

**Yukon Legislative Assembly**  
**Whitehorse, Yukon**  
**Thursday, November 21, 2013 — 1:00 p.m.**

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

*Prayers*

## DAILY ROUTINE

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

Tributes.

## TRIBUTES

### In recognition of Bullying Awareness Week

**Hon. Ms. Taylor:** It is my honour and privilege to rise this afternoon to talk about an important week in the annual school calendar, Bullying Awareness Week. This week draws attention to the insidious problem of bullying in our schools and in the broader community, with the goal of helping to prevent its occurrence through education and awareness.

Everyone in this House is sadly aware of names such as Amanda Todd, Rehtaeh Parsons and Todd Loik, Canadian teenagers who took their lives after having been harassed to the point of despair. These individual stories capture our attention for weeks at a time, but the day-to-day story of bullying is just as tragic, even if it doesn't make it into the newspaper headlines and on to national television broadcasts.

Every day in a classroom or school yard, somewhere, sometime, a child is hurting because of teasing from a classmate or a playmate. Right now someone, somewhere in our country, or even our territory — a teenager — is the victim of on-line harassment. As children, most of us heard the old adage, usually from our parents, that sticks and stones may break my bones but words will never hurt me. Some of us use this as a sort of personal mantra as a defence against teasing and verbal abuse.

The truth is actually quite different. Bones may heal more readily than hearts and minds, where hurtful words take root and grow. I'm sure that many of us in this House remember childhood taunts and bear those emotional scars, even as adults.

Bullying Awareness Week reminds us that bullying needs to be understood, not only as a social issue, but as a health issue. The impact of bullying on personal health and wellness can last a lifetime, with economic implications for our society arising from lessened productivity and lost work hours from illness or personal days off work.

According to the Bullying Awareness Week website, approximately 15 percent of the students or workers in a given school or workplace are directly involved in bullying, leaving 85 percent as potential bystanders or the silent majority. That "say nothing, do nothing" majority is the primary focus and target audience of Bullying Awareness Week, and particularly of this year's theme, "Stand Up!"

The 2013 theme takes us back to 2007 when a grade 9 student in Nova Scotia wore a pink polo shirt on his first day of school. He was called a homosexual, ridiculed and threatened with violence. The story might have ended there, as it does with many acts of bullying, if it weren't for two grade 12 students who had enough. They stood up and the Sea of Pink was born. The first Sea of Pink campaign started small with emails and dozens of discount t-shirts being handed out to peers. But like many good ideas, it grew, with bullies becoming drowned out by a wave of support from hundreds of others at the school who chose to wear pink on the designated days.

It quickly spread across Canada and all the way to the Yukon. It grew further into an international phenomenon, proving that a bit of teamwork can defeat a lot of apathy and indifference. The movement is still growing today. The Sea of Pink Day will be celebrated in Yukon schools again this year — in most cases tomorrow, Friday, November 22. Participating students and staff will again rise to the occasion and stand up against bullying by wearing pink and taking the pink pledge.

Many people feel that bullying is a school problem and that it is therefore up to the schools to solve it. Bullying is everyone's issue. It is a community issue. Schools, however, can play a critically important role in reducing bullying, and Yukon schools have accepted that role and have been working for several years to reduce the occurrence of bullying in a number of ways. I'd like to highlight just a few of them. Before I do, let me assure the House that every single school in the territory is actively engaged in one way or another in reducing bullying.

At the end of October, the Teslin Tlingit Council sponsored respect workshops in Teslin School for students and the greater community. "Bullying" is a term with multiple meanings and nuances of meaning for people, so the approach to fighting it in Teslin focuses on desired behaviours. The concepts of kindness, consideration and assertive communication are woven throughout lessons across all subjects. When the school's principal, Dennis Darling, speaks with students and staff about bullying, he uses resonating words that reflect the severity of such actions. Words like "harassment", "assault" and "intimidation" make it clear just how serious bullying is, in all its forms. Principal Darling has also pointed out that the French word that best translates the word "bully" is "intimidator". Bullying therefore translates into "intimidation".

At Takhini Elementary School here in Whitehorse, the focus on the fight against bullying begins with self-regulation among students. Students are learning to become more self-aware, paying attention to what makes them upset, what calms them, and how to recognize their own internal signs.

The school has also brought in a number of presentations, such as the Victoria-based Story Theatre Co. production *Hey Bully, Bully!* and other special presenters who have spoken with students about bullying and violence.

Takhini this year will be a sea of pink this week, and students will be loud and proud about who they are and how

good it feels to make the right decisions when it comes to how they treat others.

F.H. Collins Secondary School has participated in the Sea of Pink every year since 2007 and has been an instrumental key player in spreading the anti-bullying message to other schools, asking every single person to be the change you want to see in the world. F.H. Collins took the national stage recently in a shout out from renowned Canadian comedian and political commentator, Rick Mercer. Mercer, for all of us who have seen that clip on YouTube, congratulated the school on having received the Canadian Safe Schools Network Award for Excellence Against LGBTQ Youth Bullying.

I would like to add my congratulations to all the students involved and, of course, to our own F.H. Collins vice-principal, Christine Klaassen-St Pierre, who has joined us in the gallery here today. She has been leading the charge in this school's anti-bullying movement for many years, has been leading these initiatives and has caught the attention of many schools across the territory for several years. It's through the leadership of Christine and her student teams that the Sea of Pink and the related Be the Change movement have caught on in Watson Lake Secondary School and St. Elias Community School earlier this year, and the greater community.

Mr. Speaker, the partnership between the Department of Justice and the Canadian Centre for Child Protection to raise awareness of tools for the prevention of and response to on-line exploitation of children is yet another way the Government of Yukon has been working to make a difference to build stronger and safer communities for children and youth in the on-line and off-line worlds.

The Canadian Centre for Child Protection's website [www.NeedHelpNow.ca](http://www.NeedHelpNow.ca) is specifically set up to assist someone who has been involved in a self/peer exploitation incident, otherwise known as sexting. They are there to help, and that website again is [www.NeedHelpNow.ca](http://www.NeedHelpNow.ca). The website [www.protectchildren.ca](http://www.protectchildren.ca) is another helpful resource available for parents, teens, children and volunteers. I appreciate our Minister of Justice and his officials in the Department of Justice for connecting Yukon with the Canadian Centre for Child Protection and the results these resources are garnering.

There is always more that can be done when it comes to eradicating bullying wherever we are. That is why an interdepartmental and inter-agency group comprising representatives of the Yukon government and others has been formed to identify gaps and ways in which we can further strengthen our efforts to address bullying.

I would also like to point out that joining Christine Klaassen-St. Pierre from F.H. Collins, we also have Andrea Zimmerman, who is also a member of our interdepartmental committee and is our school/community liaison consultant with Student Support Services branch. I thank her for her ongoing work in this regard.

*Applause*

**Ms. White:** I rise on behalf of the Official Opposition and the Third Party to recognize November 17 to 23 as Bullying Awareness Week. One only needs to type the word

"bullying" into one's computer search engine to fathom that bullying is a wide-spread problem. Hundreds of sites appear.

Organizations exist worldwide to try to help to help kids, students, teachers, community members, employees and employers — everyone, really — to deal with this problem. Everyone needs to recognize and acknowledge the harmful effects of bullying, how to stop it and how to develop tools to deal with its effects. Bullying is behaviour by an individual or a group repeated over time that intentionally hurts another individual or group, either physically or emotionally.

Chances are very good that your life has been affected by bullying. It could have been a personal experience or one that you were left to deal with alone. Maybe it happened when you were in school and at the time your concerns were pushed aside with the all too familiar phrase, "kids will be kids". Maybe it was your child who was or is being bullied. Maybe as I speak you're dealing with a bully in your workplace. We all deal with these behaviours in different ways. We've all been witnesses to the lasting effects that being bullied has had on those around us. We know that if not addressed, the harm this continued behaviour causes has long-lasting impacts on the lives of others.

All of the available resources share certain key messages: bullying is never acceptable, being bullied is never your fault and don't be a passive bystander. A silent witness to bullying is just as responsible for the hurt caused. If we can, we must respond in a timely and proactive fashion to disclosures of bullying wherever and whenever we are aware of it. Don't ignore it and don't believe for a minute that kids can work it out with adult help. When bullying is reported, respond positively, consistently and in a nonjudgmental fashion.

All people have the right to be respected and the responsibility to respect others, both in person and on-line. Changing our attitudes and behaviours is never easy. We may never completely eliminate bullying from society, but some things are worth the fight. We have seen major positive changes in societal attitudes and actions with respect to things like smoking, drinking and driving and recycling.

These were all attitudinal behaviours and our attitudes and behaviours have come to change for the better toward all of those. With an appetite to make it happen and by changing our own behaviours, we can create a transformation in the way we all deal with bullying. Being a bully is simply unacceptable and the wrong way to interact with others. Bullying Awareness Week is all about an invitation to all of us within our community to be the change we want to see.

### **In recognition of the Festival of Trees**

**Hon. Mr. Nixon:** On behalf of all members of the Assembly, I rise to recognize the Festival of Trees, which launches today in our very own lobby.

I ask that we also pay tribute to the people who have organized this popular fundraising event for the past 11 years. The Festival of Trees itself is an amazing accomplishment, but what is more amazing is what the Yukon Hospital Foundation has been able to accomplish through these seasonal fundraising events to support new and additional equipment

for Whitehorse General Hospital and now the two community health facilities.

Some extraordinarily talented folks have given their time and creativity to decorate trees and the wreaths that are the heart of the festival and are today welcoming the Christmas season in the foyer. Hundreds of people will enjoy their twinkling lights before they are auctioned off to very generous supporters of the foundation.

In the years since it began, the Festival of Trees has become the unofficial kickoff to the Christmas season followed by receptions, breakfasts and soirées, all designed to raise more money for the foundation and to give back to the community. These events have raised more than \$6 million.

The generosity of Yukoners over the past decade has allowed the foundation to purchase heart stress testing equipment, a digital X-ray machine, the CT scanner, orthopaedic drills, Neopuffs, ultrasounds and other equipment for neonatal care.

Last year, thanks to the generosity of Yukoners, the foundation met its \$2-million fundraising goal to purchase a MRI for the hospital one year early. As the Hospital Corporation board chair announced at the corporation's annual general meeting earlier this fall, planning work has begun to house this new piece of equipment, which will be the first MRI north of 60.

The Festival of Trees makes an important contribution to the well-being of our citizens and we salute the volunteers and designers. We support all those who support the foundation and its work by attending its events. I would encourage everyone to visit the administration building to see these amazing works of Christmas art.

I would also like to take this opportunity to recognize and thank two incredibly talented Yukoners, Ms. Krista Prochazka, President of the Yukon Hospital Foundation, along with Ms. Harmony Hunter, Manager of Partnership & Engagement. Please join me in welcoming them to the gallery.

*Applause*

### **In recognition of National Addictions Awareness Week**

**Hon. Mr. Graham:** I rise in the House today to pay tribute to National Addictions Awareness Week, which runs from November 19 to 24 this year. National Addictions Awareness Week provides the perfect opportunity to highlight the issues and solutions around drug and alcohol abuse.

It's an ideal time to raise awareness about the effects of addictions on the individual, the family and society, and how complex the problems associated with addictions are — complex and costly. Addictions cost taxpayers in this country last year almost \$40 billion. Yukon has the dubious distinction of being among the highest alcohol-consuming jurisdictions in our country and we take this matter of addictions very seriously.

This last year, Alcohol and Drug Services have focused on working with professionals. Staff has worked with clinicians on trauma-informed practice and with physicians on problematic substance abuse and pregnancy. They work with

national partners on the national low-risk drinking guidelines, which provide the best evidence on the related risks of alcohol consumption. Late last year, we launched a campaign inviting Yukoners to talk about their alcohol consumption and its related harms. ADS has also been focused on planning for the construction of a new facility, and we look forward to a new and upgraded facility from which to support more Yukon citizens who need assistance with their addictions.

We recognize the toll that alcohol can take on individuals, their families and their communities. We know that all must be involved in creating the solutions to this problem. This week provides me with the opportunity to thank all those individuals and organizations who work to support people in recovery and reduce the devastating effects of alcohol and drug addiction in our communities.

Allow me to list just a few: Alcoholics Anonymous, Narcotics Anonymous, Al-Anon, the Salvation Army, First Nations health programs across the territory, the Skookum Jim Friendship Centre, FASSY, the Canadian prenatal nutrition programs and pregnant teen programs that connect women to resources and healthy relationships. There are too many to completely list here today — groups and individuals. Many unsung heroes — I hope they realize that we know who they are and they have our grateful thanks.

**Mr. Barr:** I rise on behalf of the Official Opposition and the Third Party in recognition of National Addictions Awareness Week which, as we heard, runs from November 19 to 24 this year.

It is to the credit of aboriginal people that National Addictions Awareness Week began in the early 1980s with an initiative of the Nechi Institute in Alberta. The idea quickly caught on across Canada and in the Yukon. Yukoners continue to consume much more alcohol per capita than the average Canadian. The harm to health and our economy that comes from this is obvious. Statistics show that hospital emergency room visits and admissions are often related to injuries and illness associated with alcohol use. The numbers of people affected by fetal alcohol spectrum disorder are significant in the Yukon. Crimes that involve victims, particularly family violence, are most often related to the abuse of alcohol.

But the Yukon does not only have problems with alcohol. Reports show that about 16 percent of Yukoners have tried cocaine as compared to four percent nationally. About one-half of Whitehorse residents have smoked marijuana. There has been a 25-percent increase in the use of prescription drugs in the Yukon; Tylenol 3 alone accounts for a 70-percent increase. Cigarette smoking is gradually decreasing, but is still at an intolerable rate.

We are now aware that gambling can also become addictive. We must be cognizant of the devastating impact that gambling has on families and communities when we look at our economy and disruptions in families.

Education is one of the most powerful preventive tools in reaching the objective in being addiction-free. National Addictions Awareness Week is an important move toward

this. This week's celebration points to the joy of being addiction-free, reinforcing a healthy attitude and a lifestyle that will assist families, friends and the community as a whole. We salute all those professionals and volunteers who work so diligently in assisting Yukoners to become addiction-free. I look forward to attending the community dinner in Carcross as one of these events this evening.

### **In recognition of International Education Week**

**Hon. Ms. Taylor:** I rise on behalf of the Legislative Assembly to acknowledge International Education Week, which began earlier this week. The purpose of International Education Week is to raise awareness and an understanding of the significant benefits of international education to Canada, to Canadian educational institutions and to all Canadians.

International Education Week showcases the significant contribution that international education makes to our social, economic and cultural well-being and supports Canada's ongoing efforts to engage on the international stage. This year, Canada is joining over 100 countries in making this week special. The theme of Canada's participation in International Education Week 2013 is "Celebrating Canada's Engagement with the World." The theme underscores the value that Canadians place on connecting with the world through studying abroad, internationalized curricula in international service and in opening the world to Canada by welcoming international students, promoting international exchanges and encouraging students to make Canada their new home.

Yukon has long been a place to which people from other countries have come to pursue their love of learning. Many of these international students have started by improving their English proficiency with Yukon College's ESL program and have then gone on to completing a diploma certificate and even degree programs here.

At the moment, there are more than 30 international students enrolled in programs of study at Yukon College. They come from Asia, Africa, Europe and the United States. Seventeen of them are in the ESL program while another 15 are enrolled in a variety of programs such as business administration, early childhood development, circumpolar studies, multimedia, mineral resources and renewable resources management.

On September 11, 2013, 15 Japanese students from Kanazawa, a university in Japan, here to take an intensive, short-term ESL program, shared their culture with Yukon College staff and students during a special noon-hour hands-on demonstration of activities and games such as: Shodo, which is Japanese calligraphy; picking up beans by chopstick; Ayatori, or cat's cradle; Kendama, cup and ball; Koma, a Japanese spinning top toy; and, of course, origami, a paper-folding art. Some of these students, like many of them before, may elect to apply for permanent residency, establishing new lives here and contributing to our economy and to our communities in a myriad of ways.

We are enriched by their presence. Others will return to their home countries, forever changed by their time in the

territory and acting for the rest of their lives as unofficial ambassadors for our territory and our country.

On the other side of the coin are the many Yukoners who have travelled to other countries for educational or vocational purposes. They, too, have returned from their experiences of being immersed in other cultures, speaking other languages and perhaps contributing their skills and labour in new and different work environments, with broader perspectives, more open minds, and perhaps even a stronger appreciation for their country and territory of origin.

I ask the House to join me in acknowledging and celebrating International Education Week.

### **In recognition of Restorative Justice Week**

**Ms. Moorcroft:** I rise today on behalf of the Official Opposition and the Third Party to pay tribute to Restorative Justice Week, November 17 to 24. Restorative Justice Week is a time when we think about the criminal justice system and how it can truly be more rehabilitative. Restorative justice is a philosophy and an approach that views crime and conflict as harm done to people and relationships. It is an approach to justice that emphasizes healing in victims, accountability of offenders and the involvement of citizens in creating healthier, safer communities.

In Canada and the United States, the justice system is tainted by racial discrimination. Government records demonstrate the warehousing of aboriginal people in the Yukon and nationally, where First Nations, Inuit and Métis are overrepresented in jails and correctional centres.

Restorative justice is not about excusing crime or letting people off the hook. It's not about forcing forgiveness, or even about forgiveness per se. It's not about removing important safety considerations from our communities. What restorative justice makes it powerful. Restorative justice has been practised for thousands of years, if not more, by global indigenous peoples. In New Zealand, restorative justice is used as the primary juvenile justice model.

Restorative justice asks who has been harmed and seeks to repair that harm appropriately. It has three baseline questions. Who has been hurt? What are their needs? Whose obligations are these?

Restorative justice shows high diversionary rates from incarceration, saving money and improving lives. Restorative justice approaches can keep people with mental health conditions, autism spectrum disorders and fetal alcohol spectrum disorders out of correctional facilities. They are informed by a more progressive model of justice than the incarceration of youth and adults with conditions that cannot be changed.

Yukon's restorative justice approaches, such as pre-charge diversion, First Nation justice initiatives and community-based policing, are effective measures to support healing and dignity over incarceration and retribution. Restorative justice calls for community building. It calls for respecting and supporting victims in a way that acknowledges their rights. The hope found in restorative justice models is that they will foster healthier communities and prevent crime

through education, advocacy and community development initiatives.

**Hon. Mr. Nixon:** I just want to remind the House that just yesterday I did a tribute to Restorative Justice Week in the Legislature. I just want to again, as I did yesterday, acknowledge the good work that is being done within the territory and within the Department of Justice.

**Speaker:** Introduction of visitors.

### INTRODUCTION OF VISITORS

**Ms. Hanson:** I'd like to invite members of the Legislative Assembly to welcome to the Assembly Doug Van Bibber — he is the forestry advisor for the Liard First Nation — and Sarah Newton, who is the manager of Land and Resources for the Liard First Nation. Both Doug and Sarah are involved with the good work being done by the Yukon Forest Management branch and the Liard First Nation. Welcome, Doug and Sarah.

*Applause*

**Ms. White:** I'd ask the House to join me in welcoming our Canada World Youth and their Mozambique partner, AJUDE, for the Mozambique-Canada portion. This is the entire group, and I'm going to name the four students who stay with me because I have their names in front of me: David Castonguay, Manuel DeCarmo, Carmen Angele Maliganha and Natalie Forsythe. These students have been with me for a month and three-quarters and we have three or four weeks to go. To the entire group: thank you for being here.

*Applause*

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

Are there any reports of committees?

Are there any petitions to be presented?

Are there any bills to be introduced?

Are there any notices of motions?

### NOTICES OF MOTIONS

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

THAT this House urges the Government of Yukon to work with the Liard First Nation Development Corporation to develop a strategy that will be based on research and community engagement that will help lay the basis for a potential joint venture agreement with an industry partner to develop a viable forest products business in the vicinity of Watson Lake.

**Speaker:** Is there a statement by a minister?

This then brings us to Question Period.

### QUESTION PERIOD

**Question re: Death at Watson Lake hospital, public investigation of**

**Ms. Hanson:** Over the last two weeks, the Official Opposition has raised as a matter of public concern serious questions about the death by mixed drug toxicity of Teresa Ann Scheunert at the Watson Lake hospital.

The Official Opposition has detailed an extraordinary number of discrepancies, questions and serious concerns surrounding Ms. Scheunert's death. The government's response to these questions — questions that affect all Yukoners — has been to avoid, to claim an inability to act, to hide behind public institutions and to put the onus on the family.

The chief coroner said that there was a system failure — a failure of our public health care system. Why has this government refused to support a public investigation into the system failure that resulted in the death of Teresa Ann Scheunert?

**Hon. Mr. Graham:** I think yesterday I made it very clear to the members opposite as to why we didn't support a public inquiry. I laid out very clearly, I think, the steps that have been taken to date and that should be taken in the future — that have been started and not completed. For all of those reasons that I outlined yesterday, we won't be supporting a public inquiry at this time.

**Ms. Hanson:** The death of Teresa Scheunert was a result, not only of mixed drug toxicity, but of a system failure. This system failure includes outdated legislation, a public hospital, medical practitioners, the Workers' Compensation Board, the Yukon Hospital Corporation and standards and practices that are supposed to be in place to protect Yukoners and their families. These are all matters for which the ultimate accountability rests with the Yukon government. The government has offered no help to the family of Ms. Scheunert. The government's only suggestion is that the family pursue this through the courts.

Mr. Speaker, why won't the government do the right thing and launch a public inquiry into the death of Teresa Ann Scheunert at the Watson Lake Hospital?

**Hon. Mr. Graham:** I can only reiterate what I said yesterday and what I have been saying for the last two weeks. There is a Patient Safety Review underway at the Yukon Hospital Corporation at the present time. We have had assurances from the corporation that they will be prepared to share that information with the family. It has been indicated to us that a complaint has been lodged with the Yukon Medical Council. The family has told me that and they have actually had some correspondence from the Medical Council. We think that should be played out as well.

The final process, as I have indicated time and time again, is that there is the potential of asking for a coroner's inquest by applying to the courts. We believe that an impartial party such as a judge should be able to make that determination when all of the facts — not only the rhetoric, but the facts — are presented to a member of the judiciary.

**Ms. Hanson:** This government is running away from its responsibilities and is putting the onus on the family to pursue the death of their mother and their sister through the courts. This is shameful. It is the minister's job and it is this

government's obligation to publicly investigate and fix system failures, not the family's.

The message is that Yukoners can only expect justice and the truth if they can afford to pay for it themselves or if it does not embarrass this government. Is this justice in the Yukon, Mr. Speaker? Is it justice when a system failure of the government, its agencies and laws is left to the grieving family to try to correct?

Will the Premier stand before this House today and take the right step — the morally, ethically and legally correct step — and allow for a public investigation into the system failures that resulted in the death of Teresa Ann Scheunert?

**Hon. Mr. Graham:** Once again, we are extremely sympathetic. We understand there are many things that have contributed to Ms. Scheunert's death and we think it's extremely unfortunate that these things have happened. As I've indicated throughout the last couple of weeks, there are already a number of steps that have been taken with the Yukon Hospital Corporation. I have corresponded with the Yukon Workers' Compensation Health and Safety Board to discover what the process breakdown was there. They have promised that they are investigating and hope to bring in new policies that prevent such an occurrence in the future.

There are a number of steps that have already been taken. A patient safety review, as we've said over and over again, will clear up some of the things that have happened in the hospital, we hope, and give a clearer indication of the steps that are being taken to protect all patients in this territory. The Hospital Corporation and this government are very concerned about patient safety in our medical facilities. The Hospital Corporation and the medical practitioners themselves are all taking the appropriate steps to ensure that the safety of patients is assured.

#### **Question re: F.H. Collins Secondary School reconstruction**

**Mr. Tredger:** A year ago, the Yukon Party announced the re-inclusion of geothermal heating into the redesign of F.H. Collins Secondary School. The Minister of Education said, and I quote: "We're very excited that we're able to move ahead with plans to heat the new F.H. Collins Secondary School with what's known as a geo-exchange heating system so obviously a lot of excitement around that as we look to decrease the school's carbon footprint and reduce annual energy costs."

Mr. Speaker, why has the government abandoned energy-efficient geothermal heating in the current redesign of F.H. Collins and gone back to heating with fossil fuels.

**Hon. Mr. Istchenko:** As you know, F.H. Collins is going to be designed to meet LEED silver energy-efficient standards, Mr. Speaker. We are going to meet all the building codes that are required.

When it comes to geothermal, the new location where we're building F.H. Collins now is separate from where the old location was. The location of the well for geothermal is further away than the first design of F.H. Collins was going to

be, so we're still looking at that, and we look forward to this school being completed.

**Mr. Tredger:** The government has made commitments to curb the territory's greenhouse gas emissions through constructing energy-efficient buildings. The government has bought and paid for at least three studies that all show that F.H. Collins is a good candidate for geothermal energy and that system would pay for itself within a decade. The Yukon Party government has already spent millions on the groundwork for geothermal energy at the F.H. Collins site. The previous minister expressed excitement about the ability to use geothermal energy at F.H. Collins and to save the taxpayers up to 80 percent in annual heating costs while combatting climate change. Geothermal energy is a fiscally responsible solution.

Why has the Yukon Party government dropped geothermal energy at the new F.H. Collins school and abandoned its commitments to combatting climate change and saving taxpayers money?

**Hon. Mr. Istchenko:** As I've said in this House many times before, we were approved for a budget on F.H. Collins. When you come in \$10 million overbudget, you want to be fiscally responsible. This is what we're doing. We're being fiscally responsible. We're out to tender on a school in a new location, next to the old F.H. Collins school, where there will be no interruptions for people and there will be a gym until they move into the new school.

This government works with the Department of Highways and Public Works. Fleet vehicles, energy efficiency — there's lots of stuff this government is doing.

#### **Question re: Hydroelectric dam project**

**Mr. Silver:** I have a question for the Premier. After many years of dragging its heels and attempting to sell our publicly owned energy corporation to the private sector, the Yukon Party finally announced this summer that it was planning to expand our hydro generation. The Premier told local media in July that he wants to build a new hydro dam. This is news to the former EMR minister who could not name a single project when I asked him about it in the spring. It is also potentially good news for Yukoners if it is done properly.

Now the Premier said that it would be — and I quote: "a great opportunity for First Nations to become partners in a project". Mr. Speaker, what hydro project is the top priority for the government and when might it be supplying power to Yukoners?

**Hon. Mr. Pasloski:** This government is committed to seeing the long-term success of this territory ensured by increasing our capacity of clean renewable hydroelectricity. Because of the foresight of those people who came before us, over 95 percent of all the electricity consumed in this territory comes from renewable hydro energy. We understand, going forward for the success of this territory, the need for more renewable and clean hydro energy. This government is committed to moving in that direction.

Do we know where the site will be at this point? No, we don't. We will engage Yukon Development Corporation to

lead us in this project and we look forward to the work that they will commence to move us on the way.

Of course, one of the things that we will always be looking at and that we always talk about is opportunities to partner with First Nations in any economic opportunity that exists within this territory.

**Mr. Silver:** Mr. Speaker, when the president of the Yukon Energy Corporation appeared here in this House in the spring, he was quite candid and he said, “We have no more excess hydro of any significance...”

We are at an energy cliff, because the Yukon Party spent a lot of time trying to sell our Energy Corporation instead of figuring out how to expand out hydro capacity. One of the major projects the government did move on was Mayo B. It was cost-shared by the Government of Canada. Unfortunately, Yukon borrowed its entire financial contribution to this project and we are paying millions of dollars in interest for many years to come as a result. How is the Premier planning to finance the new dam he announced in July? Will this government, once again, be borrowing money for this project?

**Hon. Mr. Kent:** Under my responsibility for the Yukon Development Corporation, we will be directing the Yukon Development Corporation to lead the research and planning of a new hydroelectric dam for the territory. That work will include engaging with First Nations. It will include determining what site makes the most sense from a generating-capacity perspective as well as location to the grid and location to some of the larger industrial customers. It will also include how we can expect to finance the project. We believe that this project is of national significance and that it will require some commitment from the federal government. What that commitment will be is yet to be determined, but that will emerge through the good work of the Yukon Development Corporation as they move through this research and planning process to assist us in adding additional hydroelectric capacity and really cementing a clean power future for Yukoners.

**Mr. Silver:** By the answers we got today on the floor, it doesn't seem like we're any further ahead as far as what project we're moving on or how we're going to pay for it. I believe that this inaction is costing Yukoners in higher electricity bills.

Let me change gears here — when the former Yukon Premier decided he wanted two hospitals built, he gave only a verbal instruction to the Hospital Corporation to begin working on these projects — no paper trail, no written instructions, just verbal marching orders. Since the Premier has announced that he now supports going ahead with a new dam, I'm sure that formal instruction has been passed on to the Yukon Development Corporation.

Can the Premier confirm written instruction has been passed on to the Yukon Development Corporation and that he will be providing a copy of those instructions?

**Hon. Mr. Pasloski:** Before we endeavour to move forward with such a massive project for a territory of this size, we will ensure that the due diligence is done.

With regard to Yukon Energy Corporation assets — since this government came into this Legislative Assembly, we have prohibited the sale of Yukon Energy Corporation assets — something the Liberal government could have done but failed to do when they were in power. We will continue to work with Yukon Development Corporation to move forward with a project that will ensure not only the prosperity for Yukoners in the near term and in the mid-term, but this project of creating new hydroelectricity — renewable, cost-efficient hydroelectricity — will ensure the prosperity of Yukon for decades to come.

#### **Question re: Yukon Liquor Corporation social responsibility**

**Mr. Barr:** The government has a number of ongoing initiatives with schools, Mothers Against Drunk Drivers and the RCMP. These are important efforts but I am concerned with the lack of training and resources dedicated to developing social responsibility within the Yukon Liquor Corporation.

Last spring, I asked the minister why a full-time position dedicated to the social responsibility within the Yukon Liquor Corporation was cut during the restructuring over the last two years. The minister was not able to answer my question, but promised to ask the Liquor Corporation about the restructuring and inform the opposition about the issue at a later date.

Mr. Speaker, can the minister indicate if a full-time position dedicated to social responsibility within the Yukon Liquor Corporation has been re-established?

**Hon. Mr. Cathers:** I thank the member for the question. First of all, I would point out, as the member knows, contrary to what he seemed to be framing in the question here, he didn't ask me this question earlier in the year. I would point out again that as far as personnel matters and allocations go, the departments and corporations do determine what positions are titled and when different workloads are adjusted and performed by different people. We don't interfere in personnel matters; we do leave it to managers to do that work. The member is fixating on specifics that really are not the type of thing that usually politicians delve into the details of. They're usually left to our very competent managers to determine who has what job title and how the program responsibilities are carried out by staff.

**Mr. Barr:** There is ministerial direction involved. Yukon Liquor Corporation is responsible for the distribution and sale of liquor products across the Yukon. As such, the corporation has the responsibility to help reduce the potential negative impacts of alcohol consumption from Yukon families and communities.

The corporation partners with organizations on campaigns to educate Yukoners about alcohol-related issues and encourage responsible drinking practices. Education and awareness campaigns are important, but they are only part of the solution. Given the major impact that alcohol consumption has on our families and communities much more needs to be done.

When will this government ensure that the Yukon Liquor Corporation dedicates enough resources to alcohol-related harm and making it a priority?

**Hon. Mr. Cathers:** In fact, Yukon Liquor Corporation does take a number of steps in this area. Yukon Liquor Corporation has a strong social responsibility mandate to regulate sale and consumption, and it regularly partners with government and non-government organization and agencies to deliver programs and support a variety of responsible consumption initiatives, such as the MADD Red Ribbon campaign and the PARTY — Prevent Alcohol and Risk-related Trauma in Youth program — and others.

Yukon Liquor Corporation also has a number of operational policies and social initiatives that support social responsibility in the sale and consumption of liquor products. There are, as well, initiatives through other departments, including Yukon's Department of Education's school-based education and prevention programs, such as the substance misuse prevention program, the Second Step program, the Real Game, and Baby Think it Over.

**Mr. Barr:** We appreciate the partnerships and initiatives the minister responsible has listed in this House, but this does not replace the Yukon Liquor Corporation's obligations with respect to social responsibility. Representatives from the Yukon were part of the expert working group established by Health Canada, the Canadian Centre on Substance Abuse and the Alberta Alcohol and Drug Abuse Commission to develop recommendations for a national alcohol strategy. The working group released a report in 2007, which made a number of recommendations for reducing alcohol-related harm in Canada. A key principle of the report is that efforts to address alcohol-related harm need to be based on evidence and that they need to be evaluated on an ongoing basis to ensure they are working.

How does the Yukon Liquor Corporation evaluate the effectiveness of its social responsibility initiatives?

**Hon. Mr. Cathers:** First of all, I would remind the member that there is some onus on each and every one of us to accept responsibility for our consumption of alcohol. As well, in working with friends if out at a bar — encouraging them not to get behind the wheel when they have been intoxicated, et cetera. There are a number of programs — the Check 25 program of the Yukon Liquor Corporation is an example; the \$180,000 for the prevent alcohol and risk-related trauma in youth program; the Be a Responsible Server program are just more examples and additions to the ones I detailed earlier to the member of where the Yukon Liquor Corporation invests in social responsibility programs.

I know the member wants to get into the specifics of whether a position has a certain title or not. The member also — I recall in his first opportunity to ask questions of the Premier since being elected as a member — took issue with the teddy bear campaign which this year is celebrating its 21st anniversary. This provides teddy bears to the Yukon liquor stores and to agencies, including Yukon Emergency Medical Services, which are given to sick children and children in times of difficulty. I know the member has issues with

specific elements of the programs, but in fact I think that it's fair to say that the Yukon Liquor Corporation, along with various government departments who did this, are taking significant steps in social responsibility in reducing abuse of alcohol to the best of their ability, but there is also personal responsibility —

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

#### **Question re: Midwifery regulations**

**Ms. Stick:** Mr. Speaker, childbirth is the number one cause of admission to hospitals across Canada. Meanwhile, more and more studies are coming out confirming that women and their babies under the care of a midwife have better health outcomes.

This Yukon Party government has been talking about midwifery in the Yukon since at least 2008, if not before. In 2010, we saw the government go out to public consultation and discussions on midwifery in Yukon, but what we have not seen are the results. Mr. Speaker, can the minister tell this House whether a final report and recommendations came from this consultation and when will it be made public?

**Hon. Mr. Graham:** Yes, Mr. Speaker, a final report did result from the consultation and it will be tabled this session.

**Ms. Stick:** I thank the minister across the way for that answer.

Yesterday the minister across the way was very enthusiastic about collaborative care. He wants to support multidisciplinary teams of professionals working to full scope. Those professionals should include the Canadian Nurses Association and the Canadian Association of Midwives. These two organizations recommend the development of collaborative ways to foster safe and effective maternity care. In plain language, Mr. Speaker, the added option of government-supported midwifery can provide better outcomes for women and children for less money than births in acute care hospitals.

Evidence supports the addition of this option. Better outcomes reduce number of re-admissions, reduce need for postnatal care — all associated with midwifery. Can the minister tell this House when this government will regulate midwifery to enable collaborative care and childbirth options?

**Speaker:** The member's time has elapsed.

**Hon. Mr. Graham:** The simple answer is no, I can't tell her when it will appear on the legislative agenda.

**Ms. Stick:** Mr. Speaker, that's unfortunate. The communities of Dawson and Watson Lake have pleaded for years to be able to give birth to their babies at home or in their home communities and they cannot. The government did not listen. Yukon women and families from across the territory have urged this government to support the midwifery option. PEI, New Brunswick, Newfoundland and Labrador and Yukon are the only jurisdictions in Canada that do not have this legislation and regulations. It's unfortunate.



When is this government going to demonstrate the leadership needed to implement regulated midwifery that produces better outcomes for mothers and for babies?

**Hon. Mr. Graham:** If we responded to every request for legislation from members opposite, we'd be here not only for this session, but we'd be here for the next 20 years trying to get it all in place. If the members opposite had life their way, we would regulate every single piece of peoples' lives in this territory and we simply don't agree with that policy.

What we have attempted to do is bring forward the legislation that we feel is essential to be passed now. The legislation requested by the member opposite is obviously not as important as some we are bringing forward and, when it reaches the top of the queue in terms of our legislative agenda, we will bring it forward.

**Question re: Public Service Commission personnel policy**

**Ms. Hanson:** Mr. Speaker, earlier this year, the Yukon audit bureau released an audit on public service staffing. The report highlighted the fact that non-competitive hires, such as temporary or acting assignments, outnumber competitive ones across the Yukon government.

Competitive staffing processes are designed to ensure that employment is based on merit and that staffing decisions meet the test of fairness and transparency. Can the minister tell this House what percentage of staffing actions in the last two years were done without a competitive process?

**Hon. Mr. Dixon:** I hate to disappoint the member opposite, but I don't have those sorts of statistics at my fingertips. Of course, if she wants the level of detail she has requested, I'll have to get back to her. When it comes to the details that she's requested, those are things I don't have with me at my fingertips.

**Ms. Hanson:** That's unfortunate. That report came out in February of this year. I would have thought that the minister would have read it by now.

Here is another aspect of it. We have all heard stories of employees who have worked full-time as auxiliary on-call staff for years without getting a secure position. This makes it very difficult to plan for the future, whether that means buying a car or a truck, taking on a mortgage, starting a family or making any other investment here in the Yukon.

What is the government doing to ensure that employees working hard each and every day to serve Yukoners are not kept indefinitely in auxiliary on-call positions?

**Hon. Mr. Dixon:** The member opposite correctly references a report. While I don't have the report with me today, we've reviewed the report and department officials assure me that we're taking the recommendations very seriously. We continue to engage through our negotiations with unions as well as the Public Service Commission department to ensure that we provide the best possible service to our employees in the territory and that they have ample opportunity for advancement in the course of their career development.

**Ms. Hanson:** Mr. Speaker, I'll try another aspect of that audit. Temporary assignments are used for a number of good reasons — for example, to meet short-term staffing needs or to provide employees with opportunities for professional development. But temporary assignments can also be abused, which is why guidelines are very important. In 2008, the Yukon government employee engagement survey came back with low ratings on merit- and fairness-related questions. In response, the government developed temporary assignment guidelines. Four years later, in 2012, the auditors found these guidelines were not being followed consistently and were not seen as an obligation by management.

What has the minister done to ensure that guidelines designed to prevent abuse of temporary assignments are followed consistently?

**Hon. Mr. Dixon:** The first thing I should note is, of course, that we appreciated the recognition this year of Yukon government being one of the top employers in the country. We're very excited about that recognition and we appreciate the high opinion that staff has in working for Yukon government.

With regard specifically to the auxiliary on-call employment, the majority of AOCs are covered by the collective agreement, and a letter of understanding with the union provides for joint union management monitoring of the use of AOCs. There has been only one grievance related to the use of AOCs in the last 11 years. It's important to recognize that we have a very excellent place to work here in the Yukon government. We provide ample opportunity for our employees to participate in a very positive work environment, and we engage with the unions to ensure that we have proper services and protection for our staff.

**Speaker:** The time for Question Period has now elapsed.

We will proceed with Orders of the Day.

## ORDERS OF THE DAY

**Speaker:** We are now prepared to receive the Commissioner of Yukon, in his capacity as Lieutenant Governor, to give assent to bills that have passed this House.

*Commissioner Phillips enters the Chamber, announced by the Deputy Sergeant-at-Arms*

## ASSENT TO BILLS

**Commissioner:** Please be seated.

**Speaker:** Mr. Commissioner, the Assembly has, at its present session, passed certain bills to which, in the name and on behalf of the Assembly, I respectfully request your assent.

**Clerk:** *Animal Health Act; Act to Amend the Highways Act and the Dangerous Goods Transportation Act.*

**Commissioner:** I hereby assent to the bills as enumerated by the Clerk.

*Commissioner leaves the Chamber*

**Speaker:** I will now call the House to order.

**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):** I will now call Committee of the Whole to order. The matter before the Committee is Bill No. 61, entitled *Health Information Privacy and Management Act*.

Before we begin, would members like to take a brief recess?

**All Hon. Members:** Agreed.

**Chair:** We will recess for 15 minutes.

*Recess*

### Bill No. 61: *Health Information Privacy and Management Act* — continued

**Chair:** Committee of the Whole will now come to order. The matter before the Committee is Bill No. 61, entitled *Health Information Privacy and Management Act*.

**Hon. Mr. Graham:** On Tuesday, when we last discussed this bill, the opposition raised many of the points that the Information and Privacy Commissioner noted in her public response to Bill No. 61. In my opinion, the Information and Privacy Commissioner did a pretty good job — a careful review of the bill — and we appreciate her comments, that's for sure. We appreciate the comments of the opposition, but as will come as no surprise to anybody, we take exception to some of them because we believe that Bill No. 61 does provide strong mechanisms for the protection of privacy.

There are many important sections in the bill that address this. I know that as we move forward through the detailed discussion of the sections, we can focus on the privacy and security protection afforded in the bill. There are sections addressing fundamental principles regarding personal health information. There are sections addressing required security standards and there are sections that deal with policies and procedures that must be respected whenever a custodian is dealing with information.

I realize we haven't had an opportunity to discuss these sections in detail, but when we do, I think some of the initial more detailed concerns expressed by both the Information and Privacy Commissioner and members opposite should be addressed. I believe that there are things in the bill that will address many of these concerns.

What was not acknowledged during these discussions is that these agreements in section 70, which authorize custodians to enter into an information-sharing agreement — and I know that was a section of some discussion by both the Information and Privacy Commissioner and the opposition.

What wasn't acknowledged is that these agreements can only be made to share information with a person or organization that is already subject to privacy legislation. If information is shared under an agreement, Yukoners' personal health information will be protected by privacy requirements that are at least as strong as the requirements we have here in the Yukon, and sometimes even stronger. This example points out our need to understand the Bill No. 61 in its entirety instead of picking certain sections and asking why this isn't being done in certain sections. When we do pick individual sections and question them in general debate without the benefit of considering all of the privacy protections in the act, it's difficult to put into context the concerns and responses.

Bill No. 61, once we get into more detail, provides a balanced approach to protecting privacy and to providing health care workers appropriate access to the important information they need to do their job.

I'll point this out when we have our line-by-line discussions. Our job in the Legislature is to bring forward a bill that will achieve this balance and provide the flexibility to respond to a rapidly changing world of information technology. I believe that with this bill we have done this. As I pointed out, this bill provides a solid structure while maintaining the flexibility we believe we will need in the future.

It was interesting that during discussions yesterday, in one part of the bill, opposition members said, well, there's no detail, and we said it will be in regulation. Then, in another section of the bill — well, why do you have to put all of this in the bill; it seems like unnecessary detail.

You can't have it both ways. What we're trying to do here is to achieve a balance and provide a solid structure within this bill to allow us to also maintain flexibility that we believe we'll need in the future.

What we know with absolute certainty today is that things are changing extremely rapidly and we need mechanisms to keep pace with the changes without continually amending the legislation.

An example we use is that a couple of years ago you could walk down to the local video store, pick up a DVD to watch on the weekend, and it was sometimes a social event because you would invite people over for the evening. Today, not only the video stores are gone, but we're not even renting DVDs so much. We now download from the Internet or choose movies directly through our cable providers. I know this has proven to be a great concern to the Minister of Environment whose Beta cassette of *Bambi* was his single biggest thing as he was growing up and he's very disappointed that since he lost it, it's no longer available.

It's just an idea of how quickly technology moves in a matter of a very few years.

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

**Hon. Mr. Graham:** No, he had a Beta of *Bambi*. It would have been way better if he were here.

Another example that some of us are still getting used to, I suppose, is our relationship even with our vehicles. It used to be that we could just get into our car and drive around. We

were in complete control of that automobile. Today, between the GPS, the GPS voice that reminds you what to do, the computer voice with On Star and things like that, and the cars ability to drive itself in terms of lane-change maneuverability and all that — it has completely changed our relationship to our vehicles, and to say nothing of the fact that we know now you can actually be tracked through the GPS in your vehicle or through the chip in your telephone.

There are tremendous advances being taken in the field of IT and we want to be prepared to be able to respond to those changes very quickly.

We also know with certainty that court decisions can change the way we interpret and apply the law. In the last two weeks alone, two Supreme Court of Canada decisions have changed the landscape of privacy law in Canada. Our legislation needs to be adaptable, not only to changes in technology, but to decisions of the courts as well.

We also realize that legislation takes time to bring forward. We just talked about that this afternoon with the midwifery legislation. It's on the agenda, but it just hasn't made it to the top of the agenda because it takes time to move these things forward and the process just isn't as responsive as sometimes we need and we would like.

Remember that we are talking about technologies and information management that actually can save lives if they are applied properly and quickly in some cases.

One important area where we have maintained flexibility is with the powers of the Information and Privacy Commissioner. We know that the Information and Privacy Commissioner would like to have greater powers, and we have decided that at this point in time we are not prepared to move in that direction as far as the Information and Privacy Commissioner would like. While we believe that the powers set out in the bill meet Yukoners' needs today, we understand that in the future it may be appropriate to expand the Information and Privacy Commissioner's powers. For this reason, we have maintained flexibility in the bill by allowing the Information and Privacy Commissioner's powers to be expanded through regulation. This is one example of the bill providing flexibility to meet future needs.

Finally, I spoke briefly during general debate about proactive compliance. This seems to be the buzzword among privacy commissioners across Canada. We certainly agree that the best way to encourage people to follow the law is by not prosecuting them. The truth is that we expect Yukoners to comply with this legislation. We expect Yukoners to accept their responsibility — custodians and agents to accept their responsibility — and comply voluntarily. That being said, we believe that the bill contains a number of measures that support proactive compliance. We also expect the first regulation under this act to provide more detail in this area. Perhaps these didn't go as far as the IPC would like, but again, the bill gives us the ability and the flexibility to grow into what is needed in the future.

There are important sections of this bill that need to be reviewed to understand the underlying principles. In particular, sections 15, 16 and 19 are fundamental to the bill

and will help custodians, the public and, we hope, the opposition members, to recognize the protections that this bill provides. If these provisions aren't strong enough, we have also created a strong role for people to make complaints and to take matters to court. The penalties for contravening the act are substantial and that was a recommendation that the IPC made that we accepted. We expanded the penalties for contravention of the act and it has created a very powerful incentive for all people to comply with the legislation.

In my opinion, this is a good, strong, comprehensive piece of legislation. Although it is modelled after many other provinces' statutes, we have included some specific sections unique to the territory. One of the key things we learned from our provincial colleagues is that we need the flexibility to adapt to the rapid changes in the information management world. We believe this legislation achieves this and more and I look forward to putting it all in context as we go through the bill on a clause-by-clause basis.

**Mr. Silver:** I'd like to begin by thanking the staff from the department for their time today. We very much appreciate your very valuable time in answering some of our questions. I think most of the questions would probably be best suited to go through during clause-by-clause discussions, but I do have some specific questions here. I'll roll three together and then I'll ask another one after that.

This bill opens the floor for e-health initiatives in the Yukon. Given e-health mismanagement in other jurisdictions in Canada, has the government costed the implementation of this bill? After the bill has been implemented, does the government know what the ongoing cost will be to manage it? Could the minister speak to any requirements this bill places on physicians' offices specifically?

**Hon. Mr. Graham:** I perhaps didn't quite understand the question or the way it was phrased. When you say, how much will it cost to implement an e-health system in the territory with controls in place — we're in the process of costing it but it's one of the real problems we have. We know roughly how much it will cost to build a system and we've made some estimates of the cost of operating that system well into the future, and it's a scary number.

We don't have an accurate one at this time but we realize that it's going to cost us a great deal of money. The other parts of that of course is that if we allow the IPC to do the proactive management and to make orders and do all of the other things that the commissioner would like to do, that has pretty substantial price tag attached to it as well and we would like to see that money at least at the primary stage put into operating the system.

The other part — right, working also with doctors and doctors' records. Anybody who joins the e-health system — and I can be corrected if I'm wrong here — will be considered a custodian, so the physicians' records will be part of the information covered under the legislation because they will be custodians. But we are working with Canada Health Infoway, as you know probably. In last year's budget, we indicated that we had I think approximately \$6 million still from Canada Health Infoway to develop a system. That was only to develop

the system; there were no operating funds at all. We realize this is going to cost us substantially more than that.

Part of what we'll be doing is working with the e-health system because the e-health system will only provide us with a platform onto which everybody else will join. We will provide that platform and everyone else will join, we hope. We'll be working with doctors, with pharmacists — with everyone who hopes to join the Infoway information system. We realize there's a cost there too, because we can't expect all of these custodians to jump on board and convert their system so they're compatible with our basic system.

We're still working through many of those things and it's probably one of the reasons that the information system is taking so long to develop and implement.

**Mr. Silver:** I appreciate the answer from the minister. Another question as the minister answers my next question — just the ongoing cost of managing the system — full-time equivalents and this type of thing. This is kind of a long-shot question here. We had a debate in the House a couple of sessions ago about enrolment and registration at the schools. Now, the first day of school is a major task for the administrative staff. It was suggested that schools could save an awful lot of money and increase an awful lot of their efficiency if just certain statistics of students would somehow be made available from other departments. It seems to me that with an electronic system, that information may be able to go back and forth from department to department.

Like I say, I have asked this question before in the Assembly and it didn't seem at the time that it would have been a problem, but maybe the minister can explain once again. We are not talking about medical stuff here; we're not talking about anything else other than numbers. Maybe there are some other statistics that can actually be transferred over, if we're moving on to a new management system that sounds like it is going to be a lot more efficient in an electronic network. Maybe the minister can answer if there is any possibility of sharing information department to department.

**Hon. Mr. Graham:** I'm just trying to find the section. It's 63(1) and it deals with school enrolment. It allows the Minister to, "...without the individual's consent, disclose to the Department of Education, for the purpose of school enrolment planning, the contact information of an individual who is the parent or guardian of a child under six years of age." So it only allows that information to be transposed under this. We can discuss it more when we get to it, but at the present time we can't even share that with the Department of Education. We have a working committee right now with the Department of Education working on how we deal with children from kindergarten-age back to, shall we say, three years old or somewhere in that range when we consider it time to take a look at them as potential for kindergarten. So we have a working group in that area. I'll be happy to go through that when we get there.

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

Seeing none, we are going to move on to a clause-by-clause review of Bill No. 61.

*On Clause 1*

**Hon. Mr. Graham:** In my second reading speech, and I think at the beginning of this also, I said I would take a few minutes and try to outline each section in case there is any further information that is needed.

This act states the purpose of the legislation, in addition to many of the definitions. The purpose of the act — as I've said over and over — balances the protection of our privacy and it also supports our health care providers to have the necessary and appropriate access to our personal health information to be able to provide us with the best health care possible. The act establishes a new privacy regime and includes the provision that addresses new technologies, and the act creates both an independent source for challenging compliance and effective penalties when violations of the act occur.

*Clause 1 agreed to*

*On Clause 2*

**Hon. Mr. Graham:** This one is a little bit different. Perhaps this bill is laid out a little bit differently than many are. What we've done is put them into 12 separate parts, and under each part there are a number of clauses.

**Ms. Stick:** I just want to thank the minister and his staff for being here again today and I will have lots of questions. I just want to be clear that some of the questions might seem contradictory when I ask them, but this is important legislation. I want to be able to understand it and I wasn't to be able to explain it to my constituents or people who ask me questions about it.

On the definitions, it talks about any employee of a custodian. When I started to think about this and who works, say, at Whitehorse General hospital, it's a lot of staff, including kitchen staff, cleaning staff and laundry. I'm assuming that they would all come under these definitions, because just seeing someone in a hospital means they have certain knowledge and it is a small community. My questions are: (1) confirmation of that; and (2) how is that confidentiality and the protection of privacy communicated to all employees of custodians, whether it's in a clinic or in a hospital or in a health care facility?

**Hon. Mr. Graham:** On Tuesday, I think I ended debate that day by saying one of the very important parts of this bill and implementation of this bill and the regulations is training. We as a department realize that training is going to be a huge component, but it's also going to require that our custodians and our agents — such as the Hospital Corporation, physicians' clinics and a number of others that are in here, right down to denturists — there is the potential of a huge number of custodians — each one of them will have to develop their own policies and their own programs.

That's what we said when we said this is not going to be easy to implement, which is why we think that it will be 12 to 18 months away before we implement the non e-health portion of this bill — because of the training component — because of the need to develop those. In many cases, some of those policies and procedures will already be in place because you have professional associations, such as the Canadian Medical Association, that have professional standards in place

and they will very easily meet the standards established in this bill. So, in some cases it won't be necessary, but in many cases it is going to be a whole new ball game.

**Ms. Stick:** I'm trying to read the language here — in clause 2(1), the first paragraph under definitions, it says, “‘agent’ of a custodian means a person (other than a person who is prescribed not to be an agent of the custodian)”.

So, there is that piece — and then if you go down to 2(1) (g) you see, “a prescribed person”. I'm just confused by those two pieces there. What is a prescribed person?

**Hon. Mr. Graham:** Under the section, you can prescribe a person to be an agent or you can prescribe them not to be an agent under this section. I don't know how else I can —

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

**Hon. Mr. Graham:** Yes, that's basically it. You can prescribe them as an agent or you can prescribe them not to be an agent; it's just to give that flexibility.

**Ms. Hanson:** Just to be clear, because there is no definition of “prescribed” person so the agent can do as the minister opposite just said — prescribe somebody to be whatever, but there is quite a lot of detail as to employees, appointees, volunteers, students. We're just trying to clarify what a prescribed person is and where the prescribing of that person would occur or how it occurs.

**Hon. Mr. Graham:** I have an answer for that. A prescribed person is a person prescribed under regulation.

**Chair:** Is there any further debate on clause 2?

**Ms. Hanson:** Madam Chair, I would ask for the patience of the Chair. There are 139 clauses. The definition section goes on for at least 10 pages, so to suggest that we're going to get through clause 2, which is 10 pages, in a nanosecond — I'm just asking for the patience of the Chair to allow us to be able to actually review the notes that we may have made in the margins of this legislation.

We cannot do this rapidly. This is not like other pieces of legislation that have come through this Legislative Assembly this fall.

### Chair's statement

**Chair:** The Chair would ask members, if they wish to be recognized to speak, that they stand; otherwise the Chair has no indication that anybody wants to stand to speak, and so should or should not move on. That's my request.

**Ms. Stick:** Moving to page 4, under Definitions, there is “‘health care provider’ means ...” and one of the questions I have in this section is, would this include naturopaths who are recognized in our community and through some of our private health insurers and who have their own profession? Would they be included or should they be included on this list of health care providers?

**Hon. Mr. Graham:** Under the act itself they are not included; however, there are regulations that allow us to include them at a later date. The department has had discussions with naturopaths. They have indicated that, in general, they would like to become part of this legislation, so

we'll continue those discussions and, once that decision is made, we can add them by regulation.

It's really important that we discuss — there are some that are a given, but there are others that are what we would call, I guess, on the line as to whether or not they're health care providers in the traditional sense of the word.

As the department carries out these discussions with various non-traditional healers, we can bring them in by regulation.

**Ms. Stick:** I would see that some of these practitioners, though they may not be considered traditional, in fact might be very traditional if we are looking at things such as acupuncture or naturopaths. I'm concerned about this, because in this day and age more often than not, a person doesn't see a naturopath separate from their doctor without communicating that or without communicating information back and forth between a naturopath and the family physician. I personally would do that, and I talked to my physician about that and I talked to my naturopath. I want them to be able to share information if that was necessary, such as blood work or something else.

I would rather see something included in the beginning where we already know that these collaborations are going on, and there are many in the community. We are becoming more collaborative and less — you know, where you only can see your traditional family physician and not other health care providers who might complement what is already being received. So again, the naturopath, the acupuncturist — another one I thought of was dieticians — these are all health care providers that your physician would refer you to. I assume there must be communication between the two, back and forth.

**Hon. Mr. Graham:** I think it's interesting — you now understand the conundrum we find ourselves in many times because each time you expand the envelope to include more custodians and more agents in the total information system, the more opportunity there is for misuse, accidents and all of these other things to happen. In this legislation, there are provisions to allow custodians of medical information to share that information with non-custodians. There are fences built around that but there are opportunities where custodians can share information with non-custodians. Like I said, through regulation, we can include non-traditional health providers in the fold as it were by regulation.

**Ms. Stick:** I would just ask if the member across or his staff could point out when we get to it in the act where that allows the custodian and non-custodians to share that information. I would appreciate that.

**Hon. Mr. Graham:** Maybe I'll get the member opposite to make a note that so when we get to section 57 we will be able to talk about those kinds of issues, because that's where the disclosure sections start.

**Ms. Stick:** Moving on to the next page, it's just about the same question my colleague asked about prescribed person — this one is the prescribed facility. I know you've explained it once; I'm going to ask for an explanation again of a prescribed facility or what is prescribed.

**Hon. Mr. Graham:** Whenever we talk about prescribed, it means something described in regulation. That's all that prescribed means: described in regulation.

**Ms. Stick:** I just want for the record for the minister to confirm for us that these regulations, before they go into effect, will go out for public consultation so everyone can have a look at what these are going to be and what they will mean to individuals.

**Hon. Mr. Graham:** We've already committed to that and we fully intend to honor that commitment. It is again, as I've said, one of the reasons that we expect it will take 12-18 months to fully develop the regulations and bring the act into force.

**Ms. Hanson:** I'm not a lawyer so I'm curious — I hope it's a simple word, but plain language would be great. In definition of payment — (d), subrogation. What does subrogation mean in plain language?

**Hon. Mr. Graham:** It's in a case where a person receives a health care treatment and sues as a result of something that has occurred —

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

**Hon. Mr. Graham:** Oh, right, I know now; we went through this once before.

If you are in an automobile accident, say, and as a result of that accident you have to have medical services provided by the hospital or whomever, it allows the hospital — the government — to sue the insurer to collect for the cost of the injury or the medical services.

**Ms. Stick:** I'm going to move on to page 9. It is under definition of "spouse". It doesn't say it, but it's the common law so, "with whom the particular individual has cohabited as a couple for the immediately preceding period of 12 months, unless either of them was under the age of 19..."

My question is — to me this doesn't seem consistent with other regulations we have about when people are considered to be a spouse or common law. I'm thinking to social assistance regulations, where it's a shorter period of time — I think three months. I stand to be corrected on that.

Is there a reason why we wouldn't be consistent across legislation as to what is common law or what a spouse would be considered?

**Hon. Mr. Graham:** This definition is exactly the same as the definition under the *Care Consent Act*. That's why it was used in this piece of legislation — so it would be consistent with that piece of legislation. As for other acts, when we're talking about social assistance or something, we can be a little easier in the definition, but we're talking about, in many cases, where a spouse has certain rights under this act of disclosure and collection. Especially with decisions about medical treatment as well, we're trying to keep them the same, because decisions under the *Care Consent Act* that deal with medical treatments are very similar to what personal information can be disclosed under this act, so we're trying to keep those two acts very close.

**Ms. Stick:** Thanks for that explanation. But I can see where confusion would come if an individual has only been cohabiting for four months, is considered under social

assistance to be common law and then, for some reason, requiring consent or consent in care for their partner's health — all of a sudden they're not.

My question then would be: so who would?

If I think I have a spouse and they're going to be the one to help with consent and decision-making, but they've only been with me for six months and not 12, according to this — how do we mitigate that kind of confusion or those kinds of circumstances?

**Hon. Mr. Graham:** That's part of what the very next section deals with. After "spouse" is "substitute decision-maker", and that refers to an individual authorized to give consent on behalf of another person, so that's what you would have to look at if the spousal definition didn't fit — it would be the substitute decision-maker.

**Ms. Hanson:** On page 10 — just for confirmation and clarification — the definition of "Yukon First Nation" having the same meaning as in *An Act Approving Yukon Land Claim Final Agreements* — that's a territorial piece of legislation that is sort of general. I just want to confirm that that definition is inclusive of those First Nations that have settled First Nation final agreements and those First Nations that are still *Indian Act* bands. I know the federal legislation says that, but I don't see in that very brief enabling legislation the specificity that I was seeking.

**Hon. Mr. Graham:** As we understand it, yes, it includes both groups of people. It has been verified.

*Clause 2 agreed to*

*On Clause 3*

**Ms. Stick:** I was going to ask the minister whether — we talked about him going through and explaining things — if he had anything he wanted to refer to under "deemed custodians".

**Hon. Mr. Graham:** I guess, Mr. Deputy Chair, this gets back to the previous one where we talked about a spouse. To us, it doesn't make sense if you have the ability as a spouse to make decisions about a person's medical care under the *Care Consent Act*, but under the health information act, you don't have the ability to access the information that would allow you to make a reasonable decision. I guess I had to get that out first and dealt with in section 2, spouse of a particular individual.

Under this one, this is intended to make sure that someone is always responsible for a custodian's records containing personal health information. So, in other words, if you have a medical practice and you walk away from that medical practice, there is always somebody who is responsible for the personal health information contained in those medical records.

*Clause 3 agreed to*

*On Clause 4*

*Clause 4 agreed to*

*On Clause 5*

**Ms. Stick:** I'm going to read this one out loud. Section 5: "A person who would, but for this section, be a custodian and who is an agent of another custodian is deemed not to be a custodian while acting as the agent of the other custodian."

It's crystal clear but I just want to make sure that the minister understands it.

**Hon. Mr. Graham:** We have a number of medical practitioners who work part-time in the hospital, shall we say, like a physiotherapist. I have a niece who works at Physio Plus and she can also do contract work in the hospital. While the physio works at the hospital, they are an agent of the hospital. When they work in private practice, the physio is the custodian of the records for the people of whom she provides that service to. So that's where they can be an agent and a custodian at the same time.

*Clause 5 agreed to*

*On Clause 6*

*Clause 6 agreed to*

*On Clause 7*

**Hon. Mr. Graham:** This is getting into part 2 and I just wanted to provide a little information about it. Part 2 clarifies when and how the act applies. It identifies who is covered by the act — like who is a custodian — and how this act relates to other laws like ATIPP. Basically the act applies to all personal health information in the custody of Health and Social Services regardless of the purpose for the collection, use or disclosure of that information — personal health information held by other custodians — but only if the information was collected, used or disclosed to provide health care, plan and manage the health system or for research purposes.

So that is what the act applies to. This part makes it clear that when a record contains both personal information and personal health information, all of the information in that record is considered personal health information for the purposes of this act. This is called the “mixed record rule” and is intended to make it easier for custodians to apply the act from day to day. This part makes it clear that the act doesn't change court powers or proceedings, solicitor/client confidentiality, responsibilities of health care professionals, and disciplining organizations such as the Yukon Registered Nurses Association or the Yukon Medical Council.

This part also makes it clear that, as a general principle, this act prevails over other legislation. There are exceptions, such as records that contain Cabinet confidential information, in which case ATIPP applies to the record. Other exceptions are set out at the very end of the act, such as adoption records under the *Child and Family Services Act* or the *Evidence Act* and other exceptions can be made by regulation.

**Ms. Stick:** Mr. Deputy Chair, I just want to go back to the last comment the minister made with regard to ATIPP, which I see in here, but he also referred to Family and Children's Services and some other ones. I'm just wondering where those are named in this section.

**Hon. Mr. Graham:** They are at the very end of the bill — parts 11 and 12, “Amendments to Other Acts” and “Application and Transitional.”

**Ms. Stick:** One of the questions I'm seeking clarity on is under section seven (2): “This Act does not apply (a) at any time, to the personal health information of an individual who,

at that time, has been dead for 50 years or longer” — I'm just looking for clarification on what that means.

**Hon. Mr. Graham:** It's just a general number used in other jurisdictions as well, I understand.

It just means that your health information is protected after your death but only for a period of 50 years. I have no idea why 50 years was picked, but 50 years it is in this legislation and, I understand, in other HIPMA legislation across the country. It's a pretty standard number.

*Clause 7 agreed to*

*On Clause 8*

*Clause 8 agreed to*

*On Clause 9*

*Clause 9 agreed to*

*On Clause 10*

*Clause 10 agreed to*

*On Clause 11*

*Clause 11 agreed to*

*On Clause 12*

**Ms. Stick:** I'm just wondering if I could get an explanation for clause 12(1).

**Hon. Mr. Graham:** As a general rule, this act and not ATIPP applies to personal health information in the custody or control of a custodian that is a public body, such as the Department of Health and Social Services. The exception to the rule is set out in 12(2). So in 12(1), it gives us the ability to make an exception. In clause 12(2), it indicates at that time that ATIPP applies and not HIPMA, where the information is protected from disclosure under ATIPP.

This includes: ministerial briefing notes; a Cabinet confidential record; draft legislation or regulation where its disclosure would be harmful to the financial or economic interests of a public body, harmful to law enforcement or could be harmful to inter-governmental relations or negotiations or is legal advice given to a public body. What it basically says is that the rules in ATIPP continue to apply to confidential ministerial and Cabinet documents, and it will result in consistent application of the principle associated with Cabinet confidentiality.

*Clause 12 agreed to*

*On Clause 13*

**Hon. Mr. Graham:** This now moves us into the core parts of the legislation. The first division is the part that is foundational to the entire act. When I gave my second reading speech, I said this one is the one that sets the limits on what can be collected, used and disclosed. As we get deeper into the part, we'll start to see some of the privacy and security requirements that custodians have an obligation to meet.

This part also introduces or identifies the right of individuals to have access to their personal health information and, finally, it introduces a process for responding to security breaches. This is a fairly new approach for legislation across Canada, and I'm pleased to say that our legislation will provide Yukoners with a very responsive approach to notifying people when security breaches occur.

Specifically, division 1 within part 3 contains by far the most important sections of this act. I guess it's one of those

things that if I could have this repeated on every single page of the act in some form or another, I would.

I referred in my second reading of the bill to the Canadian Standards Association privacy code, which gives 10 principles. This division directly addresses two of those 10 principles: limiting collection and limiting use disclosure and retention. The two key principles that echo throughout the act that we need to keep in mind when we are reading every other section are: identifying information is information that identifies someone and that can only be used if non-identifying information will not serve the purpose. An example is that while identifying information is necessary to treat a patient's diabetes, it is not generally needed to determine the incidence of diabetes in the territory. The second is: need to know — to collect, use or disclose only the least possible amount of information required for the purpose, only what you absolutely need to know. An example is that if my physiotherapist is treating a broken leg or a healed leg, she likely doesn't need to know my drug allergies.

As we move through the rest of this act, it must be read keeping this division or this part in mind.

**Ms. Hanson:** I understand and appreciate the concept of the need to know and how that works in the context of section 10 that says: "If a record contains both personal health information of an individual and personal information of the same individual, the personal information is deemed to be personal health information of the individual."

On one hand we don't need to know all this stuff, but we do know that, in part, it becomes personal health information because it's deemed to be such. How does that jive with the concept of not having that and of needing to know that personal information? Is it a matter of "needing to know" versus "using"? I'm just unclear as to how that works.

**Hon. Mr. Graham:** In going through this, it's our understanding that in many cases, if not most, the standards under HIPMA are slightly higher than they are under ATIPP. If information is collected under this act and they're protected under the act, we think it's a higher standard.

An example of the information we're talking about is if your medical chart is in your doctor's office and, as a result of the fact that you have insurance with your employer, your employer's information is also part of your medical chart, it becomes protected under this act. The fact that you work for a specific employer would also be protected under this act and it could not be used, disclosed or — it is collected, obviously. But it cannot be used or disclosed without your express consent.

*Clause 13 agreed to*

*On Clause 14*

*Clause 14 agreed to*

*On Clause 15*

*Clause 15 agreed to*

*On Clause 16*

*Clause 16 agreed to*

*On Clause 17*

*Clause 17 agreed to*

*On Clause 18*

**Hon. Mr. Graham:** This is division 2. This is the Yukon Public Health Insurance Plan Number and YHCIP Card.

This section highlights the importance of our health insurance card and provides the necessary protection of the card and card number to avoid identity theft or fraud within the public health system. We sometimes forget how valuable our health card information is. Our health card is like a key to a safe. In the wrong hands it can cost the public system a lot of money, not to mention — if it's used for identity theft — the grief that that can be caused to a person. This act recognizes how important our health care card and number is, and makes sure that they are used only for health care or other authorized purposes. This division tightly limits when the card number can be used or when somebody can be asked to show their health card. We expect to allow for other necessary government-related uses of the health card by setting them out in future regulations.

**Ms. Hanson:** In appreciating the importance of the Yukon health care card, I'm wondering if the minister can tell us when we might anticipate seeing a card that doesn't look like an archaeological dig. Mine must be about two inches thick. It seems to me that it's similar to our previous drivers' licences, which were quite easy to replicate and caused issues. Given the importance of this card and not wanting to have this kind of information easily transferred to others — because I can simply peel off my card, layer after layer, and transfer it — is there an intention in terms of implementing some aspect of this legislation to actually ensure that our health care cards are brought into this century?

**Hon. Mr. Graham:** There is no requirement under this act to change it. As I said, this act and the accompanying regulations will take us 12 to 18 months. During that 12- to 18-month period, we are going to be looking at changes to the health care card because, much like yours, mine is very thick — in fact, thicker than probably anyone's in here. It reminds me of the driver's licence. The last time I used the old driver's licence and they saw a three-digit number on my driver's licence, the question to me was, "how old are you, anyway?"

**Ms. Stick:** Just to clarify, I agree this is a really important section about who can collect this. I'm aware, having worked in Health and Social Services previously, that it's not uncommon to collect a person's health care number. Will we be going back through other regulations, such as social assistance or those programs, to ensure that those numbers are no longer being collected? Can the minister assure us that these numbers that are now being collected — there are other programs that do collect the Yukon health care number — will no longer be collected when this legislation comes into effect?

**Hon. Mr. Graham:** This act does limit how the health care insurance card and number can be used, and it's only to be used for the purpose of publicly funded health care. That will include services related to the Yukon health information network, research or legal proceedings.

Having said that — and because we are an integrated department — if it's being used for the purpose of publicly



funded health care, it will be collected. I can see under something like social assistance that it wouldn't be collected because social assistance is not a publicly funded health care. There may be exceptions in there but it shouldn't be used for anything other than publicly funded health care — research or legal.

**Ms. Stick:** I agree. It shouldn't be used for other things and there are no exceptions noted in this section. Again to clarify, where it is collected, it now will cease to be?

**Hon. Mr. Graham:** Under the current regime, many government programs use the health card as proof of Yukon registry. The act will allow for regulations to authorize other purposes of the card to be presented, but we as a department are going to have to look very carefully at what we are using the card for, because we're going to have to make sure that we comply with the regulations so they won't be collected in any instance that would be prohibited under the regulations.

It's difficult because we require proof of residency for everything from hunting licences to campground permits and all of those other things, and the health care card has always been one of those things that you could slap on the table. Under these regulations, we'll have to look at all of that.

**Ms. Stick:** I would agree. I think we do have to look at those things. It's the way that social insurance numbers were at one time. We used to use it to cash cheques and we would use it in the grocery store. It was just common. Everybody did it and we didn't think twice about handing over our social insurance number — except for my colleague here, who never did it apparently. I did. But I think there needs to be a real commitment to that.

The other piece I was thinking of is some of the information systems that we use that require certain fields to be filled. It seemed to me that that was always one field that you had to have; otherwise you could not proceed, so there are those implications also in terms of the cost of looking at that and changing those bits. Other than that, I have no more to say on that one.

*Clause 18 agreed to*

*On Clause 19*

**Hon. Mr. Graham:** In part 1 of the act we reviewed the purposes of the legislation. This division specifically responds to the first purpose, to establish strong and effective mechanisms to protect personal health information. This division also ties in a number of the other Canadian Standards Association's privacy principles — namely, safeguards, accountability and openness.

One of the main reasons we brought this legislation forward is to make sure that personal health information is protected and is secure and that's what we believe this division does. It creates the obligation for custodians to keep personal health information protected and secure by meeting certain standards and requirements. This section requires custodians to have privacy and security policies in place to keep personal health information safe and to do such things as to make sure the need-to-know rules apply to anyone who has access to the custodian's records and to make sure that records

of personal health information are disposed of in a way that protects privacy.

What we mean by this is no more throwing patients' charts into dumpsters, no more pages of patient information blowing around the streets as has happened in other provinces and, finally, making sure that there is a process for making and answering any patient complaints about privacy. This section recognizes that more informed patients and health care providers make better decisions. To achieve this, this division includes obligations such as: every custodian will have to make a statement about their information practices available to the public, including letting patients know how to access their records or request corrections. Finally, every custodian will have to keep track of when personal health information is disclosed and make sure that information is available to the patient.

Many of these practices are already established business practices in our Yukon health care sector, but the purpose of this division is to make sure that all health care providers meet the standard. Yukoners can expect this level of openness and accountability in all their interactions with the Yukon health care system.

**Ms. Hanson:** I want to just confirm with the minister my understanding of this section and apply it to a scenario. It's a scenario I can actually describe from personal experience.

In terms of the information that the custodians — and we had a long conversation yesterday afternoon about collaborative health care and the importance of a team-based approach.

One of the things I've become more aware of over the last three or four years is the concept that the fearless caregiver — which means that if you are working or living with a family member or somebody who has a chronic condition — the caregiver, the spouse, the partner or the parent needs to become fearless with respect to ensuring that there is coordination and collaboration that we talk about — that the words, including "collaboration", are words that don't happen unless there is some stimulus for that. One of the things that's a challenge for the individuals who are parts of or are dealing with a multitude, a hydra head, of service providers and deliverers in our health care and health care related services is coordination.

The minister talked about ensuring that the records of an individual are kept and that there is no undue disclosure. Does this section in here speak to the importance or the ability of ensuring that the subject — that has the custodian of some various services, gathering information and care plans and all that kind of stuff, or doing an element of an individual's care plan — most people with chronic diseases interact with anywhere from two to a dozen health care and health-care-related custodians — I call them "custodians" as I understand it under this legislation — to ensure that they are automatically provided copies of all information with respect to them. Does this provide for proactive disclosure to their contact person and to the individual?

**Hon. Mr. Graham:** I guess part of what you asked is under the recording requirement. If a custodian discloses any of an individual's personal health information, they must keep a record of that. We'll get into the disclosures part, which will deal with collaborative care — section 57. That was the one I asked you to make a note of earlier, because that's where we get into disclosures. Under this one, the recording requirement is quite simple. If a custodian discloses personal health information, they must keep a record of that — who they disclosed it to, the name, the date and the purpose — so that would encompass collaborative care.

If they had a collaborative care meeting, then there wouldn't be any automatic disclosure of that, obviously, but a patient would be aware that they were having collaborative care — a number of different health care professionals — meeting and their information would be shared. That information would be available to the patient or to the person acting on their behalf — substitute decision-maker. That information would be available to the patient or the substitute decision-maker at a later date if they so decided.

**Ms. Hanson:** I just want to push this a bit further because collaborative care is a future orientation and we're going to be awhile before we get there; we heard that yesterday.

When we're talking about the current situation, does this provision here — you see the OT, you see the physiotherapist, you see the neurologist, you see the whatever — require them to ensure that patients are provided copies of their personal medical information? Because until and unless there is a collaborative care clinic established — and this is why I used the reference early to the fearless caregiver — it's generally a parent, a spouse, somebody, and not the individual who is having to navigate the system.

In lieu of a systemic collaborative-care model, family members take on these responsibilities. What I'm looking for are assurances that this legislation is not going to make it more difficult for family members, caregivers, spouses and parents to access and demand that they have copies of all the pertinent information so they can serve the purposes of ensuring there's collaboration amongst those caregivers, because there aren't now. That's the experience of many people with chronic conditions, not just in this territory, but across this country. I'm really looking for that kind of assurance. Is this enabling, not prohibiting? Many of us have had that experience — "I can't give you that." What do you mean you can't give it? It's mine. It's my information.

**Hon. Mr. Graham:** I guess right now we're talking about the requirements to record information release and about information practices just generally.

We'll get into the rights of the patients or their alternate care provider to access the information in the next section, but in this section it's very clear that a custodian has the responsibility to record any instances where they provide that personal health information to another care provider or to another custodian for any purpose. This part will mean that all the members of a collaborative care group or a team will have to record that they're exchanging that information and then

the disclosure of that to the patient or the alternate caregiver comes in the next division.

I think there's one thing you're missing — where you say that we don't have collaborative care here in the territory right now — we do. There are a number of instances where collaborative care is an ongoing thing. We have the referred care clinic where we have a physician and a number of other health care professionals who provide service to a population of residents here in the city on a collaborative basis and on a daily basis. We do have collaborative care working in the territory. We have a nurse practitioner, as you are aware, and collaborative care happens in our continuing care facilities on a daily basis. There are many people there with chronic diseases who are visited by their doctors and part of the team at the care institution provide their services on a day-to-day basis. We do have instances of collaborative care now.

**Ms. Stick:** Going back to the point my colleague was making — and I also have personal experience with this — is that when a person begins to see a number of specialists and care providers, the communication between those is often not clear and sometimes not good and sometimes, frankly, it doesn't exist. It becomes the job of the caregiver to carry the file. You go with the individual to see this specialist. You see them and they write up notes; you ask for copies, you put it in the file and you take it away with you. You see the next specialist and they do blood work or these tests or whatever and you get copies of that because you know that information will not necessarily be transferred to the next person that you're going to see. So you end up carrying a file. It's either your personal file or, as a caregiver, it's the person you're trying to advocate for.

This talks about that they're going to disclose or they're going to have to record when they disclose information, but there should be no barriers to an individual getting any of that information and sharing it with other health care professionals who they might have to coordinate with, whether it's their own health or someone they're being the caregiver for.

I think that's where we were looking for that clarification. It's not whether the custodian is recording it, but it's the individual's access to that information and the ability to take it with them every time.

**Hon. Mr. Graham:** Perhaps we got off on the wrong foot when we started talking about this section, because this section is mostly to ensure that adequate steps are taken to make sure that personal health information is not disclosed, stolen or disposed of — those kinds of things — correct me if I'm wrong, don't hesitate — and access to records, which is what we are talking about now.

The patient's right or the alternate caregiver's right to access those records is in the next section. I know exactly what you are talking about because, as you know, I spent two weeks this summer with my mother touring Whitehorse General Hospital and St. Paul's Hospital in Vancouver. One of the things I tell anybody now who goes out as an alternate caregiver, is to make sure you have it in writing because it becomes extremely important when the person for whom you are caring is incapable — for whatever reason — of providing

advice and you step into the breach. If you don't have something in writing, you don't get the information. So it's vitally important. Anyway, that will come up in the next section as well.

*Clause 19 agreed to*

*On Clause 20*

*Clause 20 agreed to*

*On Clause 21*

*Clause 21 agreed to*

*On Clause 22*

**Ms. Stick:** I'm looking at 22(2): "Subsection (1) does not apply to the disclosure of a record that contains only registration information or provider registry information." I just wanted clarification of what this is referring to.

**Hon. Mr. Graham:** It generally includes registration information such as name, address — those kinds of things — telephone number and includes their health care provider, the provider name, but it doesn't include any health care information whatsoever.

*Clause 22 agreed to*

*On Clause 23*

*Clause 23 agreed to*

*On Clause 24*

**Hon. Mr. Graham:** As this is now division 4, these are the access requests and the individual's right to access. This is another of the Canadian Standards Association principles and it refers to the right to know that information exists about you and that you can access it and challenge the accuracy of it. Reliable, accurate information is a keystone not only to providing good health care but also to obtaining good health care. Health care providers aren't the only people who need good information to make decisions; health care consumers also do.

Except in the most limited of circumstances, we need to ensure that people have a right to obtain their health care records and to ask that information be corrected, if it is believed to be in error. This division sets out a process so that a person can access their health care records and ask for correction when they believe it is warranted. There are some limited situations, such as where a patient could be harmed if access were given to a particular record and where a custodian may or must refuse access. The division also sets out a process for responding to both access and correction requests and will allow a custodian to charge a fee for access that will be set out in regulation.

This division also establishes that a person can bring complaints about access or correction to the Yukon Information and Privacy Commissioner.

**Ms. Stick:** Just to clarify, in (2) it says a custodian may charge a fee not exceeding the prescribed fee — which I assume would be in the regulations — for access to personal health information contained in a record in the custody or control of the custodian. Then you go down to (3)(b), and it says "despite subsection (2), the custodian must not charge a fee for providing such a copy."

There's a fee for access but not a fee for a copy of that. I'm just wondering why.

**Hon. Mr. Graham:** In the first one, we're talking about personal health information and in number (3), I believe, it deals with records that are kept electronically and all you're accessing is a list of people who have looked at your personal health information. That would be a log on a computer, and for that, the custodian may not charge a fee for providing such a copy.

**Ms. Hanson:** This really does relate very much to the conversation we were just having. Now we're saying to a family member — a spouse or a parent — that if you are going to perform the job that's not being done by the current health care system, you have to pay for a copy of information that will help you assist the health care system provide a coordinated approach to the care of your spouse, child or parent. I guess what I'm asking is, are we talking about a new user fee? This is another onerous kind of thing.

If you are dealing with a multitude of health professionals and related services, and each time you see one of those specialists you have to pay for the information that is put on that chart about that individual, is that not a user fee? I'm hoping that the minister will explain that that's not the intent and that we will not be seeing individuals or their families having to pay additional costs when they are already struggling to figure out how they are going to coordinate the juggling when you are dealing with chronic conditions in particular.

**Hon. Mr. Graham:** At the present time, there is nothing forbidding anyone from charging a fee for access to your health records. In some cases right now, it is happening with no regulation whatsoever. There is no maximum set; there is no per-page charge; there is nothing. What we are hoping to do with this is to say that these are the maximums.

You may charge that fee because we understand that any medical practitioner has overhead costs as well. Those overhead costs — if you go in and ask for 50 pages to be copied and they have to be accessed, then we understand that there is a possibility that there may be a charge to that. What this will do is set out a maximum for that fee. We hope that there won't be any fee, but the one thing that we will not allow a charge to be made for is the record of who has accessed the electronic record and who has access to your file.

**Ms. Stick:** I can see that this could be a concern for an individual with a chronic condition who does not have a family physician and who has to access emergency for prescriptions, for treatment or a checkup or blood work or those types of things. They might have to go in on a regular basis — on a monthly basis — say, to have blood work done for whatever condition. Because they don't know who they're going to see next time or if they're going to be somewhere else, they're going to want to have a record — who they saw, what the result of that and any tests were.

So if an individual is without a family doctor, it's going to be their responsibility to take care of their own record because we know now that when individuals with chronic conditions without doctors go to emergency, it's a gamble who you're going to see. Most times, you're going to have to repeat yourself: this is who I am; these are my conditions; this

is why I'm here; these are my prescriptions; here is my file; and this is what has happened so far because I don't have a doctor. But if they're going to have to be charged a fee every time — another case of an individual I know needed — it wasn't an X-ray, but let's say it was a CAT scan — a copy because they did not have a personal physician. They needed to see a specialist Outside. They made the arrangements, but were told it was going to cost them \$25. First they were told they couldn't access it, but then they were told it was \$25 just to receive a CD of their own personal health care information to take with them. But without access to a family doctor to do that for them, they were always paying.

So I think we have to be careful with this section and think about those exceptions to the rule too. As the minister knows, there are well over 1,000 people who do not have a family physician and many of those might not need access to their records at this time because they're healthy. But there are a whole bunch of people who are using emergency as their health care provider because they have no other option and they shouldn't have to be looking at the possibility of paying every time they go in to get blood work or a standard checkup or prescriptions done.

**Hon. Mr. Graham:** Currently, ATIPP does set fees that may be charged — yes, we're talking about ATIPP — if you want to get records from Health and Social Services or from the hospital. Under that, there are fees that may be charged and there's no regulation on any of the other health care providers. The ability is there for health care providers to charge at the present time.

We will be doing this consultation on fees when we develop the regulations, but currently ATIPP does set fees if you want to access your records from Health and Social Services or from the hospital, so currently it is being done. There is no doubt about that. There is no set fee; there is no maximum set about what a health provider can charge you if you ask for personal health records. In some cases, you have to take a look from the doctor's side, too.

If somebody comes in and wants a huge number of pages copied or provided to them, then it will take time and expense to do that. It'll be interesting to see during the development of regulations what kind of response we get both from health providers and from patients, because what we're trying to do is just set a maximum. We're not saying health providers should charge, but if they do charge, we believe there should be at least a maximum because currently there is no regulation of that whatsoever. We're making a policy decision here that because there's nothing in place now, what we're going to do is set a maximum.

**Ms. Hanson:** So the question for the minister, I guess — to respond to his statement that we're making a policy decision here — would it not make sense then, in the context of a public health care system that is endeavouring to ensure that all people who are accessing the public — public, paid for us. Physicians are businesses; we pay them. It is a health insurance plan — a publicly funded health insurance plan that pays for that? I don't expect that when my insurance

gives me details about my information that they would charge me more.

The policy decision should be made. The courageous statement is to say, no, you don't charge patients for a service you provide.

Given the fact that we don't have the perfect health care system yet — we don't have health care providers for all of the people who need access to them; we don't have continuity of care for all of the people who need continuity of care in terms of accessing physicians — in particular, we don't have that for people with chronic conditions. The policy issue is that we keep it a public health care system. In order to facilitate patients having an active role in that care system, you don't put another barrier to them playing that. In particular, you don't put a barrier to those who have a difficulty in financing or paying for — even the suggestion that there is a fee. By the language of this, we are saying we condone the idea of another use fee in the health care system. I don't believe that that is what we intend to do in our public health care system. Putting it in there, enabling it, creates yet another incremental notion of taking the publicly funded aspect out. We are going to be asked to pay for it still, but we're narrowing the scope of the services that we're getting.

It just boggles my mind, given the experience that we've gone through over the last few years with respect to the number of people I deal with on a daily basis who are struggling in terms of continuity of care — from physician, to physician, to physician — to not have access or to suggest to them, when they try to do the responsible thing — which is to manage their own interactions with the health care system — that in managing that — that means having access to the information that somebody has made a decision — Dr. X, Dr. Y, Dr. Z. Some people have gone through many physicians. If they don't have access to that information — and there is no guarantee that those records are transferred — how is this going to enable them to do the responsible thing in taking a positive role in terms of managing their own health?

I would really recommend that the minister, in the course of the conversations — we've got another 115 clauses to go through. This is very troublesome and it does open serious, serious concerns with respect to that notion that particularly those people who are least capable of financially paying — we're not talking about expanding the Yukon health care coverage to pay for these things. I'm not suggesting that at all. I am saying that we are paying currently for businesses to provide health care. I would expect that it's a business cost to the government departments to make sure that their clients and patients are well-informed about what is being said about them in terms of diagnostics and prescription and determination of treatment plans, and that patient has access to that information so they can then work to make sure that others are informed of it.

As my colleague from Riverdale South said — and the minister knows this — that's not necessarily how it works. We'd like to get there, but we're not there. The minister said the other day when he was introducing this legislation that we'll be coming back to review this legislation. I'd like to

suggest that this be put on a future pile, just as there have been recommendations that we will deal with some of the issues raised by the Information and Privacy Commissioner at a future date when the legislation is up for review in three or four years. Or perhaps the notion of potential fees to access your information should be put on that future pile as well, once we have a well-established collaborative health system in this territory.

We do have isolated incidents. Yes, I love the idea of the referred-care clinic and I love the idea that there's a nurse practitioner at the Thomson Centre — but that's not for the preponderance of Yukon citizens; that's the minority.

I would suggest that the minister give consideration to deferring the notion of charging of any fees for individuals to access their own personal information and defer the notion that anybody may charge that individual for accessing their own personal information.

**Hon. Mr. Graham:** I guess the first thing that I would say is that if we remove any reference to fees from this legislation, we will leave the system essentially where it is now — the fees may be charged by health providers and there's no maximum on any of them — or we leave it under ATIPP where the fees are already set to get records. There is no doubt that if we leave the status quo, there is a fee to get records from Health and Social Services and from the hospital, and there is no regulation of those fees. What we're doing is actually saying we're restricting it. The member opposite has fixated on this doctor thing and that these doctors are paid. But doctors are not the only custodians we are talking about. We're talking about dentists, denturists, physiotherapists and pharmacists. We're talking about a huge number of private businesses, all of whom have staff that they have to pay.

If somebody comes in on a daily, weekly or monthly basis and insists on having all of their medical files copied for whatever reason so that they can trot away with those medical records, that could impose a substantial burden on that medical practitioner, especially if they're a very small operation. We have said that we are going to make the ability to charge fees. We're going to allow that to remain. As it is now, we're going to allow it, but we're going to set a cap on that fee. We have said also that this will be part of the regulations, and perhaps at that time, we can set a different fee schedule for different medical custodians. But we can't promise that at this time. We're committed to saying we're leaving this in because it reflects a restriction of what is currently in place. So we're actually restricting what is currently being done, and we think that as we consult with medical practitioners across the territory, we'll get a better feel for what is appropriate.

**Ms. Hanson:** I think that in developing legislation that's forward-thinking — the minister has said the sound principle that we're looking for here — you don't normally focus on the extreme or vexatious situations. What you're trying to do is address the normal practice, the normal circumstances of individuals. You have other legislation

coming before here about vexatious litigants and stuff. You can isolate those people who would abuse the system.

The principle here is that we're talking about not charging citizens — patients — for access to their information. The simplest way would be a custodian may not charge a fee for access and then if you want to come back — the minister has said that we may need to come back for review in a few years — and if in practice the experience of custodians is that there are a plethora of many, many demands for multiple copies, as opposed to the normal practice, which is where an individual goes in on a one-on-one basis and sees that professional, and simply asks: "May I have a photocopy of your notes?" That's what I'm looking for. I'm not looking for 15 years of history. I'm looking for something that will help guide the next person I have to go see in an appointment. That's not a huge cost. Simply put, it's the principle of ensuring that individuals are not penalized and we put this forward now. Review it in a few years; we've got review provisions here. Add that to your list for things to be reviewed.

**Hon. Mr. Graham:** I think the member opposite has for some reason fixated on this doctor situation. I guess the way we looked at it is that it doesn't matter who provides the information to the patient, somebody's going to pay.

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

**Chair:** Order.

**Hon. Mr. Graham:** Again, there are a myriad of health professionals right now that are not publicly funded that operate businesses on a daily basis that need to pay. They have to pay their staff. It's like saying I can go into a bookstore and request a copy of a book that I had some time ago and I just want to get another copy of it. That's all there is to it.

No, we are going to leave it as it is now. We have the ability under regulation to put zero in that fee. We have the flexibility we need. If we put in the legislation itself that we are not going to allow any charge no matter how justified, then we've cut off all of our options. Under this proposed bill, we will have an option and that is we can either allow a maximum fee and if we say the maximum is zero, then that's what it is.

*Clause 24 agreed to*

**Chair:** Recess has been requested. Do members wish a 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. We are dealing with Bill No. 61.

*On Clause 25*

*Clause 25 agreed to*

*On Clause 26*

*Clause 26 agreed to*

*On Clause 27*

**Ms. Stick:** This is under the section about refusing access. I was looking for clarification on 27(1)(a)(i), where the custodian can refuse to grant an individual access — has reasonable grounds to believe it would, if disclosed, “cause serious harm to the health or the safety of any individual.” I’m trying to think of an example of where something like that would occur and wondered if the minister could explain that please.

**Hon. Mr. Graham:** One of the examples of an issue that could cause serious harm to health or safety is if test results indicated that the person had an incurable condition and there was a risk that the individual might commit suicide. That would give the medical custodian, or the custodian of the record, the ability to refuse to provide that record. It would also identify someone else who provided the information to the custodian on a confidential basis, if that was the case.

**Ms. Stick:** I understood the explanation, but when I think it about it for more than two seconds, my question would be: if my physician finds out I have some incurable disease and is worried I might kill myself, isn’t it still my right to know that? How is he going to treat me or provide service if I don’t even know and therefore do have access to or even permission to say this is the treatment I want or this is the treatment I don’t want? That might be another example where I just say: no, that’s enough. So I don’t think that was a clear enough answer because I need access to my information.

**Hon. Mr. Graham:** I probably didn’t explain it well enough. Those situations are mostly when the individuals asks the custodian or the medical practitioner who actually performed the test and they are asking for it from that individual, rather than their doctor and the doctor hasn’t had time to fully talk with their patient. It would give the doctor the opportunity before the condition was known and the person went away. They would therefore have to come to the doctor to receive the information. I guess that’s what we’re saying. The information would be made available, but in the more appropriate time.

**Ms. Stick:** I think that’s a bit of a stretch. If I go for blood work or X-rays or a CAT scan or a MRI, the custodians of that information, the care providers, are pretty careful not to tell you anything. In fact it is — you’ll have to wait to hear from your doctor anyway. That’s already the system. A doctor orders something and anytime I’ve gone I don’t have them sitting there saying, oh yes, look at that — or something like that. I don’t know. I’m not clear on this clause.

**Hon. Mr. Graham:** The exact instance cited by the member opposite is one of those things that this act will change. You will have the right to access that information immediately in some cases — in many cases.

This will allow the person who is doing the test that opportunity to say: “No, I am not giving you the information; you have to see your doctor.”

Under this legislation — remember under ATIPP, the individual has the right to obtain access to their personal health information in custody and control. I don’t know what else I can say, other than it’s one of those provisions.

**Ms. Stick:** I’ll probably let that go, but it doesn’t feel right to me because we’ve already said that if a person wants access to his or her information, that person has to do it in writing and there is up to 30 days, which can be extended an additional 60 days. If there were those kinds of concerns, I’m going to assume that someone would be in touch with the doctor. If they don’t have a doctor — there’s an example that could cause serious harm, but if there’s no one else for them to give that information to but that individual in order for them to receive treatment. I don’t think I want anyone deciding that they can’t give me my information. I guess that’s what it comes down to. It’s my information, my health, and if I decide to do whatever, it’s my decision. It doesn’t feel comfortable. You are giving somebody else power over your information.

**Hon. Mr. Graham:** This is a very standard provision in other health information privacy acts across the country. Remember that whenever we talk about refusing access, the person always has the right to appeal to the IPC. Every time we say, for what we may consider good reason, that the custodian has reasonable grounds to not disclose that information, the patient or the person has a right to appeal that decision to the IPC. Whatever is said in the legislation is appealable.

*Clause 27 agreed to*

*On Clause 28*

*Clause 28 agreed to*

*On Clause 29*

**Hon. Mr. Graham:** Clause 29 is the beginning of division 5 where we talk about security breaches. While this act establishes strong privacy and security standards and practices, we know from past experience that there may be times when mistakes will happen.

Security breaches can have a devastating impact on a person whose information has been inappropriately disclosed. When this happens, it’s very important to respond quickly and make sure that it doesn’t happen again. Based on very helpful input we received from our Information and Privacy Commissioner, the approach we’ve taken on security breaches is responsive and will lead to Yukoners receiving early notice so that precautions can be put in place.

This err acts on the side of protecting Yukoners. If it’s reasonable to think that a security breach has occurred and could cause significant harm, the affected person must be told as soon as possible. The message we’re sending out is don’t wait until you’re extremely sure there has been a breach before acting; act immediately.

The division strikes the balance between limiting risk to Yukoners’ health information and not placing too heavy a burden on custodians. This part applies where the risk of harm is significant. It sets out guidelines for the custodian to determine if significant harm has happened as a result of the breach, it gives direction on how to give notice to someone and what the notice must say and, finally, it provides an important role for the Information and Privacy Commissioner.

I look forward to any questions.

**Ms. Stick:** I do believe this is an important section. I like the fact that with any security breach, at the same time the commissioner must also be given a copy of the notice. What I wasn't sure of was whether the commissioner would also have an opportunity to comment on it or report on breaches such as these, which could occur.

**Hon. Mr. Graham:** I believe under section 31(2), it says that the commissioner may, after reviewing a report submitted by a custodian under subsection (1), recommend to the custodian any measures that the commissioner considers appropriate to reduce the risk of similar breaches occurring in the future.

**Chair:** Order please. We are discussing clause 29.

*Clause 29 agreed to*

*On Clause 30*

*Clause 30 agreed to*

*On Clause 31*

*Clause 31 agreed to*

*On Clause 32*

**Hon. Mr. Graham:** This is the introduction to a new part: part 4. In this part, we talk about consent to the collection, use and disclosure of personal health information. It's important to separate this consent from consent to treatment. While the two types of consent interact with each other, they are dealt with very separately.

Consent to treatment is dealt with in the *Care Consent Act*, which is the one we were talking about previously and which has the same tenets of spouse as this one does. Consent is another of the 10 Canadian Standards Association principles. Consent is fundamental to an individual's control of their personal health information. This division addresses knowledgeable consent, meaning that our consent must be informed so we understand why our information is being collected, used or disclosed. Identifying the purpose for collection is part of the information we need access to for our consent to be knowledgeable. This is another one of those 10 Canadian Standards Association principles. I think we've now covered eight of the 10.

The consent model sets out that a custodian can assume that a patient has given consent. In other words, consent may be implied; it does not always need to be explicitly stated or written. This model is used in most jurisdictions across Canada. Knowledgeable consent means that information must be provided by custodians so that when consent is given we understand what can happen to our personal health information. For example, if the information is disclosed outside Yukon — let's say to a specialist in Vancouver — the patient must be informed that the law in B.C. will apply to it once it has been disclosed.

This section also clarifies who can give consent. It's largely modelled on the *Care Consent Act* because decisions about health care and health information are so closely linked. To give consent for information purposes, an individual must be capable and, like the *Care Consent Act*, capacity is not age-based. Where an individual is not capable of giving consent, this section sets out how a substitute decision-maker can be identified. I look forward to some questions.

*Clause 32 agreed to*

*On Clause 33*

*Clause 33 agreed to*

*On Clause 34*

**Ms. Stick:** Clause 34 talks about when express consent is required. This kind of jumped out at me: "for fundraising activities". I wonder if the minister could explain what that's about.

**Hon. Mr. Graham:** The Hospital Corporation springs to mind immediately — so, in other words, express consent would be required from you as a hospital patient for the hospital to provide your personal health information to the foundation for fundraising purposes. So in other words, the hospital cannot give a list of 200 patients who have received treatment for some disease that the hospital foundation decides they are going to fundraise for a specific machine. Say they're looking for treatment for kidneys and they want to raise money for that — they couldn't identify the patients who have needed a kidney machine to target them.

**Ms. Stick:** I thank the minister for the answer. If we could just look at the very next paragraph and if I could get an example because, again, it's a lot of words but I'm not clear what an actual circumstance would be.

**Hon. Mr. Graham:** The prescribed circumstances would be set out in regulation. So if they wanted to use you for marketing, you would still have to give your express consent. It would be anything that's set out in regulation, basically. You know, you see the faces on the posters in the hospital — each one of those people has to give their express consent for marketing purposes.

*Clause 34 agreed to*

*On Clause 35*

*Clause 35 agreed to*

*On Clause 36*

**Ms. Hanson:** It's not a point of debate, but I'm trying to understand the intent of the sentence: "except to the extent that the individual purports to prohibit or restrict" — it's not my normal understanding of the word "purport". I'm assuming this means "tries", but wouldn't we just say "tries"?

This legislation is complex so it would be nice if the legislation used language that was legally sound but also plain and accessible.

**Hon. Mr. Graham:** It's written in dumb language — I understand it. One particular example springs immediately to mind because I have a son-in-law that works in Motor Vehicles. If a doctor has knowledge that a patient has a medical condition that should prohibit that person from driving, even though the act says you cannot release medical information without consent of the individual, the doctor under another piece of legislation, I'm not sure which one —

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

**Hon. Mr. Graham:** Under the *Motor Vehicles Act* or whatever act, the doctor has a responsibility to report that condition to the Motor Vehicles branch so that my son-in-law can go out and pick up their licence. That is one specific example I know of.

**Ms. Hanson:** Thanks to the minister for that explanation of the intent of it. It's just an overall comment that when we're doing legislation and trying to make sure that the citizens that this applies to understand it. The use of plain language is not a new concept. I know the English language, I love the English language, but I think English language has ways of being more accessible to more people if we use language that's — if "purport" is intended to say "try" or "imply", then what is it?

Is there legal reason for certain kinds of language?

**Hon. Mr. Graham:** In my explanations, the language has been dumbed down so I can understand it, so it might be a little too low for the members opposite I'm not sure. It's unfortunate that we can't do that. Unfortunately, we're required to meet certain legislative standards and that's what the department is trying to do. Talk to the Minister of Justice, I guess, to see if we can get more plain-language legislation. This is what we're required to do under current practice.

*Clause 36 agreed to*

*On Clause 37*

*Clause 37 agreed to*

*On Clause 38*

*Clause 38 agreed to*

*On Clause 39*

*Clause 39 agreed to*

*On Clause 40*

**Ms. Stick:** I struggled with this section because I could think of examples of where an individual — what I'm talking about here is section a that says — I'll read the whole thing because it's important: "... a custodian is entitled to assume in relation to an individual's consent to the collection, use or disclosure of the individual's personal information", and "(a) that the individual, regardless of their age, is capable of giving the consent."

I have a couple of questions around that one. Who decides that the individual is capable of giving their consent? Any age? Regardless of their age? I mean, six, two? It just seems very wide open. We have an age of consent and I know there have been circumstances when individuals younger than that do determine their own health care choices, but I also know it can create quite a lot of difficulties. If I could just have a clear explanation of who's making that decision that consent has been given, and is there really no limit to age?

**Hon. Mr. Graham:** The first part of that clause was really important: "Unless it is not reasonable to make the assumption in the circumstances" — generally a custodian can assume. I think it's important to realize, and I think this was an issue brought forward by the Information and Privacy Commissioner because there was some concern raised during the consultations that parents or guardians may not be able to get their children's medical records.

This act is fashioned exactly after the *Care Consent Act*, which deals with consent for treatment. It adopts the approach whereby, if a health care provider considers a young person capable of understanding their treatment options, that young person can give consent for treatment without their parent or guardian's involvement.

If a young person is considered capable of making these important health treatment decisions, it seems reasonable that they should also have the opportunity to make decisions about their personal health information. That's what we are doing. We're basically mirroring the health information clause with the *Care Consent Act*. If a person is capable of giving consent for medical practice, then we believe they are also capable of determining who can see their medical records and who cannot see their medical records. The act actually supports a young person's right to be considered capable of providing consent for the collection, use and disclosure of personal health information.

*Clause 40 agreed to*

*On Clause 41*

*Clause 41 agreed to*

*On Clause 42*

**Ms. Stick:** I was curious about the clause about an individual's withdrawal of consent under subsection (1)(a), "must meet the prescribed requirements." Then the addition — there is: "if any".

Must they meet the prescribed requirements? I would assume there would be some, and I'm just not sure what the "if any" in there is for.

**Hon. Mr. Graham:** This deals with the regulations. We will be making regulations that determine what requirements must be met and there may not be requirements in some of these instances. We may make a regulation that says, "For this type of request you must put it in writing" and for another one it may be verbal. There will be a variety of different requests depending on the type of information that you're talking about and the sensitivity of information. That's why it's there. Regulations will control this part of the act or this part of the act will control the regulation.

*Clause 42 agreed to*

*On Clause 43*

*Clause 43 agreed to*

*On Clause 44*

**Ms. Stick:** I was just wondering if this one is stand-alone. I would like an explanation for it.

**Hon. Mr. Graham:** This deals with instances where consent given by a patient results in only a limited amount of information being provided to a custodian by another custodian. The fact that information is not complete must be made clear. The example that I was given is that if a patient told his doctor that he did not want his drug addiction revealed to a specialist, the doctor would be bound not to provide that information, but, in discussing the patient with the specialist, they would be able to say, "This is the information I've given you, however it's very clear that this is not all the information I have in my possession." So it becomes clear to the specialist that there are other things that he or she may have to ask the client.

*Clause 44 agreed to*

*On Clause 45*

*Clause 45 agreed to*

*On Clause 46*



**Ms. Stick:** I'm looking at clause 46 and about halfway down the next page it talks about decision-maker for the consent and then in (h) it talks about two individuals who are custodians and health care providers. I was starting to get confused here because you have custodians, which I thought were health care providers — so you have both mentioned here. Or is it just a way of clarifying?

**Hon. Mr. Graham:** Perhaps I'm looking at the wrong one. I assume the member opposite was talking about section (h). It's when there is simply nobody else. Somebody has to make a decision. It could be in the case of somebody who is — and we see it happening in the Yukon — an elderly patient, a guy who has lived in the bush all his life and has absolutely no relatives alive in the Yukon and no close friends. Somebody has to make the decision. It's two custodians, two people who have relevant health information about this individual and our health care providers. They are called last-resort decision-makers.

*Clause 46 agreed to*

*On Clause 47*

*Clause 47 agreed to*

*On Clause 48*

**Hon. Mr. Graham:** Madam Chair, this is part 5, "Obligation to Provide Health Care". When we consulted on this legislation, some health care providers expressed concerns that the legislation could make them treat patients they might not choose to treat for a variety of different reasons. This part simply confirms that nothing in this legislation changes a custodian's existing right to refuse a patient or refuse to provide health care to a patient.

*Clause 48 agreed to*

*On Clause 49*

**Hon. Mr. Graham:** This is a new part — Part 6. This part sets out the various ways personal health information can be collected, used and disclosed. This part speaks to the balancing of personal privacy with the need for appropriate access to information by custodians so that they can provide the best care possible. This part provides custodians with the authority to collect, use and disclose information to support improved health care and to better plan and manage our health care system.

This part is quite lengthy, but it's very similar to how other jurisdictions have approached collection, use and disclosure. It specifically lays out authorities rather than providing broad authorities.

Collection in division 1: in the real world of health care, custodians cannot and do not do all of the heavy lifting themselves. They use employees, volunteers, IT specialists, contractors, lawyers and other advisors to help get the job done. This section sets out the rules for a custodian's helpers, which in this act we call "agents."

Agents who specifically provide information services, such as information technology help, are called "information managers" in this act. Custodians cannot use agents or information managers to avoid responsibility for protecting personal health information. That's a very important tenet. Custodians are always responsible for the actions of their

agents. Custodians must control what information an agent needs to do their job and the act states clearly that an agent must follow the direction of the custodian.

Because information managers are not health care providers who often have professional confidentiality and security standards established by their professional organization, when a custodian contracts with an information manager, this arrangement is subject to additional rules. A custodian must have a written agreement with an information manager and the agreement must meet the requirements of the act and any regulations. Both the custodian and information manager must comply with this agreement. I look forward to any questions.

*Clause 49 agreed to*

*On Clause 50*

**Ms. Stick:** Flipping the page and over to subsection (3), saying an agent of a custodian must notify the custodian at the first reasonable opportunity if a security breach has occurred in relation to any personal health information handled by the agent. As the minister mentioned, this is a long section and an important one, and what I'm curious about is enforcement or monitoring. How does this act speak to that?

**Hon. Mr. Graham:** The act applies to the agent as well as the custodian, so the penalty provisions that apply to a custodian if they don't carry out the provisions of the act that they're supposed to would also apply to the agent. In theory, what should happen is — if it was an IT problem — immediately after the problem was disclosed to the agent, they would inform the custodian and the custodian would inform the Information and Privacy Commissioner and carry out the necessary procedures after that point.

At all stages, the agent is responsible to report the initial break and the custodian is responsible to report to the Information and Privacy Commissioner and carry out the processes as required. At each stage, the penalties and the provisions of the act apply.

*Clause 50 agreed to*

*On Clause 51*

*Clause 51 agreed to*

*On Clause 52*

**Hon. Mr. Graham:** This is again division 2 within Part 6 and it deals with collection. Remember earlier when I said that I would like to have the two fundamental principles of the act — the need to know and no identifying information if non-identifying information will do — repeated on every page? Well, here is a good place to repeat it. This part sets out the rules about when a custodian may collect information.

Information can be collected directly from the individual or indirectly from another source such as a spouse, friend or from electronic information systems. But in all cases, only the least amount of information is needed. This division also addresses another of the Canadian Standards Association's privacy principles, which is accuracy. A custodian must ensure that the information collected is accurate and current when they collect it. All collection must be authorized in law, and this division on collection works together with the next division on use. In most circumstances, collection is allowed

if a custodian can use it. Health and Social Services and the Yukon Hospital Corporation, which are public bodies, can directly collect information if it is necessary to carry out a program or activity of the agency. Yukon First Nation custodians can directly collect information necessary for a health care program or activity of their First Nation.

*Clause 52 agreed to*

*On Clause 53*

*Clause 53 agreed to*

*On Clause 54*

**Ms. Hanson:** When we are reviewing this again, it's like my brain is trying to catch up to the last time.

In clause 54, "A custodian may collect an individual's personal health information from a person other than the individual only if" and "(c) where the custodian collects the personal health information for a purpose other than providing health care to the individual," and I get everything up to 54(c)(iv), "subject to the requirements and restrictions, if any, that are prescribed..." We got that; we know that prescriptions are coming in regulations — "... an enactment of Yukon or Canada, or a treaty, agreement or arrangement made pursuant to such an enactment, permits or requires the collection" — so if the custodian collects the personal information for a purpose other than — I'm just looking for an example of what treaty would apply to health care information. I wonder what kind of a treaty we would be contemplating there. We have an expressed reference to the treaties, commonly known in the Yukon as "land claim agreements." I'm wondering what kind of treaty would be referenced here so that we would be sharing anything to do with health care.

**Hon. Mr. Graham:** Madam Chair, I guess the simplest explanation is that it's a standard clause that is used throughout the country. It applies to agreements. If an act of Canada or Yukon, or a treaty — which I don't believe we have here — or agreement or arrangement under an act permits or requires the collection, those would be the circumstances under part 4. As an example, the Whitehorse General Hospital collects health insurance information from the relatives of an unconscious person, say, who is hurt in a traffic accident, and the people are visiting from another province. They do it so that the bill can be sent to the Alberta Health Authority under our reciprocal agreement for billing under the Health Care Insurance Plan. That would be an example of that because we have an agreement with the provinces for a reciprocal payment of health information.

**Ms. Hanson:** I thank the minister for that explanation. I do understand that context in terms of actually providing services, but I guess my question is when we're talking about "collects the personal health information," which could mean information with respect to what drugs are prescribed — when we're talking about treaties, what really are we talking about here? Cumulatively, data with respect to which prescription drugs are used nationally or internationally becomes very material when we're talking about current rules and regulations with respect to patents, for example. I'm just looking for clarification as to why we would include reference

to something like a treaty and what kind of treaty we're talking about here.

**Hon. Mr. Graham:** I don't want us to get confused here by thinking that all treaties are with First Nations.

A treaty is a type of agreement that we have with whatever jurisdiction. It's to ensure that we cover all acts, all agreements between Canada, Yukon and other provinces. Agreements or arrangements made under the regulations — and so we say treaties, agreements or arrangements made under the regulations. There is nothing specific. We're not using a treaty as a specific reference, and it's exactly the same phraseology that's used in the ATIPP act.

**Ms. Hanson:** I still am not comfortable with the notion that, as we move more and more — and as information is critical from a corporate point of view in terms of determining markets, and as we're entering into more globalized arrangements. We're a sub-regional government. These are national. The federal government enters into these treaties. I'm not sure why we would put in territorial legislation. I just don't get this reference. We're saying that collecting personal information that can be accumulated — in terms of privacy, this is an issue. It's an issue with respect to both the responsibility for ensuring that we're not using a backdoor means to negotiating nor providing data to trade partners that could ultimately backfire on the individual patients in terms of data that is mined.

We can't be naive about this. This is serious business, so I'm asking a serious question here. I'm not doing conjecture; I'm asking for clarification. Why would we include language with respect to the collection of personal health information when I don't know what the requirements and restrictions are? Because it's not clear; it's subject to requirements and restrictions, and if those are not enumerated, then there are none.

**Hon. Mr. Graham:** We're talking about the indirect collection of personal information. If the agreement or treaty — if you want to call it that — or act between us and someone else permits that indirect collection of medical information, this is the enabling clause. If there is an act out there that permits us to provide indirect collection of that information, this enables us. It allows us to do it. A perfect example is if a person goes to Alberta or B.C. at the present time for a medical procedure, this is the only thing that will allow us to get that information sent back to the Yukon indirectly. That's what we are talking about here — indirectly. In other words, we don't need that patient's consent to receive the information from, say, St. Paul's in my mother's case. St. Paul's could send that information directly back because it is part of the agreement.

**Ms. Stick:** I'm following along with where my colleague was and I just want to bring back attention to paragraph (c) that says that this is the collecting of personal health information for a purpose other than providing health care service or health care to the individual. It's not about going to Alberta and being able to get health care there. It's for other purposes. Then there are these restrictions on the

bottom with regard to Yukon-Canada treaty agreements and arrangements that have been made pursuant to this.

**Hon. Mr. Graham:** These agreements are also in place to pay the bills. That has nothing to do with personal health information. Unless those pieces of information are exchanged, that doesn't have anything to do — maybe I'm not catching exactly what the difficulty is here. I'd be perfectly happy if you want to set this one aside and talk about it at a later point if the member wants.

**Ms. Hanson:** I'd like to agree with the minister. The normal process when we go through these things is that you can't go back, and so I appreciate the ability to defer this for future discussion so that we can come back and seek clarification. Perhaps this phraseology may show up because we're only at clause 54 of 139 so, should it resurface, we would have a chance.

It may be an opportunity for us to do a written question as well. If that's not possible — because if I stand and read the rules right now, that might not work — we'll find an opportunity to take up the minister's offer.

I move that clause 54 be stood over for later consideration.

**Chair:** It has been moved by Ms. Hanson that clause 54 be stood over for later consideration.

*Clause 54 stood over*

*On Clause 55*

**Hon. Mr. Graham:** Clause 55 is part of division 3 and this is the last of the collection. Here we go again — need to know, no identifying information if non-identifying information will do. A custodian can only use personal health information on a need-to-know basis. A custodian can only use identifying information if anonymous information will not serve the purpose.

A custodian can use personal health information to provide health care based on the implied, knowledgeable consent of the individual. If the person has limited that consent for health care use, or health care, the custodian must respect that request.

However, the act sets out circumstances where the information can be used without consent, for example, to prepare a bill for health care service provided to the individual, or to assess someone's capacity. This section also permits Health and Social Services to use an individual's personal health information and their personal information to carry out a legal duty, or to carry out a program or activity of the department.

The Information and Privacy Commissioner took exception to this. We reconsidered this power carefully and concluded that where the information was already in the custody of Health and Social Services, the department can make more informed responsible decisions with all of the appropriate information to draw on.

So that's our policy statement, that we concluded that where the information was already available and in the custody of Health and Social Services, the department can make more informed, responsible decisions with all the appropriate information to draw on.

Drawing an arbitrary line between using personal health information and personal information to carry out legal duties or departmental programs or activities is not in the interest of our client or the public.

**Ms. Stick:** Section 55, and my question is on (b) — it talks about a custodian may use the individual's personal health information in its custody for any other lawful purpose if the individual consents to the use.

I'm just wondering what other lawful purposes a custodian would want to use that information for?

**Hon. Mr. Graham:** What we are talking about here is simply to provide health care to the individual, unless the individual expressly refuses or withdraws consent. So very simply, a custodian can use the information to care for a patient unless the patient clearly says they don't want that information used.

*Clause 55 agreed to*

*On Clause 56*

**Ms. Hanson:** Similarly to clause 54, for similar purposes with respect to 56(1)(b), I move that clause 56 be stood over for further consideration. I understand the minister has spoken to the broad policy kinds of things, but I've identified the particular area that I'm most focused on.

**Chair:** It has been moved by Ms. Hanson that clause 56 be stood over.

*Clause 56 stood over*

*On Clause 57*

**Ms. Stick:** I know that this section was referenced earlier when we were going clause-by-clause in the very beginning. I'm just trying to find my notes of what we were supposed to ask. I do have other things here. I just wondered first if the minister would like to speak to this one.

**Hon. Mr. Graham:** Sorry, Madam Chair, I was a little bit behind there. I didn't realize that section was so long. This division sets out when personal health information can be released or, as the act calls it, "disclosed" by a custodian. I have received feedback on this part. Some people have commented on how long this part is, especially when compared to the power to disclose in ATIPP. I agree. If you're just counting how many disclosure paragraphs are in this act compared to ATIPP, it seems like a lot. The power to disclose in ATIPP is described in very general terms, while the power to disclose in this act is in very specific terms. There are more paragraphs for sure, but we wanted to make sure that disclosures under this act could only be made in carefully prescribed circumstances.

When there are concerns about the number of permitted disclosures, we need to go back to those fundamental principles of need to know and no identifying information if non-identifying information will do. Disclosures are permitted under this act, but only to the extent necessary for the purpose. For example, this act doesn't allow a pharmacist to release a person's medication profile to the person's physiotherapist unless there is an authorized purpose. Knowingly disclosing more than is necessary, or disclosing identifying information when non-identifying information will do, is an offence under this act with significant fines, as we'll see later on.

We've developed some disclosures that are unique to Yukon and we've talked about one — to meet our unique health and social needs — but, for the most part, the disclosures in clause 58 represent the same disclosures you'll find in the health information act of most other jurisdictions in Canada.

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

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

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

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

**Some Hon. Members:** Agreed.

**Speaker:** I declare the report carried.

Before I entertain a motion from the Government House Leader, I would like to remind everybody that the Festival of Trees opening of the Business after Hours is immediately following in the foyer upstairs and is open to everybody. I look forward to seeing everyone up there.

**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. Monday.

*The House adjourned at 5:27 p.m.*