, and with the simple line, "Their light shall always shine."

INTRODUCTION OF VISITORS

Hon. Mr. Pasloski: With your indulgence, I would like to introduce Her Worship Elaine Wyatt, Mayor of Carmacks and recently elected as the president of the Association of Yukon Communities. I invite all members of the House to welcome her.

Applause

Mr. Silver: With your indulgence, Mr. Speaker, I would also like to welcome a young man who actually sat in the Premier's seat in this Legislative Assembly during the last Youth Parliament session — a bright student and a friend of mine, Mr. Emile Bouffard.

Applause

Speaker: Are there any returns or documents for tabling?

TABLING RETURNS AND DOCUMENTS

Hon. Mr. Nixon: I have the following documents for tabling: the Yukon Law Foundation annual report, November 1, 2010 to October 31, 2011; and *Sharing Common Ground: Review of Yukon's Police Force*, year 1 progress report, May 2012.

Hon. Mr. Dixon: I have for tabling the Yukon State of the Environment Interim Report, an update for environmental indicators, 2012.

Hon. Mr. Graham: I have for tabling the annual report for the Yukon Workers' Compensation Health and Safety Board for 2011.

Speaker: Are there any reports of committees?
Are there any petitions for presentation?
Are there any bills to be introduced?
Are there any notices of motion?

NOTICES OF MOTION

Hon. Mr. Nixon: Mr. Speaker, I rise to give notice of the following motion:

THAT this House urges the Government of Yukon to continue to work with Public Safety Canada and the Royal Canadian Mounted Police

(1) to implement the new 20-year agreement with the Government of Canada for the provision of police services;

(2) to support the RCMP in their provision of a professional, effective and efficient territorial police service that is responsive to the needs of all Yukon communities;

(3) to address street crime; and

(4) to implement the recommendations of the *Sharing Common Ground* report.

Ms. McLeod: I rise to give notice of the following motion:

THAT this House urges the Government of Yukon to promote Yukon's mining history by encouraging artists to develop artwork that celebrates Yukon's mining history and culture.

I further give notice of the following motion:

THAT this House urges the Government of Yukon to engage municipalities, First Nations, local advisory councils and the public to undertake a comprehensive review of the *Municipal Act*.

I give notice of the following motion:

THAT this House urges the Government of Yukon to develop a new five-year comprehensive municipal grant program with Association of Yukon Communities and municipalities in support of vibrant, sustainable and healthy communities.

Mr. Hassard: I rise to give notice of the following motion:

THAT this House urges the Government of Yukon to use the 2012-13 budget to enhance public safety and emergency response through the delivery of emergency medical services, wildland fire management, emergency measures and structural fire protection under the Fire Marshal's Office.

I also give notice of the following motion:

THAT this House urges the Government of Yukon to use the 2012-13 budget to commit \$4.98 million to construct a new Whitehorse emergency response centre that will improve response times and enhance public safety.

I also give notice of the following motion:

THAT this House urges the Government of Yukon to invest an additional \$1.9 million to support community fire departments and enhance fire protection throughout the territory.

Ms. Hanson: I rise to give notice of the following motion:

THAT this House urges the Government of Canada to:

(1) recognize the importance of the government-to-government relationship established in the 11 Yukon First Nation self-government agreements;

(2) respect self-government agreements negotiated with Yukon First Nations;

(3) recognize that Yukon First Nation self-government agreements require Canada to negotiate financial transfer agreements with Yukon First Nations based on negotiated principles contained in those self-government agreements;

(4) recognize the application of an *Indian Act* formula for funding arrangements is inconsistent with those principles; and

(5) stop unilateral actions that undermine the principle of government-to-government negotiations between the Government of Canada and Yukon First Nations.

Ms. White: I rise to give notice of the following motion:

THAT the Minister of Justice issue a ministerial statement during the current legislative sitting on the subject of the recent federal court judgment ruling that veterans' disability pensions are not considered taxable income and the implications in terms of determining eligibility for all services provided by the Yukon government, including social housing and social assistance.

Mr. Elias: I rise to give notice of the following motion:

THAT this House urges the Minister of Energy, Mines and Resources and the Minister of Community Services to jointly

improve the territory's communications infrastructure to better support mining exploration and development in rural areas and as identified in the Yukon Minerals Advisory Board 2011 Annual Report as a hindrance to the industry's competitiveness.

Mr. Silver: I rise to give notice of the following motions:

THAT this House urges the Government of Yukon to address the intertwined issues of a skilled mineral industry workforce and their access to housing, as identified in the Yukon Minerals Advisory Board 2011 Annual Report, by working with partners in industry, education, municipalities and First Nation governments.

I also give notice of the following motion:

THAT this House urges the minister responsible for the Yukon Housing Corporation to build on the good work already undertaken by the Klondike Development Organization with respect to Dawson City housing in general, and the John Korbo Apartments site specifically, as laid out in their May 8, 2012 proposal and letter to the minister.

Speaker: Is there a statement by a minister?

Speaker's ruling

Speaker: Prior to Question Period, the Chair will rule on a point of order regarding Standing Order 19(g).

During yesterday's Question Period, in response to a question from the Member for Mayo-Tatchun regarding the Whitehorse Trough disposition process, the Minister of Energy, Mines and Resources said, "I know the NDP does not support the mining industry..."

At that point, the Member for Mayo-Tatchun rose on a point of order and said that the minister was imputing motives to the Official Opposition.

Standing Order 19(g) says, "A member shall be called to order by the Speaker if that member imputes false or unavowed motives to another member."

It is common for members, during the course of debate and during Question Period, to offer their interpretation of the positions or policies of parties other than their own. These characterizations, which tend to be unflattering, frequently give rise to points of order.

Procedurally speaking, characterizing a party's policies or positions in an unflattering manner is not the same as attributing a false or unavowed motive to another member.

To violate Standing Order 19(g), a member would have to suggest that another member's reason for advocating a certain policy or position was one that is unworthy of an honourable member of this Assembly. For example, in a past Legislative Assembly, the Chair invoked Standing Order 19(g) where a member said that another member adopted a certain position in order to put partisan self-interest ahead of the public interest.

The Chair does not believe that something similar to that occurred yesterday. Therefore, the Chair does not believe there is a point of order in this case.

Determining the true nature of a party's policy or position on an issue is a matter for members to resolve through the

process of debate, questions and responses. It is not a matter of procedure on which the Speaker can rule.

The Chair would like to thank the Member for Mayo-Tatchun and the Minister of Energy, Mines and Resources for their contributions to resolving this point of order.

We will now proceed to Question Period.

QUESTION PERIOD

Question re: Peel watershed land use plan

Ms. Hanson: Mr. Speaker, Yukoners have been repeatedly told that this government wants to replicate the north Yukon plan in the Peel watershed land use plan, but let's start at the beginning. The north Yukon plan started with provisions in the *Vuntut Gwitchin First Nation Final Agreement* that included termination of oil and gas interests in the Old Crow Flats area; establishment of the Vuntut National Park; establishment of the Old Crow Flats special management area; establishment of the Fishing Branch Wilderness Reserve; and Bear Cave Mountain. In total, these areas account for one-third of the planning region being protected even before the planning process started.

Mr. Speaker, how can the minister continue to claim that the Peel plan should be like the N.W.T. north Yukon plan when the two regions and starting points are so fundamentally different?

Hon. Mr. Cathers: Yet again we see the NDP cherry-picking excerpts from what members were saying, and the NDP is trying to paint a picture that really is in contrast to reality. As I have indicated a number of times here, one of the things that the government has said in outlining the modifications and options that we will be presenting to the public for consideration is that we think perhaps the final plan for —

Speaker's statement

Speaker: Order please. I would ask visitors in the gallery to remove their signs. Signs are not permitted in the gallery at any time. Please remove the signs. Take them down now.

Order. I will ask the Members of the Legislature to please leave the Legislature. We will recess at this particular time.

Recess

Speaker: I'll now call the House to order.

Mr. Clerk, can you remind me where we were before we recessed? I believe, if memory serves, the Minister of Energy, Mines and Resources was into his answer.

Clerk: Yes.

Speaker: The Minister of Energy, Mines and Resources has one minute for his response.

Hon. Mr. Cathers: As I was saying before I was interrupted, the government will continue to follow through on its commitments and the approach that we outlined in the 2011 election. As the Leader of the NDP knows very well, during the 2011 election campaign, we criticized the NDP and the Liberals for committing to accept the commission's proposed plan, and we talked about our desire to seek a final plan that protects

the environment and respects all sectors of the economy and indicated that the model outlined in the north Yukon plan may be a better approach than the one that the Peel Watershed Planning Commission came up with.

Ms. Hanson: Well, in fact, the minister opposite was talking about cherry-picking, and it's he who is cherry-picking. He wants the land managed on the basis of intensity of use as in the north Yukon, but he does not want the protection that plan affords the environment.

The planning principles of both the north Yukon plan and the Peel watershed plan are essentially the same. In the case of the Peel watershed plan, the government just does not like the result. Instead of engaging in the planning process, the government refused, over the last several years, to provide the Peel Watershed Planning Commission with any meaningful analyses or concerns. Now the government wants to rewrite the principles.

When will the minister stop promoting the false notion that the Peel plan should be like the north Yukon plan —

Some Hon. Member: (Inaudible)

Point of order

Speaker: Minister of Energy, Mines and Resources, on a point of order.

Hon. Mr. Cathers: The accusation that the member just made that a member of this House is promoting a "false" notion would seem to me to be clearly in contravention of our Standing Orders.

Speaker: Leader of the Official Opposition, on the point of order.

Ms. Hanson: Mr. Speaker, would "incorrect" be more appropriate?

Speaker's ruling

Speaker: I'll accept "incorrect." The Leader of the Official Opposition has the floor.

Ms. Hanson: When will the minister stop promoting the incorrect notion that the Peel plan should be like the north Yukon plan and when will he take the final recommended Peel plan, as written, to full public consultation?

Hon. Mr. Cathers: Mr. Speaker, what we see from the Leader of the NDP are a number of assertions which simply do not accurately reflect the facts.

Again, I remind the member — as the member knows full well by this point — that of the 11 members of the Yukon Party caucus who are in government now, 10 were not in government during the response to the commission to which she referred.

We will continue to follow the approach we outlined to the public in 2011 election campaign. We have indicated that, in following the remaining stage of the process, we will continue to follow all our obligations under that process, including hearing from the public, from communities and from First Nations prior to reaching any final decisions related to the Peel plan. However, we have indicated, as we have a number of times, that we believe that modifications would be appropriate and we believe the north Yukon commission did a better job than the

Peel planning commission of coming up with a plan that manages the footprint from all users in a fair, equitable and balanced manner. So therefore we as government are obligated to do what we believe is in the best interests of the planning process and provide suggestions aimed at making a plan the best it can be. One of the suggestions is that perhaps it should be more like the *North Yukon Regional Land Use Plan* — I wonder if the member has even read the north Yukon plan.

Ms. Hanson: Again the member opposite is cherry-picking. On one hand he uses the Yukon Party government when he's looking good, but he's not part of that government when the spotlight is not so favourable.

He can't have it both ways — he is either part of the Yukon Party government over the last 10 years, leading this path, or he is not.

Mr. Speaker, the Peel Watershed Planning Commission decided that the method of measuring and managing land use intensity used in the north Yukon would not work throughout the Peel planning region because the terrain and type of eco-zones were not similar, nor were they conducive to managed intensity of use. The final recommended *Peel Watershed Regional Land Use Plan* does accommodate industry. Nowhere does it ban mining or call for expropriation of mineral interests.

Again, Mr. Speaker, when will the minister stop promoting the incorrect notion that the Peel plan should be like the north Yukon plan, and when will he take the final recommended plan, as written, to full public consultation?

Hon. Mr. Cathers: The member's question was so riddled with inaccuracies in information. The member has had ample time and opportunity to know she is incorrect. She has made assertions that she ought to know are incorrect.

All I can say to her question is that the member is wrong; the member is wrong; the member is wrong. The NDP once again have it wrong, and I would point out again that the Yukon government will continue to follow our obligations under the process. We will continue to seek the input of the public on proposed modifications to the plan. We will also listen to all citizens, communities and First Nations.

Also, in reference to today's earlier events, I have to point out that the government listens to the public and is interested in the input of all citizens, but the most effective way of engaging in public discussion is to be thoughtful, constructive and reasonable. Issuing a list of demands is one of the very least effective ways of engaging with the government.

Question re: Prescription drug prices

Ms. Hanson: I'll change topics. The Yukon is in the top three Canadian jurisdictions, in terms of how much we pay for prescription drugs. The 1995 Yukon pharmacy purchasing agreement that was supposed to expire in 1997 includes the following: the manufacturer's wholesale price is marked up by 14 percent by the distributor, and Yukon pharmacies can mark the acquisition price up another 30 percent. The government's 2008 *Yukon Health Care Review* identified that prescription drugs represent a challenge for costs containment for the health care system. The Yukon government's own internal audit of the pharmacare program in 2008 recommended the negotiation of a

new pharmacy agreement. It is now 2012, and we are still waiting.

This kind of government inaction is a burden on both Yukon's public health care system and on individual Yukoners. What is this government doing to ensure Yukoners pay a fair price for prescription drugs?

Hon. Mr. Graham: I guess the simple answer to this question is — had the member listened yesterday, during Committee of the Whole, I went through this whole process. Yes, we realize that 14 percent is the markup that distributors are able to make.

We're also very aware of the fact that a 30-percent markup is what private pharmacy owners can make on the drugs. We realize that this is a reasonable figure when the cost of the drug is relatively small; however, in these days when the cost of drugs has gone up dramatically, especially for certain drugs that are for the more serious diseases, we realize that 30 percent of a much larger number is probably not appropriate.

We've undertaken, or we will be undertaking consultation with the pharmacy owners in the territory and we will be coming up with a new agreement in the very near future.

Ms. Hanson: I was listening yesterday and it was because I was listening that I'm not having the assurance because we're still four years later not having — well, 20-some years later that we don't have an agreement. The Yukon trends are no different from what is happening across Canada. Drug costs are the fastest growing driver of rising health costs.

Yesterday the minister did say that the medical consumer has become indifferent to health care costs. In reality, Canadians and Yukoners care a great deal about keeping our public health care system sustainable so that it is able to provide equitable access in a cost-effective way. Yukoners want the government to show it is not indifferent to health care costs.

There is a concern that when governments want to cut programs, they refer to "hard decisions". We've heard this in this House. We think renegotiating the pharmacy purchase agreement now should be an easy decision. Will costs associated with Yukon Party government inaction — inaction over 20-some years — on renegotiating the pharmacy purchasing agreement lead to cuts in other programming? If so, what programs will be affected?

Hon. Mr. Graham: It's interesting to note that the member opposite referred to the Yukon Party government over the last 10 years, and now it's over the last 20. I wasn't even aware that we were in power for the last 20 years. I really don't know where this kind of question comes from. I gave an answer to a legitimate question. If you're just trying to embarrass somebody on this side of the House by going back 20 years, then go ahead. But if you want answers to questions, then ask a question that's legitimate. I've said we will be renegotiating the contract. We will be doing it as quickly as possible —

Speaker's statement

Speaker: Order. I'd ask the minister to address the Chair and not the member opposite.

Hon. Mr. Graham: Okay. Sorry, Mr. Speaker. Perhaps you can convey, then, my feeling of frustration and my

difficulty in answering a question that has been answered a number of times already.

Ms. Hanson: The reason that I asked the question with respect to renegotiating the pharmacy agreement is because we have seen time and time again — and yes, I made a mistake, the agreement itself is 20 years old. The government has been in place for 10 years. It is during that 10 years that it has not acted to renegotiate this agreement, so when we have heard, yes, we are going to act on *Landlord and Tenant Act*, yes, we will act on whistle-blower — we have had all of these promises; they are vacant promises. Until the minister can tell this Legislature, tell Yukoners when the agreement will be renegotiated, we will continue to have high costs. Pharmacy costs are one of the three cost drivers for health care in this territory. We need to know when they will begin and when he will have an agreement to replace the existing outdated pharmaceutical agreement in the Yukon.

Hon. Mr. Graham: I am tempted to make a one-word answer to this question, but I will not. I will try to do it in a reasonable manner. The cost of drugs is a driver. It is one of the drivers of the costs of health care, but so are the costs of wages, so is the cost of heating and fuel, and so are the payments that we make to physicians and nurses at the hospital. The pricing that the member opposite has also referred to does not include the cost of drugs that we purchased in the hospital system.

We use a different system for that. We're now working together with the other provinces on a system of purchasing drugs on a Canada-wide basis that we hope will also reduce the price, especially of the more expensive drugs. So we're making positive steps. As quickly as we can, we'll renegotiate this agreement as well.

Question re: School attendance

Mr. Silver: Mr. Speaker, we are very pleased to hear of the new partnership between the Department of Education and the Victoria Gold Corporation. That partnership will see \$15,000 financial contributions from both parties, and Victoria Gold is planning to go above and beyond that amount through fundraising.

The ultimate goal is to improve student attendance, which is a serious and worsening issue in the Yukon. We share the minister's concern about school attendance and the effect it has on students' educational success.

We understand that all the details of the initiatives haven't been worked out yet. However, could the minister please share with us what discussions have taken place with respect to this new project?

Hon. Mr. Kent: This does give me the opportunity to not only thank Victoria Gold Corporation and their president and CEO, Mr. John McConnell, for partnering with the Department of Education on this very important initiative, but also thank all of the mining companies that have contributed to numerous charities, sports teams and a number of different initiatives throughout the territory over the past number of years as good, solid corporate citizens of the Yukon.

With respect to this particular project, as the member opposite noted, attendance is an issue that affects schools across the Yukon. As far as plans for this project go, although they

haven't been finalized, it's my hope that we can engage the student advisory committee on this important initiative and solicit their feedback and input when it comes to this particular aspect of addressing student attendance.

Mr. Silver: I think absenteeism is quite a problem. I think we might have witnessed a few students playing hooky in the Legislative Assembly today.

As the minister is already quite aware, there is a local Dawson City program being developed that focuses on improving school engagement and retaining more students within the educational system. It's the Tr'ondëk Hwëch'in First Nation's initiative called the virtual education initiative. Under this program, students are registered with their schools, but they complete much of their studies within the community and on the land in a way that is meaningful and accountable to their educational goals. Much work has already been done, and the results look very positive.

How will the minister ensure that this successful community development initiative works with the new partnerships that are being forged ahead with mining companies, such as Victoria Gold?

Hon. Mr. Kent: The department, of course, has introduced a number of strategies over the past several years to improve attendance, such as more experiential programming, more First Nation cultural and language content, the hot lunch programs, a new program called "Learning Together", which encourages parents and caregivers of young children to participate in a variety of school activities.

Of course, when it comes to this particular partnership with Victoria Gold, again, I have to say how pleased I am that they have stepped up as a great partner with the Department of Education on such an important initiative.

It's my preference that this particular aspect of addressing school attendance be student-driven, that we solicit ideas from students moving ahead. That's not to say that this is going to be the only thing we do moving forward, but it's certainly going to be one of the programs we initiate to improve attendance in our schools.

Mr. Silver: We have been advocating for integrated technologies and trades training in our rural schools for two main reasons: first, it will allow Yukon students to train for well-paid, skilled jobs in their home communities; and second, such training engages students who would otherwise be at risk of dropping out.

With this government's partnership announcement, the public was advised that students, educators and stakeholders will be brought together to help develop this new attendance initiative and that the program will be in place for the 2012-13 school year. That school year is less than four months away and that's not much time left.

How will the partners be facilitating meaningful community input into this initiative, particularly in light of the excellent work that has already been going on in Dawson City?

Hon. Mr. Kent: Of course, while attendance is a concern at Robert Service School in Dawson, it's also a concern at other schools throughout the territory. So I want to make sure that when we develop the program that's going to match these

dollars we involve students, educators and stakeholders from across the territory in moving forward on this important initiative.

As I've said on the floor of this House previously, there have been a number of initiatives already undertaken. When it comes to student attendance, it's going to be the responsibility, not only of the students, not only of the department and our teachers, but also of the parents. So we want to make sure that we engage all of those partners moving forward when we develop this program and look at other programs moving forward that will address the issue and the problem of poor student attendance.

Question re: *Municipal Act* review

Mr. Barr: I, along with many others of this House, attended the Association of Yukon Communities AGM in Dawson City. I was pleased to hear that there will be a review of the *Municipal Act*. It was good to hear the commitment to full public consultation in the motion this afternoon. Over the years, citizens have raised a number of concerns about the effectiveness in terms of strengthening the local democracy. I believe Yukoners will welcome the opportunity to be a part of a public consultation on the act. Can the minister provide some details about the time frame and the process regarding the consultation on the *Municipal Act*?

Hon. Ms. Taylor: I would like to thank the member opposite for raising this question. As the member opposite was present, I believe, at the Association of Yukon Communities AGM in Dawson this past weekend, the Yukon government was very pleased to announce a number of initiatives in support of the further development of our communities as we know them today, including undertaking a full review of the *Municipal Act* and developing a new five-year comprehensive municipal program in collaboration with Association of Yukon Communities and the municipalities themselves.

As I announced, we are looking to review the *Municipal Act*. It will be multi-year and multi-focused. We will engage municipalities, First Nations, local advisory councils and the public at large to ensure a balance between the interests of the municipal governments and the citizens they serve. It will take place, as I said, commencing immediately in mid-June, with full public consultation involving and engaging the public, including all the other stakeholders I just listed. It will continue through the fall and into the year thereafter. It is multi-phase and it will be comprehensive, and it is long overdue.

Mr. Barr: This is good that the Yukon people would be part of the discussion on the *Municipal Act*, and that this review is not just a targeted consultation between municipal councils and the Yukon government. After all, the preamble to the act states that public participation is fundamental to good local government. When the current *Municipal Act* was passed, it was hailed as a landmark in the country in terms of its progressive approaches to its citizen democracy.

The Public Votes section, which gives citizens the ability to get a referendum organized on any matter, has been diminished by recent court decisions. Will the public have an opportunity to participate in discussion on how the Public Votes sec-

tion of the *Municipal Act* can be amended to ensure that it is a relevant, useful tool of citizen democracy?

Hon. Ms. Taylor: I am certainly not going to preempt the outcome of this comprehensive review of this act. As the member opposite ought to be aware, there is a 10-year review that is required under the current *Municipal Act*. We are committing to a comprehensive, very broad overview of this particular act.

Likewise, we've also committed to a comprehensive review of the five-year comprehensive municipal grant program, in collaboration with municipalities. There are a number of various items that will certainly be under review, to be sure, which includes anything from revenue generation, investments, local improvement charges, terms of office, and other municipal-focused issues. One only has to take a look at the "Our Towns, Our Future" review that has taken place over the last two years, in collaboration with the Association of Yukon Communities, which sets out 18 different priority areas for moving forward. This is but one area — the comprehensive review of the *Municipal Act* — but, to be sure, we are working on all 18.

Mr. Barr: Public participation is fundamental to good local government. I've received comments from citizens that the process to review the act should be driven by citizens. I'm looking for some assurance that Yukon people will drive the process of reviewing the *Municipal Act* and that there will be lots of opportunities for the public to bring forward their suggestions to make municipal government more transparent, more accountable and more democratic. Will the minister please provide this assurance that it will be the Yukon people that drive the process and changes to the *Municipal Act* and municipal governance?

Hon. Ms. Taylor: We, on this side of the House, are very committed to an inclusive review — an inclusive review that incorporates municipalities, the Association of Yukon Communities, the local advisory councils, Yukon First Nations and the public, to be sure.

As I already outlined in my address to the Association of Yukon Communities over the weekend — and, again, I am committing on the floor of the Legislature — the review will be comprehensive. It will be broad, it will be a phased approach, and it will be meaningfully engaging all the respective stakeholders moving forward.

Likewise, we're also very pleased to move forward on the comprehensive municipal grant program — a new five-year one at that — to certainly assist municipalities to ensure that they remain vibrant and healthy and sustainable in moving forward. I certainly commend the Community Services officials, those who work within the department, who have been collaborating with municipalities. I think that they have done a great job on the "Our Towns, Our Future" review, coming up with a number of priority initiatives, all of which we are moving forward in an inclusive manner.

Question re: FASD and ARND children in Yukon schools

Mr. Tredger: There are many students in our school system who are affected by fetal alcohol spectrum disorder.

Many more children have been identified with alcohol-related neurodevelopmental disorder, or ARND.

Some schools have identified that as many as 30 to 50 per cent of the children in their classrooms may be affected. This has huge implications for resource allocations and instructional capability in all of our schools. Even three or four students who may be moderately or severely affected present considerable challenges for the whole class.

How does the minister identify the number of students affected by FASD and ARND, and how many affected students are currently in the system?

Hon. Mr. Graham: As I mentioned yesterday during debate of the Health and Social Services budget, one of the most difficult things we do is label people with FASD. In order for a person to be designated as a person suffering from FASD, we must do a careful evaluation. That evaluation is done by a team of people with the department. We have had — I believe since 2004 — 49 people who have been presented for assessment; 41 of those assessments were completed.

Whether or not all of those people are still in the educational system I can't tell members, but that's the way those people are identified within the system. The Department of Health and Social Services carries out those assessments.

Mr. Tredger: I thank the minister for that answer. One of the reasons that we have gone to alcohol-related neurodevelopmental disorders is the very fact that it is very difficult to get a concise clinical evaluation and it is very expensive. However, effective management of instruction depends on accurate information and knowledge of the number of affected children. Research has identified teaching and classroom management practices that are effective in working with children affected by FASD. Indeed, knowledge and application of research-based teaching methods is essential for the benefit of all members of the classroom. Training for teaching staff and educational assistants is absolutely necessary to get the most out of the process of teaching and learning.

What is the minister's plan for training staff, teachers, administrators and educational assistants in the coming year?

Hon. Mr. Kent: I believe the member opposite is talking about the deployment in our classrooms of the paraprofessional resources, which of course includes educational assistants, remedial tutors and learning assistants. But I can say that the information that I have with me today in the House is that those numbers have gone from 113 in 2002-03 to almost 160 in 2011-12, so there's a substantial amount of investment being made in those paraprofessionals to assist in the classroom. Of course, under the guidance of a teacher, EAs — or educational assistants — assist in the implementation of educational programming and student individual education plans. The EAs are assigned to students, not schools, so they vary from year to year depending on the needs of a particular school or the students who are in that school.

Mr. Tredger: These students present an enormous challenge, but properly managed they also present an opportunity. Currently there are few resources and training opportunities available for teachers and educational assistants who often must rely largely on their own initiatives to develop program-

ming. With this syndrome, as in most school challenges, it is important to include the whole community in support of the students and the school. What is this minister's long-term strategy to support schools and their communities to train and work effectively with students affected by fetal alcohol spectrum disorder and alcohol-related neurodevelopmental disorder?

Hon. Mr. Kent: I thank the member opposite for the question. When it comes to the educational assistants, they are, of course, deployed based on assessed student needs. Priority is given to students who have what is referred to as level 1 needs, as well as students recommended by the Child Development Centre as needing EA support. Level 1 currently means students who are not able to participate in a classroom setting without an educational assistant. For example, these students may be physically dependent on others for meeting self-care needs, deaf and/or blind, or emotionally, behaviourally, or developmentally challenged.

So I think that when it comes to deploying the number of paraprofessionals, it's done on a per-student basis. It's something that I believe they are assigned in the spring prior to the upcoming school year. I should also mention that one of the first acts that we undertook as a government was to take the paraprofessionals — I believe the number was around 22 — take them from a term position and make them indeterminate. So they're now part of the formula and there's job security for those individuals who are performing these incredibly worthwhile tasks for us in our schools.

Speaker: The time for Question Period has now elapsed. We'll now proceed with Orders of the Day.

ORDERS OF THE DAY

OPPOSITION PRIVATE MEMBERS' BUSINESS

MOTIONS OTHER THAN GOVERNMENT MOTIONS

Motion No. 16

Clerk: Motion No. 16, standing in the name of Mr. Elias.

Speaker: It is moved by the Member for Vuntut Gwitchin

THAT this House urges the Minister of Justice to undertake a full review of the territory's family, child and property laws with a view to introducing amendments to this legislation by the fall of 2013; and that the review address the issues of:

- (1) custody and access;
- (2) property;
- (3) spousal support;
- (4) same-sex couples; and
- (5) the definition of a common-law relationship.

Mr. Elias: It's an honour and a privilege to stand and speak to the motion that I put forward to the House today to consider. I want to begin my comments by recognizing that it's important to understand that I came across this issue about a year and half ago on a flight from Vancouver to Calgary with a lawyer from Alberta who was going through the process of

doing an overview of Alberta's family law. In the discussion I had beside the gentleman, the words that caught my attention were "the best interests of the child are the only concern." Over the past months, doing the research with regard to this motion, it became very clear that the scope of our family law situation in the territory encompassed more than just custody and access. That's why I submitted the motion to the House that includes property, spousal support, same-sex couples and the definition of a common-law relationship, because we have to look at the whole scope in order to protect the best interests of the child.

I will begin, Mr. Speaker. Our family, child and property laws contain expectations of how people will behave as they marry, have children and otherwise form families. They also contain assumptions about what those families look like. Legal recognition of couples has historically been premised on a male and female husband and wife, who are legally married.

Yukon, like an increasing number of jurisdictions, has instituted marriage equality for same-sex couples. As well, regardless of sexual orientation, more people are choosing to live in common-law relationships. Our expectations about being parents, responsibility and access to children after a marriage breakdown have changed considerably over time, as have our beliefs about the distribution of property and income between spouses during separation and divorce.

In the Yukon, we are governed by the federal *Divorce Act* for certain matters. Within the territory, we have the *Family Property and Support Act*, the *Children's Law Act*, the *Family Violence Protection Act*, and the *Child and Family Services Act*. To be relevant to the way Yukon families are formed, evolved and operate today, this legislation must be kept up to date. For example, the *Family Property and Support Act* treats common-law couples seeking financial support differently from married couples doing the same. As well, although same-sex marriage has been legal in the Yukon since 2004, much of our government literature still refers to husbands and wives, brides and grooms.

Changing social expectations, family patterns and the extension of marriage equality should be comprehensively and effectively reflected in our legislation and other guiding documents. To explore this further, we can imagine the legal circumstances of Yukon's same-sex and common-law couples, both of which have changed considerably in the last 10 years.

With regard to marriage equality, homosexuality was a criminal offence in Canada until 1969, when Prime Minister Pierre Trudeau's *Criminal Law Amendment Act* was passed, and he stated that, "...what's done in private between adults doesn't concern the Criminal Code."

It took more than 35 years for that same-sex marriage to be federally legalized in Canada. In 2003, Prime Minister Jean Chrétien presented draft legislation to include same-sex couples in the definition of marriage with the same benefits and responsibilities that had historically been reserved for opposite sex couples. By that time, courts in seven provinces had determined that restricting marriage to a man and a woman violated the Charter of Rights and Freedoms.

In 2004, the Supreme Court of Canada determined that the federal government had jurisdiction over who might get mar-

ried, but that religious organizations could not be forced to perform marriages contrary to their beliefs. Finally, in 2005, gay marriage was legalized under Prime Minister Paul Martin. Yukon was ahead of the federal government, thanks to a local couple, Stephen Dunbar and Rob Edge. When they were denied a marriage licence in 2004, they brought the issue to the Yukon Human Rights Commission, and eventually to the Yukon Supreme Court. Justice Peter McIntyre found the marriage licence denial unconstitutional and changed the definition of marriage from a union of man and a woman to the voluntary union for life of two persons to the exclusion of all others. Stephen and Rob were married a few days later. The Yukon was in good company then, having been the fourth Canadian jurisdiction to legalize gay marriage after Ontario, British Columbia and Quebec. By the time the federal legislation passed the Senate, marriage equality already existed in eight provinces plus Yukon as the only territory at that time.

With regard to common-law relationships, our family, child and property laws include other assumptions about family structures — that is, our family law was originally based on two spouses who are legally married. But more and more couples now choose to live in common-law relationships.

The 2006 census provided information on a number of married and common-law households in the Yukon. Researchers found 4,640 households headed by married couples and 1,970 households headed by common-law spouses. That is roughly 70-percent married and 30-percent common law. However, the census also found that the proportion of common-law couples has risen considerably since the 2001 census. In the five years prior, there had been an increase of almost 10 percent in common-law couples, whereas married couples increased only by four percent.

Over time, more families are being headed by common-law couples and we should ensure that our family, child and property legislation reflect this reality in our Yukon society. These numbers, by the way, include both same-sex and opposite-sex couples. The 2006 census was the first to include same-sex couples in the "legally married" category. There were 25 married same-sex couples reported, which was less than one percent of all couples in the territory, although, notably, local marriage equality had only been achieved two years prior.

There was another interesting trend contained in the growing number of common-law couples. More and more of this kind of relationship is a deliberate choice as opposed to a reaction to past marriages and divorces. That is, people aren't just living in common-law relationships because they have been married and divorced in the past and don't want to get married again. The proportion of people living in common-law relationships who have never been married is rising. In 2001, 30 percent of people in common-law relationships had previously been married. By 2006, that number had dropped to 25 percent. Given the trend, we can imagine that number is even lower today.

Common-law relationships are recognized in a range of statutes, including those governing pensions and estates. However, common law is not specifically defined, including within our family and property legislation.

A common-law relationship is one considered to be of some permanence. Whether or not two people are living common law does not depend on their having lived together for a set amount of time. Instead, it depends on their particular circumstances, what their intentions were getting together, if they commingled their assets and how they handled family obligations. That creates a lot of uncertainty for couples when they separate.

There are no automatic statutory property rights that determine how assets should be distributed after the end of the relationship. It has to be worked out on a case-by-case basis. Statutory property rights and enshrining a definition of “common law” would be excellent additions to our family legislation.

I want to speak for a moment about our existing legislation. These are only two of the recent legal and social changes in the Yukon family structures and functioning. As we can see, attitudes toward marriage and family evolve over time. In some cases, our legislation reflects those developments in short order. In others, the legislation and associated guidelines lag behind. At this point, I would like to briefly review our existing family, child and property laws so that we may consider opportunities for updating and enhancing them.

The *Family Property and Support Act* outlines the distribution of marital assets, including the family home, after separation. It also includes support provisions between spouses and for children and outlines other personal contracts adults may make among themselves, such as cohabitation agreements. It is the primary legislation governing assets and income between separating spouses. Although marriage equality has existed in the Yukon since 2004, the act maintains in-place references to “husband and wife,” as opposed to the more accurate “spouses”. The support section’s definition of “spouse” — and I quote: “includes either of a man and woman between whom an order of support has been made.”

This act also creates different, more stringent requirements for common laws seeking support. To obtain financial support after the relationship ends, the applicant must do so within three months, which is stated in section 37. While the judge adjudicating the request uses the same criteria as used for married couples, the common-law person has less time to make the same request.

Our *Children’s Act* deals specifically with legal issues in relation to children, and its provisions are based on the child’s best interests. Again, I’d like to reiterate that this was the area that caught my attention some year and a half ago and I realized that the scope of the issue and solving the issues so as to have the child’s best interests — the only concern — when it comes into question is why I brought this motion to the floor of the Legislature.

It includes determining parentage, custody, access and guardianship of children. It also covers adoption of the children, and under what circumstances and in what ways children may be taken into government custody for their own protection.

The *Family Violence Prevention Act* is applied when there has been or there is risk of violence within a family. It allows the victim to have residence in the family home, regardless of

whose name the home may be in, and prohibits the aggressor from going to the home or otherwise contacting the victim, or their associates, in ways meant to alarm or annoy. The act includes emergency provisions to protect personal safety and property and includes enforcement measures to ensure them. This legislation exists to prevent worst-case scenarios during a family breakdown.

Finally, the *Child and Family Services Act* outlines support programs for families, as well as the government’s role in protecting children at risk. It places the best interests of the child as the paramount consideration in applying the act. The best interests of the child is based on a number of factors, including the child’s attachment to the family members, and other people already in their life, the value of continuity and reducing disruptions in the child’s life and the importance to children of ongoing positive relationships with their parents and extended family.

I believe this was the section that I was asked about several times over the years by Yukoners regarding the possibility of including the issue of grandparents’ rights within this type of legislation. I think it’s important to note that in our territory right now, I believe, grandparents don’t have preferential rights or the first rights of opportunity to care for their grandchildren.

Acting in the best interests of the child also requires awareness of their culture and linguistic, religious and spiritual heritage, and the act specifically recognizes the importance of preserving cultural identity for Yukon First Nation children.

I’d like to go over some of the research that I’ve done with regard to the legislation in other jurisdictions.

Several jurisdictions have reviewed and/or updated their family law in recent years. In Ontario, new legislation now makes it a criminal offence to breach a restraining order. This gives more protection for spouses and children in threatening situations and extends the eligibility for restraining orders to common-law spouses of less than three years. It also requires non-parent child custody applicants to provide detailed care plans for the child to ensure the child’s material, emotional and developmental needs are met.

The New Brunswick Justice minister recently pointed out that although the number of separations and divorces in the province has increased significantly in the past few decades, the legal system hasn’t yet been adequately reformed. That province completed a family law review in 2009. Among other recommendations, the review argued for a less adversarial system and easier access to alternative dispute resolution processes. The researchers advocated for more resources for mediation services and the extension of alternative dispute resolutions to child protection matters.

Just a few weeks ago, Nova Scotia tabled legislation to modernize and improve their family laws. The provincial government is currently partway through a multi-year legislative review. The amendments currently being considered include explicit provisions for prioritizing the best interests of the child, with specific inclusion of any violence within the family. They also act on recommendations from the Law Reform Commission of Nova Scotia that make it easier for grandparents to gain access or custody of their grandchildren. As members can see,

family law has been a topic of interest in jurisdictions across our country in recent years.

I will now focus my more detailed comments on the changes made in Alberta and British Columbia. These will provide some exploration of where updates to Yukon family law might be directed.

In Alberta, the *Family Law Act* was proclaimed in 2005, and a number of amendments were made as recently as in 2011. Before tabling that legislation, the government reviewed provincial family law in consultation with family law practitioners, service delivery agents and, of course, the general public.

Based on that consultation, the new *Family Law Act* addresses a range of issues, including the best interests of the child, parenting orders to assist parents' care for their children after separation, and financial support for children and former legally married and common-law spouses.

The law also specifically recognizes the importance of maintaining relationships with grandparents and other people who might be important to the child and provides processes for ongoing contacts. Guardians are required by law to cooperate with each other on matters regarding the child and to inform and consult with the other guardian. In addition to these changes, the Alberta *Family Law Act* is designed to create a less adversarial system for settling family conflicts and these legislative changes are supported by streamlined court processes.

When families engage legal counsel, that legal counsel is obligated to discuss with their clients different, cooperative conflict resolution avenues, and government support services is available to help resolve those disputes.

The courts can refer families to mediation or ask parties to attend programs, such as for parenting after separation, before they go to court.

Now, with regard to the British Columbia legislation — in my research, this is the high watermark in terms of my research in our country of Canada with regard to family law, mainly because of the section that is of particular interest to me.

The Government of British Columbia recently implemented sweeping changes to family law in that province. I would like to highlight changes in three key areas: the best interests of the child; facilitating less adversarial resolutions to family law matters; and common-law issues. There may be opportunities to learn from our neighbours' recent improvements when it comes to our own family law legislation.

In British Columbia, it says that the best interests of the child are now the only consideration in parenting disputes. Beyond that, a new definition of family violence explicitly recognizes that children are harmed by violence among the adults in their life, even if they themselves are not subject to the violence.

The legislation also replaces restraining orders with protection orders, which are much stronger and can be enforced under the Criminal Code. Administrative procedures are improved so that knowledge of family violence is taken into account at all decision-making points. This was instituted in response to several tragic cases involving a parent killing their children after

having already engaged with the social services and legal systems.

The government had found that the adversarial approach common in family law was both contrary to the children's best interests and a significant drain on public resources. With more than 40 percent of marriages ending before the 30th anniversary, fully one-quarter of all litigation in the province was related to a family breakdown. The legislation now emphasizes mediation and out-of-court resolutions and offers parenting coordinators to resolve disputes before they enter the courts.

As well, language was changed to more neutral rather than adversarial terms. "Guardianship" replaced the word "custody"; and "parenting time" replaced "access". Judges now have a new tool — and this is interesting — for dealing with high-conflict families in which the hostility is obstructing resolving the conflicts and is tying up the justice system. In this case, the court may actually appoint a lawyer specifically for the child — I found that very interesting in the Province of British Columbia — to focus the proceedings to their best interests. The changes recognize the growing prevalence of common-law relationships. The law now includes provisions for splitting assets and debts after two years of cohabitation, with exemptions for inheritances and property predating the relationship. These legislative changes in British Columbia came after extensive research and consultation. The existing *Family Relations Act* was reviewed over five years, with more than 500 groups and individuals consulted during the process. A discussion paper based on these findings then served as direction for legislative change.

In my concluding comments, it is too early to determine the full effects of these legislative changes in other jurisdictions. Some of them seem immediately positive, however. I think that all members here can agree on the preeminent importance of the best interests of the child. Having family law that encourages cooperative, rather than litigious resolutions to family breakdown is good for children and for the out-of-court system.

When the British Columbia government started their family law review, they didn't have the amendments already drafted; they did, however, recognize that society's attitudes toward marriage, divorce, common-law and same-sex relationships had changed considerably and that legislation has to keep up with the realities and the priorities of today's society.

With regard to our Yukon review process, some of the things that were successful in other jurisdictions in undertaking a full review of these pieces of legislation — and so that our Yukon government could build on the work that has already been done — are things like creating a discussion paper and convening a working group made up of Yukon lawyers, family support services, child advocate representatives, representatives from the Yukon Family Law branch, child counsellors and, obviously, parents and grandparents and guardians. This is so that they may develop a discussion paper and take these pieces of legislation that I'm discussing here today, and the issues out of those pieces of legislation, out to broader public consultation and input and then forward recommendations to the floor of this Assembly.

In the Yukon we also live in a changing society, and I urge all members to support this motion so that we can ensure our family, child and property laws are up to date and effective for our families, children and communities. I thank you, Mr. Speaker, for allowing me to give my opening comments on Motion No. 16 today.

Hon. Mr. Nixon: I appreciate the Member for Vuntut Gwitchin bringing this motion forward, Motion No. 16. His motion reads:

THAT this House urges the Minister of Justice to undertake a full review of the territory's family, child and property laws with a view to introducing amendments to this legislation by the fall of 2013; and that the review address the issues of:

- (1) custody and access;
- (2) property;
- (3) spousal support;
- (4) same-sex couples, and;
- (5) the definition of a common-law relationship.

I want to begin by again thanking the member opposite for bringing this motion forward. It does speak to amending the territory's family, child and property laws. As I studied this motion and listened to his opening comments, I asked myself, "What is it that the member opposite is trying to accomplish?" I appreciate the Member for Vuntut Gwitchin speaking to this in his opening comments. It is helpful for me to understand where he's going with this.

In my reply, I want to address the motion by addressing the parts — the clauses that make up this motion. I also want to mention that, in addition to the legislation, which is what the motion speaks to, I think that we also need to say a few words about the programs that the legislation enables. I think that if we're going to talk about reviewing the legislation, we must also address the programs created by the different pieces of legislation.

I want to outline how I'm going to respond to this motion. As I indicated a few moments ago, I want to address it by looking at the individual phrases and clauses that are involved.

I also want to speak to some of the broader issues that I think the member opposite is really attempting to engage.

Since it calls for the Minister of Justice to undertake a full review of legislation, I think that it is helpful for us to examine what that legislation is, and what we are actually dealing with. In my comments that follow, I will put on the record a partial — and let me emphasize that point: a partial list of the legislation related to this subject matter.

The motion calls for us to address the territory's family laws. I will provide a list of the laws relating to children, and will overview the laws addressing the protection that we have in place for children, including both the legislation and the associated programming. I have already spoken in this Assembly about the Yukon's property laws, which we are in the process of modernizing. Instead of rehearsing that area, I will overview the relevant laws, especially the *Family Property and Support Act*, and note some of the areas, when this applies.

With respect to the call of the motion for any amendments to this legislation to be brought forward by the fall of 2013, I

will share with this Assembly my thoughts about who sets the government's legislative priorities and the government's legislative agenda.

The motion speaks to custody and access. Both the federal and territorial governments have legislation that may apply, depending on the nature of that relationship. I will discuss the important role the courts play in this area. We fully respect the role of the courts.

I will outline the legislative regime for property. Let me say at the outset that I am indebted to the many excellent publications available on the Justice Family Law Information Centre and the Yukon Public Legal Education Association websites.

As I prepared for today's debate, I spent some time on these websites and I'm very, very impressed with the quality of work and the information available. I'd like to thank those who were involved in making that information available, Mr. Speaker.

Yukoners with general questions about child support or spousal support may find many of their questions answered by reading through the information on these websites.

Regarding same-sex couples, I will overview the role that the Parliament of Canada and the Supreme Court of Canada play in addressing this element of this particular motion. I will then reflect on laws concerning the definition of a common-law relationship. I will also address what I think are some of the broader issues that this motion raises. I will also discuss the programming that comes forth from the legislation and what the challenges are that the legislation is addressing. That is my road map for today's debate.

This motion calls for us to conduct a full review of legislation and then bring forward, by next fall, new amendments. I guess my first concern with this motion is that the point of this motion is the Liberals attempting to set the government's legislative agenda.

The Yukon Liberal Party presented their platform and Yukoners opted not to accept it. I want to explore that for a few moments. Our government pledged that by working together we could do better. We offered Yukoners a clear vision for a bright future, and we committed to moving forward together. Each of the parties in this Assembly put forward their prospective platforms, and Yukoners selected and elected the Yukon Party to form government once again.

As I reviewed our platform, we committed to improve the services offered to families engaged with the justice system. I did not see a commitment in our platform to review and amend this legislation. While I appreciate the suggestions from the member opposite, Yukoners elected us to deliver our platform. Support for our Yukon Party government continues to grow, one Yukoner at a time.

The motion speaks to the territory's family, child and poverty laws. Several laws are relevant to this motion. The laws that I feel are relevant to this motion are the *Child and Family Services Act*; the *Child and Youth Advocate Act*; the *Children's Law Act*, also known as the *Children's Act*; the *Divorce Act*, which is federal legislation; and the *Dependants Relief Act*. Also affected would be the *Education Act*; the *Family Property and Support Act*; the *Family Violence Prevention Act*; the

Health Act; the *Interjurisdictional Support Orders Act*; the *International Child Abduction (Hague Convention) Act*; the *Maintenance Enforcement Act*; the *Maintenance and Custody Orders Enforcement Act*; the *Married Women's Property Act*; the *Public Guardian and Trustee Act*; and the *Reciprocal Enforcement of Maintenance Orders Act*.

I draw members' attention to the presence of the *Divorce Act* in that list I just read. As I flagged, it is federal legislation.

I think the motion fails to recognize the important role the *Divorce Act* plays in the Yukon's family law landscape. I could name some more acts, including those that are focused on young offenders or on the transfer of property such as *Land Titles Act* — both of those areas are captured under the wording of this motion.

Before the member opposite rises and says that the *Land Titles Act* has nothing to do with the motion before us, let me mention sections 4, 5 and 6. Sections 4 and 5 address "Dower and Curtesy." Section 4 reads: "No widow whose husband died on or after January 1, 1887 is entitled to dower in the land of her deceased husband but she has the same right in that land as if it were personal property."

Section 5 addresses "Tenancy by the curtesy abolished." It states: "No husband whose wife died on or after January 1, 1887 is entitled to any estate by the curtesy and the land of his deceased wife but he has the same right therein as a wife has in the personal property of her deceased husband."

It sure seems to me like that wording relates to families and property. Section 6 addresses married women and addresses registration when there is a change of name by marriage. My goal here is to point out that we have many, many laws that speak to the various elements of this motion. I do not intend to discuss all of these acts, but I do want to mention a few of them in some detail, as they lay out the guidelines and principles that guide how the legislation is applied. I also want to point out that some of the items listed in this motion overlap. For example, when I talk about child support, I am also going to discuss spousal support.

Before I deal with the individual points of this motion, the member opposite has shared with me his desire to address this subject because of his concern for protecting children. I want to speak for a few minutes about the regime we have in place that indeed protects children.

In his opening comments in another context, the member opposite has spoken about his desire to move in this area because of his concerns with the child protection regime here in Yukon. He noted that several pieces of legislation address different aspects of child protection. I'm concerned that some Yukoners, based on the information the member opposite has put on the floor of this Assembly, may not necessarily be aware of or understand how the government protects children or the principles that guide our legislation. I would like to mention some of the relevant legislation that speaks to how Yukon children are cared for and indeed protected. I think it's both appropriate and productive for us to spend a few minutes talking about the laws concerning children here in Yukon. Later I'll discuss the property aspect, but right now I want to focus on

the children and I'll begin with the *Child and Family Services Act*.

The preamble states: "WHEREAS Canada is a signatory to the United Nations *Convention on the Rights of the Child*; every child is entitled to personal safety, health and well-being; children are dependent on their families for safety and guidance and as a result, the well-being of children is promoted by supporting the integrity of families; every child's family is a unique and has value, integrity and dignity; members of society and communities share a responsibility to promote the healthy development and well-being of their children; and this act has been developed through the combined efforts of representatives of the Government of Yukon and First Nations as well as groups and organizations with an interest in the welfare of children."

With respect to this motion, this act speaks directly to the laws regarding children. Although I do not intend to spend a great deal of time addressing the *Child and Family Services Act*, I do mention it here because of the legislative regime it sets up, and it also lays out the principles that guide its implementation and administration.

"This Act shall be interpreted and administered in accordance with the following principles: (a) that the best interests of the child shall be given paramount consideration in making decisions or taking any action under this Act; (b) a child has the right to be protected from harm or threat of harm; (c) knowledge about family origins is important to the development of a child's sense of identity; (d) the cultural identity of a child, including a child who is a member of a First Nation, should be preserved; (e) family has the primary responsibility for the safety, health and well-being of a child; (f) a child flourishes in a stable, caring and long-term family environment; (g) the family is the primary influence on the growth and development of a child and as such should be supported to provide for the care, nurturance and well-being of a child; (h) extended family members should be involved in supporting the health, safety, and well-being of a child; (i) a child, a parent and members of their extended family should be involved in decision-making processes regarding their circumstances; (j) First Nations should be involved as early as practicable in decision-making processes regarding a child who is a member of the First Nation; (k) the safety and well-being of a child is a responsibility shared by citizens; and (l) prevention activities are integral to the promotion of the safety, health and well-being of a child."

Clearly, Mr. Speaker, this legislation speaks to the protection of children.

I would now like to talk about the child and youth advocate legislation as this is directly relevant to the discussion brought forward by the member opposite.

The guiding principles for the *Child and Youth Advocate Act*, read as follows: "This Act must be interpreted and administered in accordance with the following principles: (a) the family is the primary source of nurturance, support and advocacy for children and youth; (b) consistent and loving relationships enable children and youth to form attachments and develop personal resiliency; (c) culture, traditions, values and beliefs play a vital role in strengthening the identity and resiliency of a

child and youth; (d) every child and youth has strengths that can be enhanced by those working in partnership with them; (e) relationships based on trust and respect enhance the will to cooperate and resolve issues; (f) modeling a cooperative and respectful process for resolving issues provides children and youth with an experience of how to resolve issues in a way that fosters resolution and healing; (g) First Nations have a responsibility for children and youth who are members of their First Nation and a desire to be involved in processes regarding the protection and realization of their members' rights and interests; (h) the dignity and diversity of children and youth must be respected; (i) children and youth are active participants in their own development and have an evolving capacity to form and express their views; (j) the way a child or youth communicates is not necessarily a reflection of their capacity to understand and make decisions; (k) communication with a child or youth must be respectful and appropriate to the skills, abilities and developmental maturity of the child or youth; and (l) a child-centred or youth-centred approach focuses on the interests, needs and rights of the child or youth and recognizes that a child or a youth grows and develops as part of a family, a culture and a nation."

Mr. Speaker, I'd like to talk about the element of the motion that speaks to custody and access. I would suggest that Yukoners who find themselves involved in family law matters consult the *Guide to Family Law* document put out by the Yukon's Department of Justice. It's approximately 30 pages; so it's a short read, and it's very, very, very helpful. As I mentioned, the Government of Canada has its own booklet and webpage information on getting divorced.

The courts that deal with family law in the Yukon are the Supreme Court and the Territorial Court. Both deal with family law matters. The Supreme Court has the authority to hear applications for child custody and access, child support and spousal support. Only the Supreme Court has the authority to deal with divorce and the division of property.

The Territorial Court deals with child protection matters under the *Children's Law Act*. This court also has limited authority over family matters, including some maintenance and support matters.

The Territorial Court does not deal with divorce, custody or adoption. There are many legal issues to consider when two people who were married or living common law can no longer live together. These issues include where children will live, how they will make decisions about the children and support them financially, whether one spouse will need financial support from the other spouse, and how property and debt accumulated during that relationship will be divided.

Lawyers refer to these issues as custody, access or parental responsibility, child support, spousal support and division of property. There are different legal rules for married spouses and common-law spouses. For example, common-law spouses who want spousal support must make the request within three months of separating.

Division of property rules is also different for married and common-law couples. While there are different rules for married and common-law couples, I understand that all married

couples have the same rights and that all common-law couples have the same rights. I'll come back to that point when I talk about the fourth element of this motion.

However, before I move on, I want to state that people choose the kind of relationship they are in. Some people, for whatever reason, choose to marry, and some people, for whatever reason, choose to live common law. My point is that it is a choice that people make. I think we need to think very carefully before we begin changing the laws in this area.

Let me share with this Assembly some of the things we are doing to help Yukoners in the area of family law. We have the *Yukon Guide to Family Law*. We also have the Family Law Information Centre.

We developed a family law website that can be found at www.yukonflc.ca. I would like to mention that several guides are available on the Justice department's website as well. For those in the maintenance enforcement program, or MEP, we will have links to the maintenance collection tools, fact sheet and a page on enforceable orders. For Yukoners engaged in the courts, we offer the guide called *Representing Yourself*.

The Family Law Information Centre, or FLIC, offers the FLIC brochure on the web. We also have a couple of fact sheets. One is entitled *Alternatives to Court*, and the other is entitled *Preparing an Affidavit*.

The website offers guides for the following areas: Book 1 — *Applying for an Initial Family Order*; Book 2 — *Opposing an Initial Family Order*; Book 3 — *Applying to Change a Family Order*; Book 3 — *Applying to Change a Family Order*; Book 4 — *Opposing an Application to Change a Family Order*; Book 5 entitled *Consent Orders*; and finally, the *Family Law Resource Guide*.

I would like to continue to address the ways in which the Government of Yukon responds to family law matters here in Yukon.

We updated the 1995 Yukon Public Legal Education Association's publication entitled *Splitting Up* — a publication on separation and divorce in the Yukon, of which the third edition is now available. I highly recommend this book — which available on-line as well — to those with questions about family law matters here in Yukon.

The Yukon Legal Services Society provides legal aid services in respect of criminal, youth criminal justice, family and civil matters.

I would like to mention overview of family law that they have in the *Splitting Up* book.

Canada has two levels of government that can pass laws dealing with family matters. Both the federal government in Ottawa and the Yukon government in Whitehorse have passed laws covering the issues that come up when couples separate and/or divorce.

The rules of law that apply to splitting up in the Yukon are found in three places: the Canadian legislation, which is passed by the Parliament of Canada in Ottawa; the Yukon legislation, passed by the Yukon Legislature in Whitehorse; and case law, which is decisions made by judges in previous cases. Again, I highly recommend this book.

I would like to talk about the Family Law Information Centre, which is, again, often referred to as FLIC. The Family Law Information Centre is a legal resource for separating or divorcing couples and families in transition. It is an office of the Court Services branch of the Yukon Department of Justice that provides information on family law, issues and court procedures.

Services provided by the Family Law Information Centre are free to the public. Anyone who needs information about Yukon family law matters can use this centre, but it is important to understand and remember that the Family Law Information Centre staff members do not take the place of a lawyer.

I would like to remind Yukoners that one is responsible for one's own case. The Family Law Information Centre is staffed by neutral people who provide legal information and educational materials as a public service. Your communications with the staff are indeed confidential, but staff members are available to help both parties. The Family Law Information Centre has two employees: a family justice projects officer, who administers federal funding under Justice Canada's Supporting Families initiative, and a Family Law Information Centre administrator, who provides free information on family law issues and court procedures to members of the general public.

Established in 2007, the Family Law Information Centre encourages the parties to reach agreements rather than going to court about issues such as establishing, changing or varying child support amounts and custody or access to children. Funding in the amount of almost \$207,000 for both positions and for operating expenses can be recovered from Justice Canada following its approval of funding, proposals and yearly reports. This funding initiative is due to expire in the 2013-14 year. I would like to thank Canada for its contribution in this area. I am very grateful for the good working relationship that we indeed have with Canada.

The Family Law Information Centre is a neutral service that can provide information to both parties to a family law matter and, as I mentioned before, staff are not able to provide legal advice about what course of action to take, and they consistently advise clients that they should seek the assistance of a lawyer about their family law issue.

The Family Law Information Centre sets up and regularly delivers court-mandated parent education programs that provide parents with legal information about separation and divorce, as well as information on the effects of family breakdown on children. Clients can download the family law information, including a series of Yukon child support court procedure guides from the Family Law Information Centre website, or come to the Family Law Information Centre office for family law information from a variety of sources.

One of the major projects the Family Law Information Centre is currently researching is the administrative recalculation of child support amounts. Several Canadian jurisdictions have services that regularly recount the amount of child support owed so that the parties do not have to apply to the court to vary child support amounts.

While we are speaking about child support, I want to mention the maintenance enforcement program. I spoke about the

legislation a few moments ago to emphasize that government has the ability to collect a considerable amount of information in its efforts to ensure that parents pay the support they owe. I will come back to how the maintenance enforcement program works in more detail in a few minutes. At this point, I want to mention that the maintenance enforcement program, or MEP, enforces agreements or court orders requiring support payments to a spouse or to a child.

The maintenance enforcement program can take steps to enforce agreements or orders for support after they are filed with the court. Either parent can register with the maintenance enforcement program. Registration with the maintenance enforcement program does not guarantee payment, nor does it guarantee regularity of support payments. The maintenance enforcement program takes all possible steps to attempt collection of support payments set out in a court order or set out in an agreement. When the program collects money from the paying parent, that money is paid to the receiving parent. Our maintenance enforcement program has considerable powers. I would like to mention the section on enforcement information — 6(1): "For the purposes of enforcing a maintenance order that is filed in the office of the director under this Act or of obtaining information for a person performing a similar function in another jurisdiction, and despite the Access to Information and Protection of Privacy Act, the director may require any person, including the Government of Yukon, to provide to the director information about: (a) the wages, salary or other remuneration; (b) sources of income; (c) the assets or liabilities; (d) the financial status; (e) copies of income tax returns; (f) the social insurance number (SIN); (g) changes in circumstances which affect the amount of maintenance to be paid under the order; (h) the location, address, and place of employment; (i) the location, address, and place of residence; and, (j) the telephone number of the respondent, the respondent's spouse, or income source of the respondent that is within the knowledge of, or shown on a record in the possession or control of, the person."

Madam Deputy Speaker, that's quite the list and my point here is that the government has at its disposal some very powerful tools when it comes to addressing support issues. Related to this is another important piece of legislation called the *Reciprocal Enforcement of Maintenance Orders Act*.

You've probably asked yourself what Yukon's maintenance enforcement program does? The maintenance enforcement program offers a conflict-free mechanism for Yukon families to meet their child and spousal support obligations. The maintenance enforcement program has collected almost \$1.6 million for spouses and children as of the beginning of March during the 2011-12 fiscal year.

More than 77 percent of these funds were collected from Yukon residents. In fact, 564 children are currently being supported through the maintenance enforcement program. I have been asked a few times since I have been appointed Minister of Justice if the maintenance enforcement program is successful. In fact, the maintenance enforcement program collected funds on 88 percent of active files during the 2010-11 fiscal year. Almost 59 percent of Yukon registered payers in the program are in full compliance with their maintenance orders. The main-

tenance enforcement program disbursed more than \$2 million to Yukon families in 2010-11, and \$1.6 million, as of the beginning of March 2011-12.

Folks are probably wondering how much the government has spent on the maintenance enforcement program since 2007. Operating and maintenance costs for the program for the past number of years has been as follows: In the 2008-09 fiscal year, the cost for the program was \$349,812. The cost for the program in the 2009-10 fiscal year was \$279,499. The cost of operation and maintenance for the program for the 2010-11 fiscal year was \$330,943. The operation and maintenance costs for the program for the 2011-12 fiscal year was \$304,508. Madam Deputy Speaker, that's of March 2, 2012.

The maintenance enforcement program offers support payment services through a number of means, including an interactive voice system and an online query system. The program accepts registrations from either party in a family law matter. Approximately 40 percent of the money received is paid voluntarily. Almost 550 families are supported through the maintenance enforcement program.

Many more families are benefiting from the collection of child support arrears. Of those 550 families, 372 involve claimants who live in Yukon, and 299 of those are centred in Whitehorse. Historically, four percent of claimants have been male. The maintenance enforcement program participates in national and international discussions to deal with outstanding issues, such as cross-border enforcement, age of majority policy and family law questions.

I believe that we have an effective program in place to address family law matters. Custody and access issues arise frequently during separation and divorce. I would also note that section 16 of the federal legislation, the *Divorce Act*, addresses custody orders. Section 16(1) states: "A court of competent jurisdiction may, on application by either both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage."

I will skip down to section 5: "Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child."

In his comments, the member opposite spoke about looking after the needs of children. Madam Deputy Speaker, the *Divorce Act* speaks to how children are to be cared for. I am going to mention some detail here that I found in a very helpful on-line booklet put out by the Government of Canada on divorce. That on-line booklet is called *Divorce Law: Questions and Answers*.

The divorce law sets out some basic principles that a judge must use when making decisions about children. Those principles are as follows: the best interests of the children come first and the children should have as much contact as possible with both parents so long as this is in the child's best interest. When deciding on the best interests of the child, the judge will take into account a number of factors, including care arrangements before the separation, the parent-child relationship and bond-

ing, parenting abilities, the parents' mental, physical and emotional health, the parents' and the child's schedules, support systems, sibling issues, and the child's wishes.

Clearly the legislation takes a great deal of interest in the children and works to ensure their needs are addressed and their views are considered as the parents work through a divorce.

This motion speaks to custody and access. Sometimes that can be a very contentious area. Unfortunately, when couples part ways, sometimes the children are caught in the middle. I want to talk for a few minutes about the legislation that addresses custody and access.

Yukon has signed on to the *International Child Abduction Act*. Let me share with this Assembly what that means. Here's what the convention says that we have committed to: "The states signatory to the present Convention; firmly convinced that the interests of children are of paramount importance in matters relating to their custody; desiring to protect children internationally from the harmful effects of their wrongful removal or retention into established procedures to ensure the prompt return to the state of their habitual residence, as well as to secure protection for rights of access; and have resolved to conclude a Convention to this effect, and have agreed upon the following provisions..." and the first article states, "The objects of the present Convention are to: (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States."

The second article says: "Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention," and "for this purpose they shall use the most expeditious procedures available."

I would like to say just a few words of explanation.

Now according to the act, the word "convention" means the *Hague convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, set out in the schedule to this act. Section "2(1) On, from and after February 1, 1985, except for the reservation described in subsection (2), the convention is in force in the Yukon and the provisions thereof are law in the Yukon."

I would like to share with this House what the *Hague convention of 25 October 1980 on the Civil Aspects of International Child Abduction* is. Often just called the *Hague Abduction Convention*, this is a multilateral treaty developed by the Hague Conference on Private International Law that provides an expeditious method to return a child internationally abducted from one member nation to another.

Some Hon. Member: (Inaudible)

Quorum count

Deputy Speaker: Member for Copperbelt South, on a point of order.

Ms. Moorcroft: I believe that pursuant to Standing Order 3(2), we fail to have quorum in the Legislative Assembly at present. While I'm interested to hear the ministers speak —

Deputy Speaker: Thank you. I'm going to ring the bells for four minutes, and then we'll do a count.

Bells

Speaker: Order please. I have shut the bells off and I will do a count. There are now 13 members present. A quorum is present. We'll continue with debate.

Hon. Mr. Nixon: In this debate, I am happy to see that all of our Yukon Party members are present and that only one NDP and one —

Speaker's statement

Speaker: Order please. I will remind the member that the attendance or non-attendance of the members is not business to be brought forward. Members must keep their comments to the question under debate, please. The Minister of Justice has the floor.

Hon. Mr. Nixon: As I was mentioning, section 2, subsection 1 — from and after February 1, 1985, except for the reservation described in subsection 2, the convention is in force in the Yukon and the provisions thereof are law in the Yukon.

I would like to share with this House that the *Hague Convention on the Civil Aspects of International Child Abduction* is what it is. Often just called the "Hague abduction convention", this is a multi-lateral treaty developed by the Hague Conference on Private International Law that provides an expeditious method to return a child internationally abducted from one member nation to another.

Proceedings on the convention concluded on October 25, 1980, and the convention entered into force among the signatory nations on December 1, 1983. The convention was drafted to ensure the prompt return of children who have been abducted from their country of habitual residence or wrongfully retained in a contracting state not their country of habitual residence. The primary intention of the convention is to preserve whatever status quo child custody arrangements existed immediately before an alleged wrongful removal or retention, thereby deterring a parent from crossing international boundaries in search of a more sympathetic court. The convention applies only to children under the age of 16.

I would like to share with this Assembly what that means for Yukon children and their parents. The convention provides that: "The removal or the retention of a child is to be considered wrongful where (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. The rights of custody mentioned in subparagraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision or by reason of an agreement having legal effect under the law of the country of habitual residence."

From the convention's standpoint, the removal of a child by one of the joint holders without the consent of the other is wrongful. This wrongfulness derives in this particular case, not from some action and breach of a particular law, but from the fact that such action has disregarded the rights of the other parent which are also protected by law and has interfered with the normal exercise.

Mr. Speaker, the motion speaks to property laws. I would now like to talk about how the Yukon addresses these matters through legislation like the *Family Property and Support Act*. The purpose of this act as laid out in section 5 is to recognize that "(a) that child care, household management and financial provision are the joint responsibilities of the spouses; and (b) that inherent in the material relationship there is a joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities and to rectify this deficiency by entitling each spouse to an equal division of family assets on marriage breakdown subject to the equitable considerations set out in sections 13 and 14."

This can apply even though the spouses entered into the marriage before this act comes into force and even though the property in issue, or the family home, was acquired before this act comes into force, or a proceeding to determine rights as between the spouses in respect of property or a family home has been commenced or adjudicated before this act comes into force.

I would also like to refer to family assets. Section 4 addresses family assets: "In this Part, 'family assets' means a family home as determined under Part 2 and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation, or for household, educational, recreational, social, or aesthetic purposes, and includes (a) money in an account with a chartered bank, savings office, or trust company if the account is ordinarily used for shelter or transportation or for household, educational, recreational, social, or aesthetic purposes; (b) if property owned by a corporation, partnership, or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the partnership or trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property; (c) property over which a spouse has, either a loan or in conjunction with another person, a power of appointment exercisable in favour of themselves, if the property would be a family asset if it were owned by the spouse; and (d) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse; (e) if the spouse's rights under a pension plan have vested, the spouse's interest in the plan, including contributions made to the plan by other persons; (f) the spouse's rights to contributions to a pension plan in which the spouse's rights have not vested, and the spouse's rights to money in a retirement, savings, or investment plan but does not include property that the

spouses have agreed by a marriage contract or separation agreement is not to be included in the family assets.”

I would now like to turn my attention to the part of the member opposite’s motion that speaks to spousal support. I want to talk about the Canadian legislation that addresses that issue. That legislation is the *Divorce Act* if the couple is married and the *Family Property and Support Act* if the couple is in a common-law relationship in Yukon.

I want to look at section 15 of the *Divorce Act* as that deals with how we support children and spouses. Section 15.1 deals with “Child Support Orders,” and section 15.1 (1) “A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.”

Section 15.2 addresses spousal support orders.

15.2(1) “A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.”

I would like to skip down to section 15.2(6) “An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown; (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage; (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and, an order made under the subsection (1) or an interim order under (2) that provides for the support of a spouse should: (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.”

Directly relevant to this discussion before us today is section 15.3, which, Mr. Speaker, speaks to the priority given to child support.

“15.3 (1) Where a court is considering an application for a child support order and an application for a spousal support order, the court shall give priority to child support in determining the applications.”

The member opposite spoke about common-law relationships. I am not clear if he understands how the legislation works with respect to support. As part of my reply, I want to talk about the *Interjurisdictional Support Orders Act*. This deals with enforcing judgments involving support orders, and it speaks to both in-territory and out-of-territory situations. I won’t go into the details here. People can read the act for themselves, but I do want to mention how this act addresses the items outlined in the member opposite’s motion.

A “support order means a court order or an order made by an administrative body requiring the payment of support and includes the provisions of a written agreement requiring the payment of support if those provisions are enforceable in the jurisdiction in which the agreement was made as if they were contained in an order of court in that jurisdiction.”

The word “‘support’ includes support, maintenance, or alimony payable for a claimant or for the child of a claimant or for both.”

A “‘reciprocating jurisdiction’ means a jurisdiction declared in the regulations made under subsection 43(1) to be a reciprocating jurisdiction.”

Locally, nationally and internationally, governments place a high priority on addressing the needs and protecting the rights of children. Let me just mention some of the jurisdictions with which we have reciprocal agreements, as I want to show how our system works, even if members of the family involved migrate to other regions.

For example, in Canada, we have reciprocals with Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec and Saskatchewan. We also have reciprocals with the United States, including the 50 states, District of Columbia, Guam, Puerto Rico and the United States Virgin Islands.

I’d like to now mention some examples of the other regions of the world, with which we have reciprocals. My goal here is to show that Yukon is truly part of a global system. Here is a list of the reciprocal jurisdictions: in Africa, Zimbabwe; in Asia, Singapore; in Australia and Polynesia, Australia, Fiji, the Cook Islands — I’ll just note that Cook Islands, as well as the United Kingdom and the Isle of Man, that I’ll come to in a moment, were added by the OIC 2007-176 that shows that we are continuously working on ensuring our agreements are up to date.

In Central America and West Indies, Cayman Islands; in Europe, Austria, Czech Republic, Germany, Isle of Man, Jersey, Poland, United Kingdom; in the South Pacific, New Zealand.

I hope I have demonstrated that our legislation is part of an international response that aims to ensure support orders are enforced regardless of where the parents involved may live. While there may be countries without reciprocal agreements, I think the list of countries with them is impressive.

Moving forward, I would like to mention same-sex couples. With respect to same-sex couples, both Parliament and the Supreme Court have addressed this matter. The *Civil Marriage Act* was introduced by Prime Minister Paul Martin’s Liberal government in the Canadian House of Commons on February 1, 2005 as Bill C-38.

It was passed by the House of Commons on June 28, 2005, and by the Senate on July 19, 2005. It received royal assent the following day.

To back up a little bit, in 2003, the Liberal government referred a draft bill on same-sex marriage to the Supreme Court of Canada, essentially asking it to review the bill’s constitutionality before it is introduced. I would like to mention the federal government’s Department of Justice fact sheet on this decision on www.justice.gc.ca/eng/news-nouv/fs-fi/2004/doc_31342.html

Mr. Speaker, the Supreme Court of Canada rendered its decision on December 9, 2004, in the marriage reference.

The court ruled section 1 of the government's proposed legislation extending civil marriage to same-sex couples is constitutional and that its very purpose flows from the Charter. The Charter protects religious officials from being compelled to perform marriages between two persons of the same sex if it is contrary to their religious beliefs. Section 2 of the proposed legislation on the protection of religious freedoms goes beyond federal jurisdiction into matters that are provincial jurisdiction. Religious freedom is already protected by the Charter, but if additional protections are desired, they would have to be done by the provinces and the territories. The court declined to answer the question on whether the opposite sex requirement for marriage is constitutional, as they felt it was unnecessary in light of the unique combination of factors at play. Parliament and the Supreme Court have spoken.

I now want to address the issue of married and common-law couples. In 1998, the NDP passed, but did not proclaim, the sections relating to the division of property. They proclaimed other parts of the act, but not these ones. I would suggest the member opposite ask the Member for Copperbelt South, who was the Minister of Justice at that time, why she did not proclaim these sections. The legislation in question was passed but not proclaimed by the NDP in 1998. The NDP got around to proclaiming other parts, but as I mentioned, not these ones. I'm not here to question what the NDP were thinking. For me, the real question is if any Yukoners' rights have actually been compromised. I'm advised that all married couples in Yukon are indeed treated the same. I am also advised that all common-law couples in Yukon are indeed treated the same. If any Yukoner feels that his or her rights are in question, he or she may seek remedy through the courts.

Legally married couples in Yukon, whether the partners are opposite or same-sex, enjoy the same rights and protections in terms of spousal support and the division of family assets. In July 2004, the Supreme Court of Canada ruled that standard to all of Canada.

With respect to common-law couples, in 2002 the Supreme Court of Canada in the case of *Nova Scotia vs. Walsh* decided that the exclusion of unmarried co-habiting opposite sex couples from the definition of "spouse" in matrimonial property legislation was not discriminatory with the meaning of section 15(1) of the *Canadian Charter of Rights and Freedoms*. The court said that there is no discriminatory denial of the benefit in this case, because they opted for a common-law relationship instead of a marriage and because those who do not marry are free to take steps to deal with their property in such a way as to create an equal partnership between them.

In other words, Mr. Speaker, people choose the kind of relationship they want to be in. Being married has certain rights and responsibilities, and living in a common-law relationship has certain rights and responsibilities. Yukoners are free to choose the kind of relationship that they want to be in. In section 37 of the *Family Property and Support Act*, common-law couples can apply for a support order during or within three months after their relationship has ended.

I am going to discuss our response to domestic violence next. While many couples enjoy violence-free lives, I do want

to speak to a segment of family law that addresses the terrible problem of spousal and intimate partner abuse. Let me speak about the *Family Violence Prevention Act*, which addresses this matter.

The preamble to this act reads as follows: "Recognising that family violence continues to be a serious problem in the Yukon; recognising also that one difficulty victims of family violence face is that the abuser often forces them to leave their own home to escape the abuse; recognising also that there must be effective legal procedures that victims of family violence can easily use to get immediate help and relief from the abuse."

This act is set up to help those Yukoners dealing with family violence. I want to mention the definitions section of this act as it speaks directly to the kinds of relationships involved. "In this Act, 'cohabitants' means (a) persons who have resided together or who are residing together in a family relationship, spousal relationship, or intimate relationship, or (b) persons who are the parents of one or more children, regardless of their marital status or whether they have lived together at any time."

The legislation clearly identifies this area as one that merits the government's engagement. I want to mention some of the programs developed to respond to this legislative initiative. This now brings me to our response to the territory's family laws with respect to domestic violence. As part of the *Victims of Crime Act* and the associated strategy, we folded into the act a bill of rights for victims. This includes the right to have needs, concerns and diversity considered. I won't repeat all of section 7, but I do want to flag section 2, (a) and (b), which reads as follows: "Programs and services for victims are, where reasonably possible, to take into account, (a) the differing needs and circumstances of women and of men" and "(b) gender inclusive analysis relating to offences and victims".

Now, our government is deeply concerned about violence against women. The statistics, as many in this Assembly know, are sobering. Statistics Canada reports that rates of violence against women in the north far exceed the national average. Rates of spousal violence and spousal homicide are also significantly higher for aboriginal women than non-aboriginal women. Aboriginal women experience spousal violence at a rate that is three times higher than that for non-aboriginal women.

Our *Victims of Crime Strategy* was developed by Justice and the Women's Directorate in collaboration with First Nations and community agencies in order to enhance our response to the needs of victims, families, and communities. We have set up an advisory committee to assist with the implementation of the strategy workplan. This committee has representatives from community groups, First Nations, women's groups, other justice organizations and the RCMP. This group has met seven times since August of 2009.

The Yukon will continue to work with the implementation advisory committee to roll out the *Victims of Crime Strategy*. This government has committed a total of just over \$1.5 million to support the implementation of the *Victims of Crime Strategy*. Mr. Speaker, \$817,352 of this figure was allocated for the Department of Justice projects and the remainder was to

support the Women's Directorate programs. I'd like to talk about how this is addressing the family law matters addressed in this motion.

We have provided annual funding of \$170,784 to support two additional victim services workers to improve our ability to respond to victims in all rural communities. Yukon offers many services through the Victim Services unit. I just want to mention the ones that relate to the family. These include assistance in the court process by supporting applications for peace bonds and emergency intervention orders under the *Family Violence Prevention Act* and support for victims whose partners are involved with the Domestic Violence Treatment Option Court in Whitehorse and Watson Lake and/or the Community Wellness Court here in Whitehorse.

A victims of crime emergency fund has also been established to address costs of being victimized that cannot be covered by any other source. Funding for the emergency fund is being provided by the Policy Centre for Victim Issues with over \$35,000 in the 2011-12 fiscal year and \$76,423 in the 2012-13 fiscal year, and by the crime prevention and victim services trust fund, \$45,000.

Another component of the victims of crime emergency fund is the emergency cellphone campaign. Emergency cellphones are provided to address safety concerns as a result of victimization. Since April 2011, approximately 50 phones have been provided. I want to particularly thank Latitude Wireless and Steve McAvoy for their generous support of this program. This is an excellent example of community and government collaboration.

Victim Services workers travel to the rural communities for court circuits and additionally, to meet with clients, attend meetings, and other events in all communities and to provide information and support. In addition, the Department of Justice also funds the support variation assistance program that provides assistance to persons who need to have their support orders varied. The Department of Justice also funds the maintenance enforcement program, which helps to collect child and spousal support, and it also funds Legal Aid to provide lawyers for parents involved in child protection matters and permanent custody applications.

It also funds the Law Line, which takes over 2,000 calls per year, of which more than one-third are family law questions. The Department of Justice also funds For the Sake of the Children parenting program.

Addressing violence against women is a complex problem, is especially prevalent in the north, and requires a multi-faceted response. This response includes initiatives in the areas of public education; services to women, victims and enforcement. A number of programs have been laid out: \$50,000 a year has been committed for the Department of Justice to support further public education, and \$181,000 has been provided to the Women's Directorate for public education. Victim Services redeveloped its brochure and is conducting a public education campaign about the *Victims of Crime Act* and the bill of rights.

Victim Services continues to support the Yukon Sexual Assault Response Committee, or SARC, which consists of representatives from government and community-based service

providers focused on developing consistent, timely and effective responses to victims of sexualized assaults. The committee is currently discussing training needs and ways to better communicate with the public about sexualized assault.

This work is closely related to the work being carried out and the response to a *Sharing Common Ground* report recommendation to develop a framework to address domestic violence and sexualized assault.

The Women's Directorate is working with the Yukon Aboriginal Women's Council, the Whitehorse Aboriginal Women's Circle and the Liard Aboriginal Women's Society on implementation of the aboriginal women's role model pilot project.

The Women's Directorate has also obtained support to implement an aboriginal women's project implementation officer position, which I understand has now been staffed.

Another key element is enforcement. Our government believes that it is critical that the justice system responds to domestic violence matters effectively, and we continue to be committed to working with all partners to develop ways to both respond to and to prevent domestic violence.

In my capacity as Minister of Justice, every year I set priorities for policing in the territory and communicate those to the RMCP's M Division. A common thread in those priorities has been to work to increase the communication and the coordination of services to victims of crime. The RCMP has been responsive to this priority, and we continue to discuss ways of improving our levels of service to victims of crime. I can assure members that the RCMP views domestic violence very seriously and continues to work in collaboration with many others toward providing a safe environment for families. While both men and women report experiencing violence in relationships, research shows that indeed women are more likely to experience serious physical injuries and that women are much more likely to fear for their lives and experience emotional consequences of abuse.

The RMCP has both national and divisional policies regarding violence in relationships. As part of the RMCP basic training at Depot, members receive training on how to respond effectively to domestic violence.

I am very pleased to say that I will be touring Depot for two days in July, and I will be looking forward to a variety of different classes and approaches to not only policing and responding effectively to domestic violence, but to policing in the north in general.

This specialized training continues once they arrive at M Division, with more focused training in areas such as the Yukon *Family Violence Prevention Act*. In addition, there is ongoing and regular in-service training. There is education and communication between Justice staff and front-line RCMP members regarding domestic violence, victimization and ways of responding to situations where there is a high risk of violence.

The RCMP also participates in the Domestic Violence Treatment Option Court steering committee, and the Community Wellness Court steering committee. Since the review, we have confirmed that M Division has a policy directing police

officers to use a primary aggressor assessment in cases where dual assaults have been alleged.

M Division has strengthened its policy direction and is working to improve the tools available to assist front-line officers to conduct these assessments.

Community members raised domestic violence matters during the review. Our government is responding to the recommendations in *Sharing Common Ground — Review of Yukon's Police Force — Final Report*. This report calls for the creation of an inter-agency working group including representatives from First Nations, women's organizations, and the Public Prosecutions office to develop a comprehensive framework for responding to domestic violence and sexualized assault.

Another area of focus in the *Victims of Crime Strategy* is the development of new legislation. In May of 2010, this government passed the *Victims of Crime Act*. The *Victims of Crime Act* regulations were also drafted after consultation with key stakeholders. The act and regulations were proclaimed on April 8, 2011. Work is underway with key partners, including the RMCP and the Public Prosecution Service of Canada, to fully implement the Victims' Bill of Rights enshrined in this act. As mentioned, an extensive public education and information campaign has been developed to ensure that Yukoners are aware of this new legislation.

I'd like to talk for a few minutes about the *Victims of Crime Act*. The rights set out in this act state that at all stages of the justice system, consideration should be given to the needs and concerns of victims of crime and that they should be treated with courtesy, compassion and respect, and have access to appropriate protection. The *Victims of Crime Act* and regulations support programs and the services to become more client-focused as they are able to take into account the gender-inclusive analysis and also the cultural diversity of Yukon's people and the specific needs of groups of individuals, such as those with cognitive impairments or mental illness. The director of Victim Services is given duties that include monitoring how rights are being observed, considering victims' concerns in new and existing programs and conducting research into victims' issues.

I am very pleased to advise that we have added an additional \$85,000 per year to provide training for people who work with victims. We are also providing funding through the crime prevention and victim services trust fund for several other victim-related projects, including a project for young women in Ross River, an equine therapy project in Watson Lake, an aboriginal women's advocate, community-based support programs and the victims of crime emergency fund. The trust fund supports projects that are intended to — and I'm being selective in my list here — prevent violence against women and children, provide, publicize and promote information on crime prevention, protection from victimization, the needs of victims and services offered to victims.

I now want to talk about the important piece of the government's response to one of the causes of breakdowns in relationships. Mr. Speaker, our goal is to help families stay together. One response is to focus on a therapeutic response to

domestic violence. The Domestic Violence Treatment Option Court is indeed a therapeutic court that supports offenders and the victims to make the necessary changes in their lives so that they lower the risk to reoffend. The Domestic Violence Treatment Option Court operates in Whitehorse and Watson Lake. Victim Services staff participate in the monitoring of safety with respect to victims in both the Domestic Violence Treatment Option Court and the Community Wellness Court. The Domestic Violence Treatment Option Court, or DVTO, was created as a response to the high rates of domestic violence, a significant First Nation population that felt victimized by the formal justice system, whose culture and values were perhaps inconsistent with their own, and a perception that relatively few victims actually reported domestic assaults to the police.

When domestic assaults were reported, a high proportion of cases were stayed or withdrawn because the complainant was unwilling to testify; or if she did, she changed her evidence in order to help out the accused. There was a developing consensus that the formal justice system — being adversarial, punitive, and offender focused — was not reducing the incidents of violence in part because the formal justice system was not meeting the needs of the victims.

Typical criminal justice interventions appeared to have little impact on repeat offending. The DVTO Court, on the other hand, operates on a different premise. It is a therapeutic alternative that helps motivate offenders to take responsibility for their violent behaviour early in the justice system process, and to understand and perhaps unlearn this behaviour. At the same time, it uses the authority of judges to monitor the behaviour of offenders in order to maximize the safety of victims.

The Yukon DVTO is premised on the belief that many more victims would be prepared to participate in a criminal court-based process that offers a therapeutic treatment alternative to offenders or that requires the offender to acknowledge responsibility by entering an early guilty plea. To be effective, this alternative must at the same time hold the offender accountable in a meaningful way and must not compromise the safety of the complainant.

The Yukon DVTO provides an alternative procedure for dealing with domestic violence offenders in criminal court. It does not divert offenders away from criminal court. To the contrary, its objective is to bring more offenders into the justice system. It offers an alternative based on principles of therapeutics to encourage offenders to accept responsibility for their actions at the very early stage of the proceedings.

More victims are encouraged to disclose their victimization, knowing that their partners can opt for counselling and programming under court supervision and thus be eligible for a community-based sentence. The DVTO Court has a specialized caseload and is handled by dedicated judges and key partners such as Victim Services workers, treatment program personnel, police, Crown attorneys, defence counsel and social workers.

The goals of this court are as follows: encourage more disclosure of domestic violence; provide for early intervention, provide a non-adversarial, therapeutic, court-based alternative to formal criminal court as a means of responding to domestic violence; reduce the high collapse rate for domestic violence

charges and hold offenders accountable in a meaningful way; provide a therapeutic sentencing option to offenders under the close supervision of the court and treatment professionals; encourage early acceptance of responsibility and early guilty pleas by perpetrators of domestic violence; and finally, to provide protection, information and support for victims.

The DVTO process begins with a report to police. In response to the report of domestic violence, the RCMP attend and investigate the complaint using a special risk-assessment guide. If a decision is made not to arrest the offender, the police will typically impose conditions on the defendant that address these risks, including a no-contact order and a requirement to report to a bail supervisor. Both Legal Aid and the Crown's office have assigned specific lawyers to the DVTO sitting of the court.

This assignment allows for the development of expertise and provides continuity, allowing the same counsel to take a case to its completion. Duty counsel treat this sitting of the court like a circuit point, meaning that he or she assesses the accused's eligibility for legal aid at the time of court appearance, avoiding a further adjournment and delay.

The RCMP set all first appearances involving domestic violence for the next sitting of the DVTO Court. This is a specialized docket with specially assigned judges and is in session every other Monday. The delay between the charge and court appearance is thus substantially reduced and is an essential aspect of fast-tracking domestic violence cases. If the accused is detained or released on bail, he will appear on the next DVTO Court date. Holding court at the same time and in the same courtroom every other week facilitates attendance by resource persons, such as representatives of the Family Violence Prevention unit, Victim Services, Family and Children's Services and Probation Services.

Prior to the commencement of court, a pre-court meeting is held where all key players, excluding the judge, attend to discuss cases that are on the court docket for that day. Information is shared about the accused, the victim and the offence, and issues are discussed or recommendations are made among the parties. This assists in the fast-tracking of cases because all parties are usually in agreement prior to court even commencing.

Information about the DVTO is provided to the defendant at the first court appearance. The DVTO is available to the defendant only upon application. The defendant must be prepared to accept responsibility for the offence as a condition of eligibility. This application is made at the first or second court appearance. Adjournments are only granted for specific reasons — for example, to obtain further disclosure and, normally, for two weeks only.

When an application is made for the DVTO, the court adjourns the case for two weeks to allow the Family Violence Prevention unit to conduct an intake assessment and assess eligibility for the treatment program. If the defendant is found to be ineligible for the DVTO, he is returned to the formal court process. Ineligibility for the program, though infrequent, is usually due to serious mental health problems or severe substance abuse programs.

Some Hon. Member: (Inaudible)

Point of order

Speaker: The Member for Riverdale South, on a point of order.

Ms. Stick: We have been listening to the member opposite, and I believe he has gone off track in this debate and is going way beyond what was in the motion before us.

Speaker: Minister of Energy, Mines and Resources, on the point of order.

Hon. Mr. Cathers: Mr. Speaker, the minister is making comments that he believes are relevant to the motion in front of us. I don't believe there's a point of order. I think the minister is providing comments he thinks are relevant.

Speaker's ruling

Speaker: There is no point of order.

We have gone through this in the past and I'll just reiterate that it is difficult for the Chair to determine whether the — I ask members to not chatter while I'm giving a ruling, as my rulings are important to the conduct of this Assembly. As such, I would like members to pay attention to them. I'm not doing it for my pleasure.

The member's statements, whether or not they're relevant to the motion at hand, is for him to determine within his statement. I would hope that they would be tied together, as I have said in the past, to bring it back. It is up to the members to make sure that their debate is relevant. It is their responsibility. Until, in fact, the member has completed his final statements, it would be impossible for the Chair to make a ruling of relevance.

Hon. Mr. Nixon: Now, where was I?

The defendant must be prepared to accept responsibility for the offence as a condition of eligibility.

This application is made at the first or second court appearance. Adjournments are only granted for specific reasons — for example, to obtain further disclosure — and normally for only two weeks.

When an application is made for the DVTO, the court adjourns the case for two weeks to allow the Family Violence Prevention Unit to conduct an intake assessment and assess the eligibility for the treatment program. If the defendant is found to be ineligible for the DVTO, he is returned to the formal court process. As I just mentioned, ineligibility for the program, although infrequent, is usually due to serious mental health problems or a severe substance abuse problems.

Occasionally the program will give conditional acceptance to a defendant. This means that the defendant must complete some other form of programming prior to entering spousal abuse programming. Once a defendant is accepted to the treatment program, a plea must be entered into the court. A formal guilty plea must be entered prior to the commencement of the treatment program. If the defendant chooses to plead not guilty, his case is referred back to the formal court process.

The treatment recommendations are presented to the court and may be incorporated in an undertaking or in a recognized area where one is already in existence. Modest modifications of

the treatment plan may take place during subsequent court reviews. The defendant may have other needs besides treatment which are addressed by Probation Services and outlined in a report.

After the defendant has pleaded guilty, the spousal abuse program conducts a lengthy clinical assessment prior to commencing treatment. Once this has been completed, the defendant begins to attend the treatment group. While the defendant is attending treatment, the court undertakes regular monthly reviews of the defendant's progress. Reviews may also be initiated by the bail supervisor or by the treatment personnel. A defendant may be returned to the formal court process and sentenced as a result of failing to follow the treatment plan, missing treatment sessions, or as a result of not participating in group sessions.

Every effort is made to address the victim's needs and concerns while the defendant is participating in the treatment program. Safety considerations are given the highest priority. Victim Services can assist the victim and provide information about available services. Further, a counsellor and SAP will invite the victim to participate in the defendant's assessment process through a partner assessment. The victim is also contacted throughout the offender's treatment to discuss any concerns that may arise. The victim is invited to participate in the defendant's assessment process. The court encourages the victim to be heard at all stages of its process and may direct that appropriate court documents be made available to them. Probation services identifies other programming needs and normally prepares a report for the court to assist with sentencing. Victim Services defense counsel and Crown counsel provide their recommendations to probation services.

The court normally imposes the sentence after the defendant has completed the treatment offered by the Family Violence Prevention unit, and other recommended programming that has been identified or started. Sentencing to the DVTO Court will take place after the completion of the required programming. The required programming will always include the 15-week spousal abuse program, or SAP, which involves group meetings facilitated by counsellors and a relapse prevention program, which may last for several additional weeks.

Referrals to other program — such as alcohol and drug counselling, grief counselling, parenting programs or couples counselling — may also be made. There may be a requirement to start this programming before sentencing actually takes place. The sentence will give credit for the early guilty plea and reflect the participation and progress of the offender through the treatment process, as well as the *Criminal Code* sentencing principles.

The sentence imposed will normally be a community disposition, so either a conditional sentence of imprisonment plus probation or simply a period of probation. The offender may receive an actual jail sentence if he has breached his bail conditions. In all cases, however, the disposition will reflect the reduction in risk factors resulting from the successful completion of the programming undertaken.

The Yukon DVTO Court has been evaluated by the Canadian Research Institute for Law and the Family, University of

Calgary. The evaluation concluded that the DVTO Court was effective in dealing with domestic violence cases. Overall, we would conclude that the DVTO system and SAP as a whole are very effective. While each of these components of the overall system has some claim to achieving individual objectives, the interactive effect seems to be the strongest in preventing re-assaults with a very difficult client group. The DVTO model, which combines a comprehensive justice system approach with a treatment program for batterers, provides an excellent model for dealing with spousal assault and abuse.

In conclusion, let us consider the motion. It calls for the Minister of Justice to undertake a full review of the legislation. I have put on the record a partial list of the legislation related to the subject matter. It calls for us to address the territory's family laws. I have provided a list of the laws relating to children. I've spent a fair amount of time emphasizing the protection we have in place for children, including both legislation and the programming.

I was tempted to spend quite a bit of time on the Yukon's property laws, which we are in the process of modernizing. Instead, I overviewed them and noted some of the areas where this applies. With respect to the call of the motion for any amendments to this legislation to be brought forward by the fall of 2013, I pointed out that our government will set our legislative agenda.

The motion spoke to the custody and access, and I've shared with this Assembly the federal and territorial government's legislation. I also shared that the courts have an important role to play in this area, and we fully respect the role of the courts. I outlined the legislative regime for property. Again, I am indebted to the many excellent publications available on the justice, the Family Law Information Centre and the Yukon Public Legal Education Association websites. Yukoners with general questions about child support or spousal support may find many of their questions answered by reading through that information that's available.

I have overviewed the role of the Parliament of Canada and the Supreme Court of Canada in addressing the element of this motion regarding same-sex couples. I have also addressed the definition of a common-law relationship.

As I mentioned earlier, our government pledged that by working together, we could do better. We offered Yukoners a clear vision for a bright future. We committed to moving forward together. Each of these parties in this Assembly put forward their respective platforms, and Yukoners selected and elected the Yukon Party to form the government once again.

As I reviewed our platform, we committed to improve the services offered to families engaged with the justice system. I did not see a commitment in our platform to review and amend this legislation, as I've mentioned. While I appreciate the suggestion from the member opposite, Yukoners elected us to deliver on our platform. As I mentioned, support for our Yukon Party government continues to grow, one Yukoner at a time. I will suggest that Yukoners who find themselves involved in family law matters consult the *Guide to Family Law* document put out by the Yukon's Department of Justice.

It is approximately 30 pages long and it is very helpful. As I mentioned, the Government of Canada has its own booklet and webpage information on getting divorced.

In concluding, I want to remind the members of this Assembly and the good people listening what it is that MEP does for Yukoners. The maintenance enforcement program has collected almost \$1.6 million for spouses and children as of the beginning of March during the fiscal year of 2011-12. More than 77 percent of these funds were collected from Yukon residents. I've mentioned that 564 children are currently being supported through the maintenance enforcement program.

I've been asked if the maintenance enforcement program is successful. I mentioned that the maintenance enforcement program collected funds on 88 percent of active files during the 2010-11 fiscal year. It's almost 59 percent of Yukon registered payers in the program who are in full compliance with our maintenance orders. MEP has disbursed more than \$2 million to Yukon families in 2010-11 and \$1.6 million as of the beginning of March of this year.

I thank the member opposite for bringing this motion forward, and I appreciate the member's interest in this area. Thank you.

Ms. Moorcroft: I'm not certain if the Minister of Justice had intended to try to break the record of the Yukon Party for how long he could speak in debate on a Wednesday afternoon, but I'd like to congratulate him for speaking for some two hours and 10 minutes on the motion before us, although, at times, he did stray somewhat from the purpose of the motion.

This motion, brought forward by the Member for Vuntut Gwitchin, urges the House to urge the Minister of Justice to undertake a full review of the territory's family, child and property laws, with a view to introducing amendments to this legislation by the fall of 2013, and that the review address issues of custody and access, property, spousal support, same-sex couples, and the definition of a common-law relationship.

All of these are important matters, and family law, I would agree, does need to be kept up to date, as do all of our laws. The Official Opposition is supporting the motion. While the Minister of Justice did not clearly state whether he would or would not support the motion, he left us with the impression that he would not, as he stated that the Yukon Party had been elected to deliver on its platform, and that its platform did not include a review of family law.

I might point out that I see no reference in the Yukon Party platform for developing new ultimatums on approaching the Peel River watershed, and the planning document that was created according to the provisions of the *Umbrella Final Agreement*, with many years of work and over \$1 million. I did not see in the Yukon Party platform an indication that if a request for oil and gas dispositions in the Whitehorse Trough came forward that they would either accept them or reject them. Any government, when it is elected, puts out a platform, but it does find itself needing to deal with matters of business that are brought forward by the public, or in a motion debate by members of the Opposition.

Speaking to family law — social and legal changes related to family law include the legalization of gay marriages, the protection of equality rights in the *Canadian Charter of Rights and Freedoms*, and the dramatic increase in the number of common-law families. A review of family law may take some time, but it is important to do. It is interesting and significant to note that there are many different definitions in a number of Yukon laws that relate to common-law marriage, among other things, and to the definitions of "marriage". Yukon's laws have not been amended to reflect the new social and legal definitions of "spouse". Changes were made to the *Marriage Act* after the Dunbar and Edge case, which both the Member for Vuntut Gwitchin and the Minister of Justice spoke about. But some of the Yukon's other legislation that has not been updated to include same-sex relationships and the definition of spouse would include the *Family Property and Support Act*, the *Children's Act*, the *Vital Statistics Act* and the *Land Titles Act*.

So I believe that this motion raises an issue that does merit the attention of the government and we will support it.

The members previously spoke about the Family Law Information Centre which provides free information in the areas of child support and parenting after separation and family law. That information centre is housed on the main floor of the Andrew A. Philipsen Law Centre. I would encourage members of the public who may need those services to use that.

The legislation involved in this motion, as previous speakers have stated, includes the *Family Property and Support Act* which determines the Yukon's child support guidelines. Those are calculated when parties are coming before the courts with an application for child support. The maintenance enforcement program that the minister spoke about is a program that helps those families that do not receive child support that has been ordered by a court.

It's clearly a problem for some parents when there are currently 550 active files in the maintenance enforcement program. As the minister stated, 96 percent of those files are women whose ex-partners — whether they were husbands or common-law spouses — are not paying their child support. It's clearly a problem for some parents to pay their child support. We're pleased that the maintenance enforcement program is there to help them, but it is discouraging that those services are needed by so many families.

The *Children's Law Act* is the old *Children's Act* and it was kept in place when the new *Child and Family Services Act* was enacted. The new *Child and Family Services Act* came into effect on April 30, 2010, and that covered a wide range of family and children's programs — issues including things like the disclosure of adoption records; collaborative planning processes such as family conferencing, which involves family groups and decision-making for their children; and provisions for First Nation child welfare agencies.

In addressing the issue of custody: after separation, a parent of the child or another person may apply for custody of or access to the child. The custodial parent is the one that the children live with. Custody is the legal term that says where the children live and who is responsible for making decisions involving them. There are many kinds of custody. There is sole

custody, there can be joint custody, shared custody or split custody. Then we come to the issue of access. A court order or a separation agreement describes the access that may be allowed to a parent who does not live with the children but who wants to visit or spend time with them. Reasonable access is provided according to what is deemed to be appropriate for the situation of the parent who is living with the children, and it would give parents the flexibility to make their own arrangements about access to children. There may also be specified access that sets out certain times for parents who don't live with their children to spend time with them. There may be supervised access that says the parent who does not live with the children may spend time with them only when another adult is present.

A court may order this kind of access if the judge feels that it is necessary for the welfare of the children, or if it is in the best interests of the child.

Both of the previous speakers have spoken about the best interests of the child. I want to state very clearly for the record that children's best interests are only served when the interests of their caregivers are also served. Hungry children and homeless children generally come from low-income households, and those are generally, most frequently, single-parent households headed by women.

I agree with the Member for Vuntut Gwitchin that we need to look after the needs of the children, and that our legislation does speak about attachment to family members, a continuity of residence, and maintaining ongoing positive family relationships with family members for those children. What that means, though, is looking out for the needs of families. It means looking after those children's primary caregivers, often their moms.

I would also like to put on the record a note of caution about mediation and out-of-court settlements of family law matters. Those can be a useful approach, but great care must be taken to ensure that women are not coerced into taking part in mediation or an out-of-court process that fails to protect women's safety. Violent men can be manipulative and abusive in ways that are not easily detected by others. So when we're considering the best interests of the child, we also must remember to consider the best interests of their parents or grandparents or other family members that they are living with.

In preparing for debate on this motion, I looked at definitions of "property" and definitions of "spousal support" and definitions of "marriage" and "spouses" that are found in a number of different statutes in the Yukon. There is also a difference between Yukon legislation and federal legislation. The *Divorce Act* is federal and it deals with spousal support. Child support is covered under the *Family Property and Support Act*. It outlines family assets; how division of family assets should be done after separation, third party rights, support obligations and cohabitation agreements.

The *Estate Administration Act* defines a common-law spouse as, "a person who is united to another person by a marriage that, although not a legal marriage, is valid by common law, or, a person who has cohabited with another person as a couple for at least 12 months immediately before the other person's death."

From the Yukon Public Legal Education Association *Splitting Up* booklet in 2007: "The Yukon currently has an extremely short period (three months) during which a common-law partner must apply if he or she wants spousal support. If you don't apply for support, or make an agreement about it, within three months of your separation date, you can't get spousal support."

The Minister of Justice spoke about choices and that people can choose to have a common-law relationship or people may choose to be married. If people choose to have a common-law relationship, they should not be discriminated against in law.

We as a society have progressed far beyond the days when couples who chose to live together without being married were referred to as "living in sin". We believe that the definitions of spouse, including common-law spouse, should be aligned across all of the various laws that address custody and access, property, spousal supports and same-sex couples. Now, to be considered a common-law marriage, the couple must live together for a certain period of time. They're not considered married under Canadian law; however, when their relationship ends, many of their rights are the same as for people in a regular marriage.

There are also many important differences. The amount of time a couple must live together to be considered a common-law marriage varies from province to province, and this is generally two to three years, but in Ontario and New Brunswick, the period is three years. In British Columbia and Nova Scotia, the period is two years. To complicate matters further, federal legislation often specifies a different period for a relationship to be considered a common-law marriage for federal law purposes. It's normally only one year. These new definitions have come into play over the last decade or so.

It has been somewhat controversial. Some people continue to hold the view that a common-law relationship, whether it is a same-sex relationship or a male-female relationship, are in some way less valid than a marriage.

The Minister of Justice, in his remarks, also asked why the *Estate Administration Act* — that the NDP developed and that was new when it was proclaimed into effect on April 1, 1999 — did not include the section, now proclaimed, which I read earlier, relating to the definition of common-law spouses.

At the time, there were rather strenuous objections from some members of the family law bar, and we agreed to further discussions. As I just noted, the definition of "common law" does greatly vary across jurisdictions, and I am pleased that in the Yukon the relationship — at least under the *Estate Administration Act* — recognizes that a period of 12 months is what establishes the legitimacy of that relationship.

Common-law relationships have also become far more common in recent years. In looking in the 2006 census of Canada table that provides the distribution of common-law families as a percentage of all families for Canada and the provinces and territories, it shows that the Yukon at that time had 1,965 common-law relationships or 23.6 percent of relationships were common-law, as opposed to married. In Quebec in 2006, the percentage of common-law couples was 34.6 percent, which

was the highest in Canada. But overall in Canada, the number of common-law families was 15.5 percent in 2006.

In other countries — in the United Kingdom, 15 percent of relationships are common law; in Ireland, it's 14 percent. In New Zealand, 23.7 percent of relationships are common law; and in Sweden, it's 25.4 percent. We see that common-law relationships are becoming much more prevalent among families and I believe that it is important to recognize the rights of couples who cohabit or live common law in a similar way to the way we recognize the rights of couples who are married.

I believe that the Member for Vuntut Gwitchin was hoping that this motion would come to a vote this afternoon. We did have some optimism that we might, in fact, proceed through motion debate and return to dealing with the budget this afternoon, but that hasn't happened. I would like to conclude by saying that we do support this motion. We do believe that laws need to be regularly reviewed and that as much as possible, there should be consistency in the definitions that do have a strong influence on how families can conduct their business. The laws governing custody and access, property, spousal support, same-sex couples and defining common-law relationships have impacts outside of this Assembly. They have impacts on the daily lives of members of our communities and we want to see those definitions revised in order to ensure that there is consistency.

I did also want to speak before I close on the kinship law and the comments made by previous speakers regarding public policy that recognizes family structures, including extended family members and their involvement in raising children.

The 2008 report *Kinship Care in the Yukon* spoke about family structures and included recommendations about recognizing the role of informal kinship care that may often be provided by grandparents or other extended family members. It made recommendations for cross-cultural training for Family and Children's Services and social workers, and for the government to have open and welcoming policies that support extended families for child protection or adoption matters.

Speaker: Order. I'm sure the member has a lot more to say, but unfortunately the member's time has elapsed.

Hon. Mr. Graham: Mr. Speaker, I found this motion quite interesting in that, during a previous tenure here in the Legislature, I was then the Minister of Justice and the original matrimonial property settlement legislation was brought in at that time. I think it was late 1978 or 1979. At the time, it was considered cutting-edge legislation. I'll never forget the debate that went around the fact that anybody could be so bold as to decide that if a marriage broke down, that a wife who had spent a number of years at home looking after the children should actually receive 50 percent of the assets in the partnership. At the time, as I say, it was cutting edge and it's interesting to see how things have evolved over the years.

My comments will be primarily about the interests of the child. As the Member for Vuntut Gwitchin stated, the best interests of the child is his greatest concern. I agree to some extent.

I find it interesting, during my introduction to the *Child and Family Services Act* when I became minister, that the service delivery principles and the actual principles of the act determined that the primary service principle was the best interests of the child. In fact, in part 1(4) they even tell us how the best interests of the child shall be considered. "In determining the best interests of the child all relevant factors shall be considered including: (a) the child's safety, health and well-being; (b) the attachment and emotional ties between the child and significant individuals in the child's life; (c) the views and preferences of the child; (d) the child's physical, cognitive and emotional needs and level of development; (e) the importance of continuity and the resulting stability to the child, and the effect of any disruption in that continuity." It goes on, "...the importance to the child of an ongoing positive relationship with their parents and members of their extended family." And to this end, the act was drafted in such a way that cooperative planning — the cooperative planning process, or family conferencing as it is sometimes called now in the department — was considered the primary method of ensuring that children were being cared for more by families and extended families. They were being cared for in their home community, and in all instances, it led to better outcomes for the children themselves.

In determining the best interests of the child, the ability of a proposed care provider for that child to fulfill the parental responsibilities was also a great concern. At that time, the *Child and Family Services Act* had other provisions that said extended family members should be involved in supporting the health, safety and well-being of the child.

In instances even today, during child custody cases or child welfare cases anywhere in the territory, one of the things that is always considered is who the child's extended family is, and in all cases, the attempt is made to include those folks in any family conferencing.

One of the interesting things that was pointed out to me during my conversations with departmental personnel in this area was that in the past, when considering child custody, many times it was one or two social workers or people from the department in Whitehorse. They would come to a community — if this happened to be in the community — and they would invite either a parent or two parents or a caregiver to a meeting. So there was almost an imbalance of power there. So now, what we do during family conferencing is ensure that there is no longer an imbalance of power. So you make sure that the extended family is there; make sure the grandparents, if possible, are there; and, of course, the natural parents as well. But we find in some of these instances that's not always possible, so extended families are very important. The family conferencing is a key part of any child custody cases that come to the attention of Social Services.

The other principles that apply to the provision of services under the act is that a child's sense of time and development capacity should always be respected. Families and children should receive the most effective, but least disruptive, form of support, assistance and protection that is appropriate under the circumstances. I think that, again, points to the fact that the interests of the child come first in all of these cases.

I also found that the adversarial system of making decisions regarding children that the Member for Vuntut Gwitchin talked about is also something that we also agreed with — or the drafters of the *Child and Family Services Act* agreed with — and built in, in all cases, that collaboration, mediation and facilitation were always more important than taking the case to court. Even in cases where a child custody dispute had to go to court, the judiciary was given the opportunity — instead of actually deciding on the merits of the case in a court setting, they could turn the dispute or the disagreement back to either a family conference or they could send the whole issue back to be determined in a more collaborative mediation-type setting.

So there were different powers and there were different resolutions to many of the problems included in the *Child and Family Services Act*. I have to point out, too, that this act just came into being. It was proclaimed with the regulations in 2010.

It hasn't even really had a great chance to be tested in a real-world situation for any great length of time. I think that it is very important that changes not be made until we get a chance to evaluate how the act has operated since 2010. The evaluation process is built in, as well, so there will be an evaluation of how the *Child and Family Services Act* is working and if it is actually providing the improvements that we thought it would provide to all involved.

Again, in determining the best interests of the child, one of the other relevant factors was that any history of family violence or child maltreatment perpetrated by a prospective care provider, and the effect on the child of any past experiences of family violence or maltreatment — and this section was obviously included, or the passage was obviously included, to take into consideration some of the things that we know happen on a daily basis, and to protect, once again, the interests of the child above all else.

The other interest that I thought was very important, too, is that, if a child is a member of a First Nation, the importance of preserving the child's cultural identity shall also be considered in determining the best interests of the child. I think that's a very important clause, because it's something that we know over time hasn't always been the case. We've all heard horror stories of children being put with families that are not even close culturally and the devastating impact that that has on children in the long term.

This clause, I think, was very important. It's a clause that I think is very necessary. Also, in this act, we made sure that First Nations would always be involved — again, this is another section in the act itself. First Nations should be involved as early as practicable in decision-making processes regarding a child who is a member of a First Nation. In the spirit of that section, our department always invites — wherever the director of Social Services for the First Nation is available — those directors are always invited to any of the family conferences that occur in First Nations. So by doing these cooperative type of conferences, we feel that the rights of the child are being looked after.

We will again evaluate the process in due course to determine if all the things we hoped would happen are actually happening.

Some Hon. Member: (Inaudible)

Speaker: The Member for Takhini-Kopper King, on a point of order.

In recognition of the page

Ms. White: Mr. Speaker, I would just like to ask everyone to join me in thanking Midhula Kalpak. It's her last day today, so I would like to thank her for the time she has been here with us.

Applause

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

Debate on Motion No. 16 accordingly adjourned

The House adjourned at 5:30 p.m.

The following Sessional Papers were tabled May 9, 2012:

33-1-40

Yukon Law Foundation (November 1, 2010 to October 31, 2011) Annual Report and Financial Statements (Nixon)

33-1-41

Sharing Common Ground, Review of Yukon's Police Force: Year One Progress Report (May 2012) (Nixon)

33-1-42

Yukon State of the Environment Interim Report: An Update for Environmental Indicators 2012 (Dixon)

33-1-43

Yukon Workers' Compensation Health and Safety Board 2011 Annual Report (Graham)