

Yukon Legislative Assembly
Whitehorse, Yukon
Tuesday, December 3, 2013 — 1:00 p.m.

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

Prayers

DAILY ROUTINE

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

TRIBUTES

In recognition of International Day of Persons with Disabilities and Disability Awareness Week

Hon. Mr. Graham: I rise today to ask all colleagues in the Legislature to join me in acknowledging the International Day of Persons with Disabilities. The theme for this year is: “Break Barriers, Open Doors: For an Inclusive Society and Development for All.”

More than one billion people — or approximately 15 percent of the world’s population — live with some form of disability. Persons with disabilities face physical, social, economic, and attitudinal barriers that exclude them from participating fully and effectively as equal members of society. They are disproportionately represented among the world’s poorest and lack equal access to basic resources such as education, employment, health care, and social and legal support systems. In addition, they usually have a higher rate of mortality. In spite of this situation, disability has remained largely invisible in the mainstream development agenda and its processes.

The commemoration of this year’s International Day of Persons with Disabilities provides us with an opportunity to further raise awareness of disability and accessibility not just globally, but here at home as well.

We are indeed fortunate that in a community the size of Yukon we have amazing groups of people who have come together through various organizations to support and serve Yukoners with disabilities, both physical and cognitive — Yukon Council on DisABILITY, Options for Independence Society, Yukon Association for Community Living, Teegatha’Oh Zheh, Autism Yukon Society, CNIB, Fetal Alcohol Syndrome Society Yukon, to name a few. All of these groups provide support, not only to the individuals themselves, but also to their families. The Yukon government in turn supports the Rick Hansen Institute and provides annual funding, which is then redirected locally through the Yukon Solutions Team to assist in creating accessible, inclusive communities. This money enables the purchase of adaptive equipment and other mobility aids, including installation of ramps in homes and buildings.

All of these organizations make tremendous efforts to benefit Yukoners with a wide range of disabilities, to help

improve their health outcomes and enhance their quality of life. They work very hard to break down barriers and open doors for all of their members and clients.

I have heard it said that Yukon has some of the best supports in the country, especially for individuals with disabilities. We should be very proud of that and those individuals who make that true.

I’d like to take the opportunity to introduce three of those individuals here today: Lisa Rawlings Bird from YCOD, Bobbie Lucas from Teegatha’Oh Zheh, and Debbie Parent from Yukon Learn. Thank you very much for the work that you do.

Applause

Ms. Stick: I rise on behalf of the Official Opposition and the Third Party to pay tribute to International Day of Disabled Persons and Yukon Disability Awareness Week.

The theme of International Day of Persons with Disabilities is “Break Barriers, Open Doors: For an Inclusive Society and Development for All.”

We are fortunate in the Yukon to have many groups, volunteer organizations, professionals and NGOs working to improve inclusivity for all Yukoners with disabilities. These include: Yukon Council on DisABILITY, Yukon Association for Community Living, Fetal Alcohol Syndrome Society of Yukon, the Challenge-Disability Resource Group, Teegatha’Oh Zheh, Helping Hands day program, Open Doors day program, Options for Independence Society, Yukon Learn, Yukon Special Olympics and many groups and individuals providing residential supports to adults and children.

I apologize if I have missed any — I’m pretty sure I have. I would also be remiss if I did not recognize the many family caregivers in all our communities who are supporting their family members with a disability. They are often the ones who listen closest and know what is most needed for the individuals they support.

Individuals with disabilities — whether children, adults, seniors or elders — all want the same thing everyone else does: a safe, affordable place to live, an opportunity to work and receive pay for that work and a chance to participate in the recreation and arts of the community. Individuals want to participate in their communities, attend school, attend church, volunteer, develop relationships and friendships and receive the appropriate supports they need to do these things.

These are all things that we want and these are things we can all work on together. Are our businesses accessible? Do we consider individuals with disabilities when hiring new staff? Are our sports teams inclusive? Do we include individuals with disabilities in our organizations and do we give them meaningful roles? Mr. Speaker, do we listen? If we want to break barriers and open doors, as this day’s theme suggests, there is much that each of us as individuals can do every day.

I want to thank all those organizations, individuals and family members who work hard to build inclusive

communities throughout the Yukon and to remind each of us of the role that we play in building a better community.

In recognition of the centenary of Girl Guiding in Yukon

Hon. Ms. Taylor: I rise on behalf of the Assembly to pay tribute to Girl Guides and the upcoming centenary of girl guiding in the Yukon, which began in Dawson City back in 1914. At that time, parents wanted more for their daughters and so the first gathering of 25, 10- to 12-year-old guides took place at St. Paul's Cathedral. Martha Black was their patron and Harriet Osborne was their leader.

The early groups met at school and church and did marching drills by the government building. They spent two weeks every summer at Rock Creek on the Klondike River. They borrowed tents from the Royal Northwest Mounted Police and slept on spruce bough beds with Hudson Bay blankets. During the war years, they made candy, cookies and long-knit blue stockings for soldiers overseas and raised funds for the Red Cross.

Yukon guides have also played a very important role as ambassadors. In 1953, 19-year-old Lena Tizya from Old Crow was chosen by the Commonwealth Youth Movement to represent Yukon and Alberta Girl Guides in London at the coronation of Her Royal Highness Queen Elizabeth II.

In 1959, Brownies and Guides were with Scouts and Cub Scouts at Whitehorse airport to welcome Her Majesty Queen Elizabeth and Prince Philip during their royal tour. In 1967, 40 Girl Guides helped formed the honour guard to welcome Her Royal Highness Princess Alexandra to the Yukon as part of Canada's centennial celebrations. In 1982, Guides greeted and attended celebrations with Princess Anne during her visit to Whitehorse.

By the 1960s, extensive guide camping was taking place and the land for Sprucewind, the campsite at M'Clintock Bay at Marsh Lake, was leased from the territorial government. In 1987, it was purchased outright and hundreds of Girl Guides and Brownies have camped there ever since from across North America.

Yukon Guides have hosted cadets from abroad, have won the Yukon Sourdough Rendezvous best group float and were an integral part of the community response to the 1979 Dawson City flood.

As one of the largest organizations for women and girls in Canada, Girl Guides continues to play an important role in the lives of our youth. This may be because, while the Girl Guides are a long-standing tradition in Canada, the organization has also been willing and able to change with the times. From learning to bandage wounds during the First World War to learning about Internet safety and privacy in today's digital age, guiding continues to change with the times to reflect the needs and the interests of contemporary girls and women.

Guide laws and the Guide promise have also evolved over the years to reflect what girls and young women value in today's world. Likewise, uniforms, badges as well as the recipe for the infamous Girl Guide cookies have also evolved over the last 100 years. What hasn't changed, however, is the

Girl Guides' overarching vision of supporting and enabling girls to be confident, resourceful and courageous, and to make a difference in the world.

Though some time ago — and I must stress, Mr. Speaker, quite awhile ago — I had the privilege of serving as a Brownie and a Girl Guide here in the Yukon. My mother was a huge advocate of guiding in the north and, as such, served as a team leader for a number of years in the Watson Lake division. My experience was a very positive one, overall. Above all, it taught us the importance of teamwork, having fun and pursuing interests beyond what we thought were our interests at the time.

It gave me a better appreciation of the outdoors and learning how to be a responsible environmental steward. As a Brownie and a Guide, I had the opportunity to experience winter camping for the first time. I learned various skills and crafts, and engaged in the sale of a lot of Girl Guide cookies — a skill that has served me well in recent years.

There are a number of prominent women who can say their lives were influenced by their association with Girl Guides, from the Queen Mother to Canada's first female astronaut, Roberta Bondar, who was also a doctor and a scientist before her space adventures began.

Here at home, Yukon area Girl Guides have made an impact on the history of Yukon and have contributed many individuals, including government leaders, commissioners, managers, directors, teachers and many others with successful careers over the years. Ask any woman who has ever been a Girl Guide about the meaning and value it has played in their lives, and they will undoubtedly share with you some very profound and valued memories of how their lives were influenced by this highly respected organization and the camaraderie of their fellow Guides.

I believe there will always be Girl Guides, as long as there are girls and young women who are interested in being part of their community and making it a better place for everyone. Most importantly, being a Girl Guide is about being true to yourself, which can often be a challenge for girls and young women in today's world.

As minister responsible for the Women's Directorate, I was honoured and pleased to acknowledge the excellent work and the contributions of the Yukon Girl Guide movement with the unveiling of a poster during Women's History Month in October. It was an event that was well-attended and an event that certainly has contributed to the ongoing history of this movement.

In keeping with past practice, I will be delivering a box of Girl Guide cookies later today to every member of the Legislative Assembly — because we all know that eating cookies in the Assembly would contravene the Standing Orders of the Assembly — and to each person in the media gallery and to the Hansard office staff as well. As members are aware, all funds raised from the sale of Girl Guide cookies support girls throughout the Yukon and their respective unit activities.

In closing, I'd like to thank our own Yukon area Alberta Council — in particular, the Yukon area commissioner Kerri

Scholz, who has also joined us here in the gallery today — and the many countless volunteers for the imparting of their values and helping to shape the lives of Yukon girls and future citizens for the past almost 100 years. Joining me in the gallery here today are Kerri Scholz, Jan Mann, Erin Dixon, Johanna Smith, Carole Laurie and Sarah Usher.

I would ask all members to join with me in giving a warm welcome to each of these individuals. I would also just put in a plug with respect to a number of upcoming events, in recognition of 100 years of girl guiding in the Yukon, inclusive of a guiding retreat coming up in Dawson City to mark the 100th anniversary. It will be taking place May 23 to 25 in Dawson City. For more information, one can actually go on to <http://www.2014guideretreat.com>. There will also be a book launch recognizing and commemorating the history of Girl Guides in the territory and a museum exhibit launch at MacBride Museum that will be kicked off on February 1, 2014.

I would welcome all Yukoners to join with us in this great celebration coming up and to extend a warm welcome to each and every one of you for joining us and for your contributions.

Applause

Speaker: Introduction of visitors.

INTRODUCTION OF VISITORS

Ms. White: I ask the House to join me in welcoming Amanda Smith, who is a translator working with the hearing impaired. 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?

Is there a statement by a minister?

This brings us to Question Period.

QUESTION PERIOD

Question re: Mineral staking on settlement land

Ms. Hanson: Mr. Speaker, Yukon First Nation governments were quick to respond to the December 2012 Ross River Dena Council Court of Appeal decision, telling the Yukon government in January 2013 that they were prepared to work collaboratively to develop new mining legislation and regulations. The government turned down this opportunity when they rejected the Ross River decision and asked the Supreme Court of Canada if they could appeal.

As of December 27 of last year, the status quo for mining in this territory is no longer an option. The Yukon Court of Appeal made this clear when it handed down its decision and the Supreme Court of Canada made this clear when it rejected the government's request to appeal.

So, Mr. Speaker, why is this government so intent on maintaining the status quo when it is clear this path will only lead to further court battles and more economic uncertainty?

Hon. Mr. Kent: Just to correct the record, there were two declarations made by the Yukon Court of Appeal. One of them was accepted with respect to notification on class 1 activities within the Ross River area. The other one is the one that we appealed. Of course, as the member opposite referenced, we saw that the Supreme Court of Canada rejected our appeal and we've been working through the Executive Council Office, through the Premier's leadership, in a government-to-government consultation with the Ross River Dena Council to identify areas within their traditional territory where staking won't be occurring. That declaration doesn't require any amendments to the act.

The amendments to the act that are before this House, and the subsequent regulations, deal with the notifications under class 1. I know — I've spoken in the past about this — that the NDP would prefer to see mining shut down in the territory, an end to the free-entry system, large-scale withdrawals of land, and increased royalties and taxes.

That's not what we're about. The court didn't question the free-entry system; neither is the Yukon government. We're working to ensure that we meet the obligations under the December 27, 2012 Yukon Court of Appeal ruling and we're working to do that by December 27.

Ms. Hanson: Mr. Speaker, Yukon First Nations gave up a great deal when settling land claims. In return, they agreed to work with the Yukon government following devolution to develop new mining legislation that would be consistent with the new relationship between the Yukon government and Yukon First Nation governments. The Premier rejected the First Nations' request to activate provisions of the devolution agreement to develop successor legislation in collaboration with First Nations. The Ross River decision gave the Yukon government and Yukon First Nations an opportunity to modernize Yukon's mining laws and regulations in a manner that respects aboriginal rights and provides certainty for the mining sector. First Nations only received draft copies of the proposed legislation and regulation at the eleventh hour. They were given until yesterday to respond.

Mr. Speaker, what does the government think it will achieve through this rushed consultation process? Has the government done a risk analysis to determine the likelihood that their actions will lead back to court?

Hon. Mr. Kent: I think it's important for me to inform the House of the consultation process that has taken place with respect to these legislative changes.

In March of this year, the former Minister of Energy, Mines and Resources, through department officials, informed First Nations that we would be accepting the declaration with respect to class 1 activities. There was a consultation held on the legislative changes in June and July of this year, followed by discussions throughout August, September, October and November with respect to the changes to the legislation as well as the regulations that we need to put in place to ensure

that we can meet the declaration with respect to notification on class 1 activities by the court-imposed deadline of December 27.

I think that I can speak on behalf of all Cabinet ministers on this side of the House in that we certainly see where there are a number of successes that we can celebrate in working in partnership with the First Nations on a number of fronts. For instance, with Energy, Mines and Resources there are land developments with the Carcross-Tagish First Nation as well as the Teslin Tlingit Council that we can point to as partnerships that are successful with respect to working with First Nations.

We're proud of the work that we have accomplished together, but on some fronts there are differences of opinion and this is one of those cases. We'll continue to work with First Nations when it comes to ensuring that we have a healthy and responsible mining sector here in the territory.

Ms. Hanson: Yukon First Nation governments have been clear that they want to work with the Yukon government and industry to create and maintain a climate of investor certainty and economic opportunity. The Ross River appeal court decision upheld by the Supreme Court of Canada in September confirmed that a mining system in which mining interests supersede all others cannot create this climate of certainty and opportunity. First Nation governments have suggested that in order to salvage the process, the Yukon government ask the court for leave to delay the December 27 deadline so that the Yukon government and First Nation governments have the time necessary to engage in meaningful consultation.

Will the Premier commit to requesting such a delay from the court?

Hon. Mr. Kent: Again, we're working with the Ross River Dena Council on the two declarations. On the one declaration with respect to class 1 notification, not only are we working with the Ross River Dena Council but we did receive feedback from, I believe, 10 of the 14 First Nations when developing those legislative amendments.

Yesterday was the deadline for comments on the regulatory package and we received a number of letters from First Nations — letters that we commit to respond to.

We're confident we can meet that court-imposed deadline of December 27 with respect to the class 1 notifications. What it ultimately boils down to for us as governments, whether First Nation or the Yukon government, is that we need to decide if we all support responsible mining in the Yukon or not. It's something we certainly support as the Yukon government, but we recognize what it takes. It takes investment in infrastructure; it takes a clear and competitive regulatory regime; it takes a willingness by government to work with industry and First Nations to ensure that we can remain competitive on a global basis.

There are many jurisdictions we compete with for investment dollars across the country, as well as around the world, and we want to ensure that, in the Yukon, we remain competitive when it comes to a healthy mining industry.

Question re: Peel watershed land use plan

Ms. White: For seven years, First Nation governments, industry and the public engaged in good faith with the Yukon government to develop a land use plan for the Peel watershed. However, the Yukon Party government then ignored the final recommended Peel plan.

The public knows that 55-percent protection, as indicated in the final recommended plan, is balanced. Despite this, the government has been trying to impose on Yukoners and the four affected First Nations a completely new land use plan. We know that this government received final input from those First Nation governments just last week.

Will the minister tell this House if his government has the agreement of the four Yukon First Nations to move ahead on a final land use plan for the Peel watershed?

Hon. Mr. Dixon: Mr. Speaker, as I've indicated previously, we have received input from the four affected First Nations with regard to the government-to-government consultation that we undertook with them. We are currently reviewing the input we've received from First Nations. Once we've concluded the review and consideration of the input we received from First Nations, we'll determine how to move forward.

We will remain engaged with First Nations as we continue forward, and especially, once it comes to implementation, we would hope that implementation would be something we could do in collaboration with First Nations.

As I've indicated in this House before and in the public before, we felt that the final recommended plan as presented by the commission was not balanced and, indeed, could be improved upon by applying certain modifications.

We then consulted the public on those modifications and received a significant amount of input. Of course, our intention is to move forward with a land use plan that provides protection for key areas in the Peel watershed region, but also allows for a balanced use and balanced provisions for access that allow our economy to continue on currently and into the future.

Ms. White: The minister's answers provide little comfort to those who want economic and legal certainty in this territory. The minister's answers also leave much open to speculation.

The staking moratorium in the Peel expires on December 31 of this year. The Legislature's last sitting day is on December 19. Most First Nation government offices will be closed over the Christmas week and, in some cases, into the new year. The public's attention during the last half of December will be turned to celebration, to family and to friends.

This government has a record of burying controversial items by announcing them on a Friday of a long weekend or during a holiday period. Mr. Speaker, is it this government's intention to announce its own unilateral land use plan for the Peel watershed during the holiday period?

Hon. Mr. Kent: There is no date that is set for a final decision on a plan for the Peel but, as mentioned by the Minister of Environment, we're hopeful that all the parties

have prioritized this for a timely conclusion of this important planning process.

I certainly recognize that there a number of Yukoners who have invested significantly of their time and their effort, no matter what side of the Peel debate they're on — whether they want to see land used for traditional purposes or wilderness tourism, or whether they're engaged in responsible resource activity and they want to make sure that there is a land base available to them going forward to find the next discovery like the Rackla or the White Gold.

This certainly isn't an issue where you can run to one side or, like the New Democrats do, pick winners or losers. We're trying to find a balanced plan for the Peel watershed, one with which we can ensure there remains healthy economic activity balanced against the environmental protection and the traditional uses that Yukoners value as well. That's what we're working toward. We're not going to put an artificial timeline on that. We're going to ensure that we exhaust every opportunity to come up with a plan that works, not only for the Yukon government, but our First Nation partners as well.

Ms. White: The lack of assurance by this government to not announce its own land use plan for the Peel watershed during the Christmas and New Year's break is very troubling.

By refusing to rule out this possibility, it suggests that the Yukon Party government is contemplating just that. Such an action by this government would be an affront to democracy, would bring dishonour to the Crown and would be contemptuous to Yukoners and to all those who participated in the planning process. Most importantly, it would be a great disrespect to First Nation governments.

Will this government commit to not announcing its own land use plan for the Peel watershed during the holiday period and to extending the interim subsurface withdrawals in the Peel region until after December 31?

Hon. Mr. Kent: What I'll commit to is announcing the final Peel watershed plan when it is ready. That's something that the Minister of Environment has talked about. Again, we're reviewing input from First Nations that we've received over the past while. That final round of consultations with our First Nation partners has been ongoing for some time now. There is a lot of information and we want to ensure that we exhaust every opportunity to find a plan that not only works for us as the Yukon government, but also works for our First Nation partners.

Again, with respect to the announcement of a final plan or the extension of the staking withdrawal in the Peel watershed, we certainly want to exhaust all the opportunities that we can to reach consensus with our First Nation partners and develop a plan that will work for all Yukoners no matter where they are on this issue.

Again, as I've mentioned, the NDP seeks to always run to one side of any argument. We need to, as government, be responsible and find a balance that works for Yukoners, whether they're First Nations in that area or whether they work in Marwell here in Whitehorse supporting the mining industry. We want to make sure that there are opportunities

for everyone when it comes to the Peel watershed and the entire Yukon.

Question re: *Act to Amend the Placer Mining Act and the Quartz Mining Act consultation*

Mr. Silver: I have a question for the Premier on Bill No. 66. The Premier has received an earful from both the mining industry and the First Nations of the Yukon over this legislation. One of the common concerns from both sides is a lack of consultation. The Teslin Tlingit Council has described the consultation process as vague, confusing and contradictory. The mining industry said back in June simply that the consultation period for amendments is too short.

For example, the government sent draft plain-language regulations to stakeholders on November 13 and gave them 14 business days to respond.

Why does the Premier think that 14 days is adequate to review these important regulations?

Hon. Mr. Kent: It's important to spell out the consultation process with respect to these court-ordered amendments that are before the House right now, as well as the regulatory package. As I mentioned in March, when the Yukon government decided not to appeal the one declaration with respect to class 1 activities and notification in the Ross River area, we informed the First Nation of that by letter. We launched a 60-day consultation period throughout June and July on the amendments to the legislation. Then, as early as August, we began work with First Nations and industry on not only the development of the enabling amendments to the legislation, but also the regulatory package, culminating yesterday with the deadline for comments on the regulatory package that we're also looking at.

We want to ensure we meet the December 27 court-ordered deadline by the Yukon Court of Appeal. We're confident that we can do that with respect to the class 1 activities. We're working very hard and officials in the department are working very closely with industry and First Nations to accomplish just that. As I mentioned, we feel we can meet that court-ordered deadline of December 27.

Mr. Silver: The Premier's mailbox has been filling up yesterday and today with letters from First Nations that have a host of concerns about this government's approach to Bill No. 66. They don't believe that 14 days is sufficient to review regulations, for example.

There is a mechanism the government could have used to meet with First Nations to discuss common issues with respect to Bill No. 66. It's called the Yukon Forum. The forum has met once in two years since this government was elected. It's supposed to meet four times a year. It's legislated to meet four times a year. Meeting to address questions regarding Bill No. 66 is exactly the type of situation the forum was created for.

Mr. Speaker, why didn't the Premier convene a meeting of the Yukon Forum to address concerns over Bill No. 66 instead of just ignoring First Nations' concerns?

Hon. Mr. Kent: As I mentioned earlier in Question Period today, the Yukon government works together in partnership with First Nations on many fronts. I personally, in

my former role as Minister of Education and my current role as Minister of Energy, Mines and Resources, have been to the leadership several times, as I'm sure others of my colleagues have, to discuss issues of importance. The most recent one for me, of course, was with respect to our clean power initiative and our desire to see the development of a hydroelectric dam here in the territory.

We're very proud on this side of the House of all that we're able to accomplish together. On some fronts, there are differences of opinion. Essentially, we agree to disagree and this is one of those cases. We feel that through the consultation efforts of the last year — as we move toward this court-ordered deadline of December 27 to have these amendments in place — we've conducted sufficient consultation given the level of amendments that we're proposing, as well as the regulatory amendments that we're proposing.

We feel that the question again that needs to be answered is whether or not governments, including First Nation governments, do support responsible mining in the Yukon or not. We've seen examples recently through First Nations supporting CNIM training as well as the royalties that are paid to Selkirk First Nation from Capstone Mining that they do support responsible mining, and they join us in that support and we need a competitive regime.

Mr. Silver: The question needs to be asked and a great place to ask this question would be in the Yukon Forum.

One option available to address the question of consultation and a host of other issues was to ask this court for an extension to implement the decision. Unfortunately, that was never considered by this government and now we find ourselves up against a deadline.

Concerns are being raised by both miners and the First Nations that the bill is being rushed and that there has been inadequate consultation. The Government of Yukon bears full responsibility for this situation. They created this problem and concerns that have been raised for months by stakeholders have been ignored.

How does the government plan to address concerns raised by Yukon First Nations regarding Bill No. 66?

Hon. Mr. Pasloski: What we are hearing today from the Liberal Leader is what we hear almost on a daily basis, and that is a continual flip-flop on basically every issue that comes forward, whether it is on digital staking — which the Liberal Party said they supported but then this Liberal leader said that, no, they changed their mind on that — or on F.H. Collins — he will come out and say that we're taking too long and we need to move this forward faster, but then he also comes out with an article that says to take the time to do it right.

What about the Peel, where the Liberal leader is in support of no economic development and going forward with a recommended plan that will see, essentially, cultural and traditional uses for that land and no opportunities for other economies to go forward? Then he turns around and talks about how he supports mining in Ross River.

Mr. Speaker, when the Liberal leader talks to miners, he tells them that they support mining. When the Liberal leader talks to conservationists, he says that he's opposed to mining. This is the Liberals. This is how they have worked in the past. This is how they continue to exhibit they would govern today.

Question re: Oil-fired appliance safety

Ms. Moorcroft: The Yukon government has a responsibility to act in the interest of public safety. Action to improve the safe use of oil-fired appliances from this government has been too slow. Five reports between 2007 and 2010 by industry expert Rod Corea and five preventable and tragic deaths of tenants speak to the urgency for immediate action.

On May 2, 2013, the *Oil-Fired Appliance Safety Statutory Amendment Act* established regulation-making authority, but today — seven months later — there are no regulations in place governing the safety of oil-fired appliances.

When will the Yukon government bring forward regulations to adopt the current, relevant Canadian Standards Association fuel oil code, B139-09, into law to improve safety for oil-fired appliances?

Hon. Mr. Cathers: It's really unfortunate the pattern that we see from the NDP here in this Assembly, constantly the most negative possible characterization of events in almost every case. As I pointed out before to members, work on the regulations for the oil-fired appliance act is underway. The focus of staff is on getting it right. I would remind the member that safety is something that we must treat very seriously, but the members have a tendency to overblow the issue — and overblow it and overblow it again.

Ms. Moorcroft: What's an unfortunate pattern is the Yukon Party government fails to act. Carbon monoxide detectors are a good step, but they are not foolproof and they hardly solve the problem. Although detectors can save lives, the root of the problem is the need to comply with sound, up-to-date safety standards and regulations under the *Building Standards Act*, *Electrical Protection Act* and *Fire Prevention Act*. Industry-specific laws, such as the Yukon's *Gas Burning Devices Act*, do in fact protect and guide the industry by requiring safe appliance installations and providing for permits, qualified installers and an inspection regime with strong enforcement measures.

Again I ask the minister, when will the government enact regulations so that Yukoners can have more confidence that all oil-fired appliances in all Yukon buildings are installed and operated to the highest-possible safety standards?

Hon. Mr. Cathers: Again, I think this is really illustrative of the difference between the Yukon Party and the NDP. First of all, the NDP takes the attitude of trying to characterize every situation in the most negative possible light and ignores the facts in doing so.

Regulations under the oil-fired appliance act are being developed right now, and of course the first step under the *Oil-Fired Appliance Safety Statutory Amendment Act* includes requiring carbon monoxide detectors in residences. Really, that is the first step for each and every citizen — to ensure that

they have somebody who is appropriately qualified to install whatever type of heating unit they have, that they get the proper permits from Building Safety, and that they themselves take personal responsibility for ensuring they have a carbon monoxide detector, a smoke detector, a working fire extinguisher and an escape plan for their house, as recommended by the Fire Marshal's Office and by our good staff there.

Government will do, and is doing, what we can to prevent future tragedies, but it starts with individual responsibility like each member on this side of the floor accepts responsibility — unlike the NDP.

Ms. Moorcroft: We've seen the advertisements in local newspapers telling homeowners it is seriously simple to find a certified technician to check installations. An advertising campaign is a good step, but it is not enough. The government should not wash its hands of responsibility for public safety. I want the Yukon Party to take government responsibility.

At the coroner's inquest into the death of the Rusk family and their friend Mr. McNamee, the landlord at 1606 Centennial testified that he was unaware of requirements for a permit to install a used oil-fired appliance.

The coroner's inquest determined that the deaths of five tenants at 1606 Centennial Street by carbon monoxide poisoning were preventable. I don't know how to cast that in a positive light. My question for the minister is this: how will the Yukon government ensure that all landlords and building owners meet the standards and conduct annual inspections of oil-fired appliances in accordance with safety codes and certified manufacturers' instructions.

Hon. Mr. Cathers: The member continually makes reference to a tragedy and government, of course, has taken appropriate steps, including territory-wide public consultation, to determine where improvements can be made that could potentially prevent a tragedy occurring at any time in the future of a similar nature. That has included public education, that has included passing legislation with regard to oil-fired appliances and that includes the education campaign encouraging people to have their own carbon monoxide detectors. As I reminded the member, it's also important to have a working smoke detector, a fire extinguisher and a proper escape plan in the event that your home develops a safety issue of that type.

The member, in referencing what she tries to characterize as a failure by government to act — why did the member during her four years as a minister act in a manner that, by her own characterization, was so short-sighted in not responding to this need, if indeed she believes this is a crucial issue? The member deliberately likes to overplay every issue and portray it in the most negative light because that's all the NDP has to offer Yukoners.

Question re: F.H. Collins Secondary School reconstruction

Ms. Moorcroft: Yesterday the Premier stated in this House that the previous budget of \$38.6 million for the reconstruction of F.H. Collins is the budget that they are still

operating with for the new and smaller design. In the previous tender process in late 2012 — the one the government had to cancel because they mismanaged the budgets and the estimates — the government had three independent estimates for that project. The Premier has said repeatedly in this House that independent estimates are an important tool in ensuring fiscal responsibility.

Has the government sought any independent estimates on the construction costs for the new design of F.H. Collins Secondary School?

Hon. Mr. Istchenko: I thank the member opposite for the question. I've said this in this House before that I think they're losing the forest through the trees. We are building — we are out to tender right now for a school for Yukon kids to go to. I have to clarify the responsibilities of the minister and the department. The member opposite is unable to distinguish and grasp how government functions. The contract has been put out — or tenderized to it. It's the responsibility of the department officials with the expertise in those areas to make sure that this comes across.

The Minister of Education and I work with our other agencies on programming. Everything is set and ready to go. We're looking forward to the tenders being opened on the school and we're looking forward to a new state-of-the-art school for Yukon students to go to.

Ms. Moorcroft: It appears that the minister has lost his ability to hear and to answer the question. I'll try tenderizing it for him.

The tender provides an estimate of costs for the construction of a school in Edmonton, Alberta. The project tender also has a multiplier effect for Yukon costs, which would be determined by the Yukon government. We know that the addendum has added costs from original tender. Those include insulation R values and triple-pane windows that are in line with our northern standards and codes. We also know that the multiplier effect for the Yukon would cover the greatly increased costs for supplies and materials, transportation, wage schedules and supply chain challenges, to name a few.

Without an independent and professional estimate, how can the government determine the multiplier effect and the true cost of this project?

Hon. Mr. Istchenko: I've said this before and I'll say it again in this House: details into the contracting are the responsibility of the department and I have complete faith in what the department is doing. The professionals working in the department are flexible and responsive to the input from the local building community. The contractors who have concerns go to the department and talk about the tender.

We're building a school to LEED standards and energy efficiency in environmental design. We have three objectives with the school. Our primary objective is to build a school for Yukoners, unlike the members opposite who maybe don't want a school for Yukoners. That is our responsibility to our Yukon families. Our secondary objective is to ensure that the school is built well. It will be — I've spoken to this in the House — with the LEED in energy and in environment design

and to the building codes required. Our final objective is to provide a project that will create local jobs and economic activity. That is our responsibility to our local contractors, other businesses and like-minded suppliers.

Ms. Moorcroft: Mr. Speaker, independent estimates are a vital tool in ensuring transparency and sound fiscal management, and it is the Premier who has said repeatedly in this House that independent estimates are an important tool in ensuring fiscal responsibility. My objective is to try to get the government to do the project right and to live up to the standards they say themselves are important — an independent estimate.

Again, Mr. Speaker, has the government sought any independent estimates on the construction costs for the new design of F.H. Collins school?

Hon. Mr. Pasloski: Again, we continue on with this line of questioning from the NDP, which really, to me, speaks to what we have heard from both opposition benches. That really is a continued disrespect for the employees of this government, the public servants who continue to work to deliver on a daily basis. To have the opposition come out and tell people that we're going to build a school that won't meet code, that we're not going to have enough classrooms, that we're only building a school to house 450 students — we are confident in the ability of the public servants to ensure that we are building a school that meets the need of the school, that we do meet all of the requirements under the building code, and that, in fact, we have enough classrooms to ensure that we can deliver on those programs.

We want to acknowledge the work of the building committee. I want to acknowledge the work of the administration and the teachers of that school. I want to acknowledge the work of the department and the ministers for the work that they have done.

We are going to build a 21st-century school that will be the pride of all of those students who work and will be going to school and to those teachers and administrators. Mr. Speaker, we are looking forward to the completion of that project.

Speaker: The time for Question Period has now elapsed.

Notice of opposition private members' business

Mr. Silver: Pursuant to Standing Order 14.2(3), I would like to identify the items standing in the name of the Third Party to be called on Wednesday, December 4, 2013: Motion No. 332, standing in the name of the Member for Klondike, and Motion No. 545, standing in the name of the Member for Klondike.

Ms. Stick: Pursuant to Standing Order 14.2(3), I would like to identify the item standing in the name of the Official Opposition to be called on Wednesday, December 4, 2013: Motion No. 496, standing in the name of the Member for Whitehorse Centre.

Speaker: We'll proceed to Orders of the Day.

ORDERS OF THE DAY

GOVERNMENT BILLS

Bill No. 63: *Court and Regulatory Statutes Amendment Act* — Second Reading

Clerk: Second reading, Bill No. 63, standing in the name of the Hon. Mr. Nixon.

Hon. Mr. Nixon: I move that Bill No. 63, entitled *Court and Regulatory Statutes Amendment Act*, be now read a second time.

Speaker: It has been moved by the Minister of Justice that Bill No. 63, entitled *Court and Regulatory Statutes Amendment Act*, be now read a second time.

Hon. Mr. Nixon: The people of Yukon elected this government to ensure good governance by practising open, accountable, fiscally responsible government. One way the government achieves this is by regularly reviewing its procedures. Achieving effective and efficient operations sometimes requires major legislative amendments, but other times operations are already effective and reviews can shift to identifying opportunities for improved efficiency.

The bill before us today proposes efficiencies through 11 minor amendments to court operations and three minor amendments to regulatory procedures. As Minister of Justice, one of my fundamental responsibilities is ensuring all Yukoners have access to high-quality justice services, including efficient, effective and appropriate court services that are accessible to the public.

Yesterday the members opposite seemed to be confused on several points, so I want to begin my comments today by mentioning some of the work that we are undertaking in the Department of Justice. I'll come back to these in a few moments, but to summarize the amendments before us, the *Court Jurisdiction and Proceedings Transfer Act* updates references to other statutes before the act is proclaimed.

The *Human Rights Act* changes will see the Legislature designate a deputy chief adjudicator to ensure there is no gap if the chief adjudicator is unable to act.

The interprovincial subpoena act will allow travel expense rates for extra-territorial witnesses to be set by regulation.

The *Judicature Act* gives effect to the government's commitment to the *Agreement on Internal Trade* revisions allowing person-to-government disputes by allowing cost orders against persons to be enforced.

The *Jury Act* broadens the pool of eligible jurors and correctly identifies those who do not qualify. It allows the court to determine how prospective jurors should be summoned and increases the maximum fine for those who fail to attend jury selection.

The *Notaries Act* makes it easier to identify notaries before whom documents have been sworn.

The *Regulations Act* and the *Interpretation Act* will clarify that members of the Legislature may be given

electronic notice of filing of regulations and electronic copies of the regulations.

The *Territorial Court Act* increases the retirement age of judges from 65 to 70 and allows the appointment of staff justices of the peace who can perform strictly defined functions. The changes to the *Court of Appeal Act*, *Small Claims Court Act*, *Supreme Court Act* and the *Territorial Court Act* codifies each court's existing capacity to impose restrictions on vexatious litigants who abuse court time and resources and clarifies procedures for appealing these restrictions.

While we're talking about courts, I want to mention we have updated information for the court services public information. The updated small claims booklets are now available for the public. These booklets explain the small claims court process. On-line court forums are in the process of being posted to the Court Services website.

I would also like to mention that on August 7, 2013, the Yukon government appointed Peter Chisholm as a new judge of the Territorial Court of the Yukon. Mr. Chisholm has extensive experience with the Public Prosecution Service of Canada as defense council and has a strong knowledge of the legal system in the Yukon and a history of volunteerism in our territory.

The first four amendments address improvements to the empanelling of a jury under the *Jury Act*. The jury is one of the oldest institutions in our justice system. It is a civic duty that benefits us all by ensuring fair trials, which promotes a civic and just society. Thus it is vital that the process of empanelling jurors promotes fairness.

The bill advances this by exempting from jury service anyone who is involved in the prosecution of criminal offences or enforcements of sentences. In Yukon, this includes the Public Prosecution Service of Canada, federal Department of Justice and the federal Correctional Service. This amendment helps ensure that jurors do not possess prior knowledge of an accused person's circumstances, which could prejudice the jury.

The second amendment addresses the disqualification of people from jury service on the basis of having being previously convicted of an offence. Fulfilling one's civic duty is the right and responsibility of every Canadian citizen, so when it comes to jury duty we must ensure that we only disqualify people when there is good reason for doing so.

Currently, the *Jury Act* disqualifies anyone who was convicted of a crime in which they could have been sentenced to a jail term exceeding 12 months. So even if the sentence was shorter, such as only one day in jail, for the purpose of jury duty, the person is still treated as if their crime was serious enough to warrant a sentence exceeding 12 months in jail. This infringes on a person's civic identity and also reduces the pool of potential jurors. We must ask ourselves, is this infringement justified? Does it make sense to reduce the pool of potential jurors when the judge did not think the circumstances of the crime were serious enough to impose a jail term of more than 12 months?

We must also be cognizant of the fact that when there are fewer potential jurors available, it means those who are in the pool will be called upon more often — is this fair to them?

Our colleagues in Parliament did not think so when they enacted section 638 of the *Criminal Code*. In that section, the grounds for challenging a juror based on prior conviction are only permitted when the juror actually received a sentence of imprisonment exceeding 12 months, not simply when they could have received that sentence. Therefore, it is appropriate to disqualify people from jury service on the basis of prior convictions only when that conviction resulted in a sentence of imprisonment that actually exceeded 12 months.

The next amendment removes the requirement for jury duty summonses to be sent via registered mail. Our review has determined that this requirement is not needed. Sheriffs in British Columbia, Alberta and Saskatchewan deliver juror summonses by regular mail and actually report a better response to this method of service.

A better response rate improves the likelihood of empanelling a jury quickly, reducing the demand on everyone's time. Removing the requirement of service by registered mail also provides a cost-efficiency. It saves on mail fees and it saves on staff time. The amendment removes the requirement of registered mail and it replaces it with a requirement that the sheriff follow the direction of the senior judge of the Supreme Court of Yukon on issuing summonses. Thus it is still open to the judge to use registered mail where deemed appropriate when it is no longer mandatory.

The bill next addresses the maximum fine that the court may impose on someone who does not respond to a jury summons. Currently if a person does not respond, the court may impose a fine in a minimum amount of \$25 and a maximum amount of \$200. These amounts were established when the *Jury Act* was passed in 1954. Although \$200 may have been a lot of money at that time, 60 years later, it is not a sufficient deterrent. The only other Canadian jurisdiction with a maximum fine for not responding to a jury summons — pardon me, for Hansard that's "jurisdictions" — are both Nunavut and Northwest Territories. Both jurisdictions rely on legislation that was also enacted more than half a century ago.

The other Canadian jurisdictions have increased their maximum fine amounts for not responding to a jury summons or have eliminated a maximum amount altogether. Seven provinces allow for fines of up to \$1,000. This amendment brings Yukon's legislation in line with the rest of Canada by allowing a maximum fine of up to \$1,000. It also eliminates the minimum fine.

Mr. Speaker, the next amendment deals with how travel expense rates are set for witnesses who live outside the Yukon and are subpoenaed to attend court in our territory. Currently, travel expense rates are addressed directly in the *Interprovincial Subpoena Act*. The amendment allows the rates to be set by regulation instead of within the statute, which is a more efficient means of using government resources and helps ensure the Legislature's time is available for more significant matters.

Mr. Speaker, the bill makes minor amendments to the *Court Jurisdiction and Proceedings Transfer Act*. This act has been passed but is not yet proclaimed. The amendment updates a reference to the *Child and Family Services Act* to ensure accuracy before proclamation.

The next amendment implements the government's commitment under the *Agreement on Internal Trade*. This national agreement has recently been amended to allow persons to be involved as parties in disputes that were previously restricted to government parties only. Part of the agreement requires governments to permit trade orders arising from disputes to be filed with the court, so that they are enforceable against the parties as court orders.

A recent amendment to the agreement requires the act to consider that persons may now be subject to trade orders and required to pay costs. The bill achieves this.

Now turning to the *Notaries Act*, the bill addresses the need for a judge or other official to be able to identify the name and commission of a notary public who has signed a document in their official capacity. This amendment requires notaries to print or stamp their first and last name and the date their commission expires beside their signatures. To avoid placing an unnecessary burden on some notaries whose office requires them to sign numerous documents in a day, the amendment also provides that regulations can be made exempting certain classes of notaries from the requirement.

The next amendment addresses the inherent powers of the courts to restrict litigants who abuse the court process by persistently starting vexatious court proceedings. These are proceedings that are without merit and intended only to annoy or harass other parties or cause them to incur unnecessary legal fees. We are all well-aware of how valuable court time is. The courts work diligently to provide services in a timely manner, yet as anyone who has brought a matter to court can attest, it often feels like waiting for one's day in court takes a long time. This is of course because court proceedings must be rigorous and thorough to ensure justice is done and achieving that level of detail takes time. When a vexatious matter is filed, it places an unnecessary burden on the time of everyone who has a matter before the court.

It is therefore important that the courts can take steps to address litigants who have proven themselves to persistently abuse the court process. The courts already possess this power through their inherent jurisdiction to control their proceedings. They can order a person to be declared a "vexatious litigant", which means they must receive a leave from the court before commencing proceedings.

However, since the inherent jurisdiction of the courts is not codified, it is more difficult for a layperson to understand this law. To make it accessible, the bill amends the *Small Claims Court Act*, *Territorial Court Act*, *Supreme Court Act* and *Court of Appeal Act* by codifying each court's inherent jurisdiction. We must also ensure safeguards exist so that no person is unfairly restricted from access to the courts. Therefore, the bill also expressly clarifies that a right of appeal exists for a litigant to have their vexatious status

revoked or to apply for leave of the court to initiate proceedings that do have merit.

Finally, the amendment requires that the Attorney General must be given an opportunity to make a submission at any hearing where the status of a vexatious litigant is being considered by the court. This provides an additional safeguard to ensure all Yukoners have access to appropriate court services.

The next amendment improves efficiency in how Court Services arranges the services of justices of the peace for routine, non-discretionary matters. For example, currently after a bail hearing when an accused is released on a recognizance or undertaking, an on-call justice of the peace must be called in to read and explain the release conditions to the accused.

Since JPs are not always present in the registry, there can be a delay while they travel to the courthouse. This creates a delay in releasing the accused from custody or returning them to Whitehorse Correctional Centre. To improve this process, the bill amends the *Territorial Court Act* to provide for staff justices of the peace. These JPs would be a small subset of the regular court registry staff who would be empowered to carry out JP functions that do not involve discretion, such as a reading of the conditions of release to an accused.

Since there would always be at least one staff JP present in the court registry, the time spent waiting for a JP would be greatly reduced. There would also be a financial savings since the staff JP is already present.

The final amendment involving changes to court operations changes the age of retirement for Territorial Court Judges from 65 to 70. This amendment has been requested by the judiciary and brings Yukon in line with other Canadian jurisdictions.

We now turn to the second part of the bill, which makes amendments to various regulatory procedures. The first amendment addresses the *Human Rights Act*. Currently the act does not address the situation where the chief adjudicator of the panel of adjudication is incapable of acting in his or her role. This could result in a procedural delay until a new chief is appointed by the Legislature. The amendment will require the Legislature to appoint a deputy chief adjudicator who would have no extra powers or functions unless the chief adjudicator is unable to act.

If the chief adjudicator becomes unable to act, then the deputy chief would be empowered to act in place of the chief adjudicator until such a time as the chief adjudicator becomes able to act again or the Legislature appoints a new chief adjudicator.

The final two amendments deal with regulations. The first increases the efficiency of how minor corrections to existing regulations are made. Currently, making minor corrections to a regulation, such as fixing grammar or references, or repealing obsolete provisions requires an amending regulation for each regulation that needs correcting. To improve the efficiency of Cabinet, the bill enables minor corrections of more than one regulation to be made in a single miscellaneous amendments regulation.

The final amendment involves the notice and delivery of regulations that have been filed with the registrar. The current requirements are for all regulations to be laid before the Legislature as soon as it is convenient. The amendment provides for the registrar to distribute regulations by electronic mail or other available means as soon as possible after filing. This allows the registrar to take advantage of modern communications technology and it promotes expediency.

In conclusion, this bill supports the government's commitment to ensure good governance by practising open, accountable, fiscally responsible government and the Department of Justice's commitment to ensuring access to high-quality justice services, including efficient, effective and appropriate court services that are accessible to the public.

By attending to the details, the government is able to realize efficiencies that save time and expenses, which really benefit all Yukoners. I would like to thank the judiciary of both the Yukon Supreme Court and the Yukon Territorial Court for their input into this legislation. The court is always interested in making improvements and I'm glad that our government was able to accommodate their requests for some of the changes to legislation contained here in Bill No. 63. I think it shows that we can work together to ensure that the judicial branch of government works well and has the tools to do its job efficiently.

I would also like to take the time to thank the staff at Court Services, the legislative counsel office and the Policy and Communications branch for their hard work on this bill. They did work very hard, Mr. Speaker, to ensure that the bill, although relatively minor in the nature of the changes, made it to Cabinet in a timely manner for the fall legislative session on top of the many things that are asked of them in their day-to-day work.

We know that the Department of Justice is a central service department that offers legal support to all other departments, but they also have the responsibility for managing nearly 100 pieces of legislation of their own and they do an excellent job of managing this dual role.

Ms. Moorcroft: The Official Opposition will be supporting the *Court and Regulatory Statutes Amendment Act* that is before us today. I want to thank the minister for reading into the record a description of what statutes and regulations will be changed. I'm glad the minister is doing his job to bring forward amendments to improve the functioning of the courts and to add tools that will support the work of court staff.

I also want to thank the Department of Justice officials who will be listening to this debate so the minister can respond to the questions that I will now put on the record and we can deal with when we are in Committee of the Whole.

I'm going to begin with the orders in respect of a vexatious litigator. I'd like to know the nature and extent of this problem. How many litigators have brought forward vexatious actions without merit in the last two to five years? Do they anticipate that there will be many persons who have been persistently instituting vexatious proceedings, making it necessary to have such orders?

There's also an amendment to the *Human Rights Act*. I would like to know if the Yukon government consulted with the Yukon Human Rights Commission about those amendments to the *Human Rights Act*. What the amendments do is establish that the Legislature will select the chief and deputy chief for the human rights board of adjudication.

I would be interested in knowing what the criteria would be for the selection of those positions — if they would be required to have training in law or knowledge and experience of administrative law.

The minister did explain the rationale for the new staff justices of the peace with limited authority and indicated that their authority would be largely reading conditions of release to an accused person to avoid delay in processing. He also indicated that would be cost-effective. I will be asking the minister what other duties they may have. Does the minister know how many will be appointed and what it will cost?

There's also reference to miscellaneous corrections to regulations looking at editorial or drafting practices and defining a consistent form of expression. I note that the amendments also refer to using gender-neutral language. It is challenging to be gender-neutral. I would suggest that gender-inclusive language would be an appropriate term to use.

On the raising of the age of retirement for a Territorial Court judge to 70, the minister said that that would comply with other jurisdictions. Was that the sole reason for raising the age of retirement for a Territorial Court judge, or was this a request from the judiciary or from the department or both?

I don't have further comments with regard to the other amendments that will be before us. We can discuss them in Committee.

Speaker: Are you prepared for the question? Are you agreed?

Some Hon. Members: Agreed.

Speaker: The yeas have it. I declare the motion carried.

Motion for second reading of Bill No. 63 agreed to

Bill No. 60: Act to Amend the Corrections Act, 2009 — Third Reading

Clerk: Third reading, Bill No. 60, standing in the name of the Honourable Mr. Nixon.

Hon. Mr. Nixon: Mr. Speaker, I move that Bill No. 60, entitled *Act to Amend the Corrections Act, 2009*, be now read a third time and do pass.

Speaker: It has been moved by the Minister of Justice that Bill No. 60, entitled *Act to Amend the Corrections Act, 2009*, be now read a third time and do pass.

Hon. Mr. Nixon: I will be brief in my remarks. I again want to extend my appreciation to the Department of Justice for the excellent work they have done on Bill No. 60, entitled *Act to Amend the Corrections Act, 2009*, and again express my thanks to all members of this Legislature for supporting this bill as it moves forward.

Ms. Moorcroft: My remarks will be brief as well. I do want to put on the record, Mr. Speaker, that in second reading debate, the Official Opposition indicated that we will support this bill. We also raised our concerns about creating a new class of criminals — police prisoners — who are often people who are picked up by the RCMP for public intoxication.

We noted that the 2010 Beaton and Allen *Task Force on Acutely Intoxicated Persons at Risk Final Report* recommended a very different approach than the one the Yukon Party has taken to criminalize people with addictions. Dr. Beaton and Chief Allen spoke about the archaic Yukon *Liquor Act*, which the Yukon government has still not updated, and they spoke about the need to update that legislation.

Beaton and Allen also spoke about the need to treat people who are drunk in public and struggling with addictions — often because of deep-rooted social and economic disadvantage — with respect and compassion. The key to doing that lies in changing attitudes.

Dr. Beaton and Chief Allen noted that: “Persons of First Nations’ ancestry constitute a majority of the individuals who are detained under the *Yukon Liquor Act*. Such individuals report, both directly and through representatives, they frequently are the recipients of inappropriate attitudinal behaviours, when detained while acutely intoxicated. It is not the intent of this report to explain the reasons for this behaviour but the statement was so frequent in our conversations that we accept the validity of the assertion.”

The Beaton and Allen report went on to note: “If any attendee to intoxicated persons demonstrates repeatedly that he is not capable of acting with respect, recognizing dignity or acknowledging personal rights and freedoms, that person should not be allowed to continue to serve in that capacity.”

We also raised in second reading and in the Committee debate the missed opportunity to make improvements to the *Corrections Act, 2009* in responding to people with fetal alcohol spectrum disorder who become involved with the criminal justice system.

We spoke about recommendations made by the Canadian Bar Association to look at authorizing a judge to make an order approving an external support plan recommended by an FASD person’s probation officer that could be in effect after probation expires.

With those brief comments, I will again state that we will be supporting this legislation and would encourage the government to consider our advocating for making even more improvements to the *Corrections Act, 2009*.

Speaker: Are you prepared for the question?

Some Hon. Members: Division.

Division

Speaker: Division has been called.

Bells

Speaker: Mr. Clerk, please poll the House.

Hon. Mr. Pasloski: Agree.

Hon. Mr. Cathers: Agree.

Hon. Ms. Taylor: Agree.

Hon. Mr. Graham: Agree.

Hon. Mr. Kent: Agree.

Hon. Mr. Nixon: Agree.

Ms. McLeod: Agree.

Hon. Mr. Istchenko: Agree.

Hon. Mr. Dixon: Agree.

Mr. Hassard: Agree.

Mr. Elias: Agree.

Ms. Hanson: Agree.

Ms. Stick: Agree.

Ms. Moorcroft: Agree.

Ms. White: Agree.

Mr. Tredger: Agree.

Mr. Barr: Agree.

Mr. Silver: Agree.

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

Speaker: The yeas have it.

Motion for third reading of Bill No. 60 agreed to

Speaker: I declare the motion carried and that Bill No. 60 has passed this House.

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

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

Motion agreed to

Speaker leaves the Chair

COMMITTEE OF THE WHOLE

Chair (Ms. McLeod): 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*. Do members wish to take a brief recess?

All Hon. Members: Agreed.

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

Recess

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

Bill No. 61: Health Information Privacy and Management Act

Chair: The matter before the Committee is Bill No. 61, entitled *Health Information Privacy and Management Act*.

Mr. Graham, you have the floor with just about 18 minutes left.

On Clause 57 — continued

Hon. Mr. Graham: I think we stood over clause 56, so I’ll speak to both 56 and somewhat to 57 as well because the

same phrase repeats itself — when we were talking about an enactment of Yukon or Canada or a treaty arrangement or agreement entered into. Last time we discussed this bill there were concerns raised about that subclause, and it appears in three different places in the bills: in the disclosure, use and collection. All three sections have it.

The members opposite were questioning the language that we see in this clause — I think it starts on 56(1)(b) — that permits disclosures, use or consent, “subject to the requirements and restrictions, if any, that are prescribed, if an enactment of Yukon or Canada, or a treaty, arrangement or agreement entered into under such an enactment, permits or requires the use.”

I realize that this bill isn’t the easiest to understand, and I acknowledge the concerns. What we’ve tried to do is explain this subclause and hopefully clarify the references in the three sections where the language was identical.

The intent is to allow for disclosure in circumstances where other legal instruments — either Yukon or federal — permits or requires disclosures. The legal instrument would be a law or a treaty, an arrangement or agreement that is made under a Yukon or federal law. For example, in cases of disease outbreaks, the Yukon *Public Health and Safety Act* requires disclosures by health care providers, who are custodians, of certain personal information to be made to the chief medical officer. This specific disclosure is not identified under this bill, other than by reference in this provision. So the only way the chief medical officer could disclose information required under the *Public Health and Safety Act* would be under this act.

Other acts that require disclosures and that work in conjunction with this subclause include the Yukon and federal *Statistics Act*. I have mentioned that work is underway with B.C. on a public health program. It’s a cooperative program called “Panorama.” An agreement will be required to support disclosures and indirect collection of personal information because B.C., as part of our agreement, will necessarily collect some of that information. This will be an example of a disclosure that would be permitted under this subclause, because another act — in this case, the Yukon *Health Act* — permits Yukon to enter into an agreement for the disclosure of personal health information.

So, already under the Yukon *Health Act*, there is a clause — I think enacted in the 1990s — that allows us to disclose personal health information to B.C. if a person is being transferred there for medical services. Under this act, you would no longer be able to do this if we didn’t have this clause in there. That’s the reason. I admit it’s all complicated, but once you wrap your head around those things, it gets easier because basically what we’re talking about is that the language in this subclause acknowledges that other types of information flows may be required pursuant to other legal instruments that may not typically be considered to be acts about personal health information. The intention of this bill is to continue to allow collection, use or disclosure if it is required or permitted by a law of Yukon or the federal government.

When I refer to legal instruments, this could include treaties. In this subclause, “treaty” means a special type of an agreement. It’s an agreement entered into between nations or states, and an identical provision exists in ATIPP and we have tried to mirror some of the familiar language in ATIPP when possible. A common example of the use of the word “treaty” is in international taxation agreements between governments generally called “tax treaties”. The wording of this clause is almost identical. It reflects the standard provision found in a number of other provinces. Ontario, New Brunswick, Newfoundland, Nova Scotia and Saskatchewan all use the word “treaty” in their parallel provisions.

I hope that this sheds a little light on these three clauses. If there are any other questions I’ll attempt to answer them.

Clause 57 agreed to

Chair: The minister is now ready to proceed with clauses that have been stood over. That would be clause 54 on page 41. Is there any debate?

On Clause 54 — previously stood over

Clause 54 agreed to

On Clause 56 — previously stood over

Clause 56 agreed to

On Clause 58

Ms. Stick: I’m going to refer back to what the minister just spoke of and explain one of my concerns, though we’ve agreed on the other two clauses to pass that certain one. There was just a recent news article on CBC of a woman attempting to enter the United States to go on a trip. She was denied entry and was told the reason for that, and then they proceeded to state that she had been hospitalized for a mental health problem.

Now, this is being looked at by the ATIPP Information and Privacy Commissioner in Ontario, who has since received other complaints from individuals saying they were denied entry based on personal health care information. The reason I was concerned about this was, I know that sometimes there are treaties with other nations. Sometimes it’s with the United States and has to do with Homeland Security. We have to give them flight lists of who is flying over their country and that type of personal information, so that’s what we were trying to understand. Then we saw this article this week, saying that, somehow, border guards had personal health care information of individuals trying to enter the United States.

It is being investigated, but you can understand where our concerns would be with regard to this certain clause and not being sure of what treaties or agreements we do have with other countries, whether that personal health care information is protected, or are there instances when it could be shared — except for an epidemic, as the minister talked about, or any other situation.

I’ll just put that out there as an example of something we were concerned about and not knowing always what those treaties and agreements are with other countries.

Hon. Mr. Graham: I’m not aware and we’re not aware of any treaties right now that would allow that kind of disclosure. What we do have is an agreement between Yukon, Alaska, B.C. and a couple of western states — and Alberta too

— with respect to exchanging information during a communicable disease outbreak. That's the only treaty that the Yukon government has entered into that would enable that kind of exchange of information without allowing people the chance to agree to disclosure — but that's the only case.

Ms. Stick: I want to move on to, under section 58(e), where it says a custodian may disclose an individual's personal health information without the individual's consent if the personal health information is available to the public. I just wondered if the minister could give an example of when a person's personal health would be out in the public.

Hon. Mr. Graham: A perfect example, Madam Chair, is — if a famous or infamous — if a member of the Opposition were to go skiing on the ski hill and break her leg and it was on the local CBC news, her doctor would be able to confirm or deny that she actually did break her leg. That would be an example. Because the CBC news already announced it, it would be available to the public and a doctor would be able to confirm that that was true.

Ms. Stick: It would be news to me if I was skiing down a hill, Madam Chair.

In the next one (h), it says — again, it's about disclosing without the individual's consent for any purpose other than providing health care — if the custodian reasonably believes that the disclosure will prevent or reduce a risk of serious harm to the health or safety of any other individual. I'm looking again about another example for this, please.

Hon. Mr. Graham: One of the good things about having a staff knowing that I'm not all that sharp is that they've included examples on almost everything.

The example here is that, if a doctor diagnoses a patient with severe dizziness, and the patient is a construction worker who could be injured or cause injury to others at work if he became dizzy at work, if the patient refuses to comply with the doctor's advice to stop working or to take a temporary desk job, the doctor could communicate the risk of injury to the patient's employer.

Ms. Stick: I'll move on to (n), which is about disclosure to the Canadian Institute for Health Information or to a prescribed health data institute in Canada. I'm just wondering if the department is contemplating entering into agreements with other health information systems within Canada.

Hon. Mr. Graham: Madam Chair, the example we have is the Canadian Institute for Health Information which is Canada's national health database. I just returned from a national meeting of the Canadian Institute for Health Information and it's supported by all jurisdictions across the country and is governed by a board with representation from across Canada. It provides analysis of health information to support improved health care to Canadians through better health policy and health system management. So this clause gives us the ability, if we have a written agreement, to provide them with health information without disclosure.

Ms. Stick: Section (p) and (q)(i) kind of go together and talk about disclosure of information to verify an individual's eligibility. It talks about funding from the

Government of Yukon, another province or Canada. I'm just wondering if, under this, could a person be denied health care, if in fact it was determined they weren't eligible?

Hon. Mr. Graham: This section allows us to say whether or not that person is covered in Yukon. A perfect example is at Yukon College. Many times students would come in and they did not have a health care card or an address. Health and Social Services had the ability to give us the student's address only for purposes of determining that the person was a Yukon resident. The same thing would be done for insured health, or Health and Social Services can inform a doctor's office that a patient who did not bring a health care card to an appointment is still covered to receive care. Under those two examples, some information can be given just to make sure that the person receives care or receives a service.

Ms. Stick: Under (s) and (t), still in the same part — litigation guardian, I'm not clear what that is.

Hon. Mr. Graham: Litigation guardian is when a minor or a person not capable of representing themselves applies to the court and has someone appointed to act for them. That's a litigation guardian.

An example for this section is a psychiatrist who has completed a capacity assessment and found an individual who received a brain injury in a car accident to be incapable, can give that information to the injured individual's wife so that she can sue on behalf of her husband, so the court can approve the wife to act for the injured husband. The wife would be the litigation guardian, in that case.

Ms. Stick: I am assuming then that this next section, (u)(i), talks about disclosing information for the purpose of complying with a "summons, warrant, order or similar requirement". I'm again looking for an example of when that would happen in (i) or (ii).

Hon. Mr. Graham: It would mean that, if the wife had been approved by the court to represent her injured husband as a litigation guardian in a lawsuit, the husband's doctor can give her information with respect to her husband's injury or medical history.

Ms. Stick: Going on to, under (x)(i), it's about disclosure of information without the individual's consent "to the Minister of Justice or the police". Again, I'm just looking for an example. So far, I've been able to follow them, so thank you.

Hon. Mr. Graham: Examples are wonderful. Under this section, the Minister of Justice or the police would be able to receive that information if it relates to a possible offence under the law of Yukon or Canada. The example is the hospital can give the police a limited amount of information, set out in the regulations, about a gunshot victim being treated in emergency.

Ms. Stick: Under (y)(ii), there's the section about providing information for the purpose of preventing or reducing abuse in the use of health care — just another example, please.

Hon. Mr. Graham: You're going to love this one. An example is: a doctor who is called by a pharmacist who

suspects a prescription is a forgery can tell the pharmacist that a prescription brought in by a patient is a fake or is real.

Ms. Stick: Under (z)(cc), it talks about the *Public Health and Safety Act*. It's a section that refers to the chief medical officer. It talks about under the laws of another jurisdiction, if a disclosure can be made — "if the disclosure is made to permit the chief medical officer or the authority to discharge a duty, function or power under that act" or a substantially similar duty, function or power. Again, I'm just looking for clarification please.

Hon. Mr. Graham: This is like what we talked about before where we have a treaty with western Canada and the western States as well as Alaska. Under this specific section, Health and Social Services could disclose information about patients in Watson Lake with a contagious disease to the British Columbia Centre for Disease Control to control the spread of that contagious disease from Watson Lake, Yukon, to Lower Post, which is in B.C. That's what is meant by the interjurisdictional transfer.

Chair: Can we be clear on the section that we're referring to? I thought Ms. Stick was talking about (z).

Ms. Stick: Just to clarify, apparently it is just (cc), not (z)(cc).

Chair: Thank you.

Ms. Hanson: Just another point of clarification. With respect to (dd)(i), it says — so here someone's doing an audit review and they have a bunch of material that they've amassed before commencing the audit review of accreditation — "to destroy the personal health information at the earliest possible opportunity after completing the audit, review or accreditation." I don't see in the subsequent ones if there is any ultimate termination point. Just in terms of whether there is any requirement — so, if I say it's the earliest possible, what's to prevent them from dragging that out for six months or six years?

Hon. Mr. Graham: You're right in that it would mean an auditor or an accreditation more than anything. They would receive the information during their accreditation and we would expect that the information would be destroyed immediately after the accreditation. Let's say for Whitehorse General Hospital or for the Continuing Care section of Health and Social Services, once that accreditation evaluation was done, we would expect that the information would be destroyed.

There is no specific time limit under this and this is maybe something we should look at doing under regulation, so we'll take that under advisement — but it wouldn't be done in any event right here; it would be done under regulations.

Clause 58 agreed to

On Clause 59

Clause 59 agreed to

On Clause 60

Ms. Stick: I have a couple of questions in this section, the first being when it talks about disclosure to a successor. I'm assuming this would be if a new doctor was taking over an old doctor's practice, or if a person's health information was being transferred from Macaulay Lodge to Thomson

Centre or Copper Ridge. I just wanted to know if, in that first 60(1), this is what we're talking about there.

Hon. Mr. Graham: Yes, that's right. The "potential successor" is a person who may enter into an agreement — "may" enter into an agreement to accept — and "successor" is actually someone who obtains custody. So with "potential", we're talking about somebody looking at a practice to buy it — whether it's a doctor or a dentist or a psychiatrist — and in the second, it's somebody who actually obtains custody and controls it. They then become the "successor."

Ms. Stick: One of the things I looked for in this — and something that was pointed out to me by a few individuals — was what happens when a clinic perhaps closes and a person's files do not get transferred to a new physician? How is a person supposed to be able to access their own personal health care information that they might take to another physician if the clinic closes without a replacement?

Hon. Mr. Graham: The actual legislation was covered somewhat earlier, but remember that a custodian never loses the responsibility of those records until they transfer that responsibility to a successor. They would be responsible for maintaining control of those documents and providing security for those documents. Remember that they can even charge a fee that will be set in regulation for people to access those personal health records.

In fact, under this section now, if a person chooses not to have their personal health records transferred to a successor, they can do that as well by simply saying that they do not want to have their files transferred. That is also the other thing that's in here.

Ms. Stick: Which would then raise the question: what happens to those records if the person says, "I don't want them transferred"? Where do they go and how does that person have access to them?

Hon. Mr. Graham: They could either be transferred to the individual themselves or, if they didn't take them themselves, the doctor would have the responsibility to maintain control and custody of those. I can't remember what length of time they would have to keep those — we don't have any set limits — so they would have to keep them under custody and control.

Ms. Stick: My only other question around that whole piece would be, what if that physician leaves the territory — even the country — retires or goes somewhere else? Again, it's just being able to access your own personal health care information that concerns me.

Hon. Mr. Graham: We can only control what happens in the territory. In the case you mentioned where they may leave, we would expect that they would either transfer control of those to another custodian or to the patients themselves. That option would be there. In any event, they have to maintain security and control of those patient documents.

Clause 60 agreed to

On Clause 61

Ms. Stick: I am looking for clarification on the diagnosis decision and the definition of that. I'm looking for an explanation, please.

Hon. Mr. Graham: This is the section we talked about at length, I think, in general debate. I think it was mainly because the IPC noted that this section was unlike any other section anywhere else in Canada. In my opening speech, I mentioned that we do have some items in this piece of legislation that, we believe, are setting the stage for other things to happen.

The section is really intended to support individuals who have used up all other avenues to obtain a diagnosis of medical conditions that cannot be made without limited information about another individual, specifically FASD, and that's why I was really interested in the debate when we talked about the prevalence study going on in the local corrections institution, because part of that diagnosis — and I know the NDP critic for Justice said how important it was to get that diagnosis in order for a person to be eligible to enter into programs to assist them when they are afflicted with FASD. So the section is, in part anyway, a response to concerns raised during our discussions with various FASD workers, as well as NGOs, Yukon Justice and Health and Social Services staff. It also responds to a call to action by the Canadian Bar Association. When it recently met in Whitehorse, they commended the Yukon for providing leadership at the national table on FASD and this was part of our plan.

The Canadian Bar Association has also called for better assessment tools so that FASD assessment can be completed and individuals with this disability can be provided with more appropriate responses from both the justice system and the health and social services systems. This proposal was endorsed in the meeting last week of the ministers of Justice held here in Whitehorse. We believe that we've included very tight controls on how this information may be accessed so that the other individual's personal health information is made available only to the person doing the diagnosis or, in many cases, the team doing the diagnosis, because we really have more of a team approach to diagnosing FASD.

In fact, the legislation also limits how the court proceedings are reported so that the names of the people involved cannot be made public in any way.

This section also limits when an application to court is appropriate. The health care provider making the diagnosis must indicate that the diagnosis cannot be completed without the specific information sought in the application. The individual whose information is being requested is given notice and time to respond. Only after that can the court consider the application and determine if the information requested is essential for the diagnosis and that no other information will do.

The court must also be satisfied that, without the information required to make the diagnosis, the person's health would be endangered or their health care would be negatively affected, and that they would not be eligible for many of the programs currently available to people who are diagnosed with FASD. That's a very high threshold.

When the court makes an order under this provision, the information may only be provided to the person making the

diagnosis decision, and it can only be used for this purpose or for providing care to the person who requires the diagnosis.

Finally, it's important to remember that the information can only be obtained and used in the most limited manner and only for the purposes mentioned. We understand that the IPC has raised concern about the protection of privacy, and we've carefully considered this. We believe the courts can balance the intrusion on an individual's privacy with the pressing health needs of another individual and make balanced court orders, which is why we chose to proceed in this manner.

Ms. Stick: Thanks for that clarification. I thought about this a lot in the last week and was trying to think whether there would be other examples of when something like this might occur. I would ask if there are other possibilities that the department has thought about. The one I came up with is: would something like this apply for an individual who is perhaps adopted and is looking for genetic information or background for themselves — that they would have to go through an adoption department or something and try to find out that information.

Hon. Mr. Graham: There is the possibility that it could be used for genetic information. There are so many ways now that adoptions can be tracked — so, probably not. We felt that by putting the controls in place so that you have to go to court and you have to convince a judge, it was appropriate that we use that system so that possibly, if a person had a disease like a blood-borne disease and they wanted to have information about another person who may have given it to them, that information, if you made application to the court, may be obtained that way.

Clause 61 agreed to

On Clause 62

Clause 62 agreed to

On Clause 63

Ms. Stick: I'll start right at the very top with school enrollment. I'm wondering if this section is a way of tracking new students coming into the system. Are we talking at all about vaccination information for enrollment?

Hon. Mr. Graham: No, it doesn't. It only allows the Department of Health and Social Services to provide contact information — address and phone number — of parents of children under six to assist the Education department with school enrollment, and parents may even opt out of this by using the next section.

Ms. Stick: I have just a comment for section 2. It says, "Disclosure under this section must be preceded by the posting, on the Internet website of the Department..." It's a great website but I don't think that many people actually would know to look there. Is there any other way that this information could also be posted, whether it would just be an ad in the paper or something on the radio? It's not that everybody listens or reads the papers either, but just so there are more options of getting that public information out there rather than just the Internet.

Hon. Mr. Graham: This is the absolute, bare minimum that's required under legislation. Under the regulations, we can require notification at the school, public

newspaper ads or whatever — but this was the absolute, bare minimum that would be required under the legislation.

Clause 63 agreed to

On Clause 64

Clause 64 agreed to

On Clause 65

Hon. Mr. Graham: Madam Chair, this is a new division — or a new part of the division — so perhaps I'll run through a few things.

Personal health information is collected, used and disclosed for a variety of purposes. Health research is an important purpose that Yukoners can benefit significantly from. When a custodian — who is not a First Nation custodian or a public body — wants to collect personal information for pure research purposes, the custodian must get approval from an institutional research review committee that is typically a research ethics board associated with a university. Custodians can all use the information they collect for their own research purposes.

For example, if a clinic wants to review the various approaches used in the clinic to treat a disease or to identify the more effective approaches, this is permissible. Disclosure of personal health information to other researchers is a bit different. A researcher must first have the research reviewed by a research review committee. Following that, if the researcher is requesting a public body custodian to disclose the information, the public body — typically the Hospital Corporation or Health and Social Services — must carefully consider the importance of the research and the invasion of personal privacy.

This requirement is in place to add additional careful scrutiny of disclosures for research, given the amount of personal health information that the Yukon Hospital Corporation and Health and Social Services hold in their custody. When personal health information is disclosed for research purposes, an agreement between the custodian and researcher must be in place so that the researcher maintains the privacy and security of that information.

There is currently no research ethics board in the Yukon and, therefore, it would mean that, if we required the researcher to have a research ethics board approval for research, it would require somebody from outside of the jurisdiction to give consent to activity happening most of the time within the government. We believe that decisions of this nature should be made in the Yukon, given Yukon values and priorities, and that, until a research ethics board is created in Yukon, there is no assurance that approval given by a research ethics board outside of the Yukon would reflect those priorities and values. That's why we feel that the act must contain criteria that must be met in order to permit disclosure for research.

Under the *Health Information Privacy and Management Act*, a public body cannot disclose the information for research, unless certain criteria are met. The first is that the importance of this disclosure must outweigh the privacy intrusion, that the research cannot be done without identifiable

information, and it would be unreasonable or impractical to obtain consent under the circumstances.

I'll finish that, because there is another part to it that I wanted to add, but we'll wait until we get to that section.

Ms. Stick: I was going to ask the minister to get up and repeat that. It's a lot of information.

I'm going to try to go through the questions. Some of them I've taken comments from the Information and Privacy Commissioner because she is much more comprehensive in her comments on this and says it better than I could.

One of my first questions, though, is under section — have we started on —

Chair: We are discussing clause 65.

Clause 65 agreed to

On Clause 66

Ms. Stick: Thank you, Madam Chair. I am interested in 66(2)(a). It talks about where the custodian is a public body, a branch, and it goes on to say it must meet the prescribed requirements, if any.

That seemed like an odd clause to put in there — the “if any,” suggesting that there might not be any. So are there going to be prescribed requirements or not?

Hon. Mr. Graham: Madam Chair, we're talking about public bodies such as the Department of Health and Social Services, the Yukon Housing Corporation or a Yukon First Nation. They will have requirements prescribed in regulation. When we talk about “if any,” those are the regulations that will prescribe requirements.

Ms. Stick: Would those be regulations of those public bodies — First Nation operation or program?

Hon. Mr. Graham: No, they'll be regulations under the act created by the department.

Clause 66 agreed to

On Clause 67

Ms. Stick: My concern was that this does not limit — “A custodian may, without the individual's consent, use for the purpose of research an individual's personal health information that is in its custody or control.” It does not put any limits or any framework around this. I'm wondering if I could have an explanation of that, please.

Hon. Mr. Graham: This is information that they already control. So they can do research. For instance, if Health and Social Services wants to do a research project on the incidence of some specific disease that we've been paying for — or a perfect example in Ontario was that they did a research project on cataract surgeries and how much it cost and how much the time has decreased to do those surgeries. That information was already in their custody, so they could use it to do research. They just couldn't disclose it.

Ms. Stick: Does this also mean that five years down the road they could go back and look at the same information and pull different information out of what they have collected in their research and use it for something else?

Hon. Mr. Graham: I have to go back — this is information that is already in the custodian's control. So if they get more information and they want to do another research project, yes, they can do it as long as the information

is already under their control. This only gives them the ability to do research. So if the Hospital Corporation wanted to do research on infections of people admitted to the hospital, because that information is already there and it's under their control, they could do that research. They could do it every year. They probably do.

Clause 67 agreed to

On Clause 68

Clause 68 agreed to

On Clause 69

Clause 69 agreed to

On Clause 70

Hon. Mr. Graham: This whole section or part — part 7 works with the management of information — includes some things new and some things old.

The first division deals with the old and brings into the act — an amendment that was made to the *Health Act* to authorize the minister to enter into agreements. The *Health Act* provisions are repealed as a result of this new section. The other division addresses new situations that will arise once Yukon implements an electronic health information system. In this act, we refer to the Yukon health information network. As we'll see, much of the detailed authorities that will be necessary to operate the network will be set out in the future in regulation. This part is very future-oriented. It's very comprehensive and complex, and we wanted to address as many issues as possible.

We know that the world of information management is rapidly changing. For example, we know that national efforts are now being made to develop technologies to make sure that Canadians have access to their key medical information anywhere in Canada. We support this work, but our challenge is to ensure that Yukon has the authority to participate in these large, national systems. This division mirrors amendments made to the *Health Act* that were limited to agreements made by the minister. It also broadens the earlier scope and allows all custodians of health care information to enter agreements for indirect collection for the purpose of providing health care under certain conditions.

When Health and Social Services enters into an agreement, the department must post notice on its website of the general details to inform the general public. An example of the usefulness of this division is the work currently underway to participate in a new, national public health information management system.

Yukon is working with B.C. to access powerful tools to improve public health care delivery and surveillance. Yukon will be part of the B.C. system, eventually, and an agreement under this division will be necessary to authorize the flow of information between B.C. and the Yukon.

Clause 70 agreed to

On Clause 71

Clause 71 agreed to

On Clause 72

Clause 72 agreed to

On Clause 73

Clause 73 agreed to

On Clause 74

Ms. Stick: Under section 74, it's about ministers' decisions and that, before making a decision, the minister shall submit a draft of the decision of the minister to the advisory committee, if any. It's that "if any" again. I'm wondering if the minister could just clarify this particular clause. I would point out it was one that was also pointed out by the Information and Privacy Commissioner. We're talking about having this committee, but then it's like, well, if any, or if we do. I'm just looking for clarification, please.

Hon. Mr. Graham: You know, it has been awhile since we did second reading debate but, in second reading debate, I made the commitment that we will establish an advisory committee in regulation and we will require that the minister shall submit decisions — with certain exceptions. If it's an emergency health situation or personal harm may result, then we won't wait the 30 days for a decision for a review, but for normal decisions the minister will be bound to submit decisions to the advisory committee for recommendation.

Clause 74 agreed to

On Clause 75

Ms. Stick: I just wanted to point out again that we continue to go back to the Internet website. The minister has assured that there are other ways of providing that information, so again I look forward to seeing the regulations and hoping that those other methods are included also, and not just the Internet website as a source of information.

There are still people who do not own or have access to computers or don't want to, or don't know how, so it's important, I think, that public information be available in more than one form.

Hon. Mr. Graham: Amazingly enough, we're kind of a leader in this in that we required any notification at all. Most jurisdictions in the country require no notification at all. As I said earlier though, this is the minimum, so the very bare minimum is that it has to be posted. My staff has already taken note of the fact that this could be expanded in regulation.

Clause 75 agreed to

On Clause 76

Clause 76 agreed to

On Clause 77

Clause 77 agreed to

On Clause 78

Clause 78 agreed to

On Clause 79

Clause 79 agreed to

On Clause 80

Clause 80 agreed to

On Clause 81

Clause 81 agreed to

On Clause 82

Clause 82 agreed to

On Clause 83

Clause 83 agreed to

On Clause 84

Hon. Mr. Graham: As I mentioned earlier, the Yukon is in the early stages of development of our electronic health information systems. In our discussions with other jurisdictions and with Canada Health Infoway, what we learned is that sometimes we can't anticipate everything before a system is actually in the testing mode. We need authority to test information systems that may not be in compliance with this law, but the only way to determine this is by testing it.

This division allows the minister to run a pilot project that includes collection, use and disclosure of personal health information and a limited amount of personal information. The project must be limited in scope and time and be for the purpose of improving health care. The purpose for piloting the project would typically be to identify if and where there may be a need for collections, uses or disclosure not yet authorized by legislation so that the department can identify any necessary amendments to legislation, new regulations or adjustments to the project to bring it into compliance.

This is somewhat on the cutting edge, as we said earlier, but it is limited in time and scope. Pilot projects can only be done once the minister is consulted with the Information and Privacy Commissioner and any custodians that may be impacted by the project. The public is then notified through posting on the website.

Ms. Stick: I looked for it in the sections under this division but didn't see it. We talked previously about destroying records that were used in — I think it was research or collection. I'm wondering if under pilot projects such as this, information that's collected and used to run tests on systems, such as electronic ones, would be saved or would it then be gotten rid of?

Hon. Mr. Graham: The intent would be that, with any pilot project undertaken, the personal information utilized would only be utilized as long as the pilot project was underway and then it would be destroyed.

Clause 84 agreed to

On Clause 85

Ms. Stick: I'm just wondering who makes this decision — whether or not the information would significantly impede the pilot. Who makes that decision?

Hon. Mr. Graham: It would be part of a pilot project — the collection of personal information — so it would be reviewed by the Information and Privacy Commissioner and custodians who may be impacted. Regardless of what is included, it would be reviewed by the Information and Privacy Commissioner before the pilot project went ahead.

Clause 85 agreed to

On Clause 86

Clause 86 agreed to

On Clause 87

Clause 87 agreed to

On Clause 88

Clause 88 agreed to

On Clause 89

Clause 89 agreed to

On Clause 90

Ms. Stick: Right at the bottom of the page of this is it will "provide an opportunity for the public to provide comments on the pilot project to the Minister before it begins."

I'm just wondering what that time period might be for the public to comment on this. That was my question.

Hon. Mr. Graham: At the very top, clause 90 states "90 days" and it includes all of these things. So it would be at least 90 days to provide the public an opportunity to comment on the project.

Clause 90 agreed to

On Clause 91

Hon. Mr. Graham: We discussed this one at length as well. Because of the role that Highways and Public Works plays as a central information technology manager for the government, all Health and Social Services' electronic information is actually in the custody of Highways and Public Works.

When Health and Social Services develops systems that form part of the Yukon health information networks, Highways and Public Works may play a very important role because they will be the caretakers of that information. Given the way that ATIPP and this act interact, this division is necessary to permit an individual to access or correct their personal health information by contacting Health and Social Services rather than Highways and Public Works. The intent is to ensure that Health and Social Services is the public contact regardless of the role that Highways and Public Works plays behind the scenes.

The IPC made several comments with respect to this particular division, so maybe I'll touch on a few of those. We need to ensure that we have enough flexibility in the legislation to accommodate any uncertainty about the structure of our future e-health system. The IPC suggested that section 91 is not necessary, but in our view this will depend upon future decisions about how e-health is constructed.

The IPC suggested that Highways and Public Works could simply be made either a custodian, an agent or an information manager. We considered all of those possibilities — and they remain possibilities — but at the same time, none of the models really work for us. At this point, we don't know the solution, given where we are in the development of our e-health systems. The personal health information in the custody of Highways and Public Works remains subject to ATIPP. I think that's really important. The IPC noted that Highways and Public Works must comply with ATIPP.

The ATIPP act requires that public bodies make reasonable security arrangements against loss, unauthorized access, collection, use, disclosure and disposal. ATIPP provides a solid framework for management of personal information.

To the extent that HIPMA protection is more robust, such as the requirement for security breach notification, we expect that such additional requirements for enhanced protection of personal health information will be included in any agreement entered into between the Minister of Health and Social Services and Highways and Public Works. In other words,

when and if we enter into an agreement with Highways and Public Works, part of that agreement will be that, should Highways and Public Works have an accident or accidental disclosure of information, the exact same section on security breach notification would apply to Highways and Public Works as it does to any other custodian in the system.

Clause 91 agreed to

On Clause 92

Clause 92 agreed to

On Clause 93

Clause 93 agreed to

On Clause 94

Clause 94 agreed to

On Clause 95

Clause 95 agreed to

On Clause 96

Clause 96 agreed to

On Clause 97

Clause 97 agreed to

On Clause 98

Hon. Mr. Graham: As much as we don't want things to go wrong, we know that it inevitably happens in systems and that processes need to be in place to respond to concerns of the public. When a person has a complaint, generally the first place to go should be to the custodian. But we know that this can be difficult sometimes, and the Yukon Information and Privacy Commissioner has a vital role to play in situations such as this.

Anyone can make a complaint to the Information and Privacy Commissioner if they believe that a custodian has not complied with the legislation. This division sets out the process for making a complaint and the steps the Information and Privacy Commissioner may take in his or her response. The Information and Privacy Commissioner must try to settle the issue informally if possible. If that's not possible, this division establishes a formal process and timeframe for the Information and Privacy Commissioner to consider the complaint.

The Information and Privacy Commissioner must write a report with recommendations. The report is given to the custodian and the other persons involved. It can also be given to the regulatory body of the custodian such as the Yukon Medical Council, if the custodian were a physician. A summary of the report must be made public, but only after the period for appeal to the court has expired. If the custodian appeals, then the report is posted when the appeal is decided and a reference to the appeal decision must be posted. So that's all I have to say on that.

Clause 98 agreed to

On Clause 99

Ms. Stick: It says "within 60 days after the alleged non-compliance that is the subject of the complaint," so there's a time limit of 60 days and then it goes on to say that "within any reasonable longer period that the commissioner permits."

I just wonder if there is a limit to that time that a person could make a complaint.

Hon. Mr. Graham: I think this one may have slipped by me, Madam Chair. It is "any reasonable longer period that the commissioner permits," so we haven't put an absolute number on that. As I said, this one probably slipped by me, I apologize.

Clause 99 agreed to

On Clause 100

Clause 100 agreed to

On Clause 101

Clause 101 agreed to

On Clause 102

Clause 102 agreed to

On Clause 103

Clause 103 agreed to

On Clause 104

Clause 104 agreed to

On Clause 105

Clause 105 agreed to

On Clause 106

Clause 106 agreed to

On Clause 107

Clause 107 agreed to

On Clause 108

Clause 108 agreed to

On Clause 109

Clause 109 agreed to

On Clause 110

Clause 110 agreed to

On Clause 111

Clause 111 agreed to

On Clause 112

Clause 112 agreed to

On Clause 113

Hon. Mr. Graham: After a complaint is made and the Information and Privacy Commissioner has completed her report and recommendations, then a custodian must determine what action to take. If the custodian does not follow the Information and Privacy Commissioner's recommendations within six months of the report, the person who made the complaint to the Information and Privacy Commissioner may appeal to the Supreme Court of Yukon. This division sets out the appeal procedure for the court. The court can order the custodian to comply with recommendations, make a different order under certain circumstances or dismiss the appeal.

Clause 113 agreed to

On Clause 114

Ms. Stick: I just note that we go right from — to an appeal — that it would have to be through — initiate an appeal in the court. I'm just wondering if there are any steps in between, such as mediation or a meeting of the parties to see if there is any other way to do this. Many people are very hesitant to go through the court system and might not have the resources or the ability to do that on their own.

Hon. Mr. Graham: Madam Chair, as part of the Information and Privacy Commissioner's investigation and recommendation, the parties will have gone through a mediation process. It's required under the Information and

Privacy Commissioner's investigation. Any time this step has to be taken it would have to be a pretty serious breach or a pretty serious incident in order to get to this stage.

Ms. Stick: I understood the part about the mediation earlier on when a person is making a complaint and that the Information and Privacy Commissioner could then be involved in mediation, but this is after the commissioner has made a report and then it's whether the recommendations have been followed up within a time period of six months after the report. What I'm asking is, rather than the first step being the court after the report by the Information and Privacy Commissioner, could there not even be a mediation or a meeting of this group to say, "You haven't done these recommendations" or "You've only done part of these, and is there another way that we can work this out rather than the court system"?

Hon. Mr. Graham: I guess the way we looked at it is that you would have gone through all those processes already. The Information and Privacy Commissioner would be making a report that would have specific recommendations in it, and the respondent — the record custodian, in this case — has made a conscious decision not to comply with the Information and Privacy Commissioner's report.

At that stage, we felt it was a little far down the road to do anything but go to court, where a court has specific abilities to enforce judgments.

Clause 114 agreed to

On Clause 115

Clause 115 agreed to

On Clause 116

Clause 116 agreed to

On Clause 117

Hon. Mr. Graham: This part is called "General" but it contains the important details on offences and penalties that form a critical part of the act. First, though, this part provides protection to anyone who makes a complaint to the Information and Privacy Commissioner. No one can be dismissed or disciplined if they act in good faith by making a complaint to the Information and Privacy Commissioner or refuse to do something that would violate the act. Basically, this is whistle-blower protection with respect to this act.

We move on to offences under this act. Offences fall into two specific categories. Serious offences are where someone knowingly violates a critical or fundamental provision of the act. This would apply to security breaches, destroying records, unauthorized access to records, abuse of the health care card, falsifying records and other such offences. This type of offence is subject to a fine of up to \$25,000 for an individual and \$100,000 for a corporation.

The lesser violations that are committed knowingly — usually administrative non-compliance — are subject to penalties of not more than \$500. This would include minor breaches. This decision also sets out the regulation-making powers. The list is extensive but is typical for this type of legislation.

Regulation-making authority under this act is particularly necessary, given that our health sector is maturing and information technologies are under development.

Clause 117 agreed to

On Clause 118

Clause 118 agreed to

On Clause 119

Clause 119 agreed to

On Clause 120

Clause 120 agreed to

On Clause 121

Clause 121 agreed to

On Clause 122

Clause 122 agreed to

On Clause 123

Clause 123 agreed to

On Clause 124

Clause 124 agreed to

On Clause 125

Clause 125 agreed to

On Clause 126

Clause 126 agreed to

On Clause 127

Clause 127 agreed to

On Clause 128

Clause 128 agreed to

On Clause 129

Hon. Mr. Graham: This includes part 11 and part 12, both of which deal with administrative matters. One of the very last provisions sets out the requirement for review of the legislation to begin within four years following implementation. As we've seen, this legislation is very complex, and we expect that once it is implemented and our e-health systems are set up, there may be ways to improve the legislation to respond to changes in the way the health care sector does business. Many jurisdictions — for example, Alberta — have done reviews and amendments a number of times already. The information world we know is changing rapidly and we'll need to be prepared for that change.

Ms. Stick: I think this will be my last question, and I thank the minister and his staff for their patience in explaining this.

It has to do with clause 129(3). It's about the right of access to, or correction of, records. I tried to follow this — looking at the *Health Information Privacy and Management Act*. I just wish that someone could map this out for me.

Hon. Mr. Graham: I guess it remains to be seen how much time you have because I can give you the information.

This act amends ATIPP to add a definition of custodian and personal health information. The act also amends ATIPP so that generally, the right of access or correction under ATIPP doesn't apply to personal health information in the custody or control of a custodian that is a public health body, such as Health and Social Services, or to personal information or personal health information in the custody or control of Highways and Public Works under section 91 of this act.

For example, if you want to access personal health information in a record of a custodian that is a public body such as Health and Social Services, you should use this act, the *Health Information Privacy and Management Act*, and not ATIPP. However, if the custodian is a public body and a record containing personal health information contains information as follows — ATIPP and not HIPMA continues to apply to access or correction for things like ministerial briefing material, which I know you wouldn't ask for, Cabinet confidence, policy advice, recommendations or draft bills. In all other instances, this act, the *Health Information Privacy and Management Act*, applies.

Clause 129 agreed to

On Clause 130

Clause 130 agreed to

On Clause 131

Clause 131 agreed to

On Clause 132

Clause 132 agreed to

On Clause 133

Clause 133 agreed to

On Clause 134

Clause 134 agreed to

On Clause 135

Clause 135 agreed to

On Clause 136

Clause 136 agreed to

On Clause 137

Clause 137 agreed to

On Clause 138

Clause 138 agreed to

On Clause 139

Hon. Mr. Graham: In this act, we don't intend to proclaim or bring it to force for at least 12 to 18 months. In some jurisdictions it has taken a number of years before implementation of this type of legislation has been possible. There will be time allowed for new custodians to adjust their practices so that they're in compliance with the new legislation. It is not our intention to proclaim into force legislation that the health care sector is not prepared for and isn't able to implement.

Over the coming months, there will be a huge need for training of health care providers and we'll need to develop policies and procedures required under the act.

In addition to the implementation work that custodians will need to do, there is a need for regulations to be brought into place. The first regulation under this act is required as the act comes into force. This regulation, among other things, will identify in more detail the information practice requirements and additional custodians to be named.

That's all I have for this one. Thank you very much everyone for the comments and questions today.

Clause 139 agreed to

On Title

Title agreed to

Hon. Mr. Graham: Madam Chair, I move that Bill No. 61, entitled *Health Information Privacy and Management Act*, be reported without amendment.

Chair: It has been moved by Mr. Graham that Bill No. 61, entitled *Health Information Privacy and Management Act*, be reported without amendment.

Motion agreed to

Chair: The matter before Committee will next be Bill No. 63, entitled *Court and Regulatory Statutes Amendment Act*. Would the members like a break?

All Hon. Members: Agreed.

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

Recess

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

Bill No. 63: Court and Regulatory Statutes Amendment Act

Chair: The matter before the Committee is Bill No. 63, *Court and Regulatory Statutes Amendment Act*.

Hon. Mr. Nixon: I'd like to go over some of the material here again. It's similar to the material that I covered previously in the second reading speech. The bill before us today deals with several of these minor amendments, which will improve the efficiency and ensure that the legislation is aligned with the best practices that guide the work of our staff.

The bill proposes several minor amendments to the legislation governing our courts and also to the regulatory function of our government. Although these amendments are minor, it's important for us to go through each one so the members understand how this bill improves our existing legislation. I'll begin by discussing the 11 amendments to statutes relating to the courts and then discuss the three amendments relating to the regulatory procedures.

As Minister of Justice, it is one of my fundamental responsibilities to ensure that our justice system, legislation and the work that we do in the Department of Justice builds the foundation for safe, healthy and peaceful communities. We do this by ensuring all Yukoners have access to high-quality justice services, including efficient, effective and appropriate court services that are accessible to the public. Our work supports the courts and the judiciary and their essential role in society. Many of the amendments proposed in this bill will do exactly that.

These amendments have been prepared through consultation with the judiciary and done after careful internal and external reviews of our court processes, which suggested avenues for improving efficiency while maintaining the integrity of the justice system.

The first four amendments address the improvements to the empanelling of a jury under the *Jury Act*.

Madam Chair, in Canada, law and justice is not only the business of the members of the Legislature, the judges, lawyers and police, but it is also the business of each and every citizen. One of the primary ways that adult citizens are involved in the justice system is by, indeed, serving on a jury.

Juries are one of the oldest institutions in our justice system. It is a civic duty that benefits us all by ensuring fair trials, which promote a civil and just society. It is therefore incumbent on us to ensure that the process of empanelling jurors is robust, effective and fair.

It should be obvious to all of us that it would not be fair to a person accused of a crime to have someone from the prosecutor's office empaneled on the jury or, similarly, someone employed with corrections. The first amendment in the bill recognizes this fact by exempting from jury service anyone who is involved in the prosecution of criminal offences or enforcement of sentences.

In Yukon, these functions are carried out by the Public Prosecution Service of Canada, the federal Department of Justice and the federal Correctional Services. In exempting people employed by these federal departments, this amendment helps ensure that jurors do not possess prior knowledge of an accused person's circumstance that may prejudice the jury, who must make their decision based solely on the evidence given in the trial.

We turn now to the second amendment, which addresses disqualification of people from jury service on the basis of having been previously convicted of an offence.

Fulfilling one's civic duty is the right and responsibility of every Canadian citizen, so when it comes to jury duty we must ensure that we only disqualify people when there is good reason for doing so.

Currently the *Jury Act* disqualifies anyone who was convicted of a crime in which they could have been sentenced to a jail term exceeding 12 months. So even if the sentence was shorter — such as only one day in jail — for the purpose of jury duty, the person is still treated as if their crime was serious enough to warrant a sentence exceeding 12 months. This infringes a person's civic identity and also reduces the pool of potential jurors.

We must also be cognizant of the fact that when there are fewer potential jurors available, it means those who are in the pool will be called up more often. We need to again ask ourselves: is that fair to them?

The third amendment provides an opportunity for increased efficiency by removing the requirement that summons for jury duty must be sent via registered mail to the people who form the jury selection panel. The jury selection panel is the group of people from which the jurors for a trial are selected. Currently the court has only two options for directing how the sheriff summons his people into this panel. It can require the sheriff to either deliver a summons to them via registered mail or hand-deliver a summons to them in person.

Our review has determined that this requirement for summons to be delivered by registered mail need not be absolute. In fact, sheriffs in British Columbia, Alberta and

Saskatchewan all send out juror summons by regular mail. They have concluded that there's actually a better response to this method of service rather than registered mail. Of all other Canadian jurisdictions, only Prince Edward Island requires registered mail when serving prospective jurors by mail. New Brunswick has the option of ordinary mail or registered mail.

Based on the results observed in British Columbia, Alberta and Saskatchewan, we can see that delivering summonses by regular mail is an option they may also work well in Yukon.

Achieving a better response rate means panels are more likely to contain a sufficient number of eligible jurors so that a jury can be empaneled in its first sitting. This means panels will be sitting for shorter times, which is desirable for panelists who are drawn from the public, as well as courts, lawyers and the accused persons who are waiting for the trial to begin.

In addition to improving on the efficiency of time, removing the requirement of service by registered mail also provides a cost-efficiency. Sending summonses by registered mail incurs a direct cost in the fees payable for the service as well as an indirect cost in terms of time spent by the sheriff in preparing these letters.

We have discussed how efficiencies can be realized by removing the requirement of delivering summons by registered mail. One may justifiably ask this: are there not times when it would be appropriate to use registered mail? The simple answer to that is, yes, there will be times when registered mail would be appropriate.

To ensure that the appropriate choice is made on how to issue the summons, this amendment puts the responsibility for the decision on the Senior Judge of the Supreme Court of Yukon, who is in the best position to make it.

This amendment removes the requirement that summons be delivered by registered mail or by hand, and replaces it with the requirement that summons be delivered in accordance with a practice direction issued by the senior judge. In this way, using registered mail remains an option that the senior judge can use when he determines that this method of service is appropriate. At the same time, it opens up other options that are likely to be more effective and reduce associated costs.

The basis for this amendment in improving the efficiency of the jury selection process was determined in consultation with the Supreme Court.

Another item raised by the judiciary to improve the jury selection process involves the maximum permitted fine that may be imposed on a person who fails to respond to a jury summons. As it stands now, if a person does not appear when summoned for jury service, the court may impose a fine in a minimum amount of \$25 and a maximum amount of \$200. These amounts were established when the *Jury Act* was passed in 1954 and, although \$200 may have been a lot of money at that time, we know that it's not a sufficient deterrent at this time.

We have discussed the fundamental importance of our jury to our justice system. We've also discussed how the failure of people to respond to a jury summons places an

unfair burden on the citizens who do respond. Therefore it's important that the courts have available a suitable deterrent for people who have demonstrated a disregard for the jury selection process.

The current maximum permitted fine of \$200 is far too low. The only other Canadian jurisdictions with a maximum fine of \$200 for failing to respond to a juror summons are Nunavut and Northwest Territories. Similar to Yukon's current *Jury Act*, both of these jurisdictions rely on legislation in which the fine amounts were enacted more than half a century ago. The other Canadian jurisdictions have increased their maximum fine amounts for failing to respond to a jury summons or have eliminated a maximum amount altogether.

Seven provinces allow for fines of up to \$1,000 to be imposed. These include Alberta, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and Quebec. In fact, Quebec allows for fines up to \$2,000 for subsequent offences after the first.

This amendment brings Yukon's legislation in line with the rest of Canada by allowing a maximum fine of up to \$1,000. It also eliminates the minimum fine. Note that this amendment does not require a \$1,000 fine to be imposed. Instead it sets \$1,000 as the maximum. It is the ceiling that fines that cannot exceed. The actual amount is determined by the judge who is in the position necessary to assess the circumstances surrounding why the person failed to respond to the jury summons. In this way, the amendment increases the discretion in which the judge can operate to allow for fines that would provide a suitable deterrent in today's economy.

We have discussed how the bill makes four amendments to the jury-selection process that supports the Department of Justice's goal of providing high-quality justice services, including efficient, effective and appropriate court services that are accessible to the public.

The next amendment deals with how travel-expense rates are set for witnesses who live outside the Yukon and are subpoenaed to attend court in the Yukon. In its current form, the *Interprovincial Subpoena Act* specifies the amounts of travel expenses directly in the statute. This requires an entire bill to be passed when the rates need to be adjusted and, taking into account that annual cost increases can require the rates to be adjusted annually sometimes, this would place an unnecessary burden on the Legislature's time every year, which is better spent in addressing matters of more significant importance to Yukoners.

The amendment allows the rates to be set by regulation instead of within the statute. In doing so, the legislation will be aligned with the manner in which expense rates for witnesses subpoenaed from within Yukon are set, which is regulated under the *Territorial Court Act*.

We now turn to the sixth amendment, which addresses the *Court Jurisdiction and Proceedings Transfer Act*. This act has already been passed but is not yet proclaimed. It contains a reference to the *Children's Act*, but since that statute was subsequently renamed as the *Child and Family Services Act*, this amendment puts the correct reference in the *Court*

Jurisdiction and Proceedings Transfer Act so that it can now be proclaimed.

The seventh amendment implements the government's commitment under the *Agreement on Internal Trade*. This national agreement has recently been amended to allow persons to be involved as parties in disputes that were previously restricted to government parties only. Part of the *Agreement on Internal Trade* requires governments to allow trade orders arising from disputes to be treated as court orders so that they are enforceable against the parties. The *Judicature Act* currently does so when governments are the parties. With the recent amendment to the agreement, it is necessary to amend the act to recognize that persons may now be the subject of trade orders and required to pay costs. This amendment does so. It fulfills Yukon's commitment to its federal, provincial and territorial partners in the agreement.

Madam Chair, we turn now to the *Notaries Act* for the eighth amendment. Notaries public perform an important function in our judicial system and are qualified to administer oaths, affidavits, affirmations and statutory declarations among the various powers they are authorized to exercise. Each notary's commission is time-limited, although they may renew their commission before it expires by taking the appropriate steps.

The *Notaries Act* does not currently require notaries to indicate the date their commission expires. This makes it difficult for someone who is presented with a notarized document, such as a judge, to confirm a valid commission existed when the document was indeed signed.

Also it's not always possible to determine the identity of a notary from their signature.

To address these factors, this amendment requires notaries to print or stamp their first and last name and the date their commission expires beside any instrument that they sign in their official capacity.

It is also the case that some notaries process a large number of documents in a single time for whom stamping their full name and commission on each document would be an unnecessary burden. This amendment also provides for classes of notaries who are exempt from the requirement to print or to stamp their name and the date their commission expires. These classes would be established by regulation.

Thus, this amendment strikes a balance between the need of the court to confirm the identity and commission of notaries who have signed instruments brought before the court with the impact of this requirement on those classes of notaries for whom doing so would be an unnecessary use of their time.

The next amendment addresses the inherent powers of the courts to address litigants who abuse the court process by persistently starting vexatious court proceedings. These are proceedings that are without merit and intended only to annoy or harass other parties or cause them to incur unnecessary legal fees. I know the member opposite asked about vexatious litigants and there have been no recent vexatious litigants, but judges have expressed the need to have this properly entrenched in the legislation in a consistent manner across the acts governing the various courts.

The Supreme Court has had a vexatious litigant practice directive for some time, and this is on the court website.

The member also asked about retirement ages for the judges — the changing of the age from 65 to 70. Changing the retirement age was discussed with the judiciary, and raising the age of the Territorial Court Judges to 70 was supported by all of the judges.

The member opposite also asked about administrative JPs and how many we foresee would be utilized in the Department of Justice. At this time, we are looking at about two or three individuals, just to make sure there's ample support during the day and that there are a number of people so that, if there are individuals on holidays or off sick, we have people in place.

The member opposite also asked about the *Human Rights Act* component of this bill. We had conversations with the panel of adjudicators and the chief adjudicator prior to her resignation. The chief adjudicator and the panel members indicated that this issue needed to be addressed in the act.

Madam Chair, I see that my time has expired, so I'll offer the floor to the members opposite.

Ms. Moorcroft: I thank the minister for the answers he has provided. The one question I had that I did not put on the record during the second reading speech relates to clause 5 and the amendments to establish in regulations the witness fees and travel expenses to be paid to a witness who attends before a court because of a subpoena.

The question is whether these regulations would also address the payment of witness fees and travel expenses for expert witnesses or witnesses who may be called before a coroner's inquest.

Hon. Mr. Nixon: That would be dealt in the regulations under the *Coroners Act*.

Chair: Is there any further general debate on Bill No. 63? We're going to proceed to clause-by-clause.

On Clause 1

Clause 1 agreed to

On Clause 2

Ms. Moorcroft: I did ask the minister whether he or his department officials had consulted with the Yukon Human Rights Commission regarding the amendments. I had also asked him whether the adjudicators and chief adjudicators would be selected on the basis of whether they had training and knowledge in administrative law. While he did indicate that he had conversations — or someone had conversations — with the panel of adjudicators and the chief adjudicator, the other questions that I asked he has not responded to yet.

Hon. Mr. Nixon: I thought I did answer the question. We did not consult directly with the Human Rights Commission, but did consult with the panel of adjudicators and the chief adjudicator, prior to her resignation.

As to further questions, I might have to ask the member to restate those questions.

Ms. Moorcroft: The question was whether, in designating the chief adjudicator and the deputy chief adjudicator, those positions would be people who had training and knowledge in administrative law, and if those criteria would be set in determining who would be appointed.

Hon. Mr. Nixon: Indeed that is a preference for those positions — although not mandatory, it is a preference.

Clause 2 agreed to

On Clause 3

Clause 3 agreed to

On Clause 4

Clause 4 agreed to

On Clause 5

Clause 5 agreed to

On Clause 6

Clause 6 agreed to

On Clause 7

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

Clause 12 agreed to

On Clause 13

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

Ms. Moorcroft: The next three clauses — 18, 19 and 20 — are the clauses that provide the amendments for the Small Claims Court, the Supreme Court and the Territorial Court to make for consistent provisions with respect to vexatious litigants. The minister did indicate these amendments were being brought forward to improve efficiency and align with other statutes, and that there were no recent vexatious litigants. I wanted to ask the minister to confirm that there have not been recent examples of people who have brought forward vexatious litigation in either of the Small Claims, Supreme or Territorial courts.

Hon. Mr. Nixon: Section 18 adds provisions to the *Small Claims Court Act* that allows the Small Claims Court to deal with litigants who abuse the court process by persistently starting vexatious court proceedings. These are proceedings that are without merit and are intended to only annoy or harass other parties or cause them to incur unnecessary legal fees.

If the court believes that a person has started a vexatious proceeding, or has been conducting proceedings in a vexatious manner, then the court may take steps to prevent them from creating further disturbances.

First, the court must give notice of its intention to the person and to the Attorney General. Then the person has an

opportunity to make a submission to the court in a hearing. The Attorney General may also speak at that hearing. After the hearing, the court may order that the litigant must obtain the court's permission before starting a new proceeding or continuing a proceeding that they've already started. After the court makes this order, the person can apply to the court to have the order removed or for leave to continue a proceeding that the person has already started. After the hearing, the person's application — if the court is satisfied that the proceeding is not an abuse of the process and has reasonable grounds — then the court may rescind the order or grant leave to start or continue a proceeding. The Attorney General is entitled to receive notice of any of the applications made under this section and may appear at any of the hearings.

The member opposite was also asking about section 19, so I'll cover her question in this answer as well. That section adds the provisions to the *Supreme Court Act* that allows the Supreme Court to deal with litigants who abuse the court process by persistently starting vexatious court proceedings. So again, those are proceedings without merit and are really intended only to annoy or harass other parties and to cause them to incur unnecessary legal fees.

If that court believes that a person has started a vexatious proceeding or has been conducting proceedings in a vexatious manner, then that court may also take steps to prevent them from creating further disturbance. Again, first that court must give notice of its intention to that individual and to the Attorney General. The person then has the opportunity to also make a submission to that court in a hearing, at which the Attorney General may also speak. After that hearing, the court may order that the litigant must obtain the court's permission before starting a new proceeding or continuing a proceeding that they've already started. After the court makes that order, the person can apply to that court to have the order removed or for leave to continue a proceeding that the person has already started. After hearing the person's application, if the court is satisfied that the proceeding is not an abuse of process and has reasonable grounds, then the court may rescind the order or grant leave to start or continue a proceeding. As I indicated before, the Attorney General is entitled to receive notice of any of the applications made under the section and may appear at those hearings.

With regard to the member opposite's specific question about recent cases of vexatious litigants, in the last three or four years we don't believe that there have been any. But when they do arise, the member opposite should be able to understand that one vexatious litigant can take up a whole lot of court time so this addresses that issue. I thank the member opposite for the question.

Ms. Moorcroft: Just to follow up on that, I have heard concerns mostly expressed by women about abuse of process when an ex-spouse will be continually going before the court in attempts to vary custody or maintenance orders. I would like to ask the minister whether this provision in relation to prohibiting vexatious litigation has been used in other jurisdictions to prevent parties who may be bringing forward a proceeding without merit to annoy an ex-spouse.

Hon. Mr. Nixon: That would be a question that we would definitely have to put some research into.

Ms. Moorcroft: Could I put on the record that I would like to ask the minister to respond to that question with a letter at a later date? Would he be able to do that?

Hon. Mr. Nixon: That is something I can commit to and I will provide a letter to the member opposite in the new year.

Clause 18 agreed to

On Clause 19

Clause 19 agreed to

On Clause 20

Ms. Moorcroft: The minister did respond to part of my question related to the amendments to the retirement age for the judiciary — increasing it from 65 to 70. I just want to follow up and ask the minister if that is the case in all other jurisdictions in Canada, or does the retirement age remain at 65 in any jurisdictions? Or is it more than 70 in some other jurisdictions?

Hon. Mr. Nixon: The retirement age of all superior court judges, such as the Judge of the Supreme Court of Yukon, is set at age 75 by the Constitution. In most of Canada, provincial court judges are required to retire at age 70. This includes British Columbia, Quebec, Alberta, Nova Scotia, and Newfoundland and Labrador.

Judges in the Northwest Territories, Nunavut and New Brunswick can work until age 75 before retiring. In Ontario and Saskatchewan, the retirement age is 65, but with provisions for continuing on one-year appointments until age 70 for Saskatchewan, or age 75 for Ontario.

Manitoba is unique in having no mandatory retirement age, and P.E.I. is the only jurisdiction other than Yukon that currently requires territorial or provincial court judges to retire at age 65 with no provision for ongoing appointments.

Ms. Moorcroft: I'd like to thank the minister for the answer. As I haven't yet today, I'd also like to thank the officials for being so well-prepared this afternoon.

Clause 20 agreed to

On Clause 21

Clause 21 agreed to

On Clause 22

Ms. Moorcroft: This question relates to both clause 22 and clause 24. Is there any difference between administrative and presiding justices and staff justices?

Hon. Mr. Nixon: There are a few differences. I will highlight a couple here now. Administrative judges would not be sitting in court, but they would deal with swearing matters where presiding judges do sit in court. Staff justices would just be there to read matters.

Clause 22 agreed to

On Clause 23

Clause 23 agreed to

On Clause 24

Ms. Moorcroft: The minister indicated in response to my question that he anticipated that there would be two or three staff justices appointed and that they would mainly be doing the process of explaining conditions to someone who

had been sentenced. I'd like to ask the minister whether this measure has been costed and what the costs are anticipated to be.

Hon. Mr. Nixon: There would actually be a cost-savings in moving to a situation like this. The staff JPs would be utilized through existing positions, but it would save some cost on accessing JPs to come in on time-off to hear these matters.

Clause 24 agreed to

On Clause 25

Clause 25 agreed to

On Clause 26

Clause 26 agreed to

On Clause 27

Ms. Moorcroft: The minister indicated that the department has been working on this. I'm wondering if the minister can give us an idea when he anticipates the act will come into force.

Hon. Mr. Nixon: As the member will be aware, this act would come into force through an order-in-council. We suspect it would be sometime in the new year.

Clause 27 agreed to

On Title

Title agreed to

Hon. Mr. Nixon: Madam Chair, I move that Bill No. 63, entitled *Court and Regulatory Statutes Amendment Act*, be reported without amendment.

Chair: It has been moved by Mr. Nixon that Bill No. 63, entitled *Court and Regulatory Statutes Amendment Act*, be reported without amendment.

Motion agreed to

Chair: Now we're going to continue on with general debate in Vote 53, Department of Energy, Mines and Resources, in Bill No. 11, entitled *Second Appropriation Act, 2013-14*. Do you require time for —

Some Hon. Members: (Inaudible)

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

Recess

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

Bill No. 11: *Second Appropriation Act, 2013-14* — continued

Chair: We're going to continue with general debate on Vote 53 in Bill No. 11, entitled *Second Appropriation Act, 2013-14*.

Mr. Tredger has the floor from November 25.

Department of Energy, Mines and Resources — continued

Mr. Tredger: I thank the House for this opportunity to speak to Energy, Mines and Resources again. I would like

to welcome the staff from Energy, Mines and Resources. Welcome to the House and thank you for your assistance as we delve through the budget. I look forward to continuing this discussion.

Yukon has five percent of Canada's territory, but only one in 1,000 Canadians have the privilege to call themselves Yukoners. That means we are a relatively small number of people with a big responsibility as stewards of our territory. There are challenges to being a small population in a large territory.

I've had the good fortune to have grown up in a small community. I'm also, as the representative for the Mayo-Tatchun area, aware of some of the challenges that we face as a small community with few people in our vast area. How we meet our responsibilities as stewards of the land and how we interact with industry and with each other is critical.

With a population of about 34,000, the Yukon shares some of the characteristics of small communities. People in these communities — in the communities of Mayo and Pelly and Haines Junction and Ross River — know what it means to depend on one another. They know what it means to build trust. They know what it means to take advantage of opportunities as they arise.

In the Yukon, we are blessed with strong communities, both within and outside of Whitehorse. We are blessed with vast resources and riches, with pristine wilderness — an incredible legacy left us by previous leaders.

Underlying all we do when we make use of our resources, whether through mining, agriculture, forestry or something else, we need to do so as a community and with our communities. The relationship is all-important.

So when we take a department like Energy, Mines and Resources, I believe we can involve everyone. We can work with industry and with First Nations, and we can create a fair, sustainable and prosperous Yukon — but we must do it together in consultation and collaboration. Sometimes the progress may seem slow, but we must ensure that no community, no one, is left behind, that no government is left behind, that no peoples are left behind. That is what the NDP stands for and that is what the NDP will continue to work for.

Our leaders have seen fit to sign First Nation agreements, to work with First Nation leadership, leadership in Canada and leadership in Yukon to develop the *Umbrella Final Agreement*, to develop a land claims format and to develop self-government agreements. The key to the prosperity and the future of the Yukon is within these agreements and within our relationships.

First Nation governments, the Yukon government and the Government of Canada have entered into a new relationship with the signing of the *Umbrella Final Agreement*, First Nation self-government agreements and the subsequent implementation of these.

I know this House needs no reminder, but all Yukon First Nation final agreements are constitutionally protected. Leaders in the Yukon — First Nation and government leaders — must honour the treaties and agreements to build a common future. The New Democratic Party believes in

respect, in trust and in a mutual relationship with First Nation governments, arrived at through transparency, through openness, honesty and clear communication. The New Democratic Party also believes that the benefits of the resource extraction industry and other industries should be beneficial to all Yukon and that this can be done sustainably and without contributing to global problems such as climate change. Yukon owns these resources. It is a legacy gifted to us now and for our children.

The New Democratic Party will stand for Yukoners and we will fight for our share and fight to ensure that all Yukoners benefit and have a say in the development and extraction of our non-renewable resources. We can and must ensure that the industry is viable, responsible and sustainable, but mostly we must build strong relationships between Yukon citizens, between Yukon governments — the Government of Yukon and First Nation governments — between rural and urban, between one community and another and between all users of the land, whether they be outfitters, trappers, harvesters or employed in the resource extraction industry.

Yukon citizens deserve and need the leadership that understands the obligations and the opportunity that we are presented with. We are aware, as stewards of the land, that we are responsible for our environment. We are aware that the leadership and the elders on our land have shown us a way. We have been left a legacy in renewable energy. Over 40 years ago, a series of projects were undertaken, yet we have watched as our consumption of energy has grown and our production has levelled off. Now we are on the cusp of making some very critical decisions. We must not be rushed because we have delayed the process. Now, more than ever, we must carefully choose our course.

We need to enrich opportunities for people to be on the land, to involve communities and elders, renewable resources councils, hunters, trappers, non-government organizations — like the Yukon Fish and Game Association, the Yukon Trappers Association — First Nations and citizens who spend time on our land and waterways.

We are on the cusp of making some very serious decisions and heading in a direction that will determine our relationships for the near and subsequent future.

When I was up last time, I had asked the minister a bit about housing. One of the ways that we interact as a community in Mayo, Pelly and Carmacks is through the housing that we offer. Currently most communities in the Yukon are struggling to provide housing for their citizens and to provide for future citizens. A number of the mining companies have cited housing as critical to the development of their mines. I know communities are hoping that mining will help sustain their town. I have heard a number of stories in recent months of people who wished to move from Whitehorse in the employ of YTG to live in a community, only to find there was no housing available.

My question for the minister last time was for specifics around the development of lots in Mayo and Carmacks in particular. In Mayo, I had a recent conversation with the Na

Cho Nyäk Dun and they cited that the development around Site C had stalled.

They had been in conversations with Yukon government but had not received any follow-up. There was talk of some developments on Site C. I know that the community — the Village of Mayo and the Na Cho Nyäk Dun were both eager to go ahead. I would appreciate it if the minister could give me an update on the development of Site C.

As part of that, I wonder if the minister and the Department of Energy, Mines and Resources have a comprehensive plan in place with clearly defined directions and specific measurable goals and objectives as part of a strategic planning process to meet the housing needs in our communities. I know there are a number of one-off projects underway, but is there an overall assessment of housing in the Yukon Territory, in our various communities, anticipating current and future needs in terms of housing, risks to those needs and how we're going to go about ensuring that there is cooperation between the First Nations, the village councils, the community councils, the people in the communities and industry — how has that plan been developed and could the minister could share with us the Yukon-wide housing policy for rural communities and where we are with that?

Hon. Mr. Kent: I thank the member opposite for his comments as well as the questions.

I'm not sure that we'll get to the questions during the short time that we have before us today — perhaps when Energy, Mines and Resources comes up again, if indeed it makes it back to the floor of the House during the balance of this sitting.

I do want to speak a little bit about what the member opposite mentioned as far as what the NDP stands for. Certainly there is a difference of opinion from this side of the House to the other side of the House on what the NDP stands for.

Mentioning things such as involving everyone, including industry and individuals and First Nations — that would apply for the NDP everywhere except for the Peel watershed.

They've run to one side of that issue with respect to not seeking the balance that the Yukon Party is seeking for the Peel watershed, respecting the contributions that the exploration sector makes to the economy, respecting the contributions that the mining sector makes to the economy. The New Democrats certainly don't include mining in their vision for the Peel. We were treated to a fairly extensive afternoon of the economic plan put forward by the Leader of the New Democratic Party. Their definition of "viability" includes the end of the free-entry system, a system that has worked very well for a number of years in ensuring that small prospectors — essentially one prospector and perhaps even his dog — are able to go out there and find the White Golds, find the Raklas, find the Wolverines and the other projects that have advanced to where they are.

The NDP viability includes the removal of large areas of land from mineral staking. There's no balance. There's no fairness to that.

The NDP viability includes increasing taxes and royalties — taxes on and royalties for placer miners. All Yukoners know that those are very much respected as the family farm of the north. Small operators in Klondike and small operators in the member's riding of Mayo-Tatchun — and he wants to increase the taxes and royalties on those individuals, perhaps driving some of them out of business. Again, that is their definition of viability, as well as a complete overhaul of mining legislation.

Again, we need to remain competitive. We need to have mining legislation that is competitive with other jurisdictions, not only in Canada, but around the world. But the NDP would have us remove that competitiveness. They would seek to ensure that we regulate and legislate mining out of business and out of the Yukon.

Madam Chair, I could go on and on with respect to the member's opening comments, but perhaps I will save that for the next time. Seeing the time, I move that we report progress on Bill No. 11, entitled *Second Appropriation Act, 2013-14*.

Chair: It has been moved by Mr. Kent that the Chair report progress on Bill No. 11, entitled *Second Appropriation Act, 2013-14*. Are you agreed?

Motion agreed to

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

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

Motion agreed to

Speaker resumes the Chair

Speaker: I will now call the House to order. May the House have a report from the Chair of Committee of the Whole?

Chair's report

Ms. McLeod: Mr. Speaker, Committee of the Whole has considered Bill No. 61, entitled *Health Information Privacy and Management Act*, and directed me to report the bill without amendment.

Mr. Speaker, Committee of the Whole has also considered Bill No. 63, entitled *Court and Regulatory Statutes Amendment Act*, and directed me to report the bill without amendment.

Committee of the Whole has also considered Bill No. 11, *Second Appropriation Act, 2013-14*, and directed me to report progress.

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

Some Hon. Members: Agreed.

Speaker: I declare the report carried.

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

The House adjourned at 5:30 p.m.