



# Yukon Legislative Assembly

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## HANSARD

Tuesday, October 30, 2018 — 1:00 p.m.

Speaker: The Honourable Nils Clarke

# YUKON LEGISLATIVE ASSEMBLY

## 2018 Fall Sitting

**SPEAKER — Hon. Nils Clarke, MLA, Riverdale North**  
**DEPUTY SPEAKER and CHAIR OF COMMITTEE OF THE WHOLE — Don Hutton, MLA, Mayo-Tatchun**  
**DEPUTY CHAIR OF COMMITTEE OF THE WHOLE — Ted Adel, MLA, Copperbelt North**

### CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
<b>Hon. Sandy Silver</b>	Klondike	Premier Minister of the Executive Council Office; Finance
<b>Hon. Ranj Pillai</b>	Porter Creek South	Deputy Premier Minister of Energy, Mines and Resources; Economic Development; Minister responsible for the Yukon Development Corporation and the Yukon Energy Corporation
<b>Hon. Tracy-Anne McPhee</b>	Riverdale South	Government House Leader Minister of Education; Justice
<b>Hon. John Streicker</b>	Mount Lorne-Southern Lakes	Minister of Community Services; Minister responsible for the French Language Services Directorate; Yukon Liquor Corporation and the Yukon Lottery Commission
<b>Hon. Pauline Frost</b>	Vuntut Gwitchin	Minister of Health and Social Services; Environment; Minister responsible for the Yukon Housing Corporation
<b>Hon. Richard Mostyn</b>	Whitehorse West	Minister of Highways and Public Works; the Public Service Commission
<b>Hon. Jeanie Dendys</b>	Mountainview	Minister of Tourism and Culture; Minister responsible for the Workers' Compensation Health and Safety Board; Women's Directorate

### GOVERNMENT PRIVATE MEMBERS

#### Yukon Liberal Party

<b>Ted Adel</b>	Copperbelt North
<b>Paolo Gallina</b>	Porter Creek Centre
<b>Don Hutton</b>	Mayo-Tatchun

### OFFICIAL OPPOSITION

#### Yukon Party

<b>Stacey Hassard</b>	Leader of the Official Opposition Pelly-Nisutlin	<b>Scott Kent</b>	Official Opposition House Leader Copperbelt South
<b>Brad Cathers</b>	Lake Laberge	<b>Patti McLeod</b>	Watson Lake
<b>Wade Istchenko</b>	Kluane	<b>Geraldine Van Bibber</b>	Porter Creek North

### THIRD PARTY

#### New Democratic Party

<b>Liz Hanson</b>	Leader of the Third Party Whitehorse Centre
<b>Kate White</b>	Third Party House Leader Takhini-Kopper King

### LEGISLATIVE STAFF

Clerk of the Assembly	Floyd McCormick
Deputy Clerk	Linda Kolody
Clerk of Committees	Allison Lloyd
Sergeant-at-Arms	Karina Watson
Deputy Sergeant-at-Arms	Harris Cox
Hansard Administrator	Deana Lemke

**Yukon Legislative Assembly  
Whitehorse, Yukon  
Tuesday, October 30, 2018 — 1:00 p.m.**

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

*Prayers*

## DAILY ROUTINE

**Speaker:** We will proceed with the Order Paper. Introduction of visitors.

## INTRODUCTION OF VISITORS

**Ms. Van Bibber:** I would like to ask the House to help me welcome some special guests in the Legislative Assembly today. They are here on behalf of the Yukoners cancer care fund event that is being launched today. We have with us the Yukon Hospital Corporation CEO Jason Bilsky, the Yukon Hospital Foundation President Karen Forward, Yukon Hospital Foundation Board Chair Philip Fitzgerald, chemo nurses Britt Udala, Ashley Beggs and Alexia Ackert, and from the pharmacy, manager Prev Naidoo. Welcome to the Assembly.

*Applause*

**Hon. Mr. Pillai:** Mr. Speaker, I would also like to invite some individuals here today who are here for our tribute concerning the Braeburn Lake Summer Camp's 50<sup>th</sup> anniversary — key individuals who have worked to support that. I would like us to welcome today Brenda Dedon, Stella Martin, Hank and Susan Moorlag as well as Jennifer Moorlag, Sean Murphy, Linda Cox, Harris Cox, John Maissan, Merton Friesen, Bill Mooney, Sharon Westberg, Mallory Pigage and Faye Cable, who are all here today with us. Thank you very much.

*Applause*

**Mr. Kent:** I know he has already been introduced, but he has been here a number of times with different hats. I would like to recognize Philip Fitzgerald, long-time resident of the Whistle Bend neighbourhood and a strong advocate for that community and the issues that it faces.

*Applause*

**Hon. Ms. McPhee:** I know he has been mentioned, but I am going to ask my colleagues to join me in recognizing Hank Moorlag, who is obviously a volunteer extraordinaire but also a former Officer of this Legislative Assembly when he served as the Ombudsman and Information and Privacy Commissioner. He is an amazing mentor. Thank you for being here.

*Applause*

**Mr. Adel:** Mr. Speaker, I would be remiss, seeing several of my constituents in the gallery today — I would like

to welcome John Maissan and George Harvey, both constituents of mine in Copperbelt North.

*Applause*

**Speaker:** Are there any further introductions of visitors?

Tributes.

## TRIBUTES

### In recognition of Yukoners cancer care fund

**Hon. Ms. Frost:** I rise in the House today to pay tribute to the Yukoners cancer care fund. The Yukoners cancer care fund helps Yukoners with cancer and their families with some of the financial costs that come up during treatment. After the local Canadian Cancer Society office closed, a group of dedicated volunteers started the Yukon-based fund in 2013. They quickly adopted the phrase “Yukoners helping Yukoners”, as all of the funds raised stay in Yukon. Over the past five years, the cancer care fund volunteers have worked tirelessly to host a number of fundraising events to raise money to support our friends and neighbours who have received a cancer diagnosis.

Tonight, the fund is hosting a charity art auction and the launch of their 2019 calendar. There will be many beautiful pieces of art up for auction, all generously donated by talented Yukon artists and photographers. Fundraising events like this clearly demonstrate how members of our community work together to support Yukoners who are fighting cancer.

Since 2014, the cancer care fund has provided financial assistance to over 160 Yukoners. Receiving a cancer diagnosis can come with a lot of stress. The kindness of our community members and the commitment of the fund's volunteers help to alleviate some of the stress associated with the diagnosis and also to provide support to the families. By removing a small part of their burden, we can help them have the time and energy to focus on wellness and healing.

If you are free this evening, I urge you to attend tonight's auction, as all proceeds support the cancer care fund, and there is going to be some wonderful art up for bid. The calendar is also available this evening, which features the same art that is up for auction.

As well, this is a good opportunity to network. I know that many Yukoners are impacted by cancer, including me, and that members of my community are in Whitehorse accessing the programming. I'm a bit sensitive right now and I apologize for hesitating, but I know that they do truly appreciate the support. I know that my family personally appreciates all the support given to them as they access the programming and supports that are here.

I encourage everyone to come out tonight to share some support, camaraderie and appreciation for all the work of volunteers from our community who support the fund. I want to thank you all for coming today and thanks for your many hours of support and dedication. Mahsi'.

*Applause*

**Ms. Van Bibber:** I am pleased to rise on behalf of the Yukon Party Official Opposition to pay tribute to the Yukoners cancer care fund. Formed in 2013 under the umbrella of the Yukon Housing Corporation with the help of then-president, Krista Prochazka, this fund has made a huge impact on many, many Yukoners. The charity raises funds to help those who are diagnosed with cancer, except breast cancer, as Karen's fund is specific for that particular cancer.

We offer some financial help as we all know that when we get sick, bills don't stop coming and life doesn't stop. Lights must be kept on, wood must be brought in, there are vehicle or travel expenses for trips to appointments — and the list goes on. The fund has even been used for a support person to travel with the patient for treatments outside the territory.

A gift of \$1,000 can and has done so much for over 160 families the care fund has assisted — now how good is that? I know the foundation office has received some great testimonials to bolster our commitment. However, the need seems to increase, and this sad fact alone makes the work continuous. It is difficult keeping the funds growing at the same pace as the disease grows.

Karen Forward, our foundation president and the lone staff member, is an amazing young woman. She works tirelessly and she has many great innovative and fun ideas — and what ideas bounce around in that head of hers. I know we haven't even tapped into her wealth of knowledge.

From Montreal, Karen came north with her canine companion, Albert, and they fell in love with Yukon immediately. I for one hope she continues to stay. She makes projects seem effortless and does most of the heavy lifting in whatever project the foundation is working on at the time.

As you know, the main Yukon Hospital Foundation fundraiser is the Festival of Trees, and she still found time to do this project. Today we launch one of her ideas — a local calendar — 12 months and 12 art pieces. Each artist generously donated an art piece to be part of the calendar, and this evening the art will be auctioned to raise further funds. A huge thank you to the artists: Jackie Irvine, Lillian Lopenon, Arjay Hill, Ken Quong, Twyla Wheeler, Claire Curial, Tom Dickson Jr., Erin Dixon, Lumel Studios, Kathy Piwowar and Wendy Thompson.

An extra special thanks goes to Cathie Archbould of Archbould Photography, who donated her photography skills to capture the artwork for the calendar.

We know that there are so many charities and so many asks for our hard-earned dollars. I also know that it is not easy to help every organization that you wish you could help. But we want all Yukoners to know that all the money raised stays in the Yukon and helps those who need it locally.

To date, the previous Speaker's reception, the Denim Day campaign, the *Klondike Spirit* cruise, the hootenannies with Hank Karr and Friends and the Stix Together paddling team have all contributed so much. We are blessed to have a truly caring and beautiful citizenship who are part of our giving circle.

Today, as mentioned, at 5:30 p.m., directly after the Assembly is adjourned for the day, the Yukoners cancer care

fund will launch the 2019 calendar and will also have a live auction. The Yukon Hospital Foundation is hosting, so join for drink, appies and a fun fundraiser. Come out, bid on the artwork and buy a calendar or three, or if that is not for you, make a donation to the fund and socialize for a few hours. Remember, the calendars will make a wonderful Christmas gift for friends and family.

Be part of a project that makes someone's cancer journey more pleasant. A few hours of time and a few donated dollars will make a difference to Yukoners you probably know.

*Applause*

**Ms. White:** I rise on behalf of the Yukon NDP to pay tribute to all those who donate their time, skills and enthusiasm to the Yukoners cancer care fund. I have to tell you, following the Member for Porter Creek North, one of the founding members of this fund, is a hard act to follow, so I will leave it with this.

Please join us all at tonight's soiree. It is just one event where Yukoners are invited to attend, socialize, look at beautiful art, meet the artists and be present for the calendar launch. The art donated for the calendar is up for sale, so this is my one point: bid high, bid often and bid higher again, because every little bit counts. We look forward to seeing many Yukoners at tonight's event, ready to donate, and we thank everyone for their work.

*Applause*

### **In recognition of Braeburn Lake Summer Camp 50<sup>th</sup> anniversary**

**Hon. Mr. Pillai:** Before I begin with a tribute, I would also like to thank Mr. Jack Cable, who was also here for the tribute — former MLA and Commissioner. I always appreciate any wise words that Jack is willing to share with me, so thank you for being here today.

I rise on behalf of the Yukon Liberal Party to pay tribute to Braeburn Lake summer camp. This year is an important year, as the camp is celebrating its 50<sup>th</sup> anniversary. The origins of this camp date back to the mid-1950s when it began as an information organization of the Anglican Church. The tents that they used were supplied by the army at the time.

The Braeburn Lake Summer Camp was officially incorporated in 1968 as a collaboration between two congregations of the Anglican Church along with the Lutheran, Roman Catholic and United churches. Those groups make up the Braeburn Lake Christian Camp Association, and I congratulate them on 50 years of success.

Since its humble origins on the banks of Braeburn Lake, the camp has gone through the accreditation process that church camps go through across Canada and has had positive impacts on successive generations of Yukon youth. Every year, kids arrive at the camp — sometimes with nerves and a bit of apprehension about what is to come, but they soon grow comfortable and more confident as they get involved in activities, connect with other kids and get active on the land.

Activities at the camp include drama, crafts, swimming, canoeing, campfires and songs. The camp provides an

important opportunity for youth to get out into nature to experience its beauty and power. There is also a successful mentorship program that allows campers to learn leadership skills and how to work together to achieve a common goal, all while having fun.

Braeburn Lake Summer Camp is all about friendship and respecting everyone's differences. Kids leave the camp with respect for nature and each other, and with many hugs and new-found friendships. Some even come back as mentors, counsellors and directors. The camp provides a great learning experience for Yukon youth, and it is remarkable that it has been doing so for 50 years. Running a summer camp for half a century is a magnificent achievement.

A lot of individuals work together to make this camp a success year after year. The camp has a very active board and executive committee. The board members are Bev Brazier, Stuart Dawson, Brenda Dedon, Father Szwagrzk, Stella Martin, James Mooney, Georgianna Lowe, Hank Moorlag, Sean Murphy, Stan Marinoske and Gordon Watson. The executive committee includes: chair, Bev Brazier; past chair, Harris Cox; secretary, Stuart Dawson; and treasurer, Brenda Dedon.

Harris Cox deserves special mention for his many years of contribution, including a great deal of maintenance work around the camp. Harris has been closely involved with the camp for a very long time, and after retiring in 1998, he has spent almost every year there since. Harris received the Governor General's Sovereign's Medal for Volunteers in 2016. His wife Linda actually attended the camp back in 1958. Linda is also responsible for a special project that sees a postcard sent to each camper wishing them a happy birthday in the year following their attendance.

Many others in the community have contributed to the success of the camp, which has given so many young people a positive experience that they will never forget. John Maissan has assisted with funding applications, and many companies and organizations have given generously over the years, including Kanoe People, Canadian Tire and the Lions Club.

Congratulations on 50 years of the Braeburn Lake Summer Camp, and here's to 50 more.

*Applause*

**Mr. Cathers:** I am pleased today to rise on behalf of the Yukon Party Official Opposition to recognize and pay tribute to the Braeburn Lake camp, which has provided Yukon children and youth with memorable summer camp experiences for 50 years. I would like to acknowledge all of the volunteers in the gallery as well and thank them for their contributions.

The camp is operated by the Braeburn Lake Christian Camp Association, which as my colleague across the floor noted, is made up of congregations from the Catholic, Anglican, Lutheran and United churches. Children and youth are hosted for camp sessions that include fun activities such as swimming, canoeing, drama, campfires, crafts and games. Fifty years of successfully operating a summer camp is a long

record of success and one that everyone involved should be proud of.

Between fun and educational programming, safety, kid-friendly menus and a respectful environment, Braeburn camp has been something Yukon children and youth look forward to year after year.

Congratulations to the Braeburn Lake Christian Camp Association on their first half-century of service to Yukon families. Best wishes for the next 50 years, and thank you to all of the staff, organizers, board members and volunteers for making the Braeburn camp an exciting and fun adventure for campers year after year after year.

*Applause*

**Ms. Hanson:** On behalf of the Yukon New Democratic Party, I am happy to join the members today in paying tribute to the interfaith summer camp known as Braeburn Lake summer camp.

This camp is truly a great example of building strong community. You know, Mr. Speaker, although I never had the opportunity to spend time at Braeburn Lake, former colleagues in this Assembly — Jim Tredger and Jan Stick — have shared many fond stories of their experiences volunteering at Braeburn camp over the years. When you think of it, over the past 50 years, easily hundreds of volunteers, children, teenagers and families have shared this space on the shores of Braeburn Lake. Memories abound of sun — lots of sun — rain — only occasionally, I am told — and even a forest fire. Through it all, Braeburn has been a setting of fun, good food, adventure and fellowship.

I know there are hundreds of stories and memories out there of backwards suppers, utensil lunches, songs, crafts and campfires — campfires even in the blazing sun. I even heard the story of popsicles being delivered by plane to the nearby airstrip one particularly hot summer evening. Campers and staff alike have experienced the enjoyment and appreciation of nature, a sense of joy in community and a sense of self-worth and respect for one another. Everyone is welcome at Braeburn camp.

In this day and age, when we see what happens when churches and people of different faiths are in conflict, this example of the different churches in our community coming together to provide a safe, peaceful and inclusive community that makes room for everyone gives us all hope.

Thank you to the board members, to the supporters, the volunteers, the camp leaders and the staff — many of whom started off as campers. Here's to another 50 years. Thank you, Mr. Speaker.

*Applause*

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

Are there any reports of committees?

Are there any petitions?

Are there any bills to be introduced?

Are there any notices of motions?

## NOTICES OF MOTIONS

**Mr. Adel:** I rise today to give notice of the following motion:

THAT this House urges the Government of Yukon to reduce red tape for Yukoners accessing services and enhance the availability of services online.

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

THAT this House urges the Government of Yukon to provide the Shingrix vaccine, which protects against shingles, free of charge to Yukon seniors.

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

THAT this House urges the Government of Yukon to develop and make public a concrete plan by the end of 2018 to significantly reduce the wait-lists for seniors and social housing.

**Speaker:** Are there any further notices of motions?  
Is there a statement by a minister?  
This then brings us to Question Period.

## QUESTION PERIOD

### Question re: Medical case management

**Ms. McLeod:** The Yukon Hospital Corporation has told this House that the current wait-list for cataract surgery is 350 people. They said that this problem has been getting worse. In fact, to quote them directly, they said: "... wait times to see an ophthalmologist and receive cataract surgery have been growing rapidly and now exceed three years." The Hospital Corporation has told us the wait-list for cataract surgery is growing rapidly and many Yukoners are desperate for this surgery.

Will the Liberals make an investment before the end of this year to reduce the cataract surgery wait-list?

**Hon. Ms. Frost:** I can say and commit that we — this government and I as the Minister for Health and Social Services — will work with the Hospital Corporation to address the wait-list for cataract surgeries. We have committed to doing that and we will continue to have that dialogue with the board of the Hospital Corporation and the CEO and look for options for the future to reduce the wait-list.

**Ms. McLeod:** Yukoners get a lot of talk from this government and unfortunately, we don't see a lot of action. Ministers get up and say some words but they don't answer the question.

The Hospital Corporation has told us that the cataract surgery wait-list is getting longer and growing rapidly. There are 350 people now on this wait-list. Will the Minister of Health and Social Services agree to give the Hospital Corporation the proper resources to reduce the cataract surgery wait-list?

**Hon. Ms. Frost:** What I can commit to is that we will continue to work with the Hospital Corporation to address the Hospital Corporation's priorities. That's what we've

committed to and that's what we have heard from the Hospital Corporation during their presentation to the Legislative Assembly.

I do acknowledge, as noted, that there are significant wait-times for cataract consultation and surgery and we do know that's a priority and certainly something we hope to address and work on improving with the Hospital Corporation. As well, we want to ensure that we provide the specialized services in Yukon to reduce the wait-times, and we will endeavour to do that with the Hospital Corporation.

**Ms. McLeod:** So it seems that we all agree that the wait-list for cataract surgery is growing rapidly in this territory, but not only do the Liberals have no plan to deal with it, but they have asked each and every department, including Health and Social Services, to find cuts. This growing wait-list is having a negative impact on Yukoners — 350 Yukoners who are living with this condition and who need this surgery. Vague responses from the minister that don't answer the question aren't going to cut it anymore. Can the Minister of Health and Social Services tell us one specific concrete action her government will take this year to reduce this wait-list?

**Hon. Ms. Frost:** Very interesting coming from the member opposite. We know that there have been opportunities historically to address some of the pressures on the Hospital Corporation, and we're doing that very effectively as we speak.

We met just last week with the Hospital Corporation to explore options for alleviating the current wait-list for cataract surgeries. This includes working with local partners and other jurisdictions, looking at finding creative solutions and looking at the growing cost of pressures on this government. We have to look for efficiencies, recognizing that we have pressures not only with cataract surgeries. As we know, there is a growing list of cancer patients as well. We know that we have pharmaceuticals that are rising. The objective is really to look for efficiencies in our government and work really diligently with our partners, recognizing that we have a changing demographic in the Yukon. This increase in the demographic is seeing increased demand on specialized services and the supports that we need. Clearly, it is a priority. Collaborative health care and essential health care to all Yukoners is a key priority for this government, and we will endeavour to do that with our partners and with good-faith discussions with the Hospital Corporation. We will continue to do that.

The advice from the opposition is one I will not take, because they did not do anything during their whole time in office. We intend to do everything we possibly can to ensure that every Yukoner is given the support that they require and that they deserve. We will do that in good faith with our partners.

### Question re: Carbon tax

**Mr. Hassard:** Yesterday, in his haste to defend the Liberal carbon tax scheme, the Premier slipped up and made a stunning admission on national television. He was asked if the carbon tax would actually be effective in meeting our

environmental goals, and his response was that time will tell. He actually went on to say — and I quote: “... we’ll see if this actually reduces the greenhouse gases.” We’ll see? Will it work? We’ll see. Will it reduce emissions? We’ll see.

The Premier admits he doesn’t even know if this carbon tax scheme will work, so why did he sign on to this tax scheme in the first place?

**Hon. Mr. Silver:** I’m always interested in how the Yukon Party likes to twist in the wind with certain quotes and statements.

We are beyond the time to debate the impacts of climate change. It’s time to take action and it’s time to show some leadership. Carbon pricing is the most effective way to reduce emissions and to drive innovation toward a low-carbon future.

The Mining Association of Canada, the Business Council of Canada and Nobel Prize-winning economists all agree. Yes, time will tell. Based upon a scientific approach to dealing with the effects of climate change, time will tell, and we will see what happens in the future. I will be here and so will the members opposite to see the results of this statistical analysis.

I guess the question is: What is the Yukon Party’s plan? They have never had a plan. The facts are that there is a growing list of people who do endorse carbon pricing. We will continue to work with the federal government to ensure that carbon pricing takes account of Yukon’s unique circumstances.

**Mr. Hassard:** Mr. Speaker, of course, we had a plan and we told people what it was. It wasn’t something where we didn’t know if it would work. Despite the fact that the carbon tax is going to hurt the family who needs to drive in from Beaver Creek or increase the cost of medical travel, the Premier just says and does what Ottawa asks him to do.

Yesterday on national television, he admitted that he doesn’t even know if the carbon tax will meet our environmental goals. He actually responded by saying — again, I quote: “... we’ll see if this actually reduces the greenhouse gases.” We will see, Mr. Speaker. The Premier admits he doesn’t know if this will actually reduce emissions, but he signed on to it anyway.

Will the Premier tell us what analysis he did on the impacts of carbon tax on the territory’s emissions before signing on to this scheme in December 2016?

**Hon. Mr. Silver:** Yes, we will see. That is exactly what I said and that is exactly what I mean. We will see the results. We will see a reduction of the greenhouse gas emissions, and we will see a government that wants to be on the right side of history when it comes to carbon pricing. I am very proud of the work that we have done — a whole-of-government approach here, working with Ottawa to make sure that we have a unique lens, from Ottawa’s perspective, as to the unique circumstances in the north. That is why we are happy to have dollar-for-dollar rebates for the placer industry. That is why we are happy to have aviation exemptions from the federal government, and the list goes on and on of the hard work that this government has done, standing up for Yukoners when it comes to making sure that we deal with the economic

effects. We will deal with the environmental effects but also not harm our economy.

The list of people who are agreeing with carbon pricing is increasing: Preston Manning, Stephen Hawking, Bill Gates, Janet Yellen, Ben Bernanke, Hank Paulson — the list goes on — Exxon, Pepsi, Disney. Mr. Speaker, this is the plan that a lot of corporations and the world are all saying that we need to see some results. We need to see some movement forward. We are happy to make sure that Yukon’s unique circumstances are being considered when the federal government expresses their desire to make sure that the environment is protected for generations to come.

**Mr. Hassard:** I will quote again directly from CTV last night, when the Premier was asked if the carbon tax scheme will be effective, and he finally admitted — and I quote: “We will get the results, we will get the analysis and the data and we’ll see if this actually reduces the greenhouse gases.” We’ll see. He made a decision to support this thing, but he doesn’t know if it will even work. The Premier likes to brag about evidence-based decision-making a lot, but I think usually you get the analysis, the data, and the evidence before you make the decision. Instead, what the Liberals are doing here is decision-based evidence-making.

So now that we know the Premier has admitted that he doesn’t even know if the carbon tax will actually reduce emissions, I have a simple question for him: If the analysis and the data come back and show it wasn’t effective, will he abandon his support for this massive wealth redistribution?

**Hon. Mr. Silver:** It is the first question that we heard from the Yukon Party since the Legislative Assembly started here in the fall and it is pretty weak. It is pretty weak if this is all they have after 15 days in the Legislative Assembly — waiting to see some way of trying to mislead Yukoners.

Mr. Speaker, I stand by my words. We will see. We will see what happens from this. We will take the data. We will continue to use the data. That doesn’t mean that we are just starting now. We are beyond the time to debate the impacts of climate change. It is time to take action and show leadership, and that is exactly what is happening. Carbon pricing is the most effective way to reduce emissions and to drive innovation toward a low-carbon future, something that the opposition clearly does not support.

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

**Speaker:** Order. Order. Order. The Premier has the floor.

#### Question re: Opioid crisis

**Ms. White:** Since the beginning of Canada’s opioid crisis, we have been asking about this government’s response to the crisis in Yukon. The minister did acknowledge that Yukon is one of the hardest hit jurisdictions, alongside BC and Alberta, but based on the government’s response, one could hardly tell the seriousness of the matter.

In response to our questions, the minister tabled a one-pager about fentanyl and tweeted a photo of a poster about the signs of an overdose — not exactly a comprehensive strategy or a response to the issue. In contrast, the Ministry of Mental

Health and Addictions in BC has developed a comprehensive campaign to save lives by ending the stigma around drug use.

Mr. Speaker, will the minister launch a similar campaign to end the stigma on drug use in Yukon, or will she work with her counterpart in BC so Yukoners can benefit from the materials BC has already developed?

**Hon. Ms. Frost:** I am pleased to rise today to speak to the issue around the opioid crisis in the Yukon.

I am not in any way shying away from the discussion. I think it is one that Yukoners need to have. It is one that we need to have. Part of the notification and the address is to highlight the urgency that we need to start educating our young people. We need to start working with our partners.

With respect to the intensity of the overdoses so far in 2018, we heard Dr. Hanley, the chief medical officer of health, on the radio speaking about the support of an established working group. We are focusing on harm reduction, public awareness, surveillance and health and social systems reform.

We are implementing a Yukon opioid action strategy and plan that we are working to release very shortly, outlining a multi-pronged approach as I noted. We are looking at actively engaging Yukoners and Yukon communities. So far, we have, as of course was noted, the third highest rate of opioid deaths in the country. It is very sad. It is sad for Yukoners, but it is something that we need to embrace. We need to work with the medical profession. We need to work with the education system. We need everyone on board and we need to start eliminating the use of opioids — eradicate it and move it off of the streets as best we can, in partnership with the RCMP.

We have an overdose prevention coordinator who oversees the distribution. We are just now signing off on an agreement with the federal government to get supports into the Yukon, which we have not seen historically. We have seen resources in Alberta and BC, and I am happy to say that we do now have that arrangement with Canada.

**Ms. White:** It's not just young people who are dying; it affects every aspect of our community. We have heard from the chief coroner and the chief medical officer of health that Yukon has now seen 16 deaths from opioid overdoses in the last two and a half years. The chief coroner also reported that there is a four-month delay for toxicology results. This means that the number provided is almost certainly out of date.

While we understand the hesitation of the Yukon chief medical officer of health about reporting opioid overdoses as they happen, it is hard to understand why the government would not report more regularly on opioid overdoses just like the governments in both BC and Alberta do. This kind of regular reporting would help highlight trends in the opioid crisis and allow for regular awareness and conversations to be able to talk about the issue.

Mr. Speaker, why won't the government commit to regular reports on opioid overdoses just like British Columbia and Alberta are doing?

**Hon. Ms. Frost:** I do want to make note that, given the size of our jurisdiction — as noted by Dr. Hanley on CBC — the size of our jurisdiction and the number of individuals who

are impacted — we recognize that it's not only young people, but we are now seeing an impact on our younger generation.

Historically, we've seen middle-aged men in that realm and now we're seeing younger people. That's why I raise that — because I think it's so important that we bump up our involvement and our education in our reduction strategies and public awareness.

With regard to making note of when the information is released, we do that in partnership with the coroner's office and we do that in partnership with the Yukon Hospital Corporation, but we also need to recognize the sensitivities as we have families grieving, and we're not prepared — and I'm not prepared — to make public statements until we have had sufficient results that identify and allow then individual families to go through the grieving process — recognizing that, just recently, we had a situation where we had younger people perhaps affected. I'm not prepared to do that at the moment, but I will do that in partnership with the coroner's office and the chief medical officer.

**Speaker:** Order, please. Thank you.

**Ms. White:** Our concern is that taking that approach just increases the stigma. It makes it a shameful act. Every death is too many in Yukon. Every single person we lose is one person too many. Naloxone kits can save lives by temporarily reversing the effects of an overdose. To be effective, someone needs to have a naloxone kit and know how to use it when they witness an overdose. Narcan is a nasal spray version of naloxone that is easier to use than the injection kits commonly available in Yukon. The nasal spray is available for free in Ontario pharmacies, and the BC and federal government are also providing this as part of the take-home naloxone program.

Has the Government of Yukon considered providing free Narcan nasal spray kits to help curb the number of deaths by opioid overdoses in Yukon?

**Hon. Ms. Frost:** With regard to the partnership, we're currently working with our partners in addressing and supporting opioid-related training and the elimination and avoidance of some of the harmful drugs that are in the Yukon. It's there. It's here. What do we do to address that? How do we promote awareness, but also, what resources do we have available to us in the Yukon? We are working with our partners.

As I noted, we have now established an emergency treatment fund as a means to address opioid crises impacting all of Canada. We now have a bilateral agreement with Canada for \$500,000. We didn't have the resources historically. We're now putting effort into eliminating overdoses by providing the supports to our communities using the naloxone kits, but the note raised by the member opposite is a good one. We will certainly bring that forward as a consideration as we look at the strategies and prioritizing initiatives such as improving access to non-opioid pain medication, supporting opioid-related training for nurses and physicians and also looking at the public awareness campaign as a means of addressing access to the supports available.



**Question re: Health care funding**

**Ms. Van Bibber:** There has been much discussion about the health care review that the Liberals are going to conduct. Can the Minister of Health and Social Services tell us if this health review is part of the process to find cuts that was directed by the Liberal Cabinet and outlined in the leaked letter from the Deputy Minister of Finance?

**Hon. Ms. Frost:** The comprehensive health care review is really to look at efficiencies of services to all Yukoners. The objective is to look at a conversation with our partners. We look at our performance plan; we look at providing as many opportunities as we can to address the growth of government, but we do that by addressing our program service delivery models and not by cutting programs. We are looking for efficiencies and we are looking at a more sustainable health model and social service support program and improving the results and outcomes for all Yukoners. The review, as noted, will be completed in the fall of 2019. At that point, we will look to get strategic advice and support from the expert panel members and from our partners. The comprehensive review is really to ensure that we provide the best possible collaborative care support to all Yukoners where they are in all of our Yukon communities, which we have not done historically. We aim to do that through this comprehensive review process — efficiencies are where we are heading.

**Ms. Van Bibber:** On October 10, the Minister of Health and Social Services told us that the health care review was underway. Can she please tell us who is conducting the review and what the cost will be of this review?

**Hon. Ms. Frost:** The comprehensive review, as noted, will always look for historical expenditure growth in order to provide long-term sustainable health care and social supports for all Yukoners. We have committed to engaging and involving all of our partners in the Yukon as well as our non-government partners. We are looking at a four-phase approach on the health review. In phase 1, we are looking at June to September with respect to the government-to-government engagement and preliminary research and analysis, which we are currently doing. From August to January, we are looking at continued research — involved internally — and looking at our supports there. At the end of October, we will have a comprehensive final report and an implementation plan.

With regard to how much that is going to cost — at the moment, Mr. Speaker, I am not able to give the member opposite the specific costs for the government's comprehensive review, but I can say that we will look at the completed review with our engagement with all of the stakeholder partners, and we will provide a comprehensive review to all Yukoners to address efficiencies in the government.

**Question re: Health care funding**

**Ms. McLeod:** On October 24, I asked the Minister of Health and Social Services to confirm if the Yukon Hospital Corporation currently had a funding request before the Department of Health and Social Services. In response, the minister said — and I quote: "... the capital side of the

proposal that they submitted will take some time..." Those are the minister's own words confirming that there was a proposal from the Yukon Hospital Corporation. Yesterday, when I asked the minister for more details, her response was: "... the specific ask has yet to come."

Well, the minister seems to be giving some conflicting answers. Can the minister tell me who is right: the Minister of Health and Social Services from October 24 or the Minister of Health and Social Services from yesterday?

**Hon. Mr. Silver:** The members opposite should be quite aware of the budgetary process when it comes to all the departments, whether it be Health and Social Services or any other department. Work is ongoing and we will not be releasing information before it has passed Cabinet. That's how we budget in the Yukon.

**Ms. McLeod:** It's very concerning that, depending on what day you ask the Minister of Health and Social Services about her department, she gives you a different answer. As I stated, the minister said on October 24 that there was a capital proposal, and then five days later the minister said that there is no proposal. So I think Yukoners are very concerned when they hear the Minister of Health and Social Services contradict herself about something as significant as capital investments in the hospital.

Yesterday, the minister alluded to potential investments in a secure medical unit and expansion of the operating room. Can she tell us if these are part of the capital proposal that the Yukon Hospital Corporation submitted and that the minister referred to on October 24?

**Hon. Ms. Frost:** No contradiction — I think that what we are working toward is an approach that the hospital has put before this government with respect to requests. Now, those are things that were taken into consideration to maximize opportunities for Yukoners, working with the hospital to address their requests with regard to the secure medical unit. As the members opposite well know, there is a shell unit sitting there waiting for potential development. That is going to cost in excess of \$7 million. Right now, our priority is to provide supports to Whistle Bend and open up Whistle Bend with the \$36 million of extra expenditures that we had not accounted for and that they did not account for in our budget. So as we advance and move our clients out of the hospital and into the Thomson Centre for re-enablement — that is where our priorities went. We did that in conjunction and collaboration with the Hospital Corporation. That was a capital expenditure. With respect to the O&M around that — we have worked it into the budget to address some of the pressures that we're seeing at the hospital.

To the question asked earlier — alleviating the pressures and the lists from the hospital — we will work in good faith with our partners to provide essential services to Yukoners who are in need and address the priorities when it comes to capital requests from the hospital within our budget and within our means.

**Ms. McLeod:** So regarding the secure medical unit that the Yukon Hospital Corporation told this House about on October 18, they said: "At this point, we have done detailed

functional planning. We have created schematic designs and options associated, as well as high-level costing.” So can the minister confirm if this information is part of the capital proposal that the minister referred to on October 24? Will she make it public?

**Hon. Ms. Frost:** I will not make anything public until we’ve had a commitment with the hospital. At the moment — I note that the member opposite speaks about schematics. If the member opposite is aware, a schematic drawing is really just a conceptual design that speaks to the overall building development.

What the members from the Hospital Corporation spoke to was putting together a formalized business plan with the service delivery model around potential development and tying that to a longer budget plan that would better align with their other pressure area needs that they put forward.

That is what we’re continuing to work with, and we will commit to work with the Hospital Corporation in addressing their priorities. We will schedule according to their priorities that they have noted for us. We will do that in good faith, within the means that we have. Right now, as noted, we’re spending \$1.50 for every \$1 we’re bringing in. The budget in health continues to rise, service delivery is essential, and we will ensure that every Yukoner is provided with collaborative care and essential care where they are, in collaboration and in conjunction with our partners.

#### **Question re: Health ministers meeting**

**Ms. Van Bibber:** At the health ministers meeting in June, the minister signed off on a communiqué that committed the Government of Yukon to improve access and reduce barriers to treatment options for opioid abuse. Can the minister tell us what work she has done since this June meeting to take action on this commitment?

**Hon. Ms. Frost:** I believe I have responded to that question. I will continue to say that we’re working in collaboration with our partners, addressing and implementing our opioid strategy and working with the federal government.

**Ms. Van Bibber:** No, I haven’t asked that question before.

At the same health ministers meeting, the communiqué that the minister signed goes on to say — the minister stressed the importance for — and I quote: “... the need to take steps to reduce the inappropriate prescribing, dispensing and use of antimicrobials.” Can the minister tell us what action she intends to take to address or change the prescribing practices of medical professionals in the territory?

**Hon. Ms. Frost:** As I stated previously, we will continue to work with the medical professions. We will work under the *Medical Profession Act*, and we will work with the Hospital Corporation and the physicians to address the pressures — and address and respond to the question that the member opposite is asking.

**Ms. Van Bibber:** In Canada, there are 65,000 people living with HIV and up to 246,000 living with chronic hepatitis C. At the same health ministers meeting, ministers approved a pan-Canadian framework on sexually transmitted

and blood-borne infections to take action to reduce these infections.

Can the minister update us on this framework that she committed to and what actions does it commit Yukon to take?

**Hon. Ms. McPhee:** I think it’s important to note that this was a completely separate question, and I don’t have the answer for that one. I would like to add, with respect to the second question that was asked by the member opposite, that the overprescribing of opioids is, of course, a major concern in Canada. The members opposite might be aware of a major lawsuit that has been launched by the British Columbia government. We are following closely with work between our Department of Justice and theirs to follow that case, which is, again, following along the lines of a case launched in the United States, because the overprescribing of opiates is a serious problem. The allegation in that lawsuit is that it has led to an issue with the opioid crisis and, in fact, led to the opioid crisis and the effects thereof.

As a result, I am happy to provide that information in response to the question about what action has been taken to deal with the overprescription piece.

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

#### **Notice of opposition private members’ business**

**Ms. White:** Pursuant to Standing Order 14.2(3), I would like to identify the item standing in the name of the Third Party to be called on Wednesday, October 31, 2018. It is Motion No. 294, standing in the name of the Member for Takhini-Kopper King.

**Mr. Kent:** 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, October 31, 2018. It is Motion No. 192, standing in the name of the Member for Kluane.

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

## **ORDERS OF THE DAY**

### **GOVERNMENT BILLS**

#### **Bill No. 22: *Act to Amend the Forest Resources Act and the Territorial Lands (Yukon) Act (2018)* — Third Reading**

**Clerk:** Third reading, Bill No. 22, standing in the name of the Hon. Mr. Pillai.

**Hon. Mr. Pillai:** Mr. Speaker, I move that Bill No. 22, entitled *Act to Amend the Forest Resources Act and the Territorial Lands (Yukon) Act (2018)*, be now read a third time and do pass.

**Speaker:** It has been moved by the Minister of Energy, Mines and Resources that Bill No. 22, entitled *Act to Amend the Forest Resources Act and the Territorial Lands (Yukon) Act (2018)*, be now read a third time and do pass.

**Hon. Mr. Pillai:** The amendments in Bill No. 22 focused on resolving the technical issues that we recently discovered in the two acts. Resolving these issues will strengthen and clarify the acts and will help us better protect our lands and forest resources.

As a summary, these amendments will ensure first that all regulations under the *Territorial Lands (Yukon) Act* carry a maximum penalty of \$5,000. The *Territorial Lands (Yukon) Act* contains the ability for a court to issue remediation orders to a person found guilty of damaging natural resources due to an offence. The English and French versions of section 21(j) of the *Territorial Lands (Yukon) Act* are to be aligned.

The definitions of “forest resource harvesting” and “timber harvesting” in the *Forest Resources Act* include cutting and removal of forest resources or timber or both.

I thank the Members of the Legislative Assembly for the discussion and debate of this bill in second reading in Committee of the Whole. As we have discussed, these amendments are very technical in nature and we will include broader issues with the *Forest Resources Act* in the upcoming review of that act.

I thank the Member for Lake Laberge as well as the Yukon Wood Products Association for bringing these issues to my attention.

We are working with our First Nation partners to define the scope of the *Forest Resources Act* review. I can comment that we will be undertaking a full public and stakeholder engagement, as well as government-to-government consultation with First Nations on potential amendments.

I would also like to thank the Member for Takhini-Kopper King for providing me the opportunity during general debate in Committee of the Whole to restate why the amendment to add reclamation orders to the *Territorial Lands (Yukon) Act* is so important.

This amendment will give a court the tools needed to properly enforce contraventions of the act. It strengthens the regime so that the court can administer responsibility for remediating the natural resources that the guilty parties were found to have damaged through their illegal actions.

The ability to seek remediation orders strengthens our enforcement toolbox and helps us protect and restore our natural resources. In addition to the maximum daily penalty for offences of \$5,000, the ability to recover the actual costs of remediation from guilty parties is very significant. The remediation order could levy significant costs to individuals or companies.

As I stated during Committee of the Whole, the remediation order is quite broad in scope and can require the individual or company to undertake remediation and reforestation activities, post a bond or pay for a cost incurred by government for any cleanup. In addition, the amendments allow the Yukon government to request a variation to the remediation order if it is found to be lacking. The remediation order is consistent with those found in the *Wildlife Act* and the *Forest Resources Act*. Mr. Speaker, a number of other jurisdictions also use these tools of remediation orders.

In closing, I would like to thank the Members of the Legislative Assembly for their participation in updating these statutes. I would also like to particularly thank Little Salmon Carmacks First Nation and Selkirk First Nation for their help on the reclamation work at McGregor Creek. Without their help, we would not have been able to address the situation this fall.

A special thanks to Eric Fairclough, Dean Gill and Fred Green, who work with Land Management branch officials Heli Aatelma and Brenda Sproule.

Finally, I would like to highlight that a new order-in-council came into effect on October 11, 2018, for a mineral staking prohibition in the McGregor Creek area. This prohibition will support the ongoing reclamation work in the area and will ensure that we can take the necessary steps to restore the area.

Also, as noted by the Member for Takhini-Kopper King, this work has only been completed with this efficiency because of the staff of both branches and just overall our staff at Energy, Mines and Resources and working with the Department of Justice to complete this in an extremely quick and efficient manner. I know that doesn't come without a lot of hard work. I think on behalf of all of us in the Legislative Assembly today, as well as me and my two critics on this file, we thank them for their work. I am confident that these amendments will contribute to increased protection and better management of our lands and resources.

Thank you, Mr. Speaker.

**Mr. Cathers:** As I noted earlier during debate, we recognize that this legislation is bringing forward a very specific change that, in fact, is largely restoring powers that government believed it had, but due to a court decision, felt that additional action was necessary to provide that authority. We appreciate that there needs to be appropriate penalties if there is a breach of the law in this type of circumstance, as the minister had described in his preamble.

I would thank the minister for committing to doing a review of the *Forest Resources Act* and regulations. Our lone concern regarding this area was the fact that, as I noted earlier in speaking to this, there are areas where the *Forest Resources Act* and regulations are not working as they were originally intended. There have been some unanticipated challenges faced by Yukon companies in this area and there have been a number of concerns that my colleague, the Member for Kluane, has brought forward on behalf of his constituents as well as others, I'm sure, who have contacted the minister directly. I thank the minister for listening to our request to do a broader review of the *Forest Resources Act*, and with that we will be supporting this amendment to the *Forest Resources Act* and the *Territorial Lands (Yukon) Act*.

**Ms. White:** The Yukon NDP will also be supporting Bill No. 22 today at third reading. It's an example of how quickly government can move when a problem is highlighted by closing a loophole on environmental infringements that were found under the *Forest Resources Act* and, again, our

appreciation to the staff within the Department of Justice who brought it forward so quickly. We now look forward to the fact that the cost will be borne by the parties who contravene the *Forest Resources Act* for the mistakes they make, and it won't be going to Yukon as a whole to cover those mistakes. We look forward to having that move forward so that in the future we don't have what has happened in the past.

**Speaker:** Is there any further debate on Bill No. 22? If the member now speaks, he will close debate. Does any other member wish to be heard?

**Hon. Mr. Pillai:** Once again, thank you to both opposition members who are my critics on this file. Yes, of course, in reply to the Member for Lake Laberge, we will be undertaking what I think will be quite a robust conversation around the *Forest Resources Act*, sitting with my colleagues, understanding the time it takes to build out successor-style legislation. Then, of course, we're mandated to — the time had come due and we had a commitment within that legislation and policy work to go back and do the review.

I think that the review — as we speak with our First Nation governments on this particular legislation, I think we're getting to a place where we can address some of the concerns and also the concerns from people within the industry, as stated on behalf of the Member for Kluane. With the Yukon Wood Products Association, as we see the growth in that particular area and the growth in biomass and also the threat of forest fire — all these different pieces coming together — it will be an important time to have this conversation.

Once again, I just want to state that I truly enjoy working with both individuals who are the critics on this file; we also share a couple of other files together.

Not to digress, but we will be supporting the agricultural industry on the upcoming weekend at the North of 60 Agricultural Conference dinner. I look forward to continued work on different files as we make these important changes in the *Act to Amend the Forest Resources Act and the Territorial Lands (Yukon) Act (2018)*.

**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. Silver:** Agree.

**Hon. Ms. McPhee:** Agree.

**Hon. Mr. Pillai:** Agree.

**Hon. Ms. Dendys:** Agree.

**Hon. Ms. Frost:** Agree.

**Mr. Gallina:** Agree.

**Mr. Adel:** Agree.

**Hon. Mr. Mostyn:** Agree.

**Hon. Mr. Streicker:** Agree.

**Mr. Hutton:** Agree.

**Mr. Hassard:** Agree.

**Mr. Kent:** Agree.

**Ms. Van Bibber:** Agree.

**Mr. Cathers:** Agree.

**Ms. McLeod:** Agree.

**Mr. Istchenko:** Agree.

**Ms. Hanson:** Agree.

**Ms. White:** Agree.

**Clerk:** Mr. Speaker, the results are 18 yea, nil nay.

**Speaker:** The yeas have it. I declare the motion carried.  
*Motion for third reading of Bill No. 22 agreed to*

**Speaker:** I declare that Bill No. 22 has passed this House.

**Hon. Ms. McPhee:** I move that the Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

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

*Motion agreed to*

*Speaker leaves the Chair*

## COMMITTEE OF THE WHOLE

**Chair (Mr. Hutton):** Order, please. Committee of the Whole will now come to order.

### Motion re appearance of witness

#### Committee of the Whole Motion No. 6

**Hon. Mr. Clarke:** I move:

THAT from 3:30 p.m. until 5:30 p.m. on Tuesday, October 30, 2018, Diane McLeod-McKay, Information and Privacy Commissioner, appear as a witness before Committee of the Whole to discuss matters relating to Bill No. 24, entitled *Access to Information and Protection of Privacy Act*.

**Chair:** It has been moved by Hon. Mr. Clarke:

THAT from 3:30 p.m. until 5:30 p.m. on Tuesday, October 30, 2018, Diane McLeod-McKay, Information and Privacy Commissioner, appear as a witness before Committee of the Whole to discuss matters relating to Bill No. 24, entitled *Access to Information and Protection of Privacy Act*.

**Hon. Mr. Clarke:** Mr. Chair, as members will recall, on Wednesday, October 17, 2018, the Yukon Legislative Assembly adopted Motion No. 328. The motion reads as follows:

THAT this House urges the Government of Yukon to invite Yukon's Information and Privacy Commissioner to appear before Committee of the Whole to address the concerns raised by the Information and Privacy Commissioner regarding Bill No. 24, *Access to Information and Protection of Privacy Act*.

Subsequent to the adoption of that motion, the Information and Privacy Commissioner was invited to appear before Committee of the Whole today. Despite the fact that the House adopted Motion No. 328 on October 17, a motion is still required in Committee of the Whole to authorize the Information and Privacy Commissioner to appear on a specific day at a specific time. Should the motion be adopted, the appearance of the Information and Privacy Commissioner in Committee of the Whole today will mark the first time that an individual recognized in law as an Officer of the Legislative Assembly has appeared as a witness in Committee of the Whole.

As this is a first, the procedures surrounding the appearance are new. As members are aware, a motion for the appearance of witnesses in Committee of the Whole is usually moved by the minister responsible for the entity whose officials are to appear. As the Information and Privacy Commissioner is an Officer of the Legislative Assembly, there is no minister responsible for the office. As a matter of procedure, any minister or private member can move a motion in Committee of the Whole, including a motion for a witness to appear. Standing Order 4(3) says: "The Speaker may participate as a private member in the business of Committee of the Whole."

As the Information and Privacy Commissioner is an Officer of the Legislative Assembly, I, as Speaker and Chair of Members' Services Board, have moved the motion for the Information and Privacy Commissioner to appear in Committee of the Whole.

As the Speaker, I will not speak to the merits of Motion No. 328 or of the motion I have just moved. I also will not participate in the questioning of the Information and Privacy Commissioner during her appearance in Committee of the Whole.

**Mr. Kent:** I'm going to offer brief remarks on behalf of the Official Opposition with respect to the appearance of the Information and Privacy Commissioner here today. Obviously our party is pleased that the House officer, the Information and Privacy Commissioner, will be appearing today. I would like to give credit to the Third Party, the New Democratic Party, for bringing forward a motion that asked for her appearance here today, which was subsequently approved on one of the opposition private members' days.

We do have some concerns over the time allocations for questions today, and that's what I wanted to spend a little bit of time talking about. Unfortunately, we were not able to reach a consensus on time allocations for the Official Opposition, the Third Party and the government members who have questions. Those time allocations were imposed on the House by the Government House Leader.

The Yukon Party offered some solutions when we were made aware that the government members wished to be included in asking questions. We felt that there was perhaps an opportunity to start at 3:00 p.m. rather than 3:30 p.m., to give additional time. The government didn't take us up on that offer. I know there were some solutions put forward by the

NDP, but I'll ask the Third Party House Leader to speak to those.

As the Member for Riverdale North, the Speaker, mentioned, this is a precedent for us. This is the first time that a House officer has appeared in the House, but the allocation of time — I just wanted to make sure that it's on the record that the House Leaders have agreed that this will not be a precedent and that we will revisit it after today to see if it worked and what can be improved.

Again, one of the concerns that we have is — and I brought this up at the House Leaders' meeting this morning — that we keep adding business to our agenda without adding time to the proceedings. We have had appearances by the Financial Advisory Panel. We will see the Information and Privacy Commissioner appear here today. I believe Mr. Loukidelis is scheduled to appear in this Sitting as well with respect to the report that he conducted. Again, to be clear, the Official Opposition is okay with these individuals appearing. We have been given indications at the House Leaders' meeting that other House officers will be asked to appear in the future as well.

What I think we need to do as a House — be it through House Leaders' meetings or the Standing Committee on Rules, Elections and Privileges or SCREP — is to look at solutions that allow witnesses to appear but still give us ample time for debate on budget and legislation. As I mentioned, we keep adding business without adding time, and it's cutting into our opportunities to ask questions about legislation. I put forward some potential solutions this morning at the House Leaders' meeting that I won't discuss here on the floor of the Assembly, but I hope that parties will take us up on those ideas and we can come to some sort of a consensus as to how we proceed with respect to having witnesses, including House Officers, appear before Committee of the Whole.

**Ms. Hanson:** I thank the Member for Copperbelt South for his comments. I think they should be heard as — what I heard was a constructive series of suggestions here.

I was pleased, Mr. Chair, when the Legislative Assembly adopted the motion that is coming into force today in terms of having the Information and Privacy Commissioner appear before this Legislative Assembly. I just want to clarify — that motion was brought forward, if you'll recall, from the Third Party, the New Democratic Party. We've made a number of comments over the course of the last two years that, as a Legislative Assembly, we're evolving, but we haven't evolved to what I would call the maturity level of other legislative assemblies where there are other fora for this kind of appearance by an Officer of this House.

In other places, there are established standing committees where this kind of legislative review would be discussed and we would be meeting outside of the Committee of the Whole. We would be meeting in the morning or on other days when the House is not sitting. I do believe that we need to have that conversation. We haven't had it. Part of the issue is SCREP, but part of it is whether there is a will in this Legislative Assembly to actually begin to talk about how we move

forward on that. So it's a good step that we're having the Information and Privacy Commissioner here this afternoon.

When I put the comments out in the discussion with respect to this motion, Mr. Chair, you will recall that I urged government members to be participating. I didn't anticipate that what we would see is a structure so that it would be like any other officer appearing before. I said that I urged the members to appear and speak as MLAs, not as government members, and so I was kind of taken aback when I got the plan, which basically is what we would normally see when we have the Hospital Corporation or the Development Corporation appearing here. You have the government making an opening comment, then you have the witnesses, and then you have the allocated time for the Official Opposition and the Third Party, and then you have the government summarizing it. I would have assumed that you would have just taken a time slot and said, "Government, Official Opposition, Third Party — close. Thank you very much." But that is not what we received.

We are prepared to work with this. We are very pleased to see the commissioner appearing here today and we hope that members will be speaking, having the freedom to ask questions that are not strictly coming from — and I will say this very frankly — the position of having Liberal members coming to a meeting and saying, "This is our position." It is: What have you heard from your constituents? What have you heard from the Information and Privacy Commissioner that stimulates you to ask a question about whether or not the legislation, as tabled, has achieved the objectives of an improved *Access to Information and Protection of Privacy Act*? That is our objective, I hope, this afternoon.

She has made some very cogent remarks going back to December 2015 and then more recently once the new legislation was tabled, and I think she deserves our full participation as elected members representing all Yukon citizens. We are looking forward to it.

**Hon. Ms. McPhee:** I must say that I am quite surprised and a bit puzzled with respect to the comments from the House Leader for the Yukon Party on the basis of not being able to reach consensus. Certainly there were conversations about how this might unfold. I think it is important for me to note to all the members and to Yukoners listening that this is the first time that I can recall, since at least the last 10 years — and actually I would say as far back as the last 11 or 12 years, and I don't have information before that — when an Officer of the Legislative Assembly has even been asked to appear in this House. It is certainly something that, during the five years I was the Ombudsman and the Information and Privacy Commissioner, I advocated for. It is certainly something that our government supports, because when the motion was brought forward, I think there was a conversation about it being the shortest motion ever because everybody agreed that this was a good idea.

With respect to the time allocation, I think it is important to note that two-thirds of the time available this afternoon has been given to the opposition, and they will use that wisely to

ask the questions of this House officer. One-third of the time has been sorted for the government to ask questions.

The Information and Privacy Commissioner, of course, and all the House officers are, in fact, independent of government and independent of this Legislative Assembly, so the government has no more access to those individuals than anyone else.

I can note that it is also extremely unusual on the basis that the Information and Privacy Commissioner will be appearing here this afternoon to answer questions about a bill that is currently being debated on the floor of this House. That is unheard of, Mr. Chair. I think that all of those things are positive on the basis that we are working very hard to have all of the information that needs to be properly debated in this House available and for a hardy discussion on the basis of not only the bill that is before the House and the opportunity to question the minister and others if necessary as part of Committee of the Whole and the other processes, but also having the independent officers responsible for the act come and speak.

I am also a little puzzled with respect to the idea that the members opposite suggested that there be more time for the witness to come but also commentary that they thought witnesses shouldn't be coming or that it was cutting into the time of the debate for other things.

I find that also puzzling on the basis that we have spent some 20-plus hours in general debate of the smallest supplementary budget that has ever been tabled here in perhaps the last 10 to 15 years. As a result, the opportunity for business to proceed is presented by the government, of course, but is often controlled by the opposition. I am happy for that to be the case. Clearly that is our system and it should be working that way, but complaints about the fact that it has been taking too long are a bit unusual.

That being said, I am pleased that the Information and Privacy Commissioner is coming. This is the first time this has happened — that a House officer has come. Certainly at House Leaders' meetings we have discussed the fact that this was a great opportunity and we would structure it in this way for this time and revisit it if it doesn't work. If there are things to improve, we will talk about that as well.

I will make one last comment with respect to the idea of having the government close or make an opening statement. That is not what is going to happen. I was very clear that the government will ask questions of the officer, not unlike the other parties, and that the opportunity at the end, frankly, Mr. Chair — what I have indicated is that there may be some issue with other individuals going over the time that we have discussed and that time would be subtracted from the government's time at the end of the afternoon so that neither of the other two parties would have shortened periods of time. I certainly hope that everyone who will be asking questions will respect that conversation and respect the list that we have set out and provided to the Information and Privacy Commissioner about what she can expect this afternoon, but if that is not the case, it's the government's time that will be the buffer. I think that was a reasonable and fair approach to take.

**Chair:** Is there any further debate on Committee of the Whole Motion No. 6?

*Committee of the Whole Motion No. 6 agreed to*

**Chair:** The matter now before the Committee is Bill No. 26, entitled *Technical Amendments Act (No. 2), 2018*. Do members wish to take a brief recess?

**All Hon. Members:** Agreed.

Committee of the Whole will recess for 15 minutes.

*Recess*

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

**Bill No. 26: *Technical Amendments Act (No. 2), 2018***

**Chair:** The matter before the Committee is Bill No. 26, entitled *Technical Amendments Act (No. 2), 2018*. Is there any general debate?

**Hon. Ms. McPhee:** Thank you for this opportunity. I appreciate a chance to speak to the Committee of the Whole with respect to Bill No. 26, entitled *Technical Amendments Act (No. 2), 2018*. I would also like to thank the officials for being here with me today and for their work on this bill. I have with me Teri Cherkewich and Dan Cable. Thank you to each of you for being here today.

I would like to speak just briefly to outline why we brought this type of bill forward and what we are looking to accomplish with it. As the Minister for the Department of Justice, I recommended amending two acts here in this bill to (1) remove outdated and unnecessary provisions, and (2) to ensure the smooth and effective operation of one of the adjudicative boards here in the territory.

Given that, as the Minister of Justice alone, I'm responsible for 78 pieces of legislation that are currently in force, and it's important to me that we work continuously to ensure that Yukon laws remain as accurate and relevant as possible. In the course of the work on the spring technical amendments act, 2018, the Department of Justice identified other pieces of legislation that could be considered for inclusion in future technical amendments bills, and this bill reflects some of those issues to be remedied.

These technical bills are helping us to clean up and correct various pieces of legislation in a timely manner, rather than having to wait until a more substantive review of an act might be undertaken — in some cases, they may never be undertaken for many years or in other cases it may be a bit sooner, but nonetheless, these are important opportunities.

We expect there will be more technical amendments acts in the future.

Mr. Chair, this bill proposes to amend section 22 of the *Human Rights Act* to include a provision that will allow a member of the panel of adjudicators who is in the process of participating in the hearing of a matter but whose appointment will expire, certainly or likely, before the completion of the matter to remain as a member of the panel until they have completed the hearing process and delivered a decision.

This amendment will ensure procedural fairness for those individuals who have hearings underway when a term of a panel member is about to expire and when that might happen during the course of the hearing.

This will eliminate the need to have the entire matter reheard or to start again — something that is to be avoided. I can advise this House that a number of other jurisdictions, including Canada and the other territories, have similar provisions in their human rights legislation. As a note, Mr. Chair, a similar provision to address this type of a situation is also found in section 64(2) of the Yukon *Workers' Compensation Act*. The decision to include this type of provision in the *Human Rights Act* is well grounded in precedents.

The department has advised the Human Rights Commission of this plan to include the new provision in the *Technical Amendments Act (No. 2), 2018* this fall, and they were supportive of ensuring that the smooth operation of the panel of adjudicators is enshrined in the act. This amendment would also result in additional flexibility in the scheduling of hearings — if there were some panel members whose terms were going to expire, for instance.

This bill will also clean up an unnecessary or moot provision in the *Territorial Court Act*. The amendment in this bill repeals section 11(5), which was put in place in 2001 in order to ensure that a number of the sitting judges of the Territorial Court bench were not required to retire at age 65, but rather could retire at the age of retirement that was in force at the time that those judges were appointed to the bench. As those members — the ones it would have affected — of the bench have now all retired as judges of the Territorial Court and there are no longer any judges on the bench who were appointed prior to the coming into force of the *Territorial Court Act*, this subsection should now be repealed. We are not looking for paperwork, but this is also an important change, because we believe that the repealing of this section will also remove any potential confusion as to the retirement date for all members of the bench, both those currently sitting and those appointed in the future. There is another provision in the *Territorial Court Act* that could be considered to be in conflict with section 11(5), and so removing section 11(5) will clear that up.

We have discussed this amendment with the Territorial Court bench, and they are supportive of cleaning up this legislation. As this matter is quite straightforward — the *Technical Amendments Act (No. 2), 2018* — I think that is probably all that I need to say about it.

I would like to thank the members of this House for their time and consideration of this bill. I would like to thank the officials who have worked to bring these technical matters before us, because they do make our laws better. I am pleased to answer any questions that any of the Members of the Legislative Assembly may have in relation to this bill.

**Mr. Cathers:** I do have to point out that the minister's speech was substantially longer than the bill itself. This is a very simple amendment, and we have no concerns with it so we will be supporting it.

**Ms. Hanson:** I thank the minister for expanding on the explanation provided by the officials as to the intent and effect of the amendments to the *Human Rights Act* and to the *Territorial Court Act*. The minister did mention that she expected that there would be more technical amendment acts coming forward, and I would say that, from the position of the Yukon NDP, that's good. It's good to see that legislation is kept evergreen.

We would look forward to having the minister clarify how priorities are established and how and whether MLAs can offer suggestions in updating any of the 78 pieces of legislation that she indicated were under her purview.

We will be supporting the *Technical Amendments Act (No. 2), 2018*.

**Hon. Ms. McPhee:** I'm happy to respond to the question from the Leader of the Third Party. I appreciate the support. I know that some may think technical amendments are not as important as I happen to think they are. I think cohesive legislation is what Yukoners deserve — accurate, modern and up-to-date legislation. If there are some changes we can make, certainly I am in favour of doing that.

With respect to how the priorities are set, there are a variety of ways. One example might be — as the Member for Takhini-Kopper King raised several times last year and, I think, in the spring with respect to changes that she suggested with respect to the language regarding the LGBTQ2S+ community — those, of course, were taken seriously by this government and we took a look at those. We have already had the debate about how we determined which ones could be done a little quicker than others. Of course, pieces of legislation that don't necessarily interact with another piece are easy wins with respect to making those changes. Certainly, please write to me and send me information if you are aware of something that needs addressing.

These ones, for instance, came about through the Territorial Court mentioning that there was possibly an anomaly between the two sections, and everyone who was there when this matter was put into the act was no longer a sitting member of the bench. Then, with respect to the Human Rights Commission situation, it was, in fact, something that had occurred earlier this year and we needed to address it. It was a concern that individuals who were taking their serious matter before the Human Rights Panel of Adjudicators might have to restart that, and that certainly wasn't something that was appropriate.

They come to us in many ways, but I certainly encourage MLAs who have noted changes that they are suggesting to send them to my office or contact me by e-mail or otherwise so that we can put them on the list. Sometimes they will be grouped together with respect to topics, but other times we will be trying to move the easiest ones possible or the simplest ones if they are not interacting with other legislation.

**Chair:** Is there any further debate on Bill No. 26? Are you prepared for the question?

**Mr. Cathers:** I request the unanimous consent of the Committee pursuant to Standing Order 14.3 to deem all clauses and the title cleared or carried as required.

### **Unanimous consent re deeming all clauses and title of Bill No. 26 read and agreed to**

**Chair:** Just to clarify, general debate has concluded. We are now in the process of clause-by-clause debate.

Mr. Cathers has, pursuant to Standing Order 14.3, requested the unanimous consent of Committee of the Whole to deem all clauses, preamble and the title of Bill No. 26, entitled *Technical Amendments Act (No. 2), 2018*, read and agreed to.

Is there unanimous consent?

**All Hon. Members:** Agreed.

**Chair:** Unanimous consent has been granted.

*On Clauses 1 and 2*

*Clauses 1 and 2 agreed to*

*On Preamble*

*Preamble agreed to*

*On Title*

*Title agreed to*

**Hon. Ms. McPhee:** Mr. Chair, I move that you report Bill No. 26, entitled *Technical Amendments Act (No. 2), 2018*, without amendment.

**Chair:** It has been moved by Ms. McPhee that the Chair report Bill No. 26, entitled *Technical Amendments Act (No. 2), 2018*, without amendment.

*Motion agreed to*

**Chair:** The matter now before the Committee is continuing general debate on Bill No. 207, entitled *Second Appropriation Act, 2018-19*.

Do members wish to take a brief recess?

**All Hon. Members:** Agreed.

**Chair:** Committee of the Whole will recess for 10 minutes.

*Recess*

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

### **Bill No. 207: Second Appropriation Act, 2018-19 — continued**

**Chair:** The matter before the Committee is continuing general debate on Bill No. 207, entitled *Second Appropriation Act, 2018-19*.

Is there any further general debate?

**Mr. Kent:** I know we don't have very much time here this afternoon, so I just wanted to take a little bit of time to ask the minister of housing a quick question with respect to the "seriously simple" campaign. Obviously it's a public education campaign that came in a number of years ago dealing with carbon monoxide poisoning and what people should do with respect to it.

I'm reminded of this because I saw an ATCO video today, and as we get into the season where furnaces are going to be on and off a lot more than they have been for the past



while, this is something we still need to think about. I'm just curious — I know that there is still a website that's active, but are there expenditures being planned in this fiscal year by the Yukon Housing Corporation as we move into the fall season with respect to additional public awareness aspects — newspaper and radio ads and that type of thing?

Maybe if the minister can just give us a sense for what the budget is for this program in the current fiscal year.

**Hon. Ms. Frost:** We don't have any new expenditures for this year as part of the homeowner communications ads, and we will continue to provide supports to Yukoners through the existing programs and work with them. I'll be sure to raise that back with the Housing Corporation and see where they are with their initiatives.

**Mr. Kent:** I recognize that the minister won't have the detail here, but perhaps she could get back to us with plans or how much. She mentioned the expenditures this year are the same as last year, I believe, so if she could get back to us with a number as to what those expenditures will be and what the plans are for additional outreach and public education in this current fiscal year — that would be great.

**Hon. Ms. Frost:** As I noted, there are no new expenditures, but I would be happy to follow up with the department to get current information.

**Mr. Cathers:** I would like to return to an issue that I raised with several ministers and have gotten conflicting answers on. I first began this on behalf of constituents over a year and a half ago.

I know that the issue of school bus service into the new Grizzly Valley subdivision may not be an important one for this government, but it is an important issue for my constituents. Because the government has chosen to put out 20 lots for sale in phase 2 of the Grizzly Valley subdivision with a close date on that land lottery of November 14, it's a very timely and pertinent question for any Yukoners who may be considering applying to purchase one of these lots — whether school bus service is going to be provided into the subdivision or whether they will either have to drive their children to the highway, drive them to school, or see their kids walking about two miles alongside a road that does not have a sidewalk along it or, really, a good and safe path for children to be on.

I've raised this on a number of occasions. We've had the Minister of Community Services — and I thank him for that — confirm via a legislative return tabled in this House on October 2 that the design of the road does meet the Transportation Association of Canada guidelines for school buses, emergency vehicles and so on. We've also heard directly from officials of both Community Services and Energy, Mines and Resources that, from their perspective, the road is safe and was designed for school bus service. It is important to reiterate that the slope of the roads and the roads themselves were a Government of Yukon job. They were designed by the Yukon government. They were built under the watch of the Yukon government, and they were signed off on by officials of the Yukon government who confirmed that they met the standards.

On the one hand, we hear from every department except one the confirmation that this road is safe for school bus service, yet the Minister of Education has, on multiple occasions, declined to provide school bus service to the area.

For the government to talk about a whole-of-government approach and then, on a simple but as important a matter as school bus service to a subdivision designed, built and sold by the Yukon government — for the government not be able to come up with a conclusion on whether or not school bus service will be provided on roads that are safe for school buses really undermines the government's talking point about the so-called effectiveness of their alleged whole-of-government approach.

This is a very timely question, because roughly two weeks from now on November 14, the land lottery for 20 lots that the government chose to issue and put out for sale is closing, and people who are considering buying those lots will want to know, in making that purchasing decision, whether their children, if they have children, will receive school bus service or not. Now that the government has had time to consider this and reflect on the fact that the roads were designed, built and inspected by the Yukon government and, according to Community Services, fully meet the Transportation Association of Canada guideline, will the Premier or the Minister of Education now commit to provide school bus service to this area? If they will not make that commitment, are they going to issue a warning to potential purchasers of these 20 lots?

**Hon. Mr. Silver:** We are really close to having to report progress, but I did want to just get up and say that the Minister of Education answered this question.

The member opposite makes it sound like these students do not have a transportation system now. They do. It's not permanent and we're working on solutions, but right now, the kids who do live in Grizzly Valley are being bused once they get subsidized drives to the nearest bus outlet or pickup station.

It's interesting how this question is asked, because I have driven by Grizzly Valley for years now. Yes, it was designed under the previous government and the member opposite is talking about how it was designed by the department. Yes, that is true. The slopes and the grades were designed by the departments. Yes, that is true, but the decision by the previous government to leave it incomplete — I don't think we can blame that on the departments. That would be a decision from the political side.

I drive by. Grizzly Valley is supposed to be a continuous loop and you cannot get up that second side. You haven't been able to do so for years. When the member opposite was in government, he could have dealt with that. He did not. His questions and concerns about the kids when we are moving forward on developing — they are legitimate questions, especially if we are considering 20 more lots up there. It would be legitimate for the public to know that they have access to busing services. The minister has already answered that particular question many times in the Legislative

Assembly. We are definitely going to be taking that into consideration moving forward.

Again, it is an interesting way that this question has been asked repeatedly in the Legislative Assembly. We have had a response from the Minister of Highways and Public Works. We have had a response from the Minister of Education. Also, this particular budget item would fall under Community Services, and Community Services will be up to discuss issues of the supplementary budget. The minister will have ample time to address that when he and his officials are here.

With that said, Mr. Chair, I move that you report progress.

**Chair:** It has been moved by Mr. Silver that the Chair report progress.

*Motion agreed to*

**Chair:** Pursuant to Committee of the Whole Motion No. 6 adopted earlier today, Committee of the Whole will receive the Information and Privacy Commissioner. In order to allow the witness to take her place in the Chamber, the Committee will now recess and reconvene at 3:30 p.m.

*Recess*

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

### Appearance of witness

**Chair:** Pursuant to Committee of the Whole Motion No. 6 adopted on this day, Committee of the Whole will now receive the Information and Privacy Commissioner. I would ask all members to remember to refer their remarks through the Chair when addressing the witness. I would also ask the witness to refer her answers through the Chair when responding to members of the Committee.

*Witness introduced*

**Hon. Mr. Clarke:** The witness appearing before Committee of the Whole today is Diane McLeod-McKay, Yukon's Information and Privacy Commissioner. As I said in speaking to the motion for the witness to appear, Ms. McLeod-McKay is an Officer of the Legislative Assembly, and this is the first time that an Officer of the Legislative Assembly has appeared before Committee of the Whole. Ms. McLeod-McKay is here to answer questions from members regarding Bill No. 24, entitled *Access to Information and Protection of Privacy Act*.

Ms. McLeod-McKay was appointed Yukon's first full-time Ombudsman and Information and Privacy Commissioner effective June 10, 2013, for a term of five years. On June 15, 2015, following the passage of the *Public Interest Disclosure of Wrongdoing Act*, Ms. McLeod-McKay became Yukon's first Public Interest Disclosure Commissioner, in addition to her other roles. On August 31, 2016, as Information and Privacy Commissioner, she became responsible for overseeing compliance with the *Health Information Privacy and*

*Management Act* in addition to the *Access to Information and Protection of Privacy Act*. In November 2017, the Legislative Assembly appointed her to a second term of five years, during which she will perform all three roles. Her second term will expire in June 2023.

Ms. McLeod-McKay, welcome to the Assembly.

**Chair:** Would the witness like to make opening remarks?

**Ms. McLeod-McKay:** Thank you, Mr. Chair. I will keep my opening remarks brief here today. I did provide the members with some background information that I thought would be useful in setting the context of some of my comments here today.

I have been doing this work for a little over 20 years now, and all of the information that I will provide here today comes from that place of experience, in addition to the last five years that I have worked as Information and Privacy Commissioner here in Yukon. I have made it very clear, I thought, in my comments of late and also in my 2015 comments that the current ATIPP act needed to be amended to support innovation. Bill No. 24 has actually done a lot of those things.

The areas of concern that I had were about ensuring that there was adequate control that would balance out the authorities given under the bill to ensure that there would be compliance with it.

As I indicated in my comments to the media and recently, the bill does go a considerable way to achieving that objective, but there are a few areas that I do have concerns with and I did make some comments about them recently. I believe all the members have also reviewed some of those comments as well.

With that, I am happy to take questions here today and provide information that is useful to the members as they make the hard decision about what the content of this bill ought to be.

**Hon. Mr. Mostyn:** It's my pleasure to welcome to the House Yukon's Information and Privacy Commissioner, Diane McLeod-McKay — welcome this afternoon. I want to thank the commissioner for joining us today and for agreeing to appear as a witness in this Assembly. This is truly an unprecedented event. The Information and Privacy Commissioner has never before appeared as a witness in this House.

As mentioned, this Sitting, we are contemplating Bill No. 24, the *Access to Information and Protection of Privacy Act*. It is new legislation, really. It will replace the current legislation. It's appropriate to have the Information and Privacy Commissioner appear as a witness to speak to the changes that are being proposed.

When the ATIPP act was last amended in 2012, the Information and Privacy Commissioner did not appear before this House to answer questions from elected officials, so I am happy to have opened this opportunity to Members of the Legislative Assembly. Our Liberal government is committed to openness, transparency and accountability, which is why we have invited the Information and Privacy Commissioner

here today. All of the elected members of this House will have the opportunity to ask the commissioner questions.

I have said before that the purpose of this proposed legislation is threefold: to ensure personal information about individuals held by a public body is well-protected; to enhance services to Yukoners while protecting their right to privacy; and to be more transparent and accountable to the public — to provide the information that they owe to them.

Once again, I thank the commissioner for her comprehensive review of the draft legislation. I understand that she put in more than 14 hours in meetings and the drafting of this bill and that constructive criticism and input has made the bill stronger and better. I personally met with the Information and Privacy Commissioner to discuss proposed changes to the ATIPP legislation, and the conversations that we had did improve the bill. It's better for it and I thank her for her input.

With that, I do have some questions and I will open those up. I would like, if I could, to ask the Information and Privacy Commissioner to recount, in her opinion, how the bill improves the protection of a citizen's personal information.

**Ms. McLeod-McKay:** How it improves the protection of personal information — the act has a lot of authority in it now for Yukon public bodies to collect, use and disclose information for a broad range of activities, including integrated services, data linking and specialized services, which essentially include the ability to create client registries.

There is a significant ability in the act to now share information within and between public bodies that wasn't there before. I indicated in some of my comments — and I hold the view — that these changes are necessary in order to deliver public services more effectively and efficiently. I think citizens today are looking for better services and some technology, such as online services, in order to have those services delivered to them in more convenient way.

As a result of that, there have also been some controls added to the act in order to improve the security of the information or, I should say, the privacy. I just want to make clear that when we are talking about privacy in this piece of legislation, it is not about confidentiality — that is often confused. It is about control over one's personal information. When a question like that is asked of me, I look at what privacy rights an individual has within the legislation to control their own personal information. The rules for collection are there. The rules for use are there. Disclosure is there. Some of them are strengthened. I also look for ways that individuals can protect that information, such as through complaint mechanisms for oversight — good oversight — and some accountability through privacy program management. I look for ways that public bodies can be held accountable, including through audit and through mechanisms right through to the appeal of decisions — perhaps even of the Information and Privacy Commissioner, depending on the regime.

So to answer the question, Mr. Chair — I know that is a long answer, but I think that the act does provide some good measures of privacy protection for individuals to exercise

control over their own personal information. I think that some of the abilities for oversight, such as the new ability of the Information and Privacy Commissioner to audit and to initiate own motion on certain kinds of complaints, is a step in the right direction. I think that there could have been broader authority to evaluate any kind of non-compliance under the legislation now that there has been a broad range of activity distributed throughout public bodies and various actors within the legislation, but I do think there are good privacy controls and that privacy protections have been preserved to a large degree.

**Hon. Mr. Mostyn:** I thank the commissioner for that answer. On the flip side, how is this bill improving a citizen's access to information?

**Ms. McLeod-McKay:** The access-to-information provisions of the bill have remained largely the same. There have been some requirements added to the legislation to facilitate transparency by requiring public bodies to make certain kinds of information available to the public. I think that is an excellent step toward creating transparency and making information more accessible to the citizens of Yukon. There have been slight modifications to the business harm exception, which I am not sure will be problematic or positive. I will be keeping an eye on those to see whether or not there are challenges with respect to the restructuring of that particular provision. It is quite different from most places in Canada, so I will be taking a good look at that to ensure that citizens are not being restricted from information that they had access to prior. I think the transparency provisions in the act are good. I think that there is broader ability for the commissioner to review access-to-information related issues and to make recommendations.

The Information and Privacy Commissioner's ability to make recommendations under the current legislation is very limited, so I do think that there are some positives there.

I am concerned that there is perhaps some narrowing of the Information and Privacy Commissioner's authority to evaluate administration of certain aspects of the access-to-information portion of the legislation.

**Hon. Mr. Mostyn:** In 2015, the Information and Privacy Commissioner provided 35 recommendations designed to improve access to information and protection of personal information. How many of those recommendations have been incorporated into this new bill?

**Ms. McLeod-McKay:** I don't know the exact number. I would say a good portion of those recommendations have made their way into the bill. I'm very pleased to see that. My recommendations were created based on a considerable amount of research I undertook across Canada in terms of laws that had been amended to innovate and the controls that were put in place to counter the authorities that were provided to public bodies in order to facilitate that change in the way information was being processed by public bodies.

There are a lot of good things — if I can call them that — in the legislation and, as I said, I think the bill has gone a considerable way to achieving the balance needed to ensure that innovation can occur and that there are controls in place

over that particular authority and oversight. I don't have the specific number, Mr. Chair, but I think that a good portion of those recommendations were implemented.

**Hon. Mr. Mostyn:** I would like to know how the commissioner was involved in changes to the Yukon's *Access to Information and Protection of Privacy Act*. How was she involved in the drafting of this legislation?

**Ms. McLeod-McKay:** If I understand the question, I think I'm being asked to what degree I participated in the process. I will answer from that perspective. I was contacted in early — I believe it was — July and presented with a draft piece of the legislation. It was actually portions of the legislation. I was first given the privacy provisions of the act to evaluate, and I was later given the access-to-information provisions, then the commissioner's authorities and then the general provisions.

I met with the drafters extensively for hours at a time, sometimes three to four hours, going through the legislation as carefully as I could. It's a very large piece of legislation and a lot of cross-referencing that occurs, so it was sometimes difficult for me to evaluate it on a piece-by-piece basis, but I did the best that I could. I appreciated being involved in the process to that degree. We had lots of good discussions about what was going into the bill and what was not going into the bill, and I felt I was given a lot of opportunity to provide feedback.

**Hon. Mr. Mostyn:** I want to ask the commissioner if she had ever been involved in a process like that before.

**Ms. McLeod-McKay:** I have been involved in drafting other pieces of access and privacy legislation in different capacities in other jurisdictions. I have never done so as a sitting commissioner; however, I did appreciate being involved in that process.

**Hon. Mr. Mostyn:** For the House's benefit, I would like to ask what new powers and responsibilities the office of the Information and Privacy Commissioner is getting through this new piece of legislation.

**Ms. McLeod-McKay:** If I remember correctly, the Information and Privacy Commissioner will have the ability to audit the information practices of public bodies, which is a significant authority to evaluate whether or not there is compliance occurring with respect to the information management requirements under the legislation.

The authority to extend to a certain degree is being shifted over to the Information and Privacy Commissioner after the first level of extensions is issued by the access and privacy officer.

Let's see what else is happening — the own motion for complaints. The own motion is not exhaustive. It's not anything that I can do under the legislation to address any kind of non-compliance. It is any complaint that an individual can make under the legislation and there are specific categories, so that just should be recognized — that it is not broad own motion authority.

There are a number of other things that the Information and Privacy Commissioner will become responsible for. I

can't remember them all off the top of my head, but those are probably the more significant ones.

**Hon. Mr. Mostyn:** I wanted to ask the Information and Privacy Commissioner her thoughts on whether briefing documents should be accessible to the public.

**Ms. McLeod-McKay:** From the research that I have done and the evaluation of decisions and laws with respect to those kinds of documents, there are some important policy objectives to protect a certain amount of information that comes before Cabinet so that government can make policies without fear of being evaluated on their decision-making process.

That said, I think that there are some documents that should be shielded from access-to-information rights, but there are others that can be made available. I was pleased to see that some of the provisions that were included in 2012 were removed from this piece of legislation to provide more access to information.

I will also note that, in this new piece of legislation, there is a public interest override that allows individuals the right to access information when there is a public interest at stake. Depending on who is responsible for the particular documents, they have to exercise their discretion as to whether or not there is a public interest and to disclose information if they determine there is.

**Hon. Mr. Mostyn:** I was going to ask the Information and Privacy Commissioner if she could actually expand on that a little bit and speak to the importance of the public interest and protection override. Does she have anything else to add on that subject?

**Ms. McLeod-McKay:** I am pleased to see the public interest override in the access-to-information provisions of the legislation. If I recall correctly, I believe that this provision applies to any access to information rights under the legislation. That will be an important new right for citizens to have access to information where there is a public interest that is greater than the protection that is being applied to the information. That is positive.

**Hon. Mr. Mostyn:** Earlier this afternoon, we heard the commissioner talk about efficiencies in that there should be an improved ability to share information across governments, which hadn't been enabled in the old legislation. We're making strides to improve that in this new piece of legislation. In her capacity as commissioner, what sort of inefficiencies did she see through that in the lack of sharing? If she could expand on that and some of the frustrations she found in the lack of sharing of information between public bodies.

**Ms. McLeod-McKay:** It's a difficult question to answer because it wasn't frustrations that I was seeing, it was frustrations that public bodies were seeing in their ability to share information for things such as client registries and various other programs or activities that have become integrated as part of the new government citizen-centered service delivery model. My job is to ensure that I am monitoring compliance with the law. From that perspective, I didn't have a sense of frustration. I certainly felt that sense of frustration from public bodies, and I support that there needs

to be the ability to share information in a responsible and accountable way between public bodies so that individuals can receive good services. However, there needs to be proper controls in place to monitor the protection of privacy in that realm.

To answer your question, they weren't my frustrations, but I certainly understand what they were.

**Hon. Mr. Mostyn:** I'm almost done for this first round. I know I'm running out of time and I do want to be respectful of the opposition's time with the commissioner.

I wonder if she could sort of summarize quickly a few of the major improvements she sees in this piece of legislation that she has had a hand in drafting.

**Ms. McLeod-McKay:** I have already touched on a number of them. One thing I talked about in the 2015 review was in comparison to some other jurisdictions that have amended their laws to facilitate innovation for the kinds of government services that Yukon government is looking at delivering, now and in the future. Essentially, a lot of these laws were allowing a certain amount of information to be shared, integrated and combined for certain kinds of public services. In looking at it from that perspective and the ability of government to do more with the information they have and use their money wisely through the use of technology, I think that will actually serve the citizens of Yukon well in terms of what the bill now allows Yukon public bodies to do.

I do think that there are some controls in place that will protect the privacy rights of citizens and I think that they are relatively good controls. I do think that a few more things need to be considered in order to balance the authority versus the control over privacy protection, and those are the comments that I made that I imagine I'll be speaking a bit more to today.

**Mr. Hassard:** I would like to thank the witness for taking the time to be here today. We certainly appreciate your input in this regard.

I would like to take note of your press release where you expressed that you have deep concern with the legislation. I am going to stick to concerns that you have highlighted in that press release and the background that you sent out with it.

The first one that jumped out — the first comment in your news release that said — and I quote: "... it would be up to a complainant to take a public body to court if it rejects a recommendation by the Information and Privacy Commissioner. A complainant should not have to go to court and foot the bill to fight for their rights." I am wondering if the witness could maybe go into a bit more detail on that — what her thoughts are on what the government has told us is the reason that they wrote the act in this way. Mr. Chair, maybe the witness would tell us what she would prefer to see the act say or do instead.

**Ms. McLeod-McKay:** In terms of that comment that I made about citizens having to go to court, I scanned the public sector privacy laws across the country to evaluate the remedies available to individuals following an investigation by the IPC into an allegation of non-compliance that is substantiated. The results are this: the IPCs in BC, Alberta,

Ontario and Prince Edward Island all have order-making power. Manitoba's Ombudsman and New Brunswick and Newfoundland and Labrador's IPCs all have recommendation power, but it is not up to individuals in these provinces to address a public body's refusal to accept a recommendation. Manitoba's Ombudsman can refer the matter to an adjudicator who has order-making power. New Brunswick's Information and Privacy Commissioner can appeal to the court on this own motion. In Newfoundland and Labrador, a public body must go to court to refuse a recommendation. Only Saskatchewan, Nova Scotia, Northwest Territories and Nunavut require an individual to go to court if a public body refuses a recommendation.

What is interesting about these provinces and territories is that they have not amended their privacy laws to allow for innovation. Those were the last four that I mentioned.

The new ATIPP act, as drafted, will be the only privacy law in Canada that provides an extensive amount of authority for public bodies to collect, use, disclose, share, integrate and link data and establish centralized service registries without a remedy for individuals that eliminates their having to take matters into their own hands to enforce compliance. In my view, the law should be amended. I provided two recommendations for that amendment. I recommended that either Manitoba's or Newfoundland and Labrador's model be adopted. Either of these models will eliminate the need for individuals to have to go to court if recommendations are refused by a public body, including recommendations made by the Information and Privacy Commissioner following an own-motion investigation. Right now, there is no ability for anyone to do anything beyond that if an own-motion recommendation is refused.

**Mr. Hassard:** Another concern was that the information security obligations of public bodies are not contained within the legislation. In the background from the witness, it says that Bill No. 24 does not specify the information security controls that a public body must have in place to adequately protect the personal information that it holds.

Instead, the government's plan is to set out these requirements in the regulations. This approach of the government focusing on regulations instead of the legislation seems to be a common approach so far. We have seen it in a number of acts previously.

Could the witness comment a bit on why having powers entrenched in the legislation would be better than having those powers in the regulations?

**Ms. McLeod-McKay:** To determine whether it is standard to include information security requirements in public sector privacy laws, I scanned the laws and determined that all laws in Canada except in Ontario embed a security standard required to protect personal information in the act. Some also include additional requirements in regulation. HIPMA, for example, has the security requirements embedded in the legislation, with additional requirements also in the legislation and more detail in the regulations.

In my view, embedding the security standard in the act provides certainty for individuals whose personal information is being collected, used and disclosed by public bodies about the standard that they will be held to for its protection. I think that's really important when we're looking at the act as a whole and the amount of authorities that have now been granted to public bodies to collect, use, disclose, share, link and integrate. I think that security becomes a very fundamental component of the controls that are necessary to protect personal information.

I am assured that they will be in regulation and they will be robust — I think that's positive — but the fact that the standard itself is not included in the act, I find, is problematic. As I indicated, every other jurisdiction in Canada has the standard in the act except Ontario.

**Mr. Hassard:** The legislation introduces the use of protocols to exercise authority, placing too much power in one person's hands. The backgrounder mentions that the access and privacy officer has authority to decide whether to accept or reject an access request.

Mr. Chair, would the witness be able to explain a bit about how this would be a problem and how she feels we may be able to fix it if we were to amend the legislation?

**Ms. McLeod-McKay:** My concern regarding the authority of the APO is the breadth of the authority and the potential impact on access and privacy rights that this position may have. The act allows an APO — I'm just going to call it the APO — to establish protocols. The protocols can be established for the purposes of the consistent administration of and compliance by public bodies with the legislation. Protocols that are deposited into an access-to-information registry are binding on public bodies or classes of public bodies.

The APO is an employee of a public body that is appointed under the legislation. The authority of the APO to create protocols is broad. The APO has authority to create a protocol respecting the scope or description of a program or activity of a public body or a service provided by the program or activity. The term "program or activity" appears throughout the act — for example, a privacy impact assessment must be conducted before carrying out or providing a proposed program or activity; if there is a significant change to an existing program or activity; authority to collect personal information includes, for the purposes of planning a proposed program or activity; a program or activity of a public body may be prescribed as a partner in an integrated service, personal identity service and for carrying out a data-linking activity.

The APO can create a protocol that specifies the forms and any additional procedures to be used for providing notices to individuals about a risk of significant harm to them.

The content and manner of this notice should be included in the act to ensure the content is comprehensive enough to allow individuals to understand the nature of the risk and mitigate their risk of harm. To ensure the notice is brought to the individual's attention, it should be included in the act that this be direct, unless indirect notification is the only

reasonable method in the circumstances. The APO can determine a protocol for determining whether a privacy impact assessment must be conducted. The rules about when PIs need to be conducted should be static to avoid confusion and to ensure they are completed. The rules should be in the act or regulation and they should be risk-based. The APO can create a protocol to establish types or classes of public bodies and distinguish among them. I am not even sure what the extent of that authority is.

The APO can create a protocol respecting any other matter that access and privacy officer considers necessary to promote and strengthen public bodies' administration and compliance with the act. This is a very broad authority and can include defining commonly used terms — for example, the term "unreasonably interferes", used throughout the access-to-information provisions. Under these provisions, access to information can be delayed or refused where the request will unreasonably interfere with the operations of the public body. It is unclear whether a protocol will be paramount to any decision reached by the IPC about how provisions of the act are to be interpreted. If the IPC and the APO are at odds about the interpretation of a provision, what will the effect be on public bodies that are bound by both?

These examples demonstrate that the APO can significantly impact the privacy and access rights of citizens if terms are defined too broadly or too narrowly. There is some oversight of the protocols created by the APO. The APO must provide a copy of the protocol to the IPC for review and recommendations 15 days before it is deposited into the registry. Although this provides some level of oversight, my concern is that the APO power is too broad.

As well, I am unaware of a position similar to the APO with this kind of authority established in any other public sector access and privacy law in Canada. It leaves me wondering about why this position is needed in Yukon.

**Mr. Hassard:** The Privacy Commissioner has talked a little bit about how the provisions for compliance under the bill may not be good enough. In particular, she mentioned fines and penalties. I was wondering if she could go a little further into that and also if she could tell us how this legislation's fines and penalties compare to other jurisdictions.

**Ms. McLeod-McKay:** I actually have taken a look at similar laws across the country in terms of the fines and penalties and can shed some light on whether the fines and penalties are sufficient in Bill No. 24. I will just cover a little bit of the landscape there. In Bill No. 24, it is an offence to knowingly collect, use or disclose personal information without authority. It is an offence to fail to secure personal information as required. It is an offence for violating a research agreement and for some matters related to IPC investigations. The fine is \$25,000 plus six months in prison. There are also some access-related offences with the same fines.

The current ATIPP act has very few offences, which must be willful. It is a higher threshold, so knowing is lower and that is better and the fine is only \$5,000 — so very, very low.

Offence penalties and public sector privacy laws across the country vary — some are low and some are high. For example, in British Columbia, it is an offence to disclose personal information without authority. The fine is \$2,000, but there is no threshold, so if you don't comply, you can be fined for an offence. There are also offences for allowing personal information to be stored or accessed outside Canada. They range from \$25,000 to \$500,000.

In Alberta, it is an offence to collect, use, disclose and access personal information without authority. Fines are \$10,000 and the threshold is willful, which is quite high. There are also other offences with the same amount and threshold in Alberta.

In Saskatchewan, it is an offence to collect, use, disclose and access personal information without authority. Fines are \$50,000 and the threshold is knowing. There are other offences as well with the same penalties, but the thresholds differ from willful to knowing.

The information I would like to share with the members here today about these fines and penalties is that its role in the legislation is to serve as a deterrent and then, of course, penalize for non-compliance. The right formula to achieve deterrence for non-compliance under Bill No. 24 depends on the specific Yukon context. We must keep in mind that Yukon was very slow in implementing the privacy provisions of the current ATIPP act. I have said consistently, having been here for five years, that we are starting to make headway but there is still a lot of work to do. When I first arrived here, the privacy provisions of the act had not been implemented and there were few, if any, policies and procedures guiding staff on what rules they had to follow. When I asked staff, consistently nobody had ever received training. I think we need to look at where we are today with respect to privacy management and think about what needs to be in this bill now to ensure compliance and deter non-compliance.

The ability of public bodies to collect, use, disclose and share personal information in Bill No. 24 is greatly enhanced. There is now authority to combine, link data and create personal repositories, as I have mentioned. The degree with which personal information can be breached and the risk of harm that can result from the breach is significant due to the use of technology.

I would say that all of this needs to be kept in mind when deciding what offences for non-compliance ought to be.

**Mr. Hassard:** Just to kind of continue on with the fines and penalties part of it, would the witness be able to tell us what provisions exist in the act to predict the identity of those submitting ATIPP requests and if there are any penalties for those who breach the identity of those who submit ATIPP requests?

**Ms. McLeod-McKay:** I unfortunately cannot answer that question for you. I do recall there are some provisions in there that address those kinds of issues, but I can't speak to them specifically today.

**Mr. Hassard:** I was hoping that we could have had some information on that.

Moving along to another concern that the witness had highlighted, she noted that Bill No. 24 does not include an offence for failure to notify individuals about a breach of their personal information when there is a risk of significant harm to them as a result of the breach. To remedy this, she suggests that Bill No. 24 should include an offence when required notification does not occur. I'm curious if the witness could elaborate a little bit on why this exclusion would be a concern and, further, if she could point to some suggestions for how we could amend the bill to remedy this as well.

**Ms. McLeod-McKay:** I did take a look across the jurisdictions with laws that had notification provisions in Canada to get a sense about whether or not there is a corresponding offence with a failure to notify. I did note that a number of laws do have notification provisions. There are eight health sector laws and two private sector laws in Canada, so the notification requirements are still relatively young in Canada. When I worked in Alberta under the *Personal Information Protection Act*, it was the first act in Canada that required notification of breaches and then, of course, an offence to go along for not doing that. It is relatively new territory for many jurisdictions.

Five of those now have an offence for failure to notify. Most of these are considered to be substantially similar to PIPEDA. PIPEDA now has a requirement to notify with a corresponding offence. That is going into effect soon, and I expect these laws will follow suit as a result of needing to keep their substantially similar status. There are only a few jurisdictions with privacy law notifications that don't have offence provisions. I don't need to go through those.

My primary concern with not having an offence is that there are a number of people here in Yukon who don't realize what a security breach is. They don't know what a privacy breach is. When I look at the offence provisions, I'm always looking at ways to promote compliance, and that's what I see as being the primary role of those provisions. If there is no offence for failure to notify, then the consequences for individuals are significant because they will not be able to prevent themselves from the risk of harm that could flow from a security breach. The notification provisions are only triggered when there is a risk of significant harm. We're talking significant harm here, not trivial harm. Therefore, there needs to be some promotion or reason to ensure that those provisions will be complied with. That is why I believe there needs to be an offence provision for failure to notify.

Another thing that needs to be considered is that with a new data integration — program or activity sharing of information — if information is shared between custodians under the HIPMA legislation and public bodies under the new ATIPP act and there is breach of information, there is an offence for custodians if they fail to notify of a breach, but not for public bodies. I find that there is an unfairness there, potentially.

**Mr. Hassard:** Another concern that jumped out was the statement that public bodies have too much authority to collect, use and disclose information in the public domain. The Information and Privacy Commissioner talked about the

growth of social media and the potential that the government could start collecting information from social media. Would she be able to speak a bit more about this concern and maybe highlight for us why this could be a problem that we should be considering when reviewing this legislation?

**Ms. McLeod-McKay:** I do have a number of notes on this particular comment, so just bear with me while I refer to them.

My primary concern with this has to do with the definition of “publication” that appears in the definition section of the ATIPP act. “Publication” is defined as personal information that is “... contained in a magazine, book, newspaper or other similar type of publication that is generally available to the public in print or electronic format, whether by purchase or otherwise...” I am also concerned about the ability to prescribe types or classes of information that is publicly available and the ability of the minister to specify sources in order that it is a reputable, public source.

Having recently read an article in the *Canadian Journal of Law and Technology* that examined the ability of private sector organizations to collect, use and disclose personal information that is publicly available under PIPEDA, I have a better sense of the risks associated with the definition of “publication” used in the ATIPP act. PIPEDA authorizes organizations that are subject to it to collect, use and disclose personal information that is publicly available as specified by the regulations. This authority authorizes private sector organizations to collect, use and disclose personal information that is publicly available without consent. The regulations identify five classes of information. One of those classes is published information. Published information is defined as personal information that is contained in a publication, whether in print or electronic form.

There are limitations on the ability of private sector organizations to exercise this authority. An organization can only collect, use or disclose personal information in a publication if the individual data subject is the person who provided the information to the publication. The kind of information can only be collected, used and disclosed for the purposes that a reasonable person would consider appropriate in the circumstances. The author of the article notes that the meaning of “publication” is tied to the requirement in PIPEDA that the publication be publicly available.

The result, according to the author, is that the publication must be available to the public without restriction. She notes that any publication that requires a membership or members to meet eligibility requirements do not qualify. This would include most social media. She also explained her view that the exception exists due to recognition that such information is of kind and quality that the individual’s consent to make it public can be presumed.

When you compare the limitations on the ability of private sector organizations to collect, use and disclose personal information in a publication, you can immediately see that there are significant differences on the ability of Yukon public bodies to collect, use and disclose personal information in a publication under the new ATIPP act. These

public bodies are authorized to indirectly collect personal information that is in a publication and to use it and disclose it in certain circumstances. To do so, the publication must be generally available to the public in print or electronic format, whether by purchase or otherwise. The fact that the publication can be purchased or otherwise available removes the limitation that it be available to the public at large.

This opens the door to the possibility that Yukon public bodies will be able to collect, use and disclose personal information from social media. There is also no limitation in the ATIPP act on public bodies to only collect personal information if the individual the information is about is the source and that it may only be collected where a reasonable person would consider collection of the information to be appropriate in the circumstances. These are elements of control that are necessary for individuals to exercise control over their personal information even when the information is in the public domain. The only criteria Yukon public bodies will be required to meet is that they must first qualify for collection. Public bodies have authority to collect personal information for a program or activity of a public body. Remember that the APO has authority to describe a program or activity of a public body and a protocol.

There are also limitations on the use and disclosure of this personal information to that which is needed for the purposes of the use of disclosure. These limitations provide individuals with some measure of control over their personal information collected from publications, but are far less than that afforded to them under PIPEDA. My primary concern with this expansive definition of “publication” in the ATIPP act, along with the ability to expand it further through regulation or by ministerial order, is the ability of public bodies to collect this information from social media. It may have a chilling effect on individuals’ participation in this media. Additionally, it may impact on their right to freedom of expression.

In the author’s comments about the importance of restricting access to social media, she warns that any inclusion of information from a social networking site in the category of publicly available information would expose potentially vast quantities of personal information of minors.

It is well known that social networking sites are widely used by minors who are known to disclose more information than they should. She also warns that including information posted online within the categories of publicly available information would run counter to the expectations of many users of these sites. The author notes that the definition of “publication” in PIPEDA is narrowly framed to ensure the privacy rights of citizens are protected by ensuring private sector organizations are prevented from culling personal information for commercial exploitation. She notes that the privacy rights will suffer significantly and become illusory if broad definitions of publicly available information are added to the regulations. She indicates that a better approach would be to address the specific context required for the exception while taking into account the need for citizens to exercise control over their personal information. It is clear that the exception in PIPEDA was carefully crafted to limit the kind of



personal information that can be collected from publications, based on recognition that consent is presumed.

It is unclear to me the basis for authorizing public bodies to collect, use and disclose personal information from a broad range of publications with minimal restrictions. I agree with the author that granting this kind of authority should only occur with specific objectives in mind and be limited to achieving those objectives, while taking into account the ability of individuals to exercise control over their personal information in that context.

Perhaps government can shed some light on why this authority, including its breadth, is needed by Yukon public bodies, and how citizens' privacy rights were addressed as part of deciding to grant this authority.

**Mr. Hassard:** With respect to the concern about public bodies having too much authority to collect, use and disclose information, I am wondering if the witness could tell us what she feels would be a proper fix for this. We know that she suggested that if this provision stays in the act, it will require careful monitoring in order to safeguard the privacy rights of citizens. Mr. Chair, I am curious as to how she feels that this careful monitoring would work. Would it be through an oversight board or is there capacity in her office to do the ongoing monitoring of the government's collection and use of this data — or maybe something in conjunction with that?

**Ms. McLeod-McKay:** I would first need to know that it was occurring, and how I would know about that is a question. If I were to receive a complaint, then, of course, I could investigate it. If I had knowledge that the section was being breached, then I might be able to conduct my own motion complaint.

I do have other authority under the act to comment on various provisions of the legislation. I would be looking for authority to monitor this. If I were to modify the legislation, I would do so in a way that specifically identifies the kinds of personal information that is needed from the public domain and be clear from a public policy perspective what those reasons are. As part of my consultation, I consistently asked the drafters what the public policy reason was behind this particular provision. I am not sure that I know the answer to that question. I do see that there may be some need to collect publicly available information, but it should be qualified, it should be limited, it should be specific and it should prevent an ability to collect information from social networking sites. There are significant needs of citizens to be able to participate in this that I won't go into today, but I will be watching closely if the provision is not amended to ensure that it does not get extended to social networking sites. I know that's not a great answer, but that's the extent of the information I can provide today on that.

**Mr. Hassard:** Regarding breaches of personal information, I'm curious if the Information and Privacy Commissioner thinks that all breaches should be treated equally, or should there be varying fines, penalties or consequences based on the severity of risk to the individual? I guess my example of that is someone's financial or health information leaking out would seem a more severe breach of

privacy versus, say, the government forgetting to redact the name of someone whose signature was on a letter that was released via ATIPP.

I'm curious if the witness would be able to comment a bit on that as well.

**Ms. McLeod-McKay:** The act does have a threshold that evaluates a breach based on the risk to the individual. It is a threshold that is lower than in some jurisdictions, which I think is positive, because it probably ensures that individuals are notified when there is a risk of significant harm to them. That is the threshold that has been established in the legislation, which is consistent with the *Health Information Privacy and Management Act*, so that's positive in terms of bodies evaluating risks of harm across the territory.

So there already is a threshold. Risk of significant harm — there are many aspects of harm that are evaluated. The harm must be significant enough and it triggers a notification requirement.

Other breaches of the legislation that probably wouldn't qualify as — I shouldn't say that. I would probably have to look at the legislation to see exactly how it's defined, but if it were defined as a breach of privacy, for example, to disclose, as you indicated, the name of an individual who was seeking an access request — whether there was a risk of significant harm in that particular context would have to be evaluated. But risks that fall below that standard are addressed in other administrative ways through the legislation. I believe there are privacy officers designated to receive those and evaluate them and report to someone within the particular public body about those lower level breaches.

**Mr. Hassard:** Another concern that I feel we have run into is a question about whether or not the estimates of what it will cost to get an ATIPP request can be used as a deterrent to prevent someone from going through with a request. For example, we know that media and journalists have increasingly tighter and tighter budgets, so when they submit a reasonable request to ATIPP, they may find that it can be difficult to go forward with a request.

To illustrate that, Mr. Chair, our office asked what I felt was a fairly simple question previously and was told that it would cost \$70,000. Another time, we asked for copies of letters sent to the Premier for a certain month, and the estimate of cost was \$14,000.

Mr. Chair, this seems rather odd, because I know that when we were in office it wasn't that difficult to retrieve and find letters quite quickly, so it seems odd that it would be so expensive to get these. My question for the witness would be: Does she think that the bill, as drafted, allows for adequate recourse if someone believes that the estimated costs are not reasonable? Is there any oversight from her offices in instances such as this?

**Ms. McLeod-McKay:** I don't believe that the fee guide was changed as part of the legislation, but I would have to defer to the department on that particular point. One thing that I have been monitoring is the degree to which records management practices are actually impacting on the time it takes to process access-to-information requests, so I would

have to look carefully to ensure that those are not being calculated in the costs.

There is the ability to make a complaint to my office about a fee waiver, and I do have the authority to investigate where a fee waiver, for example, isn't granted or about the calculation of fees. That authority is there for my review of that. We actually have not had a lot of those kinds of reviews. That said, that doesn't mean that more won't come. I believe we probably do have adequate authority to evaluate that. That said, if recommendations are refused and there is no remedy available to individuals, then it is more challenging for them to enforce that kind of compliance.

**Mr. Hassard:** I'm curious if there are any other concerns that have arisen — or that the witness has become aware of since her news release and backgrounder was sent out — and that she would be willing to provide us here today.

**Ms. McLeod-McKay:** I did cover most of my comments, except about municipalities. I do think that they need to be subject to the legislation. I will say that I did talk to my colleagues across Canada about this issue. They did confirm for me that every jurisdiction in Canada has municipalities that are subject to the legislation. There has never been an opt-in provision that they have ever heard of.

I do know that Australia, however, has an opt-in provision under their privacy laws, and this is for certain small sector, small businesses and non-profit sectors that don't deal in information — I think it's personal health information, just to be clear. I do know that the drafters were looking at Australia, so perhaps that's where they got the idea, but I do think that the primary consideration should not be the challenges that municipalities will face in implementing this particular piece of legislation — they will. It is scalable, though, depending on their size. I do think that a citizen's rights should be the primary consideration.

Other than that, I have not identified any further issues that I need to bring to the members' attention here today.

**Mr. Kent:** I note that we have about five minutes left in our allotted time for today and that brings to a close our questions, so we will cede the balance of our time to the Third Party as per the agreement that we had earlier today.

**Ms. Hanson:** I was not mindful of the member at the far end here.

I want to join in welcoming the Information and Privacy Commissioner to the Legislature today. It feels like we have certainly covered a whole lot of material in very rapid fashion, so I will try to go back to a couple of areas.

I am pleased that the Official Opposition focused on most of the key improvements that were noted on October 9 by the Information and Privacy Commissioner when she commented on the legislation that is before the House.

Then I would like to go through some of the comments that were contained in the Information and Privacy Commissioner's December 2015 document — comments that were delivered to the Legislative Assembly in anticipation of the legislated requirement for the review of the ATIPP act.

I will try to avoid being repetitious in terms of the points that the Member for Pelly-Nisutlin or the minister have already raised.

When the minister was speaking, he did point out some issues and asked the witness to talk about how the bill is improving access, and he indicated that these access provisions were largely the same. There was a comment there from the witness perspective — some slight modification to business harm provisions — and that it is quite different from what it is in other places. I am just wondering if she could describe how what is prescribed is different from what is in other jurisdictions with respect to how business harm provisions are contained in ATIPP legislation and what is being proposed in this legislation.

**Ms. McLeod-McKay:** I will do my best to do that. In the current ATIPP legislation, business harm is a three-part test. It requires all three parts in order for the provision to be made out, which is a mandatory exception to the right of access to information. One of those is confidentiality, and the other is trade and technological scientific formulas. I am sorry — I can't remember the third one off the top of my head.

What has changed in this piece of legislation is that there is now some ability for public bodies to accept information that is determined to be confidential on the way in the door. How it is determined to be confidential I can't recall specifically, so I won't say, but there is going to be some — whether they are rules, regulations or protocols developed to determine what "confidential" means. If it meets that particular part of the equation, then it will be removed from access rights. If it is not, then it goes into the ability to request it. That is significantly different in Canada. There is no other law that I am aware of that has this confidentiality component. That sort of prevents the right of access. That said, I do have the ability to review that.

**Ms. Hanson:** I thank the witness for that answer, and I appreciate the fact that there is that ability to review that. I would like to go back to when she made the comments in response to the Leader of the Official Opposition regarding the legislation that is before us putting the onus on complainants to go to court if a public body rejects a recommendation made by the IPC. She identified two options that she presented to the folks she was consulting with, with respect to this legislation, so I would ask her: Which would she propose if she was to amend this legislation? Which would be her preferred course of action with respect to removing the onus on citizens having to go to court with the complaint if the public body rejects a recommendation by the IPC?

**Ms. McLeod-McKay:** That's a difficult question to answer. They both have their pros and cons. The adjudicator model is one that I have also under the *Public Interest Disclosure of Wrongdoing Act*. I do think it's a good measure for ensuring that, where you may have some sort of breakdown in a decision about a recommendation and it cannot be modified as such to facilitate compliance, there is the ability to refer it to an adjudicator. I do like that approach.

The other one puts the onus on the public body to go to court to refuse a recommendation. I guess if I were to evaluate the two of those, I would probably choose the former one because I do think it gives me the ability, as an information and privacy commissioner, to potentially work with the particular public body on the recommendation. Maybe it could be modified in such a way that you could still achieve compliance but be something slightly different. In consideration of taxpayers' dollars, I think that would be a preferred alternative.

**Ms. Hanson:** I thank the witness for that. That approach would be in line with the comments that the witness made that, in fact, despite the fact that this legislation in the Yukon has been around for quite a few years in various forms — but most recently as modified in 2012 — and as we're taking this new piece of legislation, a lot of people remain who are not familiar with the legislation. If we're taking an adjudicative approach, perhaps we might have more of an opportunity to educate, as opposed to getting into the strictly letter-of-the-law approach. I think that would be a very helpful option to be presenting to the government.

Just hold on, Mr. Deputy Chair — I have so many questions.

She talked about the breach of privacy provisions and there not being any offences, and she talked about the notification provisions that we have. Our notification provisions are still quite young across the country, but she cited the Alberta model. I was wondering if she considers it as best practice. How, in fact, does it work?

**Ms. McLeod-McKay:** I'm not completely sure I understand the question, but in the Alberta model there is a risk of significant harm analysis that has to be done, and it triggers a notification requirement of individuals. If a private sector body — that's the legislation in Alberta that governs the private sector — doesn't notify the individual, it is an offence under the legislation.

Just to clarify on a comment that was made, my concern is about the offence provision being absent for a notification of a risk of significant harm.

There are offence provisions for breaches of a certain sort, just not for the failure to notify.

**Ms. Hanson:** I appreciate that clarification from the witness.

When the witness was talking about public bodies having too much authority to collect, use and disclose information in the public domain, there was a fair amount of conversation on that. I appreciated the elaboration by the witness on that because it certainly gave me a much better appreciation for the concerns that have been expressed and the implications of them. In her comments of October 9, she says — there was a little bit of discussion, but I would like to go into it a bit more — and I quote: "If this ability remains, it will require careful monitoring, in order to safeguard the privacy rights of citizens." Who is best placed to monitor it? I believe that the witness indicated that she would be monitoring it, but if she doesn't have any authority, then under what aegis would she be monitoring it? Is it something that should actually be built

into the legislation if this is an authority that is here in terms of the whole aspect of social media and publicly available published information?

**Ms. McLeod-McKay:** That is a really difficult question to answer. I don't know who would be the best person to be monitoring that provision, because once it becomes law, every public body can collect, use and disclose that information. I think it would be difficult to figure out exactly which public bodies were doing that. It will make it difficult to do, but I do think there needs to be some accountability within public bodies for that activity if the definition remains as broad as it is. There might be some way to establish some sort of process within government, even if it is through the PIA process whereby publicly available information that is collected is identified through those processes and is evaluated and reported. That is one potential way of actually monitoring it — through the PIA process.

**Ms. Hanson:** I would like to go back, if I may, to the access and privacy officer. The witness expressed concern about the breadth of the duties of an access and privacy officer and that this position as an employee of the government can issue and then use protocols to define the scope and description of a program or activity of a public body. She indicated that rules should be in the act and risk-based. Could she elaborate on what kinds of rules should be in the act in terms of how legislation would describe whether or not these rules are risk-based, and does it exist in other legislation?

**Ms. McLeod-McKay:** So my reference to the rules needing to be in the legislation and risk-based were with respect to privacy impact assessments. I would not want to see the requirement to complete a privacy impact assessment as a moving target. It is a key way to control the collection, use and disclosure of personal information on the way in the door and is a great way of preventing breaches. That is why the PIA criteria should be in the legislation.

In terms of the program or activity of the public body, currently under the ATIPP act, a public body can collect information. If they have a program or activity of a public body, it must relate to and be a necessary part of that process. That provision has been defined by commissioners and courts across Canada and it has been limited to legitimate business activities of public bodies that are essentially driven by their mandates. If suddenly the definition of "program or activity" becomes expansive and also a moving target, it is going to be very difficult to determine when information perhaps cannot be collected. I am very concerned about that particular definition expanding significantly beyond what it has been for good reason for a number of years.

There was another question there I believe I did not answer, so I will just ask the member the repeat that one, if I have forgotten it.

**Ms. Hanson:** I had asked the witness how those rules could be captured in an act and how would you determine — or are there examples of risk-based assessment?

**Ms. McLeod-McKay:** There are. There are certain criteria — for example, in Alberta's *Health Information Act* — of when privacy impact assessments need to be conducted.

I actually have guidance on my website about when it is reasonable to conduct privacy impact assessments, and I actually have that information in my recommendations of 2015. I believe that answers your question.

I believe the question that I recall that you asked that I just remembered is with respect to the position being unique in Yukon. The records manager position was unique. There was no such position in Canada and I expressed a number of concerns with that position and I still have those concerns. This position has now been expanded significantly to do a number of other things. I think that perhaps some of that was to address some of the operational challenges with this piece of legislation and maybe it will be successful at addressing some of those challenges. That has yet to be seen, but I am concerned about the breadth of this particular individual's authority under the legislation and not all of that can be evaluated by the Information and Privacy Commissioner. That is of concern to me as well.

**Ms. Hanson:** I just want to clarify with the witness — maybe I misunderstood, which is quite possible.

The access and privacy officer, this is in addition — does the records manager position still exist? I thought this was getting rid of that. I recognized in your recommendations you identified some of the real concerns that exist with that kind of position. Does this APO, who is an employee of the government — are they going to be in addition to the records management position? I thought we were getting rid of that.

**Ms. McLeod-McKay:** The access and privacy officer will replace the records manager.

The records manager's role was primarily to process access-to-information requests and perform other certain functions under the legislation. The access and privacy officer has many of those same functions but significantly more, particularly in the realm of privacy.

**Ms. Hanson:** I thank the witness for her clarification.

The witness raised these concerns that she has identified with respect to the scope and the implications of the use of protocols to define the scope and description of programs by the APO. Did she raise those concerns when the legislation was being put together? Did she have an opportunity to raise those concerns? What kind of response did she get in terms of how they might be mitigated or how this legislation should be interpreted to avoid a negative impact on citizens' rights?

**Ms. McLeod-McKay:** I did have the opportunity to raise questions about the amount of authority of the APO, and my attention focused on whether or not there should be the ability of the Information and Privacy Commissioner to review the activities of the APO if they don't carry out their activities as required. That doesn't necessarily extend to the development of protocols. I do think that would be beyond the purview of the Information and Privacy Commissioner. However, I do think that the use and development of these protocols will need to be monitored as well to evaluate what that impact might look like. As I said, I have never seen a model like this in Canada, so I do not know what to anticipate at this point.

**Ms. Hanson:** I wanted to go back to the last point that was in the witness' comments of October 9 — she did allude to it — with respect to the bill not applying to municipal governments. We had quite a bit of debate in the Legislative Assembly about this particular issue. I had the opportunity to go back and look at the comments made by the commissioner in her December 2015 note to the Legislative Assembly of the day and, in turn, to all of us by extension. She identified, under the scope of the ATIPP act, that the definition of the public body in the act does not include municipalities. The document went on to say that municipalities, like Yukon public bodies, are government bodies, and therefore the same rationale that applies for providing a right of access to records in the custody or control of Yukon public bodies applies to municipalities in Yukon. Like Yukon public bodies, municipalities collect, use and disclose personal information without any requirement to protect the privacy of the individual whose personal information they are collecting.

What was interesting, Mr. Chair — and I am sure that you have already read this — is that when the *Act to Amend the Access to Information and Protection of Privacy Act* and the *Health Act* were debated in this Legislative Assembly in the fall of 2009, the following comments were made with regard to bringing municipalities within the scope of the ATIPP act.

The first one I'll quote was from my former colleague, a member of this Legislative Assembly, Steve Cardiff, in November of 2009. His comment was: "... municipalities are a form of public government and, hence, the information they hold about members of the public should be protected... and... there should be access to information provided..." The next was from the minister responsible for Community Services, who said: "... eventually [city councils] will be part and parcel of the ATIPP process. We just want to get more consultation done so that they're more comfortable with it... consultation is being done and will be done over the next 18 months."

Then the final quote there was from the same honourable minister: "... over the next 18 months, hopefully the municipalities will buy in to go forward with ATIPP, but this is a big decision for them to put their head around, per se, in how they would address it at that level. We're working with them and putting things together so, in the next 18 months, they'll be more comfortable with any decision that comes from that."

Mr. Chair, eight years have passed since these comments were made, and I'm quoting here from — six years was when the commissioner actually circulated her comments. As she said: "... municipalities are still not subject to the ATIPP Act. Consequently, the public has no right to access information held by municipalities and no assurance their privacy is being adequately protected."

I would ask the witness — you held a public meeting in August of this year and I was at that meeting. There were representatives from AYC and, I think, at least one community. The purpose of that was to talk broadly about the public's right to information. What is your sense of why it's so imperative that municipal governments be treated as public

bodies under this legislation and not, as you mentioned, have the unusual provisions of an opt-in at some point in their future?

**Ms. McLeod-McKay:** I have stated, to a certain extent, my views on why municipalities should be included, and the primary reason is that they do collect, use and disclose personal information. They do have information that they generate as part of their decision-making process and so, for citizens' democratic and privacy rights, people ought to have access to this information and to have their personal information protected that's in the hands of municipal governments.

Another important piece of this puzzle that I haven't mentioned yet is that, under the new ATIPP act, if the municipal governments are going to be participating as part of the new initiatives that are allowed for in legislation, such as data-linking or specialized services, programs or activities and integrated services, then it will be necessary that they at least be governed by the privacy provisions of the legislation to generate a model of trust.

A lot of what this legislation does in Canada is it actually creates a level of trust for the sharing of information across jurisdictions and within jurisdictions. When you have components of your jurisdictions that are outside of that trust model, then the system breaks down. Municipal governments are likely participating in certain activities already for the disclosure of information. These new systems will enable them to integrate and partner in those processes, if that's, in fact, the case. If that occurs, they would need to be part of it. They would need to be subject to the privacy provisions for that trust model to be maintained. That is another reason why they should be included under this legislation.

**Ms. Hanson:** I thank the witness for that response.

I am just curious. In her role as Information and Privacy Commissioner, has the witness been asked to provide or provided information sessions to the AYC per se or to individual municipalities as of yet with respect to the broad issues of information and information-sharing privacy?

**Ms. McLeod-McKay:** The answer is no. I have not been asked to provide information of late.

I was invited by Whitehorse City Council to maybe come and speak to them about certain issues I raised with respect to the collection of personal information through the use of technology. I would be pleased to do that. I would be pleased to meet with them to discuss these issues to alleviate their fears to a certain degree and to promote — if the opt-in provision remains — that there are some real benefits to participating in these laws and being subject to them. I'm sure that citizens would be pleased to be able to exercise their rights in accordance with their current rights that they can exercise with other public bodies. I would be happy to do that but, no, I have not been asked to participate.

**Ms. Hanson:** I am mindful of the time.

Mr. Chair, in going through the Information and Privacy Commissioner's document from 2015, I have to say that it was a fascinating Sunday afternoon. There is a lot of

information in this. I would really encourage all members to reread this document.

When the Information and Privacy Commissioner noted some points with respect to information management schemes — as a result of the observations she made in 2015 under the current regime — she made a fairly significant recommendation that I would like to come to.

She just had noted: "There is nothing in Yukon Government's information management scheme that includes, as part of the scheme, a requirement to create government records..." I thought that was interesting.

"There are no financial penalties for damaging, mutilating or destroying a government record." That is also concerning.

"There is no policy, procedure or guidance available to Yukon Public Bodies specifically addressing the use of instant messaging features on cellular telephones or other mobile devices used by Yukon Public Body employees. Nor is there anything that would require an employee of Yukon Government to ensure information stored on a mobile device is transferred for management in accordance with the *Archives Act*, RM Regulations, and applicable GAM directives and policies.

"The Personal Devices policy is narrowly focused on employees who choose to use their own cellular phone or other mobile device to conduct government business. The policy is silent on the duty of the employee to ensure government information stored on the personal device is transferred to Government information management systems.

"There is currently no policy, procedure or guidance specific to the management of emails."

Mr. Chair, the Information and Privacy Commissioner made the recommendation that the act should require "... Yukon Public Bodies to apply information management practices that include development of policies and procedures in support of the right of access to information. At minimum, these requirements should include a requirement that the Yukon Public Bodies develop policies and procedures to ensure that: deliberations and actions undertaken and any decisions made by an employee that relates to his or her employment responsibilities are documented..." — which would refer to all of the devices and other means of communicating that I had mentioned before. It also says: "recorded information that is stored outside the Public Body's information management system, including on any mobile electronic devices, that is not transitory is transferred to the Public Body's information management system within a specified period after creation of the record; there are clear consequences for employees who fail to comply with the policies and procedures; and before a decision is made to acquire technology on which information will be stored, the Public Body consider the impact on access to information rights and evaluate whether the benefits of using the technology outweigh removal of access to information rights, and that this decision and the reason for the decision are documented and retained for a specified period..."

My question is: Does the witness believe that this recommendation — this is number 10 of 35 — has been

effectively addressed in the new *Access to Information and Protection of Privacy Act*?

**Ms. McLeod-McKay:** The answer to that question is no. I have not seen any changes to the requirements with respect to information management in this particular piece of legislation, and my concerns remain that, of course, the ubiquitous use of technology by public body employees may prevent access to information.

I still have significant concerns about the acquisition of technology that does not evaluate the impact on the right of access, such as video surveillance equipment that continues to be acquired today without this ability. I would like to have seen information management addressed more squarely within the legislation. Privacy management has certainly been addressed but not necessarily the kinds of information management that I referred to in my recommendations in 2015.

Other jurisdictions have taken different approaches to that, and perhaps that's what the Yukon government is considering doing — developing a separate information management regulation or some sort of infrastructure to support better information management in order to facilitate better access to information and address some of the cost issues that could potentially be created by poor information management practices or removing an individual's right to access information. I would like to see that addressed at some point.

**Hon. Mr. Mostyn:** I thank the opposition for the questions that they have posed to the commissioner this afternoon. I have a few questions to close out the afternoon, and then maybe we'll see if we have more time for the opposition, should they want to do it.

I wanted to ask the commissioner how common it would be for public bodies to refuse to adopt or comply with recommendations of her office. How often does that happen?

**Ms. McLeod-McKay:** In my particular time, the refusal of recommendations has only been a few. I understand that the need to put in protections may be minimized to a certain extent as a result of that, but that doesn't remove the fact that, where those recommendations are refused, individuals are quite distraught. I had a conversation with one the other day who was quite distraught about a refusal on a recommendation but could not afford to go to court to address the matter and was quite upset about it. It doesn't change the implications for citizens when that occurs. That's why having a model in place to provide that extra level of protection within the piece of legislation, I believe, is important in order to ensure that citizens' rights are upheld without them having to fight that battle on their own.

I am not sure if I missed part of your question, so please re-ask if I have.

**Hon. Mr. Mostyn:** No, I think that captured most of it. You said "a few". Can you categorize that? Is that less than 100? Is it less than 10? How many is "a few"?

**Ms. McLeod-McKay:** Two — when I say "a few".

There was a piece of that question that I didn't answer, and that is about implementation. That raises a really

important point. My office tries very hard to follow up to ensure that recommendations are implemented. It is an ongoing task to ensure that it occurs. I do have a number of recommendations, and I do report these in my annual reports where recommendations are accepted but have yet to be implemented. I don't think that is the complete answer to whether or not a refusal of a recommendation or a refusal to implement are both two aspects of that equation that need to be considered.

The other thing that has not been addressed in this legislation is: What about the commissioner's own-motion investigations? What happens when there is a refusal of a recommendation by the commissioner? There is no remedy for that at this point in the legislation.

**Hon. Mr. Mostyn:** I wanted to come back to the audit functions. I think the legislation, from our conversations earlier and as I have said this afternoon — those conversations with the Information and Privacy Commissioner were fruitful. Her knowledge on this subject is, of course, very great, and I appreciated her expertise and her contributions to this piece of legislation. I have said, and I will say again, that she made it better.

Part of the conversation that we had was about the ability to audit and specifically to audit the privacy side of the legislation. The privacy side is a sensitive subject. The provision of information is one thing, but we really want to go the extra mile where we are protecting people's privacy. I do believe that we changed the legislation so that she now has an audit function over the entire privacy side. Is that not correct? Is that not a fairly substantial, powerful tool for the Information and Privacy Commissioner to have in her arsenal?

**Ms. McLeod-McKay:** Yes, the provisions were expanded following our discussion — that expanded the authority of the Information and Privacy Commissioner further to audit information and privacy practices, so any of the privacy practices related under the legislation. I think that will be a very useful control on the authorities that have been granted to public bodies under the legislation. I think that it will be effective in order to manage some of those aspects of it.

**Hon. Mr. Mostyn:** The Information and Privacy Commissioner has spoken this afternoon about information management. I wanted to ask her if some of her concerns could not be alleviated through the careful drafting of the regulations. I want to invite her at this time — or at least extend a warm invitation and maybe suss out — after her hours spent on the legislation — if she would help us with the drafting of the regulations.

I guess the two-fold question is: Could some of her concerns about information and management not be addressed through the regulation, and would she be willing to help with the drafting of such regulations?

**Ms. McLeod-McKay:** I do think that a number of information management practices around protection of privacy can be addressed through the regulations. I am not sure about the ability to address the information management practices more broadly under the access-to-information side of

the equation. However, if that can be done, I think that would be an excellent approach. I would prefer to see the standards in the legislation, of course, to provide that certainty that I spoke to earlier to individuals to understand what the degree of protection of personal information has to occur by public bodies.

However, a well-thought-out and crafted regulation would go a significant way to providing that protection, and I would be happy to participate in that process. I have hired someone in my office with a significant amount of technical capability and can recognize information security risks. There are a number of those risks that, of course, affect the protection of our privacy here in Yukon, and I think that we would make a valuable resource to participate in that process, so thank you for that invitation.

**Hon. Mr. Mostyn:** The Information and Privacy Commissioner this afternoon has spoken about court, and I think the assertion is that complainants should not have to go to court if a public body rejects a recommendation made by her office. She has indicated that, I believe, in her time in the role she has had two recommendations not followed by a public body.

The new bill does include a provision that enables the court to award costs to an applicant even if the applicant is not successful, if it is in the public's interest. Does this not go a certain length to protecting the public's rights in that system now that we actually have a court-award provision within our bill that would allow a successful applicant to actually get their costs back? Does that not go a certain way to protecting the public in this regard?

**Ms. McLeod-McKay:** That is a difficult question to answer. I think it depends on an individual's ability to pay the costs up front. It is not just about the cost; it is also about the time that they have to take. They feel very vulnerable in that particular environment and they are up against a big public body, so I think there is a certain amount of imbalance there that actually goes along with — you know, there is fear. There is also fear about retribution. People get concerned about that as well. I think that question would be up to the public to answer. My experience is that is not the only factor that people consider when they are trying to decide whether or not to take a public body to court if a recommendation is refused.

**Hon. Mr. Mostyn:** As I understand it, the bill is built on a non-adversarial approach to achieving compliance by a public body through mediation audits — especially audits of private information — that type of thing.

As we mentioned, the bill does enable the commissioner to undertake audits related to the conduct of a public body in relation to personal information.

The commissioner, as has been noted, is not empowered to make an application to the court on a complainant's behalf. Would not doing so change the role of the Information and Privacy Commissioner in the territory — changing it more from an advisory or Ombudsman model to a more adjudicative model? In the commissioner's view, would this not also shift the role of the commissioner into an adversarial role as opposed to an independent, investigative role and, at

times, a mediator of conflicts between parties? Would your role not change if these powers were granted?

**Ms. McLeod-McKay:** I don't believe that it would. I think that's why I recommended in my 2015 comments to maintain the recommendation power rather than get order-making power because of the need to facilitate proactive compliance and the good work that the Information and Privacy Commissioner can do in that area. That's why I suggested that there be an alternate level of appeal, whether it be through adjudication or referral to a court by the Information and Privacy Commissioner. I note that my counterparts in, I believe, Manitoba, New Brunswick, and Newfoundland and Labrador are all the same, to a certain extent. They are pure Ombudsmen. Actually, under the *Access to Information and Protection of Privacy Act*, I have a bit of a hybrid model. I actually have the authority to adjudicate because I can make findings of fact in law. My remedial power is only recommendation-based. So I have a little bit more authority than my counterparts in the other jurisdictions that I just mentioned, but they have the ability to refer a matter to an adjudicator. They can go to court, if necessary, and in Newfoundland and Labrador, it's up to the public body to do that. I do not think it would change the nature of the various roles that I play, and that's why the recommendation authority or the recommendation remedial power was suggested as part of my recommendations in that review.

**Hon. Mr. Mostyn:** I have a last question on this subject: Does the commissioner have any evidence she can provide this afternoon that would help us in demonstrating the need to change the current advisory model to a more adjudicative model?

**Ms. McLeod-McKay:** I'm not sure I understand the question. I'm sorry — would you mind repeating it?

**Hon. Mr. Mostyn:** Absolutely. I'm wondering if she has had any instances that would demonstrate a need to move from this advisory model that we currently have to a more hands-on approach, a more investigative and adjudicative model of the Information and Privacy Commissioner's role — changing that role from advisory to a more hands-on investigative model.

**Ms. McLeod-McKay:** In my earlier comments, I indicated that I examined the laws across the country and looked at those specifically that had moved toward the innovation model. One of the key things I was trying to achieve when I was looking at this particular piece of legislation and making my comments in anticipation of it was that balance between the amount of authority you're granting to public bodies to do certain things and the controls on that authority in order to protect privacy rights of citizens.

I noted as part of that, in my evaluation across the country, those that have actually moved to that model that allows more collection, use, disclosure and sharing of information for innovative kinds of reasons, such as citizen-centred services, included some certainty at the end of the day as part of that process. There was order-making power in three of those jurisdictions and there were the models that I just referred to in the other three jurisdictions. The only

jurisdictions that actually hadn't moved down that spectrum are the ones that have only recommendation authority with no other follow-up to that — no other appeal beyond that.

I think that there is evidence that the need to move down that spectrum of granting that greater amount of authority must ensure that there is equal balance on the other side for control and oversight. As part of that, the individuals need some certainty that there is some ability to enforce compliance, particularly in a world where there is a lot more information being shared and the risks are more significant in terms of breaches. I think that is a part of controls that need to be present when those authorities are granted.

**Hon. Mr. Mostyn:** I thank the commissioner for that answer.

Engagement is very important to our government and to Yukoners — it is part of what we're doing this afternoon, as a matter of fact. As an Officer of this Legislative Assembly, can you provide advice about your experience with engagement during this process and, for future engagements, ways we can improve, things we can do better and things we might think about when we're going through this process?

**Chair:** Order, please. We've reached the agreed-to allotment among the three parties here, so we're kind of in this no-man's land here for the last 15 minutes.

**Hon. Ms. McPhee:** Might I suggest — I appreciate that one of the other House Leaders here — that the commissioner be permitted to answer the last question and then we can cede the floor if there are other questions from the opposition. I'm prepared to make a motion if there are no other questions, that we close the attendance by the witness, but it may be that she would like to answer the other question and any others that might be available.

**Ms. McLeod-McKay:** I was given a significant amount of engagement through this process — more so than the *Health Information Privacy and Management Act*, although I was given a good amount of engagement as part of that process.

In terms of recommendations on improvement, I don't have a lot. I think that there was really good participation in the process and lots of good discussion with the drafters. The bill was not set in stone when it arrived at my door, which is a concern that I had, and there was lots of movement as we worked through that process. I do think the engagement was good. I also think that my appearing in the House here today is a very positive step in that process, and I do appreciate the members for inviting me here today. Thank you, Mr. Chair.

**Chair:** Are there any further questions for the witness?

**Hon. Mr. Clarke:** Thank you, Mr. Chair. On behalf of the Committee of the Whole, I would like to thank Diane McLeod-McKay, the Information and Privacy Commissioner, for appearing as the witness today. Thank you very much.

*Witness excused*

**Hon. Ms. McPhee:** Mr. Chair, I move that the Speaker do now resume the Chair.

**Chair:** It has been moved by Ms. McPhee 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**

**Mr. Hutton:** Mr. Speaker, Committee of the Whole has considered Bill No. 26, entitled *Technical Amendments Act (No. 2), 2018*, and directed me to report the bill without amendment.

Committee of the Whole has also considered Bill No. 207, entitled *Second Appropriation Act, 2018-19*, and directed me to report progress.

Finally, pursuant to Committee of the Whole Motion No. 6, the Information and Privacy Commissioner appeared before Committee of the Whole to discuss matters related to Bill No. 24, *Access to Information and Protection of Privacy Act*.

**Speaker:** You have heard the report from the Chair of Committee of the Whole.

Are you agreed?

**Some Hon. Members:** Agreed.

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

**Hon. Ms. McPhee:** Mr. Speaker, I move that the House do now adjourn.

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

*Motion agreed to*

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

*The House adjourned at 5:18 p.m.*