

Yukon Legislative Assembly
Whitehorse, Yukon
Tuesday, November 19, 2013 — 1:00 p.m.

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

Prayers

Withdrawal of motions

Speaker: The Chair wishes to inform the House of a change that has been made to the Order Paper. Motion No. 495, standing in the name of the Member for Takhini-Kopper King, has been removed from the Order Paper as the House, in adopting Motion No. 509, has made a decision on the matter raised in that motion.

DAILY ROUTINE

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

Tributes.

Introduction of visitors.

Some Hon. Member: (inaudible)

Point of personal privilege

Speaker: Minister of Health and Social Services, on a point of personal privilege.

Hon. Mr. Graham: Mr. Speaker, I stand today on a point of personal privilege.

Yesterday when asked a question during Question Period, I replied with information that I later realized contained an error. My statement was: "Mr. Speaker, as the member opposite indicated, I did meet with the family of Ms. Scheunert. Interestingly enough, during that meeting the family never indicated ... that they were looking for a public inquiry."

Mr. Speaker, I realized, after returning to my office and speaking with my executive assistant that this statement was not an accurate reflection of what transpired at that meeting.

During my meeting with the family, a number of issues and concerns were discussed, including their request for a public inquiry, among other options. I wish to apologize to the House and especially to the family for this error.

Speaker: Are there any returns or documents for tabling?

TABLING RETURNS AND DOCUMENTS

Mr. Silver: I have for tabling an editorial from the *Yukon News*, dated October 5, 2011, which clearly lays out the Yukon Liberal Party's position opposing digitized staking.

Speaker: Are there any other returns or documents for tabling?

Are there any reports of committees?

Are there any petitions for presentation?

Are there any bills to be introduced?

Notices of motions.

NOTICES OF MOTIONS

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

THAT this House urges the Government of Yukon to properly manage tenders, instead of rushing them to meet political deadlines, to ensure:

(1) costly addendums or changes are not required in the middle of the tendering process, an example of which occurred this week with the issuing of a 119-page change order to the F.H. Collins school tender; and

(2) the end date of tenders do not change, an example of which occurred this week with the F.H. Collins tender closing being delayed from December 12, 2013 to January 10, 2014.

Speaker: Is there a statement by a minister?

This brings us to Question Period.

QUESTION PERIOD

Question re: Canada job grant program

Ms. Hanson: Last Friday the Premier indicated he was participating in the Council of Federation meeting with premiers from across Canada. Since that meeting, premiers have spoken out against the new Canada job grant program that replaces the employment programs currently run by provincial and territorial governments. The new program is said to be of no help to people who are not already employed. There are also concerns that small businesses won't be able to benefit from the program.

Does the Premier agree with his colleagues from the Council of the Federation that the Canada job grant touted by the Harper Conservatives will not work for employers or the most vulnerable Canadians?

Hon. Mr. Pasloski: Certainly, if the Leader of the Official Opposition did in fact read the press release, she would see that there was support by all provinces and territories on the wording of the press release that says that we do want to continue to grow the economy. That is our priority. In order to do that we need to ensure that Canadians have the training that they need.

One of the issues that we have with this program is a focus on training people who already have jobs. We feel it's very important that we continue to deliver the programming that we have in place today, which has been supported through evidence that they are in fact very effective. What we will be doing is going back to the federal government with some alternative options on how to best ensure that we can maximize our economy through good, strong job growth for Canadians to ensure that they have the training that is needed to meet the needs and the demands of our growing Canadian economy.

Ms. Hanson: I'm not talking about press releases. I'm talking about how the Premier represents Yukoners.

The president of the Chamber of Commerce recently expressed his concerns about the Canada job grant program.

Small businesses are a critical part of the Yukon's economy and the new Conservative program will not benefit them as much as the previous job training program, according to the chamber. Premiers from across the country are demanding that provinces and territories be able to opt out of the Canada job grant with full compensation so that they can continue to run the successful programs already in place.

So, Mr. Speaker, can the Premier tell us whether he agrees that provinces and territories should be allowed to opt out and does he plan on Yukon opting out of the Canada job program?

Hon. Mr. Pasloski: What I just said was not just articulating a press release. I think the clear understanding was that I was one of the people who signed off on that press release and that, in fact, what I just described is my position and the position of this government.

Yes, it also says in there that there should be an opportunity for the provinces and the territories to opt out of this program if they deem that it is not going to meet the needs of those people who we are now addressing. Some of the programs we have right now are focused on people who have had a harder time to get the training and the jobs that they want. We're talking about youth and women; we're talking about older workers; we're talking about First Nations; and we're talking about people who are on social assistance. We're talking about people who have been out of the workforce for a long time — immigrants and people who were previously self-employed.

We have worked hard not only in this territory, but across the country, because job creation and training are a priority and the responsibility of the provinces and the territories. We will continue to work with the federal government and, as I articulated, we look forward to coming back to the federal government with some options to see how we can work together to ensure that we are giving the training that is needed to Canadians to meet the job needs for today and for the future.

Ms. Hanson: Yukoners know more than anyone the importance of training. Our economy has suffered from a labour shortage and yet many Yukoners are still out of work. A job training program that won't help the unemployed, which small businesses cannot buy into, is as useful as a skidoo without an engine. It just won't work. Premiers from across the country are saying so. The chambers of commerce are saying so.

In light of the fact that the federal government has made clear statements that it will not change the Canada job grant program, will the Premier commit that at the next meeting of federal-provincial-territorial finance ministers in December, he will reject this Conservative program that will not help Yukon's economy?

Hon. Mr. Pasloski: I am disappointed that the Leader of the NDP didn't listen to my answers in the first two questions and I will also thank the Leader of the NDP for supporting our position of the premiers of this country in terms of how we want to move forward with the Canada job grant. We do believe that there is more dialogue to take place.

We've had great feedback from many different organizations and sectors within the economy. There has been a lot of hard work done by the minister responsible as well. We will continue to work with the federal government. I suspect that at the upcoming finance ministers meeting, as well, that this will also be a topic of discussion at that time and I look forward to talking to my counterparts at that table as well.

Question re: F.H. Collins Secondary School reconstruction

Mr. Tredger: We all remember Yukon Party's ill-advised attempt to tear down the F.H. Collins gym. At that time, the previous minister promised to involve parents and staff in a meaningful manner in the ongoing development of plans for the redesign of the F.H. Collins school.

This spring, F.H. Collins building plans were abruptly cancelled, throwing away years of design plans, site preparations, staff time and public involvement. Now we have a completely new design for an off-the-shelf Alberta school, and the public and staff of the school have not been meaningfully involved. The commitment made by the minister to actively and meaningfully involve the public is still expected.

Why has the government not honoured its commitments to parents, to students and to staff for meaningful involvement in the redesign of F.H. Collins Secondary School?

Hon. Mr. Istchenko: As you know, Mr. Speaker, you have heard in the House before that when the lowest bid came in at \$10 million over that budget, we needed to reassess and find a new option. We're building a school that is going to meet the needs of Yukon students well into the future and we are committed to doing that within our budget.

The programming in the new F.H. Collins that we're building — we worked with the school council and we worked the educators. We've included them through the whole process. I look forward to this project being built and I look forward to the youth of the Yukon being able to go to a state-of-the-art new high school.

Mr. Tredger: The government has paid almost \$1 million for a new design. The tender for construction is out. It is already being altered, yet the promised meaningful engagement of parents, the public and the staff is not happening. If it is, it's happening after the fact.

Would the minister like to enlighten us as to how public meetings after the government has already designed and tendered the construction contract is meaningful public involvement?

Hon. Ms. Taylor: For the member opposite, as has been reiterated by many of my colleagues on this side of the House, the new F.H. Collins will indeed provide a new learning environment that meets current as well as long-term needs of the student population. It's based on a design that has been successfully built and has been modified to reflect the very needs of Yukon learners today and well into the future.

As the member opposite is very much aware, we have been working over the past five years with the building advisory committee, with students, school councils,

administration and parents. I can say that the most important features from the building advisory committee consultations have been adapted and have been actually articulated within the design.

Examples of this include flexible learning spaces, a school-wide wireless network, fitness studio, improved First Nation program areas, an industrial kitchen, and a food service area that opens up with the band room to the lobby, which is also a multipurpose common area. We have also had an opportunity to send a number of officials to the Mother Margaret Mary school in Alberta to see first-hand. I attended that as well back in August, alongside other students and school council members as well, to see the plans in the works.

Mr. Tredger: The concerns of parents, students and teachers and their input — the people who have the most hands-on experience with the school — are not things to be ignored.

There are increasing concerns being expressed by parents and staff about the design elements of the school, and we're not just talking about building codes. Rather, one example is the concern that the number of classroom spaces cannot meet the current programs and current curriculum. If the government had honoured its commitment to engage the public and staff, these emerging problems could have been addressed in a fiscally responsible manner.

How will the minister take into consideration at this late date the concerns and knowledge of the public, parents and teachers and ensure that there are enough classrooms to meet F.H. Collins' current programming and curriculum?

Hon. Ms. Taylor: I'd like to thank the member opposite for raising this very important question. It was the result of discussions that have taken place between our superintendent responsible for the school, the school administration as well as the actual bridging consultant, Barr Ryder — in a discussion that has resulted in several additional learning spaces being added to the design. This is incorporated within the addendum that the member opposite — the Member for Klondike — has just referenced as well.

As I mentioned, the new secondary school going forward is really designed to create the most flexible and best possible 21st century learning environment for a student population that meets the needs of today and well into the future. It is based on a school that has been successfully built, and it has certainly been modified to reflect the aspirations and input received over the past five years by parents, by families, by students, by the administration and by the department at large.

Question re: Mining legislation

Mr. Silver: I am going to return to questions I asked yesterday about this government's approach to addressing the Ross River court decision. First off, the minister said that he was surprised to hear that I'm opposing the amendments that have been drafted and urged me to go to a briefing to make up my mind. Well, I have read the bill and I understand what's in it and I can't support it. I've also talked to many in the mining industry who don't support it either. They are holding their

breath. One of the main concerns they have — and I share it — is the lack of consultation done on this bill.

I won't condone how this government treats stakeholders. Before it even talked to anyone, the government decided it needed to change the legislation and it drafted a decision paper.

Why did the minister decide amendments were needed before even discussing how to implement the court decisions with First Nations and with miners?

Hon. Mr. Kent: With respect to these changes to the *Quartz Mining Act* and *Placer Mining Act*, I mentioned yesterday the amendments to each act are designed to meet one of the declarations of the Yukon Court of Appeal, the declaration with respect to low-level class 1 exploration activities.

The amendments in this bill provide for the requirement for notice by an operator, which then provides government with the opportunity to undertake consultation as appropriate. That's why we are making these enabling amendments to the act so that the government can fulfill its consultation requirements that were set out in the court of appeal declarations.

I too attended an event last night put on by the Yukon Chamber of Mines. I talked to a number of individuals I know within the Chamber of Mines and the Yukon Prospectors Association about their engagement on these class 1 declarations with First Nations, and they informed me there was no substantive engagement by them. I did talk to the Member for Klondike earlier today about whether or not he would provide me with the names of the individuals or the First Nations that were conducting these consultations and working on these solutions, because certainly it isn't anyone I know who serves in these capacities within the two industry organizations that work on behalf of mining advocacy in the territory.

Mr. Silver: I think the bigger issue here is whether or not the minister and his department were consulting with First Nations.

After a court decision was released in December 2012, the industry did begin discussions with Ross River about how to proceed. The government on the other side was silent.

Months later, after a great deal of work between industry and First Nations had already been done, the government arrived on the scene and announced that legislative changes were required and that it had already made up its mind on what these changes might look like. No consultation, no discussions — changes were simply written in a silo and presented in a discussion paper in June. As the clock ticked down to the fall session, both First Nations and industry waited to see a draft of the actual legislation the government was coming forth with. It never happened. The first time that many individuals saw the bill was when I sent it to them.

Why did the government not share the draft legislation with First Nations and with miners before it hit the floor of this Legislature?

Hon. Mr. Kent: Of course the government sought input from First Nations and industry, along with other

interested parties, on proposed changes to the *Quartz Mining Act* and the *Placer Mining Act*. Regulations are currently under review. There are a number of meetings between officials and industry organizations. I met with both the Chamber of Mines and the Yukon Prospectors Association in October to discuss this. There have been conversations about arranging a technical briefing with the industry associations on this legislation, similar to the one that the Member for Klondike, the Leader of the Third Party, won't be attending that is scheduled for opposition parties next week.

There has been an awful lot of work done on this. As I mentioned, the amendments provide for the requirement for notice by an operator and which then provide government with the opportunity to undertake consultation, as appropriate. The regulations are currently being developed on this important bill, and I would encourage the Member for Klondike to reconsider his position from yesterday and attend the briefing with officials so that he can become fully informed on how this bill will work and what the impacts for industry and First Nations will be from it.

Mr. Silver: It's good to know my schedule for next week. That's the first we've heard of this briefing, the first time we've heard there's actually a date. I would like to know what the time is of that briefing, and of course I am going to attend that briefing.

It's very disappointing to hear that, once again, the Yukon Party chose to consult with industry and with First Nations only after they made up their minds on how to move forward. The minister met in October. Without talking to either side, the government came up with a raft of amendments to the territory's mining legislation.

They go well beyond the implementation of the Ross River court decision and the minister knows this. He heard it from industry directly. They are creating more regulatory uncertainty, which is pretty much the thing that scares the industry the most. Decisions like this are speeding up the exodus of capital investments in the Yukon. Many pieces of legislation are shared widely with stakeholders before they are tabled in this House, but not this one.

Why did the government keep this under wraps until the very last minute?

Hon. Mr. Kent: Where to start on this — it's very interesting to hear the Member for Klondike profess to stand up for the mining industry and the interests of the mining industry when he also advocates for the removal of 10 percent of the Yukon for responsible mining development with his support for the recommended Peel watershed plan.

We have heard that the Liberals were very much in support of digitized claim staking, which would have put a lot of Yukoners out of work. They did that during the last election campaign —

Some Hon. Member: (inaudible)

Point of order

Speaker: Leader of the Third Party, on a point of order.

Mr. Silver: The member opposite is imputing false motives. I tabled in the Legislature today a document that clearly indicates that my party and I, personally, did not support digitized staking.

I would ask that the member opposite strike that from the record.

Speaker's ruling

Speaker: There is no point of order. It is a dispute between members.

The minister has 60 seconds to respond.

Hon. Mr. Kent: I was, of course, reflecting the fact that the Liberal Party did, at the start of the election campaign, support digitized claim staking, and it later flip-flopped and removed that support. I'm not sure why that happened.

Again, with respect to this particular issue on class 1, we are undertaking consultation on the regulations. I do encourage the member opposite to attend the briefing that we are arranging for opposition members. We are working with industry and we're working with First Nations. We're trying to meet a court-ordered declaration with a deadline of December 27 of this year.

Question re: Coroner's report re death at Watson Lake hospital

Ms. Stick: Yukoners assume that the Minister of Health and Social Services and his department know what happens in Yukon hospitals, especially when tragic deaths occur. The Official Opposition filed an access-to-information request to find out how the Yukon Hospital Corporation communicated with the department the unexpected deaths at the Watson Lake hospital over the last three years and where coroner's inquiries were released. The only records we received are e-mails in response to the Yukon NDP raising publicly the issue of Teresa Scheunert's death in July 2013.

How does the Minister of Health and Social Services justify the fact there is no written or e-mail communication between his department and the Yukon Hospital Corporation about deaths at the Watson Lake hospital until after the Yukon NDP raised the issue in public?

Hon. Mr. Graham: Obviously the member opposite's memory is failing her. I tabled two letters that I believe were dated in September of this year. I also tabled a letter from the chair of the Yukon Hospital Corporation in October of this year regarding the deaths in the Watson Lake hospital.

I think the member opposite fails to understand that there is an internal process within the hospital — it's called the patient review process — that is undertaken as soon as any adverse event happens in any hospital in the territory. Those patient reviews are kept private. I'm not allowed to see them, nor are any external parties, but they are — these patient safety reviews, once completed, are shared in this case with the family of the deceased. I understand that the patient review in Ms. Scheunert's case has almost been completed and the Yukon Hospital Corporation will meet with the family to review the findings very shortly.

Ms. Stick: Interesting. I did mention that we didn't receive any written documentation until after July and yes, we did receive the letter from August. The minister said on November 6 that the Yukon Hospital Corporation does not wait for a coroner's report, and I quote the minister, "They immediately investigate any of these adverse events..."

But on February 25, 2013, the Hospital Corporation wrote the Scheunert family saying the coroner was taking the lead on that, and I quote: "Our full attention will be paid to the report once it's received." Further, according to an e-mail from June 2013 from the Yukon Hospital Corporation to the family, the hospital patient safety review had not yet started. Can the minister explain why he said that the hospital responds immediately, when in fact it took over a year to start the patient safety review?

Hon. Mr. Graham: In this case, as I understand it, the patient safety review was delayed until such time as an autopsy report was received. It was received in February of 2013. But in other areas, the Hospital Corporation moved ahead immediately. Enhanced pharmacy supports were being provided through the implementation of telepharmacy. Some of the pharmacists on call have been available since May 2013. Improved clinical nursing documentation had been developed at this time. Implementation was scheduled for earlier this year.

Actions to improve not only systems within the Hospital Corporation but also improved communications and alerts within the hospital itself were all begun long before the coroner's report was actually received.

Ms. Stick: Mr. Speaker, the paper trail is thin. We also put in an access to information request to find out if the minister was being briefed on Watson Lake hospital deaths or Yukon Hospital Corporation patient safety, but no records were found.

There is no paper trail of briefings on patient safety at the Yukon Hospital Corporation. It appears that the minister is not looking into the important matters of patient safety. Certainly his inability to answer our questions over the last weeks confirms our fears. What is the role of communication or reporting, if any? Is there any between the Yukon Hospital Corporation and the minister who is responsible for the *Hospital Act* and for the *Health Act*, especially around unexpected deaths in Yukon hospitals?

Hon. Mr. Graham: Once again the member opposite has preceded her question with statements that are inaccurate. If the member opposite actually read the legislation, she would understand more what transpires between the Hospital Corporation and me.

Mr. Speaker, I'm very concerned with patient safety. I discuss patient safety with the chair and my deputy minister does with the CEO of the Hospital Corporation, but we also have a trusting relationship. The hospital has a number of systems built in to ensure patient safety. They operate those systems without interference from me. I'm not a doctor, nor am I an expert in patient safety. I trust the experts — the doctors, the nurses and the hospital administrators — to do their job. Obviously the member opposite does not trust them

and it's interesting to learn this. But I don't interfere with that operation either. From time to time, I ask questions and receive answers from the Hospital Corporation reassuring me that they are actually taking these things very seriously and steps have been taken to improve the systems, to improve communication and to improve overall patient safety within the Yukon Hospital Corporation.

Question re: Off-road vehicle use, chief coroner's recommendations

Ms. Moorcroft: Mr. Speaker, yesterday the Minister of Justice said that his government respects the office of the chief coroner. On November 1, 2011 the chief coroner issued a recommendation "directed to Highways and Public Works, Government of Yukon, to introduce legislation governing helmet use and age restrictions for use of ATVs in Yukon."

As of November 2013, two years later, the Yukon government has not acted on this recommendation by the chief coroner. Just last week, the Minister of Health and Social Services acknowledged what the goals of coroners' reports are: to provide facts and ensure that similar situations do not happen again. Coroners make recommendations to prevent deaths. If this government respects the office of the chief coroner, can the Minister of Justice tell the House why it has ignored her recommendation?

Hon. Mr. Dixon: Mr. Speaker, we have responded to calls for safety and environmental considerations related to ATVs and ORVs in a number of ways. Of course in 2011, we had a select committee of the Legislature review this issue and of course they issued a report in March 2011. That report received endorsement from all three political parties. It had very specific recommendations about safety of ORV use and environmental considerations related to ORV use.

We've tabled legislation on the floor of this sitting to address issues related to the environmental considerations of ATV use and that issue has received a significant amount of debate and discussion in this House, in the media and in the public.

With regard to the rest of the recommendations in the select committee's report, we will of course respond to them in due course and — as we've said before — they were endorsed by all three political parties in this House. So we take them very seriously and we'll be acting on them as recommended by that report.

Ms. Moorcroft: It's like a jack-in-the-box. When I ask the Minister of Justice a question, I never know if it's going to be the Government House Leader or the Minister of Highways and Public Works or the Minister of Health and Social Services or the Premier — and now it's the Minister of Environment who stands up and chooses not to answer the question. This is a serious question.

Last April, the Minister of Justice assured the House, "The government continues to follow up with recommendations made by the coroner's inquests." It makes me question whether this government believes coroner's judgements of inquiry don't carry the same weight as coroner's inquests, so they don't need to act on them.

When will the Minister of Justice or the Minister of Highways and Public Works or Environment — when will the Government of Yukon prove that they respect the role of the chief coroner and her 2011 recommendation and introduce legislation governing helmet use and age restriction for use of ATVs in Yukon?

Hon. Mr. Dixon: As I said before, of course we take the recommendations of the Select Committee on the Safe Operation and Use of Off-road Vehicles very seriously. That was a select committee report that was developed by all three parties in this House and endorsed by all three parties in this Legislature, so I would expect the member opposite to respect those recommendations and respect our commitment to implementing them.

As we committed to numerous times in this House, and as we committed to during the election, we've committed to amending the *Motor Vehicles Act* to clearly distinguish between roads and trails. We've committed to amending the *Motor Vehicles Act* to make helmet use, liability insurance and registration mandatory when operating an ATV or snowmobile on-road. We've committed to passing legislation to make helmet use mandatory for young riders operating ATVs and snowmobiles off-road. Those are the commitments we made to Yukoners in the 2011 election, those are what we are committed to today, and that's what we'll continue to work toward throughout our mandate.

Ms. Moorcroft: The members opposite are clearly not listening to the question and they don't appear to take it seriously. The minister stood up and said I need to respect the government's commitment. It is in fact more than two years since the chief coroner of the Yukon made a recommendation to the Government of Yukon asking it to introduce legislation governing helmet use and age restriction for the use of ATVs in Yukon. That was as a result of a death. That was as a result of finding that a young teenager driving an ATV without a helmet died, and there have been similar deaths. I would like the government to answer the question. The government says they respect the role of the chief coroner. When will the government bring forward legislation — not just say they've made a commitment — governing helmet use and age restriction for ATV use?

Speaker: Order please. The member's time has elapsed.

Hon. Mr. Dixon: Following the tragic death of a child using an ORV a number of years ago, the members of the Legislature at that time saw fit to create a select committee to review the safe use of off-road vehicles in the territory and present recommendations to this Legislature and to the government on how to proceed with regard to improving safety requirements for those who use ORVs as well as environmental considerations that are impacted by ORV use.

All three parties agreed to a report that had 14 recommendations, 13 of which related to the safe use of off-road vehicles. They were unanimously accepted by all parties in this Legislature and our government is committed to acting on those recommendations and taking action to ensure that we have safe use of ORVs in this territory.

The previous government committed to that, we committed to that during the election, and I'm reiterating the commitment to that series of recommendations in the report today.

To reiterate, Mr. Speaker, we understand that there are a number of recommendations in that report and we are committed to acting on them, including passing legislation to make helmet use mandatory for young riders operating ATVs and snowmobiles off-road.

I should also note that another commitment we made was launching an educational campaign that has, of course, been undertaken by my department, the Department of Environment, in conjunction with —

Speaker: The member's time has elapsed.
The time for Question Period has now elapsed.

Notice of opposition private members' business

Ms. Stick: Pursuant to Standing Order 14.2(3), I would like to identify the item standing in the name of the Official Opposition to be called on Wednesday, November 20, 2013: Motion No. 524, standing in the name of the Member for Riverdale South.

Mr. Silver: Pursuant to Standing Order 14.2(3), I would like to identify the items standing in the name of the Third Party to be called on Wednesday, November 20, 2013: Motion No. 19, standing in the name of the Member for Klondike, and Motion No. 332, standing in the name of the Member for Klondike.

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

ORDERS OF THE DAY

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

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

Motion agreed to

Speaker leaves the Chair

COMMITTEE OF THE WHOLE

Chair (Ms. McLeod): I will now call Committee of the Whole to order. The matter before the Committee is Bill No. 62, *Animal Health Act*.

Do members wish to take a brief recess?

All Hon. Members: Agreed.

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

Recess

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

Bill No. 62: Animal Health Act

Chair: The matter before the Committee is Bill No. 62, *Animal Health Act*. We will now proceed with general debate.

Hon. Mr. Dixon: Madam Chair, it's a pleasure to rise and speak to the *Animal Health Act*, Bill No. 62, today in Committee of the Whole. Of course, I had a chance to speak to this bill already a few times in second reading and I have outlined some of the key provisions in the act, as well as some of the background behind how it was developed and the consultation process that went into it. I also had the opportunity to thank some of the officials who had a hand in crafting this legislation as well as the policy work that went into this bill.

I'm joined today by my Assistant Deputy Minister, Allan Koprowsky, for the Department of Environment. As well, I should recognize two officials we have with us from the department, Jennifer Imbeau and Jennifer Meurer, to follow the proceedings of Committee of the Whole with regard to this very important piece of legislation.

As members know, this bill was tabled on November 6 for the first time. As discussed previously, the *Animal Health Act* will — our intent is at least to enable a more comprehensive government response to animal diseases in both livestock and wildlife as well as to help minimize the negative economic impacts of animal disease outbreaks. Healthy wildlife populations are important for harvesting, tourism, outfitting and the overall health of Yukon's environment.

Healthy animals support competitiveness and productivity for the livestock industry. In my opinion, Bill No. 62 modernizes the existing act so that the Government of Yukon can respond effectively to the full range of animal health risks and the impacts they have on human health. I think one of the key components of this act is that it seeks to, and — in my opinion — does achieve that critical balance between providing a level of protection and an ability for government to respond to outbreaks with respecting the interests of private animal and livestock owners who can and potentially would be affected by an event like a disease outbreak.

Of course, finding that balance is never easy and I have to commend the officials who have conducted the public consultation and ultimately provided recommendations to me on how to proceed. I believe that those who were consulted, including the industry organizations, the agricultural industry, First Nations and other groups would agree that I think that the balance has been struck here and we have an adequate level of safeguard of protection of personal property and rights for those who own livestock and animals with the need and ability for government to respond to potential outbreaks.

The key changes that are made here, if I may reiterate, are related to a number of aspects of the act. The scope of the new *Animal Health Act* goes beyond disease to address hazards such as risks to human health arising from toxins in meat or bacteria in milk or other animal products.

It also expands the definition of "animal" so as to include hazards from dead livestock as well as live animals. The new

act introduces the option of compensation, which the current act does not allow. A compensation program acknowledges that decisions made to protect the public will have economic impact on individuals and it is more likely that owners will report a hazard if they know they will be financially compensated and have the right to appeal.

Madam Chair, this is something that goes back to our consultation and our observations about previous events throughout the country and the world. We know that when some individuals feel they will be overly burdened or improperly compensated for actions taken, they will look to alternate routes and deal with matters, or take matters into their own hands, and that's not what we want to achieve. We want to make sure that individuals feel comfortable and feel willing to engage with government on important animal health issues.

The new act also introduces three tools for managing hazards. Those are: quarantine orders, surveillance orders and control orders. The current act only has quarantine areas where strict measures are applied to eliminate the hazard. The surveillance order, the first tool I mentioned, allows for monitoring in the area adjacent to a quarantine area to detect or prevent spread of a hazard. A control order can apply to all or part of Yukon and allows for restrictions to prevent the spread of hazards.

For example, the banning of the import of cervids to prevent the introduction of chronic wasting disease, which is something we announced earlier this year in a press release on May 2. I announced, on behalf of the Government of Yukon, that we would prohibit the import or possession of members of the deer family, better known as cervids, killed outside of Yukon to minimize the risk of introducing chronic wasting disease to Yukon game populations both farmed and wild.

The new act clarifies the role and authority of the chief veterinary officer and inspectors and the requirement for them to justify any orders that are issued. It allows the owners to request a review of orders and outlines how permits will be issued. It does not alter existing livestock production practices but offers flexibility in how a wide range of hazards will be controlled.

As I mentioned in my second reading speech, I think the establishment of the chief veterinary officer position was an excellent first step by government a number of years ago when they created that animal health unit. We have now reached the point where that unit has basically reached its upper level in terms of its capacity under the current act, and the new tools being identified in this particular piece of legislation provide it with a new suite of abilities and tools to manage animal health.

One of the key aspects of the chief veterinary officer's position is who you get in the position. I think we are certainly well equipped with Dr. Mary VanderKop, who has been in this House before, I believe. I certainly appreciate the work that she has done so far in building that animal health unit up to its present capacity and structure. I would be remiss if I didn't also note Dr. Jane Harms, the field veterinarian, and the staff in the animal health unit.

The potential offences are clearly outlined in the new act, and while the upper limits to fines have been substantially increased to align with other Canadian jurisdictions, a wide range of penalty options have been included that focus on preventing violations or offences rather than simply punishing individuals.

One of the important aspects of this relates to compensation, and I know we'll get into this when we have some back-and-forth debate. We feel that the compensation structures developed and the process by which an individual or a group can apply for compensation are sound. They provide the administrative ability to set compensation pursuant to regulation and then, following that, allow for an appeal process if it is deemed necessary by the individual. Then an appeal panel is struck and reviews the case. But at the end of everything, there is always the recourse of court, and individuals who feel that they don't receive a satisfactory outcome as a result of the processes outlined in this act, of course, always have the possibility of resorting to court action.

Once this is passed, the *Animal Health Act* will continue to complement the federal responsibility for animal health carried out by the Canadian Food Inspection Agency. The new act offers a wide range of penalties, providing flexible options for the courts to tailor the penalty to the severity of the offence and the personal circumstances of the individual. As I said, before you get to court, there is the process outlined in this act involving the minister's ability to set compensation.

I should note as well, in discussion with the chief veterinary officer, the importance of the relationship between the CVO and the chief medical officer of health. Any issues related to animal health transcend simply animals and, of course, become issues related to human health as well. We cannot forget that animal health issues are entirely relevant in the discussion of human health, and I think we've done an excellent job so far in synchronizing the work done between the chief medical officer of health and the chief veterinary officer.

I look forward to having the chief veterinary officer work with the chief medical officer of health in implementing these new powers in the new scope available under the act. I will cede the floor and open up to members opposite the opportunity for questions and I'll endeavour to provide thorough answers to those as asked.

Ms. White: I'd like to thank the staff from the Department of Environment, especially the two in the gallery, and the assistant deputy minister, the staff from the agriculture branch and especially all who participated in the public review of the *Animal Health Act*. In reading through the summary document and the responses to the very thoughtful questions posted by respondents, can the minister please explain the process that his department used for stakeholder engagement? Who was involved? Can he elaborate on those sorts of groups who were invited to respond?

Hon. Mr. Dixon: Thank you, Madam Chair, and thanks to the member opposite for the question. Of course, we conducted a fairly comprehensive consultation on this proposed act, Bill No. 62. It included a 60-day consultation

that was extended upon request if groups had needed more time to provide input. They were granted that. Direct letters were sent to a number of associations, including the Yukon Agricultural Association, the Yukon Food Processors Association, the Yukon Game Growers Association, Yukon Horse and Rider Association, Dawson City's Farmers Market, the Downtown Urban Gardeners Society, the Fireweed Community Market Society, the Great Green Growers Cooperative Ltd., the Growers of Organic Food Yukon or GoOFY, the Haines Junction Employment Development Society, the Haines Junction Employment Development Society's mini-market, Slow Food Whitehorse wellness horticulture project, all 87 food producers listed in the farm products website, all five veterinary and medical clinics in the territory, the Yukon Outfitters Association, renewable resources councils, the Yukon Fish and Wildlife Management Board and all Yukon First Nations.

Specific presentations were also granted to the Yukon Agricultural Association, the Yukon Game Growers Association, the Horse and Rider Association, GoOFY, a group of agricultural producers, the renewable resources councils' chairs, which meet annually, and the Fish and Wildlife Management Board.

In order to promote and distribute information about the *Animal Health Act*, we of course had a number of media items that were used, including a news release that was put out. We had advertisements in all Yukon newspapers, we had radio public service announcements with all the radio stations locally, cable television advertisements, we used social media — including Twitter and Facebook — and, of course, we had direct-mail letters. We had a fairly robust response as a result of this comprehensive effort to engage stakeholders and the public. As a result, we received 71 individual surveys, including written responses from the Yukon Agricultural Association, the Mayo District Renewable Resources Council, the Laberge Renewable Resources Council, the Dawson District Renewable Resources Council, the Yukon Fish and Wildlife Renewable Resources Council and the Champagne and Aishihik First Nations — which had some specific questions for clarification — and the Teslin Tlingit Council, which indicated some concerns about subsistence harvesting.

Of course, following that fairly comprehensive consultation involving all the groups and methods I listed, we took in surveys from those groups and from individuals as well and did our best to compile them and respond adequately in our drafting of the bill to reflect the input we received from Yukoners.

Much of what we heard related to the scope of the act, the clarification of the role and the authority of the CVO. There was significant interest particularly from the Yukon Agricultural Association and the Yukon Game Growers Association around compensation for losses from an order under the act — and of course, questions around the appeal process and the structure that that might take.

So, Madam Chair, the modernized *Animal Health Act* reflects the outcomes of broad public engagement with Yukon residents, including agricultural industries, wildlife interests,

veterinarians and First Nations. Public opinion reflected strong support for the proposed changes to the act that have been updated.

The new *Animal Health Act* is very clear on the authority of the chief veterinary officer and the inspectors and how they are held accountable for the orders that they issue. The act specifies all the required elements in orders, including the justification and reasons for the order. It also provides for owners to request an official review of orders.

As I said, a number of folks from the agricultural industry had concerns around the process by which compensation would be identified. They were keen to ensure that there was a process for appeal. I feel that those concerns have been reflected in the act in its current form on the floor today. The changes that were made and the detail and drafting that went into the act reflect the input we heard from the public, from industry, from veterinarians and from others with general wildlife interests.

Ms. White: I think the department should be congratulated for their outreach efforts. They have set a fine example for other departments looking at stakeholder engagement with that net that they threw.

The minister mentioned some concerns over the compensation issue. To not hit that one right now — were there other major concerns raised by stakeholders and how were they addressed in the act?

Hon. Mr. Dixon: Concerns other than compensation were related to the expanded scope of the act and the role of the chief veterinary officer. Although it relates to compensation, the appeal process was a question that a number of folks had, especially around the issue of — if compensation is granted to an individual, they wanted to ensure that there was a process following that that they could appeal to ensure that if they felt the compensation wasn't sufficient, they could appeal that decision. Of course, there is an appeal board set out in the act, which is a three-member panel that would be appointed, depending on the case.

It would likely have representation from industry, from others with wildlife interests, and they would review the compensation awarded based on the event itself, the reason for action taken, if there were any extraneous issues that needed to be taken into consideration — all those could be considered in the appeal process. They would then make a decision about whether or not compensation was adequate and if it should be changed.

Following that, if an owner who had had action taken on his or her property involving an animal or livestock, and they didn't feel that either the compensation process or the appeal process adequately addressed their needs, they can always review that process through the courts. They always have the avenue of the courts to fall to.

It's our hope that, in building the compensation process and the appeal process, we would do our best to keep things from going to court. It's important for some people to know that action is still there.

Other issues of interest to the public and to industry were the penalties that are set out in the act. The responses to the

question on penalties were mixed. Many indicated the question was difficult to answer without knowing the circumstances, which is an understandable response, but we have to do our best to consider eventualities that may occur and instances where action may have to be taken.

We conducted a survey that asked the question, "What do you think should be the highest penalty for a first offence under the act?" There was a range of responses to that. In fact, 69 of the 71 responses we received in the public consultation answered this question; two, I guess, skipped the question in their surveys. The responses ranged from "up to \$1,000" to "up to \$5,000" to "up to \$10,000. A few people said "other" and a fairly significant number — the second-highest percentage of respondents — answered that they would prefer not to answer that question. We did see a fairly significant breadth of opinion on penalties.

There was a single area for comments to the two questions on penalties, and 31 comments were submitted. We heard that penalties should depend on the severity of the offence. Some felt that penalties should be determined by the courts and should be based on the seriousness and consequences of the offence. There were many comments on the importance of education, support, warnings and graduated penalties. There was no trend, and comments were split between strongly voiced viewpoints, as I said. The comments we received varied fairly dramatically in their responses.

Some felt that the upper limit for a fine could be high, including for a first offence, to act as a deterrent to individuals who might deliberately disregard orders and spread disease. It was recognized that some actions would have consequences that cannot be "undone". Some felt that the industry is small compared to other jurisdictions so the fines should reflect the capacity of the industry, meaning that because we have a fairly small industry here, we should keep our fines commensurate with the size of the industry and the capacity of industry to respond. They said that a developing livestock industry would not thrive under the threat of high fines so, if we set the fines too high, they could be a detriment to the growth of the industry.

We also heard that graduated fines would be supported, but that education should be the first step unless actions are deliberate. In implementing this act we will continue to ensure that we make available, to the best possible extent that we can, information and education about all of the provisions in the act and make sure that — especially those in the agricultural industry, and game growers industry — all understand the penalties and are abreast of the fine schedule and potential penalties they could face. As well, the general public should be aware of the provisions in the act as well as the specifics around the penalties.

Those were some of the highlights of the primary concerns we heard in the public consultation that the member asked about.

Ms. White: This was touched upon a little bit initially in the first response, but when we got the briefing, it was a particularly lively conversation around the tools to control concerns surrounding animal health, both from the perspective

of the government and then again from private citizens. If he would like to expand on those, that would be fantastic.

Hon. Mr. Dixon: As I mentioned in my opening discussion, there are three new tools for managing hazards outlined in the act. They are quarantine orders, surveillance orders and control orders. I will start with quarantine orders. If members would like to follow along, this is section 10 of the act under part 4.

Inspectors could establish a quarantined place — under section 10 you see that: “If an inspector has reasonable grounds to believe that a hazard is present within an area or conveyance, the inspector may order that the area or conveyance be quarantined.” So what this means is that inspectors could establish a quarantine place, but “place” in the old definition included area and conveyance. Conditions of a quarantine order may differ for an area or conveyance, and the new wording is “recognizes the difference” so the section is revised for clarity from the previous act.

Under the conditions of the quarantine order, section 11(1) you will see that there’s a list of six or so requirements that an inspector must do in issuing a quarantine order. Written orders were limited to the actions to be taken and the time to comply. Expanded conditions are meant for better justification of the order and better transparency for the person identified in the quarantine order.

Section 11(1)(a) is pretty self-explanatory but section 11(1)(b) is saying that the order must be clear about what hazard is suspected; (c) provides the physical description of the boundaries; 11(1)(d) responds to the fact that there may be a species of animal or specific categories of animals — for instance, dairy versus beef cows — or products — for instance eggs, milk or manure, or things like bedding equipment or vehicles.

Section 11(1)(e) requires an end-date to be established. The end-date can be renewed if the hazard still exists, but it is important to provide impacted individuals with a time frame of what that might be.

Section 11(1)(f) is fairly self-explanatory but essentially, as it reads, it must set out the reasons for it, meaning that it must be justified and must be with an appropriate cause. Section 11(2) is expanded to be clear on what conditions or actions can be taken. The current legislation has sweeping powers to take any action necessary without limits, so this is a little more circumspect. Section 11(2)(a) through (i) are a number of things — (a) relates to the fact that the act is not proposed to limit the movement of people. The chief medical officer of health would be responsible for that kind of action. It’s important to note that this relates back to what I said in my opening remarks, that it’s important that the CVO has a strong relationship with the chief medical officer of health, as any issue arising that involves human health would require her to liaise with the chief medical officer of health. I think section 11(2)(e) through (i) are fairly self-explanatory so I won’t get into explaining those.

Moving on to the next section, division 2, which is section 15(1), is the next tool that I have discussed, which is a “Surveillance order”.

I will quote from this section: “If the chief veterinary officer considers that monitoring of a hazard that is the subject of a quarantine order is required in order to minimize the risk of the hazard spreading or persisting, the chief veterinary officer may order that a surveillance area be established around the quarantine area.”

This section introduces the concept of a surveillance area. The authority to establish a surveillance area rests with the CVO, as the geographic scope has the potential to impact several individuals. Generally, severe restrictions are not imposed, but this order ensures access to monitor animals within the area. This new section limits the border of the surveillance area. I’m referring to section 15(2). This section limits the border of the surveillance area. This distance is consistent with other Canadian jurisdictions that establish surveillance areas. Due to the rugged nature of Yukon’s landscape, it allows aligning with natural boundaries where reasonable, so the CVO could set out an area — say, a particular valley or a geographical feature — as the boundary limit rather than a fixed size.

The conditions of the surveillance order are set out in section 16. They set out the information to be included in the surveillance order, and these are comparable in detail with the quarantine area order, including providing the justification for the decision to impose the surveillance order.

Moving on, the strongest action is under division 3, section 21, and these are control orders. The current act allows the government to ban import, transit or visit of any species suspected of disease. This was how the moratorium on import of game-farmed animals was established, as we know from back in 2009, I believe. This is limited to live animals and to animals suspected of being diseased.

The concept of a control order is present in newly revised provincial legislation to the south and in federal legislation. The control order recognizes that hazards to animal or public health can be present in dead animals, animal products or clinically healthy animals. This proposed regime allows that either minister can establish a control area to prevent a disease from entering the Yukon in whole or in part. This new tool would replace moratoriums on import of animals or could limit distribution of domestic or companion animals in areas sensitive to wildlife or other animals. The focus is on transparency and providing rationale when making control orders.

To reiterate, the first two of the three new tools — the quarantine order and the surveillance order — are orders that would be made by the chief veterinary officer in her capacity as CVO.

The more severe tool would be the control order, which would be put in place by the minister under advice by the CVO but, because of its implications, it would be done the by Commissioner in Executive Council, which of course means the government and minister.

It is important to recognize that within 24 hours of making a control order, the minister must make it public in a manner that the minister considers appropriate. That’s under section 22(1). This is the same requirement as the surveillance

area and will make orders public, as orders could potentially have impact on Yukon residents other than those directly affected. That is simply an issue of transparency and being open about decisions that are made under this act.

I think the member's question was on those new tools and I think I've made a reasonable effort to explain the three new tools and when they might be used, as well as how they might be used. I'll leave it open if there are more questions about those.

Ms. White: It is almost unfortunate sometimes that the officials can't speak, because the chief veterinary officer is really passionate about this and makes it very easy to understand. I thank the minister for giving a good kick at the can — that was close — it was a good effort.

One thing that was explained during the briefing was that there would occasionally be times where individuals might financially be unable to meet certain requirements as set out by the chief veterinary officer and I was hoping that the minister could explain how these individuals could be aided by the department to meet those requirements.

Hon. Mr. Dixon: I'm sorry I can't emulate the passion of the CVO for these issues but I will do my best to convey the answers as passionately as I can.

The new act is focused on detecting disease or hazards early and preventing the spread as quickly as possible. Inspectors will issue orders to ensure that this is done and will follow-up closely with owners to ensure that they are complying. The act provides for inspectors to do whatever must be done if an animal owner doesn't have the means to comply with an order. This way any risks are dealt with as quickly as possible, recognizing that sometimes the owner simply may not be able to afford to do something like disinfect the premises when he or she has no cash flow. The inspector must be accountable for the cost of taking action because the animal owner remains responsible and these costs could be assessed against compensation awarded to a person.

So if I may comment on that a little further Madam Chair, essentially if an action is taken and we're aware of an individual who has had an action taken against them — that they need to do some something but they simply can't afford it — of course we'll work with them as closely as we can to find creative solutions. The intent here is to ensure that the proper action is taken and that disease is prevented from spreading as best as we can. It's my opinion that we would find creative solutions and find creative ways of making that come to effect. Essentially, the department, and in particular, the animal health unit and CVO would endeavour to ensure action is taken and, if an individual couldn't take action, we would work with them to find ways so they could.

Ms. White: My last question before I pass it over to others: will changes to this act adversely affect private veterinarian clinics that practice throughout the territory?

Hon. Mr. Dixon: To respond briefly, we don't feel the changes to this act will cause any undue business impacts on veterinarians who operate privately in the territory. We support Yukon veterinarians in private practice to deliver veterinary services that are required in government programs,

such as meat inspection, vaccination or spay/neuter programs. The two government veterinarians are focused on developing animal health programs that can improve animal health in the Yukon, in partnership with private veterinarians. They are working closely with the Agriculture branch to help farmers get animal health information and access to veterinary care to produce safe and healthy food.

Yukon government veterinarians are accountable to all government departments and provide support to Community Services to administer the *Dog Act* and the *Animal Protection Act*, as well as the departments of Environment and Energy, Mines and Resources Agriculture branch. They advise and partner with Health and Social Services to help protect public health against diseases spread from animals to people, including things like rabies. That goes back to my comments earlier about the need for and importance of a strong relationship between the chief medical officer of health and the chief veterinary officer.

Mr. Silver: I'd like to thank the representatives from the department for being here today. We appreciate your time. I only have a few more clarification questions after the Member for Takhini-Kopper King, who did a thorough analysis of the questions.

My first question is that the bill does add a lot of clarity, and regulations will make it even more clear, but can you confirm when these regulations will be released?

Hon. Mr. Dixon: I can't commit to a specific date that regulations would come into effect, but the normal process is that we would bring forward to Cabinet the regulations and then they would be passed in due course. I guess I would say that developing the regulations will be an important part of implementing this new work and implementing this new act. We're committed to moving forward with it as soon as possible. I'm hesitant to say a specific time or date, but it's something we want to see in place soon because, as the member alluded to, the regulations are a very important component of implementing this new act. Once we have the act assented to and in law, we can begin work on the regulations. I would expect to bring them forward as soon as possible.

Mr. Silver: I appreciate the minister's answers and his indulgence on these questions.

Once again, I have three small questions based upon — the briefing was very well done and the line of questioning from the member from the NDP as well was very well done. They would be nitpicking kind of questions here. If I could even get a visual cue from the minister whether or not — I missed it when we were talking about the consultations. Was the amount of compensation discussed in consultations? The minister is indicating yes on that one. It was, okay, so I just missed that. The process was discussed. So he doesn't need to answer that question.

I just have one other small question. The bill does speak to toxins in animals. This is just a question from my staffers during the briefing. Could the minister speak to how this bill does address toxins in animals — once again, the bill does

speak to this, but just a clarification note more than anything else?

Hon. Mr. Dixon: I will just quickly respond to the first question, although I did sort of respond off-mic. Yes, at the consultations, the process by which compensation would be addressed was discussed. The amount was not because we have not set out an amount. We've set out a process by which the compensation would be identified. The amount of compensation wasn't discussed because we don't set out an amount in the act. We set out a process by which the minister would take a number of things into consideration when deciding what the compensation would be. Then there is the appeal process if an individual felt that it was inadequate. Those things were discussed in consultation and that was a matter of significant interest to a lot of groups.

With regard to hazards and toxins, I would refer to the hazard definition in the opening part of the act — the Definitions section. We have a new definition of hazard that includes some of this. The new hazard approach expands the scope of the *Animal Health Act*. This approach is used in the recently updated Ontario *Animal Health Act*, so we relied on our colleagues in Ontario for some guidance here. During consultation, it was expressed that the *Animal Health Act* was previously too disease-centred and it needed to take a broader view of things, including toxins, because they are also important. The current *Animal Health Act* prevents the entry and spread of disease, but specifically excludes federally reportable diseases. This section expands the legislative authority to allow government to respond to the full range of health risks to animals, including the important federally reportable diseases, as well as exposure to toxins and other agents.

So if members were curious, they could go to the Canadian Food Inspection Agency website. They have a list that is updated monthly of all the federally reportable diseases the CFIA considers for their list. It's lengthy and I won't read it in the House, but essentially it gives the animal health unit the ability to consider things other than just diseases. As was noted in the public consultation, we were a little bit disease-centred, so it expands the scope of the act to include other health issues, such as toxins.

I think that covers it.

Mr. Tredger: I thank you to the minister for his passionate responses. I too would like to thank the public servants from Agriculture in particular for the work they've done, as well as the Department of Environment. On reading this act, I was quite impressed and listening to my colleagues debate it, I'm quite heartened.

I represent an area of rural Yukon. Many of the agricultural holdings in my area are isolated and a long way from market and a long way from other holdings, so it presents some unique situations. In my area is the intersection of many of our best hunting and some of our best agricultural holdings. There are a number of issues that I bring to mind around this whole area. One of the things that a rural setting provides us is isolation, which means often animals in that

situation don't have the immunity developed as do animals that are in more contact. I'm glad to see that this looks at it.

The other aspect of what we're experiencing now in the Yukon is that, through climate change, I'm seeing animals starting to migrate to different habitat areas, as well as plants. I can see that this presents some unique problems in terms of invasive species.

It may also be allowing species that are harmful to our animals, to our wildlife, to exist further north than they used to be able to, either due to lack of severe cold weather or to changing climate. The act suggests that the inspector develops reasonable grounds to believe that a hazard is present. I'm wondering if there is any appetite in the act, or perhaps through regulation, to establish a monitoring program so that such hazards — and invasive species — could be identified very early on. If we wait until it happens to show up, the problem becomes more severe.

So if we could establish a monitoring program involving local people — hunters, as well as agricultural people — it may allow us to get a head start on any hazards that are moving north or moving into our areas so that we're able to respond to them in a more timely manner. Does this act contemplate that, or would that be through regulations? Are they contemplated through regulations — that monitoring process?

Hon. Mr. Dixon: The member's opening comments were quite correct. Oftentimes, although an animal may be of the same species, their habitat may lead them to have a different level of resistance to certain diseases. For instance, if you bring a goat from down south up to the Yukon and let it interact with a wild goat, although genetically they're very similar, the one may have a very different tolerance to disease and disease could spread that way. So ensuring that we have the ability to respond and take action and provide educational materials for people about allowing or limiting at least the interaction between domestic and wild species is important.

As well, the member mentioned climate change and the fact that with climate change, we're seeing a greater prevalence of new species to the territory — species that were previously less prevalent in the territory. This summer we had a number of discussions about cougars in the territory where, although we have had cougars in the past, there was much more awareness in the public, as evidenced by some of the news media coverage, of the fact that we have cougars in the southern Yukon fairly prevalently.

With new populations coming north, those can bring new risks. I would argue that we need new tools to respond and I think that the tools outlined in the *Animal Health Act*, as put forward on the floor today, are sufficient to help us respond to the potential for outbreak or the potential of introduction of diseases to the territory.

Turning specifically to invasive species — this act doesn't contemplate invasive species in the way that the member is asking, although we do conduct a number of different programs and work with other groups to monitor for invasive species in different ways.

For instance, the Fish and Wildlife Management branch has an aquatic invasive species program that they are undertaking and there is money identified in the budget currently for that. I would also point to the work done by the Yukon Invasive Species Council. It's a non-government organization that I think receives some amount of funding from government. I know that they received a community development fund grant last year to do some educational material for Yukoners around the potential for introducing invasive species unintentionally by folks who drive south, or bring their boats to the south, and come back up.

What they've done is come up with a pamphlet that demonstrates some of the more dangerous invasive species to the territory. When I say dangerous, I don't mean to human health, but to the health of the ecosystem. They've identified a list of 10 that are sort of their top 10. They include pictures of them, how to identify them and who to contact if you do identify them. That allows Yukoners who are active out the land, in the woods and out in the bush, and are either hunting or participating in recreational activities in the woods, the opportunity to become part of a monitoring network. We provide some funding to the Yukon Invasive Species Council, both through the Department of Environment and other funding mechanisms like the community development fund.

Further to that, we work with the Yukon Invasive Species Council through an invasive species working group which we've established, which provides some similar services and programs but attempts to do so in a comprehensive and very organized way so we don't simply have an NGO doing this work and then various government departments doing the same work.

So we've brought everyone together with an interest in invasive species through this working group and are attempting to establish a network of monitoring for the territory. To answer the member's question, no, that's not done through this act. That's just done through other programs and funding opportunities in government and in particular the Department of Environment.

Mr. Tredger: I realize it's being done in various other ways, but this might be an opportunity to establish a proactive regime that would anticipate parasites and various other organisms that could enter into the Yukon Territory — into our livestock or into our wildlife — in an anticipatory manner so that we can act in a scientific way, do proper surveys and studies so that we know what is coming and act in accordance ahead of time, thereby lessening the damage. I hope that can be considered and entered into perhaps some of the regulations.

We see the leafminer, the ticks and Lyme disease — these are some that are getting more publicity, but I think it's an opportunity to ensure that we do it in a scientific manner and to use the expertise of the people in our various departments — the Department of Environment and the Department of Energy, Mines and Resources — to work with and perhaps train people in the public to be aware of this and cognizant of the potential for problems.

Another area that was of concern — and I think it's somewhat addressed in the act — I think the regulations will access it more — but many of the operations in the Yukon are small family farms. Even our bigger farms are small by national standards. We certainly don't have the intensity of feedlots or industrial farming that occurs in the south. That, in itself, would lessen some of the risks that come through intensive agricultural development — that and the proximity to our neighbours. We're a long way from it, but it also presents a bit of a problem for farmers and agricultural people in rural Yukon, who have a long way to transport their product to market.

Is there any thought to develop a template and to clarify the regulations in a way that is user-friendly — and I'll get to in my next question a little bit about the mistrust — to clarify the intent of the act so that the small farmers in rural Yukon are engaged in the process and don't feel like it's happening to them, but they have a say in what's going on.

I must commend the departments and those who came forth with their excellent consultation prior to this act; it went a long way from that.

When this was first out, many of the farmers who I talked to in my area were very, very concerned, but it was through the consultation process that some of those fears and concerns were relieved. I guess what I'm looking for is a commitment to continue that process to working with the rural farmers, hunters and residents in the development of the regulations so that they come onside and don't feel threatened by them.

Hon. Mr. Dixon: I think the answer is yes. We will continue to engage industry and engage industry organizations as well as individual farmers to ensure that they buy into the process and understand the intent and the process by which legislation and regulations are being developed.

The first step for us today is to pass this piece of legislation and then once we have that in place, we can begin work on regulations. The development of regulations would naturally be done in consultation with those groups. I would expect a very similar list of groups and individuals would be asked for comment on regulations. I expect to receive a fairly strong response as well, because I think as folks understand the regulations are where the rubber hits the road, to use a turn of phrase, and that they need to be engaged in the development of those regulations as they will be substantially affected by them.

I think the member's question is looking for a commitment from me to continue to engage those groups and he most certainly has it.

Mr. Tredger: One of the things mentioned in the comments on the proposed changes alluded to the mistrust of government action, particularly from the agricultural sector. As I mentioned in my previous question, the manner that this has been gone about has helped to alleviate that. I mentioned monitoring earlier and one way to alleviate some of the concerns would be through an educational program that would involve First Nations, hunters and people who use the land — recreational as well as agricultural people — to establish a monitoring regime that would engage them in a scientific

manner to gather data that we need to be able to protect our resources and to be able to manage the interface between agriculture and wildlife. I was just contemplating through hunting, sampling — through work with First Nations, so that they in turn can monitor their wildlife populations — to monitor the interaction, to monitor the changes — as well as our rural farmsteads.

Does the minister envision a process or plan that would engage the people actively involved on our land and in the hunting and gathering, as well as the agricultural industry, in a process that would give them the control and ability to take part in forums and educational activities for the development of a program that would engage everybody in the protection of this most valuable resource?

Hon. Mr. Dixon: It sounds like we're delving back into the invasive species discussion. Any action we take — anything we do needs to be done in a way that's efficient and responsible. One of the ways we can achieve efficiency is to not have Yukon government try to do everything. We need to lean on support from other groups and individuals.

The member listed a number of them. Folks who get out on the land and spend time there can provide significant data, both scientific and traditional. We need to continue to develop systems for them to provide that data into the system.

I'm generally in agreement with the direction of his question, that we should be doing this more and educating folks on the development of the regulations pursuant to this act, as well as other issues like invasive species. The example of consultation that we used in the development of this act, as well as the consultation we did on the prohibition of the import of cervid parts earlier this year, are good examples of Environment's strong record on consultation.

When we undertook the prohibition on importing cervid parts as a measure to prevent the entrance and spread of CWD, we consulted with a range of people, even outside of the Yukon. We consulted with northern British Columbia, especially First Nations that are transboundary, as well as outfitters in northern British Columbia. We also engaged taxidermists in both Yukon and in northern British Columbia because they are affected by that action.

So I think we have a strong record and a strong history of engaging people in a meaningful way in the Department of Environment and we'll continue to do that on any of the things we do, but most importantly in the context of today's discussion around the development of these regulations pursuant to this act.

Mr. Tredger: In the explanatory notes, they mention in the future the detailed regulations required to support the modernized act will be developed through engagement with stakeholders. I know the Member for Klondike alluded to this a bit, but what is the vision of this department for that process? Have you developed any kind of timelines around that? Does this act contain a clause — and I apologize, I haven't been able to find it but it may be there — to evaluate the effectiveness of the act and perhaps to conduct a review in say five or 10 years to ensure it has accomplished what we have set out to do in this act?

Hon. Mr. Dixon: Thanks to the member opposite for the question. There is no explicit evaluation set out in the act, although as with any piece of legislation, we are constantly reviewing whether or not it's effective and how to make improvements. Obviously, at any time, government can bring forward legislation to the Legislature for amendment at the will of the Legislature. So, if changes are needed to the legislation, government can make them by bringing them to the Legislature and having the members undertake this process of debate and discussion and eventually pass some changes, if it's the will of the members.

With regard to the development of the regulations, as I indicated in my response to the Member for Klondike, of course we will engage with the stakeholders that we engaged with on the development of the act. As I said before, I'm a little reluctant to commit to a specific timeline because you never know until you get into the discussions with stakeholders what their thoughts are. I'm hesitant to say they'll be done next month or next year, because maybe the stakeholders will tell us that they need more time to consider things and we have to push back the timelines.

There is any number of eventualities that could occur and I don't want to commit to a specific time, but I will commit to meaningful and thoughtful consultation with the stakeholders that we engage with. I imagine that the list will look very similar to the one that I gave earlier, as to who we will ask for input.

Of course there will likely be a public component as well, and there will be ample opportunities for individuals in the public as well as any industry and stakeholder groups — those with wildlife interests and those in the private sector, like veterinarians — to also provide comment on the regulations.

There are a number of regulation-making powers in this act, and I would anticipate having one regulation that would outline a number of the different provisions for regulations. That is something that we'll have to take in stride and determine what makes the most sense for achieving the goals set out in this act. If that means taking our time and going slowly to bring stakeholders along so they understand, we're willing to do that. If they're willing to take quicker actions and we need to move more quickly, then we can do that as well.

Again, I don't want to commit to a timeline or hard dates, but as I said in my response to the Member for Klondike, this is something we want to do. We want to implement this act and develop the animal health unit and the role of the CVO. We will do that and will do it as soon as possible. I know that's a general comment, but I think it necessarily has to be fairly loose. We are committed to it and I look forward to bringing it forward.

Hon. Mr. Cathers: I just have a couple questions I would like to ask the minister. As the Minister of Environment knows, most of the farmers in the Yukon are within my riding. I understand that both groups and individuals were engaged during the consultation on the *Animal Health Act*. I know one of the concerns that I heard from constituents related to the proposal that was originally

contemplated and that would have allowed inspectors to enter someone's property without a warrant. Some felt that this was open to potentially going too far.

Could the minister please elaborate on how this was responded to and explain what the legislation currently says?

Hon. Mr. Dixon: The member is correct that a number of individuals and groups in the industry had questions about the ability of an inspector to undertake searches and the need to have that done with a warrant.

I would direct the member to section 34(1) which reads: "A justice may issue a warrant authorizing an inspector or any other persons named in it to enter and search an area, including a private residence, or conveyance and take any necessary action as specified in the warrant, including seizing anything specified in the warrant, if the justice is satisfied by information on oath or affirmation that there are reasonable grounds to believe that within that area or conveyance there is..." Then there are a number of provisions following that.

This section is consistent with other search provisions in legislation and maintains the owner's right to refuse entry without warrant to search while authorizing the inspector or someone accompanying the inspector with reasonable grounds to search property through a warrant issued by a judge. Entry requires a search warrant, and if the inspector doesn't have that search warrant, the owner can refuse entry. Of course there are provisions that recognize the reality in Yukon that it's not always possible to access a judge readily. In section 35, we provide a provision for telewarrants to be used, which is consistent with the *Wildlife Act*.

Section 35 recognizes that rural agriculture property is not always close to Whitehorse, where a judge would be available, so telewarrants are available pursuant to section 35 that allow inspectors to get approval by telephone through a telewarrant from a judge. I'm comfortable that the concerns and questions raised by some about entry onto a property are addressed by sections 34 and 35 and adequately find a balance between the right of an individual's personal property and the need for government, through the CVO and inspectors, to take action where necessary.

Hon. Mr. Cathers: I thank the minister for the answer and I look forward to passing that on to constituents.

I know that another area that came up from some of my constituents during the consultation on developing the *Animal Health Act* were concerns about the provisions for compensation. There is recognition, I think it's fair to say, but most that there may be some cases when an animal health situation would require animals to potentially be destroyed or actions to be taken such as surveillance or quarantine areas. There's also concern, of course, by people whose livelihood, or a significant portion of it, depends on farming and the animals that they own, as well as the fact that even measures such as the interruption of the ability to conduct their business can have that potential impact.

One of the concerns I heard from constituents this summer was about ensuring that, within the legislation, there was a balanced and fair process that provided for adequate compensation, a process with appropriate safeguards and an

appeal process that would allow them fair opportunity to appeal decisions and ultimately to seek compensation for actions that would have a significant effect on them.

Can the Minister of Environment please elaborate on how the government responded to this request from my constituents and others, and how that has been addressed in this legislation?

Hon. Mr. Dixon: I know that the member's constituents had a number of questions about this particular aspect of the new act, and I think we've done an excellent job in responding to those questions. In the current act, the one that exists prior to this one we have on the floor today, there is no provision for compensation. Compensation was denied, so I think having a provision identified for compensation is important for all the reasons that the Member for Lake Laberge mentioned. I would direct his attention to section 44 — part 6 in general is the compensation part, but section 44 is important, as there are a number of steps that need to be taken by an individual before they can commence a legal proceeding with respect to anything done or admitted under this act.

Those two actions that they need to undertake before legal action are that: they need to have made an application for compensation under section 45 of this act — and the minister has paid compensation to the person under subsection 47(3) or 54(2). What that means is that, although the recourse of going to court is always there, the individual is required to go through the process identified in this act first.

In consultation it was supported that providing compensation was felt, by owners — that it was more likely to report a hazard if the consequence of control wasn't a financial burden. So this section 44 now states that a person can only initiate a lawsuit with respect of any powers exercised or duties performed under the act upon the conclusion of the compensation process set out in this section. As per section 45, a person may apply, in accordance with the regulations, to the minister for payment of monetary compensation in relation to all the things set out in sections (a) through (d). Under that, consideration was given to whether a compensation fund is desirable, but given how infrequently this legislation will be used, we opted to not have a compensation fund but rather to take it on a case-by-case basis. Section 45, the section titled "Application for compensation", allows the owner to apply for compensation under specific circumstances in regulation where government action or direction results in a financial loss.

There was a great deal of interest in how and when compensation would apply when regulations are developed. Consultation on a new regulation will generate interest, and it was generally agreed that should a government order cause a loss to the owner, the owner should be compensated.

Many in the public and in industry felt that there should be a scale of compensation, depending on a level of responsibility for creating or contributing to the hazard of that owner. I would anticipate that regulation would set out some considerations that a government would have to take into account before making a decision about compensation but, of course, one of the things that we must take into consideration

is going to be fair market value, and that an individual who feels they have had a loss as a result of an order, or an action taken under an order in this act, must be recompensed at fair market value.

Section 45 outlines the application for compensation that an individual would make and the process by which they would apply to the minister for compensation. I think it's important also to recognize that section 46 provides some clarity around the parameters and the time period within which the deadline applies for compensation.

As to how we determine the level of compensation and what is compensated and how much money essentially is provided, section 47 provides some guidance. This new section introduces broad requirements used in determining an application process. Regulation will be required as per section 47(1)(c) below, that will outline what deductions can apply to compensation.

Section 48 refers to the grounds for refusing to consider an application for compensation. Criteria are to be based on compensation standards from the federal government for what is allowed — for instance, labour and material costs — and what, as I said earlier, is the fair market value of the animals.

Reasons to be prescribed will include debts owed for action taken, or authorized by inspectors to ensure compliance. This section allows the minister to ask for additional information with which to consider the application for compensation. There is also the requirement to allow the minister to ask for additional information with which to consider the application for compensation.

There is also the requirement for the minister to pay compensation once all factors are determined from section 47 and, of course, that provides some guidance to the minister as to what needs to be taken into consideration when determining an adequate amount of compensation.

Following that, and following that process where an individual applies to the minister for compensation, the minister takes into consideration all of the things outlined in the act, which would probably be guided by regulation, and the minister then provides compensation to an individual. An individual could take the course of appealing that decision if they felt it was inadequate, in which case an appeal would be undertaken.

We have developed a panel or a board structure here that would be struck to review the case and review the compensation provided by the minister. Again, the regulation would provide some parameters as to how that board or appeal panel would be set up. That appeal board would then determine and make a decision about whether or not the amount provided for compensation was fair, was consistent with fair market value and adequately took into consideration all the things in section 47.

Following that, if, after all of that process outlined in this act, an individual felt that they still had been inadequately compensated for a loss, they could then apply to take legal action through the courts.

I think we've established a fairly strong process with adequate appeal provisions and ultimately leave open the

possibility of court action, should it be required. So I think individuals in the member's riding and others in the agriculture industry should feel confident and comfortable that they have provision to be compensated for any loss and that, if they aren't satisfied with the level of compensation, they have adequate recourse for appeal and ultimately have the option of appealing to the courts as well, should they ultimately be unsatisfied.

I hope I've answered that question for the member for Lake Laberge.

Hon. Mr. Cathers: I appreciate the answer from the Minister of Environment and look forward to sharing that with constituents who have expressed concern about these matters. I appreciate the response that was taken in the legislation to try to strike the balance that provides appropriate tools to officials to deal with an outbreak of some disease that could potentially occur, while doing so in a manner that provides for appropriate safeguards and also provides for compensation to owners for loss incurred as a result, particularly in light of the experiences seen in other jurisdictions that have not provided for fair compensation in this type of situation. It can lead to the even worse situation where people are deterred from reporting to health officials this type of situation. I thank the minister for answering these questions.

Chair: We're going to proceed now to clause-by-clause debate.

Ms. White: Pursuant to Standing Order 14.3, I request the unanimous consent of Committee of the Whole to deem all clauses and the title of Bill No. 62, entitled *Animal Health Act*, read and agreed to.

Unanimous consent re deeming all clauses and title of Bill No. 62 read and agreed to

Chair: Ms. White has, pursuant to Standing Order 14.3, requested the unanimous consent of Committee of the Whole to deem all clauses, preamble and the title of Bill No. 62, entitled *Animal Health Act*, read and agreed to.

All Hon. Members: Agreed.

Chair: Unanimous consent has been granted.

Clauses 1 to 74 deemed read and agreed to

On Title

Title agreed to

Hon. Mr. Dixon: I move that Bill No. 62, entitled *Animal Health Act*, be reported without amendment.

Chair: It has been moved by Mr. Dixon that the Chair report Bill No. 62, entitled *Animal Health Act*, without amendment.

Motion agreed to

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

Chair: It has been moved by Mr. Cathers that the Speaker do now resume the Chair.

Motion agreed to

Speaker resumes the Chair

Speaker: I will now call the House to order.

May the House have a report from the Chair of Committee of the Whole?

Chair's report

Ms. McLeod: Mr. Speaker, Committee of the Whole has considered Bill No. 62, entitled *Animal Health Act*, and directed me to report the bill without amendment.

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

Some Hon. Members: Agreed.

Speaker: I declare the report carried.

GOVERNMENT BILLS

Bill No. 62: *Animal Health Act* — Third Reading

Clerk: Third reading, Bill No. 62, standing in the name of the Hon. Mr. Dixon.

Hon. Mr. Dixon: I move that Bill No. 62, entitled *Animal Health Act*, be now read a third time and do pass.

Speaker: It has been moved by the Minister of Environment that Bill No. 62, entitled *Animal Health Act*, be now read a third time and do pass.

Hon. Mr. Dixon: We've had a chance to discuss this bill at length, both in our second reading discussions earlier as well as in Committee of the Whole. I think that members are in agreement that this bill is a good one and finds an adequate balance between the creation of new powers, vis-à-vis the chief veterinary officer, to take action to prevent the spread and entry of disease to the territory and protect animal health, both wildlife and livestock, with the respect and protection of personal privacy and personal private property rights as well of individuals who own livestock and own animals.

I think that this is an excellent step forward for Yukon government in its ability to respond to the possibility of emerging disease outbreaks and a range of issues that can come about as a result of animal health issues. It expands greatly on the original *Animal Health Act*, which came into force in 1997, and reflects a great deal of input from individuals, stakeholders, groups, First Nations and renewable resources councils as well as other land claims bodies like the Yukon Fish and Wildlife Management Board. It was developed after a fairly comprehensive consultation that we discussed in Committee of the Whole.

I think all members agreed that the consultation process undertaken by the Department of Environment in arriving at this piece of legislation was sound, was done in an excellent fashion and was something that we should model in our other public consultations going forward, especially around the development of the regulations, pursuant to this act.

So, I look forward to hearing from members in support of this bill. As I said, it's the next step forward for Yukon government in addressing issues of animal health. Of course, the animal health unit is not new to the Yukon. It was established a few years ago by my predecessor, the previous Minister of Environment. This act provides a new scope and

new tools for that unit to act in the best interests of Yukoners and Yukon wildlife.

I won't go into details but, of course, we reviewed in Committee all of the new tools available to the animal health unit and the chief veterinary officer, as well as new powers available to the minister to provide compensation for any losses suffered as a result of orders or actions taken under this act. I'm satisfied that we've been able to achieve a balance between the need to take action and the need to protect wildlife — both livestock and other animals — with the real economic interests that individuals in the agricultural industry and others have in wildlife and livestock. I think this represents a good balance and I'm happy to commend it to the House.

In conclusion, I'd like to reiterate my thanks to the department officials who had a hand in crafting this; in particular of course, the chief veterinary officer, Dr. Mary VanderKop. It was noted in Committee of the Whole that her presentation of this act was thoroughly more passionate and involved than mine, but I did my best to represent her and her office in presenting this act to the House.

I would also like to thank other members of the animal health unit, including Dr. Jane Harms, the program vet; as well as Megan Larivee, the lab coordinator and especially, although they are often overlooked, some of the policy folks in Environment whose work in the background on this bill deserves to be recognized as well. Of course I'm referring to Diane Nikitiuk as well as Dan Peleczy and others in the policy shop in Environment.

With that, I would like to commend this bill to the House and look forward to seeing it pass unanimously.

Speaker: Are you prepared for the question?

Some Hon. Members: Division.

Division

Speaker: Division has been called.

Bells

Speaker: Mr. Clerk, please poll the House.

Hon. Mr. Pasloski: Agree.

Hon. Mr. Cathers: Agree.

Hon. Ms. Taylor: Agree.

Hon. Mr. Graham: Agree.

Hon. Mr. Kent: Agree.

Hon. Mr. Nixon: Agree.

Ms. McLeod: Agree.

Hon. Mr. Istchenko: Agree.

Hon. Mr. Dixon: Agree.

Mr. Hassard: Agree.

Mr. Elias: Agree.

Ms. Hanson: Agree.

Ms. Stick: Agree.

Ms. Moorcroft: Agree.

Ms. White: Agree.

Mr. Tredger: Agree.

Mr. Barr: Agree.

Mr. Silver: Agree.

Clerk: Mr. Speaker, the results are 18 yeas, nil nays.

Speaker: The yeas have it.

Motion for third reading of Bill No. 62 agreed to

Speaker: I declare the motion carried and that Bill No. 62 has passed this House.

Bill No. 59: Act to Amend the Highways Act and the Dangerous Goods Transportation Act — Third Reading

Clerk: Third reading, Bill No. 59, standing in the name of the Hon. Mr. Istchenko.

Hon. Mr. Istchenko: Mr. Speaker, I move that Bill No. 59, entitled *Act to Amend the Highways Act and the Dangerous Goods Transportation Act*, be now read a third time and do pass.

Speaker: It has been moved by the Minister of Highways and Public Works that Bill No. 59, entitled *Act to Amend the Highways Act and the Dangerous Goods Transportation Act*, be now read a third time and do pass.

Hon. Mr. Istchenko: I brought this forward yesterday in the House and there was little debate, but I would like to point out a few things with this.

A tremendous amount of thought and work did go into the drafting and the amendments. I would like to thank the people who work for us in Highways and Public Works and the people who work in Justice. Bill No. 59 does modernize and improve two important pieces of transportation legislation. Both the *Highways Act* and the *Dangerous Goods Transportation Act* are out of date and will benefit from clarifications to make sure that the rules are clear.

In addition, these amendments address administrative gaps and constraints that have become evident over the years. Our public highways also provide access to and connection between the areas where we work, live and enjoy. The amendments to the *Highways Act* improve management of Yukon highways and help the department focus on its fundamental job of looking after nearly 5,000 kilometres of maintained roads. The purpose of the *Highways Act* is to establish, preserve and protect transportation corridors on public land on behalf of all members of the public. It is important for us to know which roads in the Yukon this applies to.

While the act gives government jurisdiction over all public highways, it also requires government to maintain certain highways so the amendments clarifying government's responsibility and liability are properly understood. This will make it clear that Highways and Public Works cannot be held liable for the condition of highways it has no duty to maintain.

Another quick set of amendments were needed to keep highways lands free from interference. This was needed by providing a more detailed description of some of the activities that were allowed. We also needed to be able to ensure that highways officers had adequate authority to do this.

I have touched on a few of the *Highways Act* stuff, but I also wanted to just touch on the *Dangerous Goods Transportation Act*. The amendments to the DGTA are about making things clear and making things simple. I alluded to that yesterday. There are a number of ministerial responsibilities under the act but it's not clear which of these may be delegated to department officials.

These amendments settle the matter by enabling the minister to delegate all tasks subscribed in the act to the deputy minister or to the appropriate officials.

Another set of amendments make things simple. This means that revisions to certificates and forms will no longer require Cabinet approval and can be made just by the department. It reduces the red tape and brings administration in line with modern practice.

I'm happy that we were able to get unanimous consent and I hope we do get unanimous consent on Bill No. 59. I would really like to thank the drafters of the act from the Department of Justice and the Department of Highways and Public Works, and am happy to commend Bill No. 59 to the House today.

Speaker: If the member now speaks he will close debate. Does any other member wish to be heard?

Are you prepared for the question?

Some Hon. Members: Division.

Division

Speaker: Division has been called.

Bells

Speaker: Mr. Clerk, please poll the House.

Hon. Mr. Pasloski: Agree.

Hon. Mr. Cathers: Agree.

Hon. Ms. Taylor: Agree.

Hon. Mr. Graham: Agree.

Hon. Mr. Kent: Agree.

Hon. Mr. Nixon: Agree.

Ms. McLeod: Agree.

Hon. Mr. Istchenko: Agree.

Hon. Mr. Dixon: Agree.

Mr. Hassard: Agree.

Mr. Elias: Agree.

Ms. Hanson: Agree.

Ms. Stick: Agree.

Ms. Moorcroft: Agree.

Ms. White: Agree.

Mr. Tredger: Agree.

Mr. Barr: Agree.

Mr. Silver: Agree.

Clerk: Mr. Speaker, the results are 18 yeas, nil nays.

Speaker: The yeas have it.

Motion for third reading of Bill No. 59 agreed to

Speaker: I declare the motion carried and that Bill No. 59 has passed this House.

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

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

Motion agreed to

Speaker leaves the Chair

COMMITTEE OF THE WHOLE

Chair (Ms. McLeod): Order. Committee of the Whole will now come to order.

The matter before the Committee is Bill No. 61, *Health Information Privacy and Management Act*. Do members wish a brief recess?

All Hon. Members: Agreed.

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

Recess

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

Bill No. 61: Health Information Privacy and Management Act

Chair: The matter before the Committee is Bill No. 61, *Health Information Privacy and Management Act*. We will proceed with general debate.

Hon. Mr. Graham: First of all, I would like to introduce my two staff persons who have come to assist me; that takes a lot of work, Madam Chair, as you are well aware. Lynda Ehrlich and Laurel Montrose are here with us today and they will be with us throughout to provide any explanations that I cannot.

It gives me great pleasure to bring Bill No. 61 to Committee of the Whole for debate. As members are aware, the *Health Information Privacy and Management Act* is a very complicated, comprehensive and complex piece of legislation.

At this point, all jurisdictions in Canada with the exception of P.E.I and Nunavut, have similar legislation in place. All jurisdictions also have struggled with a balance of bringing forward comprehensive legislation that is extremely complex. The legislation we have here today is divided into 12 parts and with each one I'll provide a more detailed commentary at the beginning of the part and continue to do so as we work through the bill.

The process for developing this information was quite comprehensive. It stretched over a period of four years. We started with a reference group of key stakeholders, including representation from the Yukon Medical Association, the Yukon Registered Nurses Association, pharmacists, the Yukon Hospital Corporation, the Council of Yukon First Nations health commission and senior managers from the Department Health and Social Services.

This group was responsible for establishing the policy framework for the legislation. The policy framework then went to public consultation in 2012, during which time my department — primarily these two ladies here — met with many groups, organizations and individuals. Finally last summer we provided many of the same groups that were involved in the reference group an opportunity to comment on the draft act. Again, we had meetings with many of these groups and received very helpful feedback.

In addition to all of these stakeholders, we also involved the Information and Privacy Commissioner throughout the process. Most recently she made public her comments about Bill No. 61, and we really appreciate her careful review and her comments. I can get into that later too, as far as the IPC's comments go, and which ones we accepted and which ones we have accepted with some changes and others that at this time we have decided not to go ahead with.

By way of overview of the act, the bill opens with a statement of purpose. The purposes of the act balance protection of privacy of our personal health information and support for our health care providers to have the necessary and appropriate access to all of our personal health information to be able to provide us with the best possible health care, but also to plan for the future. This includes not only the Yukon government, but it also includes First Nation governments throughout the territory.

We have made allowance where some of the information that they require in order to plan their own health departments will be made available to them — I believe through regulation, mostly.

The application section is the next section and it identifies that this act applies to all personal health information collected, used or disclosed by a custodian for the purpose of providing health care, planning and management of the health system or for health research.

More generally for Health and Social Services, this act applies to personal health information collected, regardless of the source from which it comes or regardless of the purpose. Part 3 provides the fundamental principles for interpreting the collection, use and disclosure principles of the act provisions. The principles pick up some of the key principles set out by the Canadian Standards Association's Model Code for the Protection of Personal Information and I will go back to these 10 principles as we go through the act in detail to highlight how we address each one of the 10 principles.

The act also goes into detail on the collection, use and disclosure of public health information. This act is very specific and identifies in detail when and how personal health information can be collected, used and disclosed. Unlike other general information legislation like ATIPP, this act is very detailed. Rather than establishing broad provisions for collection, use and disclosure, more modern legislation is moving to specific provisions to ensure greater clarity in application.

Part 7 of the act is about management of information and an area where the Information and Privacy Commissioner has definitely raised concerns. This section is very future-oriented,

but maintains sufficient flexibility to accommodate development of our e-health systems and to make arrangements to work cooperatively with other custodians or jurisdictions, and this is a very important part of the act.

Most jurisdictions have taken a similar approach and left a lot of room for regulation to be developed to address e-health situations as they arrive in the future.

As with ATIPP, this act makes use of the important role of the Information and Privacy Commissioner to oversee the act. In parts 8 and 9, we outline her powers and the processes for making a complaint and for the Information Privacy Commissioner to investigate complaints. This act also establishes offences and significant penalties for violations of the act. Any non-compliance is considered a violation and has a penalty associated with it.

Finally, the act amends a number of other statutes, primarily to establish which act will prevail. As I mentioned in my second reading speech, I believe this bill has benefited from every conversation that has been held and I hope these discussions will continue as regulations are developed. I made a commitment earlier to consult fully on the development of regulations that will go along with this bill, and we're moving forward with this legislation in the best possible interest of all Yukoners and in what we consider a very responsible manner.

This legislation represents a modern, comprehensive approach to ensuring the Yukon health care sector maintains a strong and effective culture of privacy and security of personal health information.

Madam Chair, I was going to include in my opening responses to a number of the IPC's earlier concerns but perhaps I'll wait and see where members opposite wish to go with this and then I can do it at any time.

Ms. Stick: I'd like to thank the officials for being here today and for the departments that have obviously worked hard on this very important and very large piece of legislation. I want to remind the House that we only received our briefing a week ago today and went on the same day to second reading. So we have had a week to work on this along with other legislation. I do have questions and I do have comments. I will bring up some of those today. Others may happen when we go through section-by-section or paragraph-by-paragraph.

The Official Opposition is pleased that this legislation has finally been brought forward by the government. We support the management of personal health information, especially when it is the goal of improving the quality and accessibility of health care in the Yukon for all Yukoners.

In 2011, the Auditor General recommended — and I quote: “The Department of Health and Social Services should develop a comprehensive health information system that allows the Department to collect and report on complete and accurate health data from all available sources.”

The department agreed. I think this is the outcome of that. We need that. It's important in order to manage our health care dollars and to manage a sustainable system.

We need accurate health care data to be able to plan into the future to see what's working today and what's not and to be able to improve our services.

We also support the establishment of electronic health information and legislation governing the management of personal health information as a necessary precursor toward that end goal. We're not alone; it's not just the Official Opposition. We've heard from health professionals over the years asking for prescription tracking. We've heard from pharmacists and doctors who have spoken again this fall about wanting systems that they are able to track prescriptions, for example.

Certainly the Yukon government has been on the receiving end of millions of federal dollars toward electronic health care records and we wait to see what comes from that.

One of the first comments I want to bring up at the beginning before I forget, because it wasn't originally one of my questions, is that the minister spoke just briefly about part 3, which was Protecting Privacy and Individual Privacy Rights. Just looking through it, it's the collection, use and disclosure, non-identifying information and when other information suffices. The important one for me had to do with the minimum to be collected, used or disclosed. That just reminded me — and this might not be the right place for it, but I'm going to ask it anyway.

We saw this year the gathering of information by the department of individuals without physicians or family doctors. People were asked for their name and they were asked for their health care number and they were asked for their date of birth. There might have been more but I can't remember. When that was closed, we heard that the only thing that was actually collected for was numbers. There was not going to be any matching or trying to assist individuals to procure or to find a family doctor for themselves. So it just raises the question for me, that's a lot of information that was gathered and it seems more than was required if all you really wanted was the numbers. A name or a birthdate should have sufficed, not all three of those pieces of information.

My first question, and I certainly have lots more that I will go on into — I thank the Information and Privacy Commissioner for the very intense work that she has done on this legislation. She has come up with a report and a press release that asks some very critical questions and it was a good guide for me to go back and look at those particular sections that she mentions and try to understand what her questions are and what the remedies might be to those.

I think we're very fortunate to have an Information and Privacy Commissioner whose expertise is actually in the area of health care privacy and information collection, so I'll send that thanks out to her because much of my questioning and queries to the minister and staff will be exactly on some of the questions she asks and recommendations for improvements on an act.

She's very clear in the beginning of her report that it is important that we have this legal framework for all Yukoners — that it's something every jurisdiction should have and that the important thing is balancing the rights of those individuals and the rights to privacy of their health care information against the complex needs of a health care system. If you just look at the list of custodians and who custodians can be under

this legislation, it's a lot of health care professionals. I'm not even sure we caught them all. But she does say that it's good that this legislation has come forward and that hard work has been done on it.

I think that will give some indication to the member across that I will be following some of the Information and Privacy Commissioner's comments and then many others that I've come across just in looking at this legislation. Some of it might be very simple explanations but I'll ask the questions anyway because I think this is important.

The other thing that the Information and Privacy Commissioner suggested was that all Yukoners should read this and take a look at it for themselves. I'm not sure how many will take her up on that, but I do recommend that every Yukoner, if they can't make it through this, go to the Information and Privacy Commissioner's website and read her report.

It's still complicated, but she certainly is pointing out areas of concern that Yukoners should consider because, really, it's their information, it's their health and it's the protection of their privacy. We know how important that is and we know how damaging it can be if information is released, whether deliberately or inadvertently, or if it is stolen. It can have huge implications on people's lives. It can have implications in so many areas. That's why this is important, and that's why people need to understand what this is and ask questions if they have them. There's so much here and we want to be sure when we pass this legislation that it's the best it can be, that it doesn't leave room for more questions or areas that aren't quite clear as to who has jurisdiction or who has decision-making powers. All of these things are important.

I think I'm just going start by thanking officials for this legislation. It's huge. It has big implications. I thank the Information and Privacy Commissioner. I will be following along on her report for parts of this and asking the same questions that she does. I think I might go back to that first question I asked the minister, and that is with regard to the gathering of that information. Did we really need that much? What has become of that information, now that the one thing we wanted was a number and we have that number? Is that information gone? Has it been destroyed? Is it being used for other reasons — you know, someone thought that now that we have this, maybe we should do this. I would just like a bit of information on that one section.

Hon. Mr. Graham: I think there are a few things that I can answer immediately. I think the orphan patient registry may have originally been started with some idea that the possibility of locating doctors for particular patients would be a good idea, but I think the department, in our conversations, later realized that assigning patients to a doctor wasn't really the best option for patients or for doctors. I met a fellow one night at a hockey rink who said: "Who the heck do you think you are? If I put my name on the orphan patient registry and you tell me which doctor I have to go and see, that's a personal choice and I may not want to go see that doctor." So I don't believe it should be appropriately used in that instance.

After reconsidering — and I think we had some comments from physicians around the territory as well — we realized that it wasn't the best option.

I think fairly early in the process we decided this was not the intent and that what we would like to do is try to find out how many orphaned patients there were within the territory to see what kind of recruitment action we needed to do. It has helped us in that regard, and I think orphaned patients are an ongoing concern. There is no doubt that we would like to see every person in the territory have a primary medical-care practitioner, whether that be a doctor or an extended-practice nurse in a small community or a nurse practitioner in a clinic somewhere in the territory.

It is a concern for us and we're continuing to address that front through our physician recruitment, through our funding for students going to medical college and we just recently, with the Yukon Medical Association — and we thank them for the tremendous work they've done in attracting young recruits to the territory for training purposes.

I think there are a few things that I can address with respect to the IPC. One of the things that she made a comment about — and the Kwanlin Dun or CYFN health commission also made a comment on this — was the use of an advisory committee. In the legislation here before us today, there is no requirement for the minister to appoint an advisory committee under section 64 — I believe that's what it is. I want to make a commitment here, the same as I did with regulations, that I have every intention of approving an advisory committee. It will be done once the regulations are brought in and the act is proclaimed.

One of the reasons for no requirement for an advisory committee, or the lack of a requirement in the legislation, is that there is a very real possibility in the future that the IPC's role may expand. I don't know for sure, but I would think that because we've also put a clause in this act that it shall be reviewed within four years' time, perhaps at that time we will have matured to the point where we feel that the IPC should have a larger role in monitoring this act. At that time, the advisory committee would no longer be a requirement. We put that flexibility within the act, but because of the fact that we have chosen not to go with more involvement of the IPC in the act at this time, I believe the advisory committee is appropriate. It would be staffed by many of the same people we had on the very first reference committee: representatives of the Yukon Medical Association, the Registered Nurses Association, Yukon, et cetera. We see an advisory committee happening shortly after implementation of the bill and regulations.

The Information and Privacy Commissioner's comments were very technical in nature, and I'll be able to provide detailed responses.

I guess very few jurisdictions in Canada have included details of their e-health systems in legislation, and we've done that as well. We have attempted to put the minimum amount in the system. We've established it, but the vast majority of the legislation will be in regulation. We have done that for a few reasons, but the primary reason is the flexibility that it

will give this government and future governments in changing the regulations quickly in light of the quickly changing IT sector. There are huge advances that have been made in the last few years and we see that continuing well into the future, so we built that flexibility into the bill.

We believe that the most effective way to respond to legal authorizations is by establishing the principles in legislation and then maintaining that flexibility for implementation through regulation. The Information and Privacy Commissioner also brought up the issue of proactive compliance and how we're doing it. I think the Information and Privacy Commissioner used the term to refer to things that could be done to ensure that custodians comply with the law, including a strong role for the Information and Privacy Commissioner to review and approve policies and procedures established by the custodians. We see that as unnecessarily intrusive at this time. We think that Yukon health care providers will act in accordance with the new law. We have also built mechanisms into the act to strengthen the role of the Information and Privacy Commissioner if this becomes necessary. We have also written in a fairly strong section dealing with complaints and sanctions, should custodians be found not to be acting in compliance with the act.

Our hope is that custodians will respond and develop effective privacy and security practices that will protect all of our personal health information. The Information and Privacy Commissioner also advocates for privacy impact assessments to be done on new information systems or changes to existing ones. Privacy impact assessments are important tools in protecting privacy.

Health and Social Services will probably be the largest single health care provider in the territory and will be required, through regulation, to do privacy impact assessments. So under the regulations we intend to create, the Health and Social Services department will be the one entity that is required to do privacy impact assessments. During the consultation on the regulations, we'll consider if this requirement should be expanded to include other custodians, but the only one we're absolutely positive of at this time is that Health and Social Services will be doing privacy impact assessments. And under the legislation — correct me if I'm wrong — privacy impact assessments will go to the IPC for assessment.

Some Hon. Member: (inaudible)

Hon. Mr. Graham: So I was wrong again. There is no requirement in the act for the privacy impact assessment to go, but we've already made the commitment and we believe it's a good idea. The Information and Privacy Commissioner doesn't have the ability to do anything but make recommendations. However, we believe that we've already shown that if the IPC has good ideas, we're only too happy to incorporate them because we believe that anything that makes this legislation better is a good thing.

I can continue on with some of the IPC's other concerns but perhaps I'll stop at that point and if there are any other questions during general debate, we can get to them or else we can start at any time going through section by section.

Ms. Stick: I was trying to keep up with the member across the way. He was in many different areas. I will go back to the very first question I asked, though, with regard to the information that was gathered for patients without doctors and that is, what is this personal information that was gathered being used for now and what has happened to it?

Just a couple of comments on some of the things I heard from the member across — he talked about how important that there be flexibility in this legislation. I think he was referring to — I will get to it later — a comment under section 74 — that the minister must submit a draft decision to the advisory committee, if any, established by the minister. That's pretty flexible. The minister has made a commitment about health privacy impact statements and corrected himself and said no, it's not required in the legislation.

He makes a commitment to that, and that's great for this minister to make that commitment to it, but why not just include it in the legislation into the future for other ministers and other governments — include it in the legislation rather than just leaving it flexible like that? That one line, "if any", is pretty loose; it's wide open — "if any", or not. It's certainly a section that the Information and Privacy Commissioner flagged as something that needs to be looked at.

We heard the minister talking about management and establishing the framework for electronic health records and we support that. There are just lots of reasons why and many professionals calling for the same thing. During second reading last week, the minister referenced making progress toward electronic health record systems. I just wondered also from the minister if we could have a timeline on when that might be in place. I'll leave it there.

Hon. Mr. Graham: I'll go through it one more time. The privacy impact assessments must be done by Health and Social Services and will be in regulation. We've already made that determination.

What we haven't determined — and we will do it through consultation with our stakeholders — is if any other custodians will be required to do privacy impact assessments. That's one part. The second part was the advisory committee. I've stated that we did not put an advisory committee in the legislation as a requirement because of the fact that in a few years when the regulations are done, we may have matured to the point where the IPC — the Information and Privacy Commissioner — takes a larger role. If the Information and Privacy Commissioner then had a role in doing all privacy impact statements and doing assessments of the system as has been suggested, then there would be no need for the advisory committee. So there would be no need to appoint an advisory committee.

That's why it was done in the way it was done. In the same way that Highways and Public Works is handled within the system, so we handle the advisory committee. It's quite simple. As we mature — as the systems are developed — because we haven't even developed them yet — and as they're developed, we may find that additional safeguards or changes should be made and we'll make those changes. As for where we are with e-health — we made progress, but I'm not

going to stand here and say that we made substantial progress and that we're going to have an e-health system in place in the next year or so because it's probably not going to happen in the next year or so.

I know we've had some difficulties in B.C. with the Panorama system — B.C. has run into some difficulties. We hoped to be able to combine with B.C. on the Panorama system, but by combining with B.C. — given their privacy legislation, there are all kinds of pitfalls that we may experience if we just go ahead and partner with B.C. What it may mean is if our health records to go B.C. — and many of them do because many of our people have to go down there for medical care — does this mean that they will then be in the possession of B.C. or under B.C. legislation and we won't be able to get those records back? That doesn't make too much sense.

So those are the kinds of things that we have to work out and from what we've experienced so far, it's a long-term project. We'd love to be able to go ahead with it immediately, but we won't. We have some things that we're going ahead with fairly quickly because they're being done within the territory — within the Yukon Hospital Corporation — and those are the kinds of things that we can make some progress on.

As for the overall network, it's definitely going to take some time. I'm not sure now if I've answered—is there anything else that I should have answered?

Sorry Madam Chair, I'll stop there.

Ms. Stick: I think when bringing forward new legislation it's important that all of us look at it and try and ensure that it is the best legislation that it can be.

I heard from the member across, the minister, talking about the "ifs". We don't know if in a few years the Information and Privacy Commissioner's role may change; her responsibilities may change. We don't want to put something in now that may change in a number of years. I guess we could do that on a lot of the different pieces of legislation and the questions that are being asked here. If it's just an "if", if it's not a plan, or that we know this is going to happen, or it could or it couldn't, then I think we should make this the strongest that we can in the first place. If in a few years — if things change, then we make amendments. That's what we're here for, but the first piece of the legislation should be the strongest. If there have to be changes at a later date, that's what amendments to acts are about. We can't always anticipate what those are going to be, so to not put in something because something might happen later down the road — I have a problem with that. I think it should be the best that it can be, straight-up.

I'm going to move to one of the sections that was brought to my attention and was also mentioned by the Information and Privacy Commissioner. It's an important one, and I think we were able to come up with more information. She asked a question, but did not have some of the background that we were able to come with.

Under section 61, it's called "diagnosis decisions", and the Information and Privacy Commissioner pointed out that

this is a provision not contained in any other privacy legislation in Canada. She suggested this section will require careful monitoring to evaluate the privacy implications.

Under this section, it appears that a third party can be ordered by court to disclose personal health information to facilitate the diagnosis decision of another person. It was pointed out to me that this was very reminiscent of the Mandatory Testing and Disclosure Act that was brought forward by another Yukon Party government in 2008. Some people who act as first responders requested this type of legislation.

An example of where this would be used, or what they were looking for, is in the case of where a first responder has been exposed to the blood of a person who may be HIV positive, have hepatitis C — some blood-borne disease. The argument was made that the first responder should have the right to the information about that person's health status.

At the time, in 2008, when this was brought forward, the Information and Privacy Commissioner at that time commented on that act and raised concerns about protections for individual privacy.

At the same time, another local, non-government organization brought an expert in the field of mandatory disclosure to the Yukon. The point was made that mandatory disclosure is not the best tool for the stated goal of protecting first responders.

In 2010, the territory's medical health officer developed a new set of guidelines for blood and body fluid exposure. The guidelines were to protect anyone who is exposed or may have been potentially exposed to infectious body fluids, but most commonly that would be health care workers, front-line workers, police, first responders, and even members of the public.

The medical officer of health's guidelines were to methodically guide a potentially exposed person to make the right assessment of that exposure, a risk assessment of an event. The medical officer of health at that time said that the guidelines were more comprehensive than simply forcing a person to disclose their own health care information.

In fact, the Mandatory Testing and Disclosure Act was not passed, but the inclusion of this section brings us back to that. This whole act is about the protection of individuals' personal health care. There are guidelines now in place for first responders and individuals who may have concerns.

As pointed out, this is a provision not contained in any other privacy legislation in Canada. I'm concerned about that section, and I believe that it's not even very explanatory on how this would work. I'd like the minister to tell this House what the purpose is of empowering courts to order this mandatory disclosure, especially when we don't see this in other jurisdictions' health privacy legislation.

Hon. Mr. Graham: The member here was right on a couple of things but wrong in a couple of others. The difference between this and the Mandatory Testing and Disclosure Act — and I don't believe that act was ever tabled in the Legislature, but we're just checking that information out — is that this would be a diagnostic decision that applies only

if information currently exists. It does not force testing on anybody. It has nothing to do with mandatory disclosure and testing. Sorry, it doesn't. It was never intended to, and in fact that never even came up during our discussions.

The personal health information is necessary in many cases in order for a diagnosis for an individual to be made and when other available information is insufficient. I can think of a few things — whether or not a person has a disease that could be passed on to children, perhaps if a mother drank during her pregnancy — and a diagnosis would depend on that information being available. So, those are instances.

It has nothing to do with the bill about mandatory testing; it has nothing to do with that. This was something that we added. We felt that there are sufficient protections by providing a court order required, and only after the third party has refused to give the information. It was actually requested — you can go and check out this information — by members of the FASD community. This is one that we put in in response to a request, and I'm perfectly happy that the protections are in place, that judges are not going to take this unreasonably or with little consideration. They're going to provide due consideration to any such requests. I did say during the second reading speech that we have some things in this legislation that are particularly of a Yukon bent, and this is one of them. We believe that we've framed it in such a way that it's safe and I hope that this doesn't become a point of contention because we did it as part of a request.

Ms. Stick: I will be coming back to that because I think there are some big implications.

I will talk to FASSY about this and their comments and I will also talk to other NGOs that in the past have raised concerns about this kind of legislation and get feedback from them. The minister can narrow it down to one instance of what we might use it for, but it's larger than that. It's not just about FASD or maternal drinking during pregnancy but it has implications for a lot of other things too. When we start asking the courts to disclose personal health care information, I think we need to be careful. I will come back to that when I have more information for myself, but I will again be clear that this is an important one that I think we need to look at.

Just again, the minister said they were checking to see whether that legislation was tabled, and what I said was that a previous Yukon government had brought this forward. I wasn't suggesting it was tabled. I did say it wasn't passed, but I do know it went out to public consultation and there were a lot of public concerns about that particular section. If I'm wrong on that point, I will stand corrected.

Sections 66 and 67 of the *Health Information Privacy and Management Act* talks about the personal health information for the purposes of research and the Information and Privacy Commissioner noted that custodians of health information are required to seek ethical review to use information for research. We know that this type of research happens in the Yukon. I can think of a couple of projects that are going on now in the north, which are directed at individuals and their health — and the outcomes of their health.

We support ethical review, but again would ask the question: is ethical peer review enough? Sections 66 and 67 seem to be lacking in detail when I look at that. I think, in fact, that the legislation should spell out in more detail the actual technical practices by which health information can be released for the purposes of research. We know for a fact that personal health information is valuable and that there are institutions that collect personal health care information for research and also pay for that information.

In 2012 in British Columbia, we saw a major privacy breach of personal data that was being used for research. It was the government that came forward and announced that there had been this breach and there were many related concerns about contracts and conflicts of interest that had happened around this particular instance. The investigation resulted in the stopping of research contracts, termination of some employees and lawsuits against the government. The Information and Privacy Commissioner in B.C. at that time looked into it, investigated that breach and wrote in her report, and I quote, "The primary deficiency at the Ministry was a lack of effective governance, management and controls over access to personal health information." This to me means that beyond ethical reviews of the use of private health information for research, at an operational level there also should be technical safeguards to prevent any unauthorized copying. There should be rules around the use of portable storage devices and how information is transported. We do hear in the news of someone's laptop left in their vehicle — gone, with all kinds of personal information on it. Someone loses a flash drive for a computer that contains hundreds and hundreds of files of personal information. I think that these things could also be included in the legislation.

So my question would be: in drafting this legislation, did the government carefully review the breaches of personal health data that have occurred in other jurisdictions and try to find technical safeguards to put in place governing the use of personal health information for research and by staff?

Hon. Mr. Graham: Madam Chair, I'll attempt to answer most of the questions here. The last one, the easiest, is under section 19, I believe. There is a section dealing with protection from loss of information. One of the reasons that many of these details aren't in the act is exactly as the member opposite stated. Twenty years ago, it would have been protect the files, put a lock on the file cabinet and don't carry a banker's box in the back of a car filled with medical records. Today it's don't leave your flash drive in a car, go in and buy groceries. As technology changes, the regulations will have to change as well. So within the regulations will be the more detailed information that deals not only with protection from loss, but also with research. We have set out the very broad definition of the things we believe are important in research. Now, because there is no research ethics board in the Yukon requiring the government to have a research ethics board approval for research would mean that for every time that we wanted to have a research project here in the territory, we would have to ask a research ethics board from outside of the territory to evaluate proposals.

We don't believe that's a good thing. We don't believe that decisions of that nature should be made — they should be made with reference to Yukon values and priorities. Until we have a research ethics board here in the Yukon, we are not convinced that an approval given by a board outside of the territory would reflect our values or our priorities. I think what's most important is that the act contains very specific criteria that must be utilized in order to permit disclosure for research. Under this act, a public body cannot disclose for research unless certain criteria are met. The important criteria are: the importance of the disclosure must outweigh the privacy intrusion resulting; the research cannot be done without identifiable information; and it would be unreasonable and impractical to obtain consent in the circumstances. Those are the criteria set out.

Just to give you an idea, New Brunswick has very similar legislation to this. What Newfoundland did to overcome some of the difficulty was to create their own research ethics board. In the Northwest Territories, the minister designates someone or a group to act as a research ethics board.

We looked at all of them and thought that the pathway we took was probably the best combination of all. I think the member opposite may have been possibly confusing disclosure with collection. Maybe that's the difficulty here. I think there are several things in here that state that the individuals cannot be identified. You can't collect identifying information if non-identifying information would suit the purposes. So, there are a number of protections in the legislation. When we go through it on a clause-by-clause basis, I'm sure we will be able to provide you with more information. But basically, we believe this is the best compromise to a difficult situation.

Ms. Stick: When I was going through this legislation, one of the items or sections that struck me was in part 7 in section 70, which is the authority to enter into agreements. I had already flagged this before reading the Information and Privacy Commissioner's comments, and in her report she says that the purposes for which an agreement can be entered into under this section are broad and unclear and authorize a number of bodies to access Yukoners' personal health information.

The only way Yukoners would be aware of these agreements is after they're already in place and only if the exception to the notice requirement does not apply. The method of posting that information was to go on the department's website.

I like to go through the different departments' websites and, interestingly enough, before we saw this legislation I came across this piece and had hoped to ask about it in the House at Question Period, but here it was in the legislation and here was an example. It talks about being able to collect individual's personal health information and use or disclose the health information if it's for the purpose of the provision of health care or for a prescribed purpose or if the minister is a party to the agreement for the purpose of implementing, administering or exercising a duty, function or power under the act for which the minister is responsible. A custodian may

enter into the agreement with another custodian, with the government of any jurisdiction, with a public body, subject to conditions prescribed in the regulations.

On the website now, there is a collection of personal information notice, and the parties to the agreement are Yukon Health and Social Services and the Yukon Hospital Corporation. Then it goes on to describe it. It doesn't say much.

“Yukon Hospital Corporation (through Whitehorse General Hospital) is collecting personal health information from Yukon Health and Social Services. The information collected is limited to diagnostic imaging information such as patients' digital x-rays and related information about patient health that may help with diagnosis/ interpretation of x-rays. This information is collected from patients at Yukon Community Health Centres for the purpose of treatment and care. The information is transmitted to Whitehorse General Hospital for review/ interpretation by radiologists. The radiologist report is then provided to Whitehorse General Hospital and accessed (collected) by Yukon Community Health Centres for the purpose of treatment and care of the patient.”

One of the sections in this legislation is obviously being used now. It's the only one I was able to find. I'm not aware of any others or of plans for others. But it's something I don't think that most individuals going to a community health centre might be aware of — I'm not sure. I just thought it was interesting that the Information and Privacy Commissioner is raising questions about this and questioning whether this is a good method of providing information to Yukoners about the collection of their information and transmission of it.

Though this certainly is specific, it is pretty broad in section 70 of the legislation. It's pretty permissive rather than restrictive. Again, we're talking about individual health privacy information.

Hon. Mr. Graham: I'm not sure I understand, given this example, who the member opposite doesn't trust to look after the health information. Is it the person in the community, the community health nurse and staff there, or is it the Yukon Hospital Corporation where the information is being transmitted? What we're talking about with that specific agreement is teleradiology. So in other words, if an X-ray is taken in the community and it needs to be either read by somebody in Whitehorse, or sent to somebody in Whitehorse to prescribe or to give an opinion on what should be done with this particular patient, that's why it was put in place. It wasn't put in place as a result of this legislation. This section already exists in the *Health Act* and has existed since 2009. What this allows us to do is share information between community health centres and the hospital for the patient's benefit. It's the same as saying that if I go to Vancouver for an operation, the Whitehorse General Hospital that gave me my primary care can't transmit that information to B.C., to Vancouver General or St. Paul's. I'm not sure if that's what the member opposite is complaining about.

I know in the hockey dressing room the other night, a point was made by a guy who said, after observing somebody

having a heart attack after a game, if I ever have a heart attack, I don't care how much of my personal health information is given out as long as I survive the heart attack. I guess you have to find a balance between the two.

What we're trying to do with this section is provide health care experts with the information they need in order to make a reasonable diagnosis. Granted, this section is somewhat broader than the *Health Act* that has existed since 2009. It permits other custodians to enter into information-sharing agreements with the minister's approval. There may be times when custodians need this flexibility, such as the hospital sharing information when lab tests are sent down to B.C. for interpretation. That happens more or less on an ongoing basis. There are also limits to the agreements.

The Minister of Health and Social Services must agree with any agreement entered into. Generally the agreement can only be for the provision of health care information. Agreements can only be with other organizations that are subject to similar privacy legislation, unless the IPC agrees. If there is a breach of the agreement, it's an offence and is punishable by a significant fine, which was increased somewhat at the suggestion of the IPC.

The reason it's put on the website is that we believe in transparency. We believe people in the community should know that, when they go in for an X-ray, it may be transmitted to Whitehorse General Hospital, especially if they are on their way to Whitehorse General Hospital for further treatment. In other words, if a person receives primary treatment in a health care centre, their medical information as a result of that primary treatment could be transmitted to Whitehorse General Hospital. That's what that agreement says and that's why we have section 70 in place.

Ms. Stick: When I brought this question up, part of it came from the Information and Privacy Commissioner. I certainly was not implying that there wasn't trust of health care staff or corporations or health care providers. I mean, if we followed that logic — that everyone should be trusted to do their job well — then we wouldn't need this legislation. But we do. We need the legislation to protect individual Yukoners' health care information. We need this legislation to provide guidelines, to provide rules and to provide regulations to health care providers so they understand what their role is and what they need to follow to protect our personal health care information. That's all.

This legislation is important. It's not about trust. These are the methods and the ways we are protecting people and their individual health care information. It's not about trust. I thank the minister for explaining that. That's all I wanted to know — where did this come from? I asked the question, that's all. I needed that. I don't need to be told, though, that I'm somehow mistrusting staff or corporations. That was not the intent. We're here to ask questions about this legislation. I have questions. I'm going to ask them.

Great, it is accountable to put that stuff on the website, but not everyone has access to that. One of the suggestions that the Information and Privacy Commissioner had is that there are other ways. You can put a notice in the paper. You

can run an ad — Health and Social Services runs ads a lot. Not everybody will see it, granted. Not everybody reads the paper. Not everybody goes and looks on the Department of Health and Social Services website. But there is more than one way of providing that information to Yukon public. And it's their right to know.

The minister has already spoken to section 74 and I made it clear that we will have more questions on that when we are going through the legislation. A big section and one that, when I looked at it, I was confused by it — I again thank the Information and Privacy Commissioner for laying it out — has to do with the Department of Highways and Public Works and section 91 of the legislation.

The Information and Privacy Commissioner talks about ways that this can be improved. She felt that there were considerable privacy risks to Yukoners given that Highways and Public Works may have broad authority to collect, use, disclose, make available and access Yukoners' personal health information for the purposes of the pilot projects outside of the privacy controls of the *Health and Information Privacy Management Act*. She's unclear, as was I, why this section removes that oversight from this act.

My question, when just going through this the first time, was about 91(2), where it says, "... *Access to Information and Protection of Privacy Act* does not apply to personal health information or personal information in the custody or control of the Department of Highways and Public Works pursuant to an agreement under this section."

It's kind of ironic because privacy and information in the ATIPP act comes under Highways and Public Works. It would seem to me that you would not, therefore, exclude them from this.

If the minister could speak to that section, I have more questions on this one too.

Hon. Mr. Graham: It's interesting that the Information and Privacy Commissioner brought this up, because the purpose of section 91 is to recognize that Highways and Public Works will most likely be the network administrator of any e-health system that we bring into the territory. We need to ensure that all the legal authorities are in place to permit Highways and Public Works to do what is necessary to be the e-health network administrator. We need to ensure that they have enough flexibility in the legislation to accommodate any uncertainty around the structure of our future e-health system.

The IPC suggests that section 91 is not necessary but, in our view, this will depend upon future decisions about how e-health is constructed. The IPC suggests that Highways and Public Works could simply be made either a custodian, agent or information manager. We considered these possibilities and they remain possibilities. At the same time, none of these models may work. That's why this particular section is included — in the eventuality that in the e-health network structure, it is inappropriate that Highways and Public Works be classified as a custodian, agent or information manager. This doesn't mean that personal health information in the custody of Highways and Public Works will not be protected.

Personal health information in the custody of Highways and Public Works remains subject to ATIPP.

The IPC acknowledges in her recent comments that Highways and Public Works must comply with ATIPP with respect to personal health information in its custody or control. The ATIPP act requires that public bodies make reasonable security arrangements against loss, unauthorized access, collection, use, disclosure and disposal.

We think that the ATIPP act provides a solid framework for management of personal health information to the extent that the *Health Information Privacy and Management Act* protection is more robust, especially in the area where we require security breach notification. We expect that such additional requirements for enhanced protection of personal health information will be included as terms of any agreement entered into between Highways and Public Works and the Department of Health and Social Services.

For that reason, we believe that it is necessary. My staff spent endless time convincing me of this as well, because it's something that leaps out at you no matter what because it's a separate department, but I have been convinced by their rationale that it is very reasonable. When the member opposite talked about section 91(2) — what that means is that Highways and Public Works can collect information indirectly. That's all it means.

I don't know if that answered all of the questions, but I think it did.

Ms. Stick: I'm just reading that section again and I'm not sure where the "indirectly" comes in, Madam Chair.

The *Access to Information and Protection of Privacy Act* does not apply to personal information or personal information in the custody or control of the Department of Highways and Public Works pursuant to an agreement under this section. I'm not sure that the minister explained it in a way that I understand. There are only three little parts to section 91 but it has big implications. The minister says, "We're not sure if we need it. We think it's going to go to Highways and Public Works. We think they will be managing the electronic health," but he's not saying "for sure" or "this is why" or "we want to make sure; we want to ensure flexibility."

If we don't know right now what is going to happen, then why do we include that on something that potentially might come about in the future? Again, I think we need strong legislation. I support this privacy information, but I want it to be the best. I wonder, do we need to include that now or is this something that we know will be a number of years yet before we get to electronic health records, et cetera? We heard that, so let's make the amendments then that fit what the plan will be when that comes forward. Let's make it work, not try and then fit something in to something that is already sitting there in legislation.

Again, I'm just wondering if I can get better information from the minister with regard to that section, because I still don't understand the answer that he gave there.

Hon. Mr. Graham: Perhaps I can explain it in this way: Highways and Public Works is going to be our e-health

administrator. They currently operate systems for the government. We anticipate that they will continue to operate systems for the government. Highways and Public Works is controlled by ATIPP. Under ATIPP, section 30(2) as is in 91(2), section 30(2) says that with any information collected indirectly — the public body must tell an individual when it collects personal information indirectly. But we don't want that particular section to apply in this case to Highways and Public Works because all of the information they collect will be indirect because it will simply be residing on a system that they are the network administrators for. In other words, they would have to disclose or they would have to tell every single individual when new information was added to the health information network because they collect it indirectly. Whether the information came from the hospital or from the doctor's office, it would all be on the health information network.

So remember, that's what we're talking about — the health information network that is administered by Highways and Public Works. Under ATIPP they have to give the individual notice when they collect information indirectly, and yet all the information they collect will be indirect information because they won't control any of it. Custodians around the territory will control that information.

So I don't know if that has made it any clearer but that's the way this system is intended to work.

Ms. Stick: I thank the member across the way for more information on that. That was helpful. I will probably come back to this and do some more research. But it's understandable that the Information and Privacy Commissioner would be concerned about this section. It is her job to look at the access to information privacy. It's her job. I think when she sees someone not having to apply that legislation to a department, there are concerns and there are flags raised. There were some very clear options given in her report as to ways to work with this and still allow the department to do its job in ensuring the protection and privacy of individual's health information.

One of the options was that Highways and Public Works become an agent of Health and Social Services. She goes on to explain why this would work. The second option was for the act to make the Highways and Public Works an information manager, which is what they are. They hold the information. They are the IT administrators. We know that Highways and Public Works manages many of the systems in this government, but I'm not sure that in those cases they are exempted from the ATIPP act or that it doesn't apply to them. The third option that the Information and Privacy Commissioner talked about was to include Highways and Public Works as a custodian in the definition. At the beginning of this, we saw that a custodian, under the definitions, means "a person (other than a person who is prescribed not be a custodian) who is (a) the Department, (b) the operator of a hospital or health facility, (c) a health care provider, (d) a prescribed branch, operation or program of a Yukon First Nation, (e) the Minister, (f) a person who, in another province (i) performs functions substantially similar

to the functions performed by a health care provider, and (ii) is, in the performance of those functions, subject to enactment of Canada or a province, that governs the collection, use and disclosure of personal information or personal health information...”

It talks about a prescribed person, and then under “prescribed person”, they talked about doctors, nurses, chiropractors, et cetera.

So the Information and Privacy Commissioner has laid out some options and a better way of doing that than exempting the department from an act that it actually takes care of. So, I just would like to hear from the minister more reasoning around why none of these options — they seem reasonable and would allow the same function of Highways and Public Works to carry on without hindering them.

Hon. Mr. Graham: I don’t know what I can add to what I’ve already said. We considered the IPC’s recommendations. We’ve had those recommendations for some time and it’s a very complicated part of the act. I spent some time, I know, with the department trying to figure out in my own mind how this would work and that’s probably why I’ve explained it the way I did. The only part of the ATIPP act that they will be exempted from is the requirement to inform an individual from whom it collects personal information.

That is the only part of the act and that is because all of the information that comes to them will come through another custodian that is responsible for collecting the person’s personal information.

Like I said, we looked at the options that were available to us, and we felt that this was the best of all of the options that were available. I suppose we can get in and argue about it for hours and hours, but I don’t know how much difference it’s going to make. We have looked at the options.

You know, when we get into clause-by-clause debate, I’ll be happy to — perhaps it will fit better once we go through it in order; I’m not sure. Again, I’m convinced that this is the best of the alternatives that are available for us in this particular instance.

Ms. Stick: Again, more questions and certainly we’ll be asking for more clarification when we go clause by clause on this. I found Part 8, “Powers and Duties of the Commissioner”, an interesting section to read through, and noted that the Information and Privacy Commissioner is able to attempt to settle complaints, consider complaints, publish a summary of the findings of those complaints and that did make sense to me.

But the part that she pointed out — and that I also noticed — was coming across information that doesn’t necessarily come forward as a complaint — hearing something, reading something in a newspaper, hearing something on the media that raises flags about personal health care and about the privacy of that and the collection of that. Under this legislation, the commissioner does not have those powers to investigate or to come up with a report and recommendations. I think that’s important that this be permissive in allowing the commissioner to be able to go where she’s heard something or something has come up and be able to have that ability to look

at something without a complaint having to be made. I just wondered if the minister could comment on that please.

Hon. Mr. Graham: We attempted to follow in some respects the provisions under ATIPP, where I believe the IPC has no ability to go out and investigate without a complaint, so we maintained that particular objective here in this legislation. We’ve opened this legislation up a little bit more, though, because under this piece of legislation any person may make a complaint.

They may make that complaint to the IPC who then investigates and will give us her recommendations as a result. This is not to say that if the IPC finds a difficulty in some area in the system, whether it be with custodians or the way a research project is undertaken, that she can’t communicate with the department at some point and say that she has some concerns. We hope that kind of give-and-take will always happen.

We felt at this time that the general powers that we have given the Information and Privacy Commissioner are adequate. We respect her ability to mediate disputes, should that happen. We also respect being able to consider complaints under the act and if the IPC believes that an offence has happened or has been committed, then disclosure can even go as far as to the Minister of Justice or to the RCMP.

The IPC has quite a bit of authority under this piece of legislation. We believe that even what is more important is ensuring that all custodians have the necessary tools to work within this legislation, that they understand and have a good grasp of what’s necessary to comply. We believe that that’s probably the single most important thing.

Seeing the time, I move that you report progress on Bill No. 61, *Health Information Privacy and Management Act*.

Chair: It has been moved by Mr. Graham that the Chair report progress on Bill No. 61, *Health Information Privacy and Management Act*.

Motion agreed to

Hon. Mr. Cathers: Madam Chair, I move that the Speaker do now resume the Chair.

Chair: It has been moved by Mr. Cathers that the Speaker do now resume the Chair.

Motion agreed to

Speaker resumes the Chair

Speaker: I will now call the House to order.

May the House have a report from the Chair of Committee of the Whole?

Chair’s report

Ms. McLeod: Mr. Speaker, Committee of the Whole has considered Bill No. 61, entitled *Health Information Privacy and Management Act*, and directed me to report progress.

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

Some Hon. Members: Agreed.

Speaker: I declare the report carried.

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

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

Motion agreed to

Speaker: This House now stands adjourned until 1:00 p.m. tomorrow.

The House adjourned at 5:26 p.m.