



Yukon Legislative Assembly

Number 109

2nd Session

34th Legislature

HANSARD

Thursday, November 1, 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
Hon. Sandy Silver	Klondike	Premier Minister of the Executive Council Office; Finance
Hon. Ranj Pillai	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
Hon. Tracy-Anne McPhee	Riverdale South	Government House Leader Minister of Education; Justice
Hon. John Streicker	Mount Lorne-Southern Lakes	Minister of Community Services; Minister responsible for the French Language Services Directorate; Yukon Liquor Corporation and the Yukon Lottery Commission
Hon. Pauline Frost	Vuntut Gwitchin	Minister of Health and Social Services; Environment; Minister responsible for the Yukon Housing Corporation
Hon. Richard Mostyn	Whitehorse West	Minister of Highways and Public Works; the Public Service Commission
Hon. Jeanie Dendys	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

Ted Adel	Copperbelt North
Paolo Gallina	Porter Creek Centre
Don Hutton	Mayo-Tatchun

OFFICIAL OPPOSITION

Yukon Party

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

THIRD PARTY

New Democratic Party

Liz Hanson	Leader of the Third Party Whitehorse Centre
Kate White	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
Thursday, November 1, 2018 — 1:00 p.m.

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

Prayers

Withdrawal of motions

Speaker: The Chair wishes to inform the House of a change made to the Order Paper. Motion No. 333, standing in the name of the Member for Copperbelt North, has been removed from the Order Paper as it is similar to Motion No. 294, adopted by this House, as amended, yesterday.

DAILY ROUTINE

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

Introduction of visitors.

INTRODUCTION OF VISITORS

Hon. Ms. McPhee: I ask my colleagues to join me in welcoming some special guests we have here today who are here for the tribute that we will be giving in a moment as part of National Community Safety and Crime Prevention Month.

On behalf of the community safety officer program, we have with us Gary Rusnak, Jesse Ryder and Roxanne Vallevand. On behalf of the emergency response centre, we have Randy Diceman. On behalf of *Together for Safety* videos, we have Collyn Lovelace, Julia Fox, Brianne Bremner and Linda Moen and her son Andrew. On behalf of the Department of Justice, we have Samantha McCormack and Laura Scott.

Thank you all for being here.

Applause

Hon. Mr. Mostyn: I ask my colleagues to join me this afternoon in introducing some visitors for another tribute we are giving. I would like to welcome Constable Louis Allain, who is with the local RCMP and is the acting NCO of his unit.

I would also like to introduce Jan Trim, who is one of MADD Whitehorse's founding members and an advisor and Jacquelyn Van Marck, who is the president. Please join me in welcoming them this afternoon.

Applause

Hon. Ms. Dendys: I would like to ask my colleagues to help me welcome elected council member of the Kwanlin Dün First Nation Charles Chief to the House today. He is a member of my riding as well. Welcome.

Applause

Speaker: Are there any further introductions of visitors?

Tributes.

TRIBUTES

In recognition of National Community Safety and Crime Prevention Month

Hon. Ms. McPhee: I rise today on behalf of the Yukon Liberal government to recognize National Community Safety and Crime Prevention Month.

Every November, the Canada Safety Council brings awareness to safety issues that affect communities across Canada. The Canada Safety Council is an independent charitable organization dedicated to the cause of safety through increased information, education and collaboration. This year, the Canada Safety Council is celebrating its 100th anniversary working to prevent deaths and injuries by promoting education and awareness for all Canadians.

The council has been running several campaigns this year, including mental health awareness at schools, discouraging impaired driving to improve road safety and promoting the use of life jackets when out on the water.

This year, the focus of National Community Safety and Crime Prevention Month is flood and water damage safety. Five of Canada's most destructive floods have occurred since 2010.

Due to the rising incidence of destructive floods, the Canada Safety Council has put together a booklet on what to do before, during and after a flood. I encourage Yukoners to review this resource, which will soon be available on the Canada Safety Council's website.

Here in the Yukon, there are many individuals and organizations playing an important role in building safer, stronger communities, and it's important that we recognize their contributions. Last May, I had the privilege of presenting six individual Yukoners and three groups of Yukoners with community safety awards. The award recipients were recognized for their innovative community safety and crime prevention efforts and initiatives, including supporting victims of sexual assault, providing excellence in emergency and first response, ongoing volunteerism and commitments to community policing.

In 2018, individual award recipients were Lorraine Graham for her 18 years of service with the Carmacks volunteer ambulance service and Trevor Ellis for his contributions to the Village of Mayo and the volunteer fire department. Mr. Ellis has been a member of the fire department since 1998 and has been a volunteer fire chief since 2010. Also, Jay Lester received an award for outstanding work as Yukon's lone animal protection officer — and Constable Kelly Manweiller for her leadership in sexual assault investigations and work with community-led groups. Also receiving an award was Corporal Dwayne Latham for supporting young persons engaged in the justice system. The last individual award went to highway foreman Royce Freeman for his heroic effort and response to a highway accident forever affecting the life of another.

The awards for outstanding projects or group contributions to community safety went to the Kwanlin Dün First Nation for their innovative community safety officer program. Another award went to *Together for Safety* for their

online video campaign aimed at supporting victims of sexual assault.

Lastly, the team at Yukon Emergency Medical Services received an award for their work and responses as highly skilled public safety specialists.

Mr. Speaker, at these awards, we were also pleased to have the president of the Whitehorse chapter of Mothers Against Drunk Driving, Jacque Van Marck, who was present there. She gave awards recognizing impaired driving enforcement, which is also known as the RIDE awards and the RIDE program, to members of the Yukon RCMP.

These individuals and organizations have all contributed to creating safe, healthy and thriving communities in our territory, and we all benefit from their work. The actions of these individuals and groups remind us that improving community safety is the responsibility of all Yukoners. I am so pleased today to be able to recognize their leadership and to thank them on our behalf.

Applause

Ms. Van Bibber: I rise today on behalf of the Yukon Party Official Opposition and the New Democratic Party to pay tribute to the recipients of this year's Community Safety awards, established in 2012 to recognize outstanding Yukoners who give so much to their home community.

Each individual recognized today has contributed in some way to making their community a safer place — through their work, volunteerism, a special project or another innovative contribution.

Chosen this year were six Yukoners and three groups who were recognized for their contributions. They range from community policing, emergency response, volunteer ambulance and fire department members and so much more. Congratulations to all those who received this award this year. This is truly something to celebrate, as these caring, giving Yukoners shared so much of their time.

I don't believe we can fully understand the emotional side of some of the tasks that these people take on as well. They are to be commended for doing assignments that some would shy away from. Many of these volunteers have done so for many years. I have a personal bias in this particular group of recipients, as Trevor Ellis is my nephew and he was the recipient of the volunteer award.

I speak with him often about his amazing sense of duty and care for his home community of Mayo. A very young man 20 years ago — and he is still young — Trevor is still stepping up to the plate for everything that needs doing. He was a firefighter for 20 years — ambulance service, rec board and curling club. At every community dance and event, you will probably find Trevor with his hand at the helm. He has also been a village councillor for 18 years. Now his young son, Aiden James Ellis, follows his dad to do some of the tasks, like flooding the rink for everyone. Another good citizen is being taught.

From all of us, thank you doesn't seem enough, but we want to give every one of the participants just that — a heartfelt thank you for all that you give to others. It is all the

outstanding efforts and dedication that you have done and continue to do that help to make the Yukon such a wonderful place to live and raise families.

We also pay tribute to all who advise us on how to make our lives safer and how to be aware of various threats. The Canada Safety Council dedicated November as Crime Prevention Month. Credit card and debit card fraud, cyber safety, senior financial fraud, firearms safety education, safety training and so many more topics will affect each of us at one time or another.

Let's continue to support all crime prevention initiatives and always keep in touch with what is happening around us. Let's make sure that we do not become victims of crime.

Applause

In recognition of MADD Canada's Project Red Ribbon campaign

Hon. Mr. Mostyn: With great revelry comes great responsibility. I'm pleased this afternoon to rise in the House on behalf of the Yukon Liberal government to recognize Mothers Against Drunk Driving Canada's Project Red Ribbon campaign.

From the first of November to the first Monday after New Year's in communities across Canada, volunteers distribute red ribbons for people to attach to their vehicles, key chains, purses and backpacks. These ribbons symbolize innocent victims and survivors of impaired driving. They remind us not to drive if we have been drinking or consuming intoxicants.

This rule applies all year, but it is brought into sharp relief during the revelry that accompanies a holiday season. It is a time of festivities — of fine food and intoxicants — alcohol and now marijuana. Last year, I found myself on a cold blustery road one evening with police officers, Mothers Against Drunk Driving volunteers and my colleague, the Minister of Justice. We were manning a checkstop, looking for impaired drivers and talking about the importance of not driving if you have been taking intoxicants of any kind.

This reminder is still very necessary in the Yukon. Far too many citizens have lost a loved one or suffered grievous injury after an impaired individual slipped behind the wheel of a car. If someone dies on a Yukon road, there is a 50-percent chance that an intoxicant was involved. The Yukon's rate of impaired driving convictions is higher than the national average. There were 273 impaired driving charges in the Yukon last year — 273, Mr. Speaker. The Yukon now has the second highest rate of impaired driving charges in Canada per capita. We must do better.

I come from a safety background and we have avoided the use of the word "accident" because that word immediately strips away responsibility. Accidents simply happen. Accidents can't be avoided. Impaired driving is never an accident. Impaired driving is a choice. Impaired driving is preventable. Impaired driving is a crime. Impaired driving kills and injures people every day. This isn't news — this is common knowledge. Those people who die or who are irrevocably injured due to impaired road crashes leave lasting scars on our community.

The effects of these tragedies touch all our communities. Every year, we lose mothers, fathers, brothers, sisters, uncles, aunts, friends, colleagues, volunteers and community leaders, and to that grievous emotional toll we can add the increased health care costs and law enforcement costs as well.

We implore Yukoners to celebrate responsibly. If you use intoxicants, don't drive. Stay out of any vehicle driven by a person who has taken intoxicants. Plan ahead — take a taxi, or pre-arrange a ride home.

Just this past week, we heard from a young community group who has purchased a 54-person bus and is seeking to implement a safe ride home program with pickups at local bars and then returning people to their vehicle the next day. We should applaud that type of initiative.

Look out for those around you. If you see somebody taking intoxicants, tell them not to drive, and call 911 if you suspect someone is driving impaired. Road safety is everyone's responsibility and it begins with each one of us. All Yukoners have a responsibility to prevent impaired driving. I encourage everyone to wear a red ribbon and to place it on their vehicle to demonstrate their support for sober driving. It is a simple message, but it is necessary, and that fact I find troubling in light of the decades of work and relentless public campaigns — but here we are.

On behalf of the Department of Highways and Public Works and all our Yukon government employees, I would like to thank our Mothers Against Drunk Driving chapter and our local RCMP for their extensive work on this continuing and wholly unnecessary problem. We are honoured by your presence here in the Legislature today and the incredible work you do.

Applause

Mr. Istchenko: I rise on behalf of the Yukon Party Official Opposition to recognize the Mothers Against Drunk Driving Project Red Ribbon initiative.

Each year, MADD floods the community with red ribbons for drivers to tie onto their vehicles as a promise to drive safe and drive sober. This community public awareness program depends on the participation of volunteers to remind the public that injuries and death resulting from impaired driving are preventable. It starts with each of us and the red ribbon serves to remind drivers to make a good decision. According to MADD, in 2014 road accidents claimed an estimated 2,297 lives in Canada. Of those deaths, like the minister alluded to in the Yukon, over half of the crashes were where an individual was positive for alcohol or drugs. This is a statistic that could be easily changed through public awareness and better choices. So tie a red ribbon on your antenna, tie one on your keys or tie one somewhere that is a good visible reminder to you and to others.

I encourage all members to support MADD in their campaign this year as the holiday season is upon us. To all Yukoners, get a ribbon, tie it on and remember that every decision you make as a driver has the potential to affect everyone in your community. Display a red ribbon proudly. It encourages others to do the same.

Thank you to MADD and those who are in the gallery today for your continuous hard work to put an end to impaired driving and to all Yukoners who continue to make our home a safe place.

Applause

Ms. White: I rise on behalf of the Yukon NDP to pay tribute to the tireless efforts of Mothers Against Drunk Driving today, the first day of the Project Red Ribbon campaign.

First and foremost, I want to acknowledge that the positive and constructive advocacy of this citizens' group comes out of the injuries and losses that many have felt. Thank you to all who volunteer with Mothers Against Drunk Driving who have turned needless tragedy in the lives of the people across the country into a positive contribution to all of our communities. Your efforts save lives.

With five times the national rate of impaired driving and with the second highest rate of impaired driving in the country, we Yukoners need to admit that there is a serious problem in our territory of driving while impaired. Front-line responders know the negative consequences of impaired driving all too well, and I want to recognize the work of the RCMP and EMS staff and volunteers who are often the first on the scene of incidents of impaired driving.

Let's remember, Mr. Speaker: Impaired driving is no accident and it's 100-percent preventable. I also want to remind the members of this Assembly that laws and enforcement can be strengthened, so let's work to bring those numbers down.

Again, I thank the volunteers of Mothers Against Drunk Driving and, at the same time, I call on every Yukoner to have a plan to get home from the bar or party and to remember: Friends don't let friends drive drunk.

Applause

Speaker: Are there any returns or documents for tabling?

TABLING RETURNS AND DOCUMENTS

Hon. Ms. McPhee: I have for tabling the *Yukon Police Council Annual Report 2017-18*.

I also have for tabling two legislative returns of responses to written questions submitted by the Member for Lake Laberge on October 16, 2018, and October 18, 2018.

Lastly, I have a legislative return in response to a question from the Member for Whitehorse Centre asked during Question Period on October 25, 2018.

Hon. Ms. Frost: Pursuant to section 7 of the *Hospital Insurance Services Act*, I have for tabling the annual report for the Yukon health care insurance plan and the hospital insurance plan for fiscal year 2017-2018.

Hon. Mr. Streicker: I have for tabling today a legislative return regarding all cannabis-associated positions in the Yukon Liquor Corporation.

Speaker: Are there any further 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. Gallina: I rise to give notice of the following motion:

THAT this House supports the paving of the Dawson airport runway.

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

THAT this House urges the Government of Yukon to include a campaign to end the stigma surrounding drug use and overdose as part of its efforts to address the opioid crisis.

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: For the last several weeks, we have raised the issue of the rapidly growing wait-list for cataract surgery. The Minister of Health and Social Services has provided us with no plan. She can't tell us of a concrete action that she will take this year to reduce it. She has refused to commit to invest in reducing the wait-list. The wait-list is now three years long with 350 people on it. Yesterday, the *Yukon News* put a face and a name to one of those 350 people. I would just like to quote from that lady: "Impaired vision certainly affects my quality of life ... I can't drive... Even walking outside is difficult now because I'm so careful where I'm treading."

What does the minister say to this lady who is desperately in need of this essential surgery?

Hon. Ms. Frost: I am pleased to rise today to speak to the cataract surgeries and the partnership we currently have with the Yukon Hospital Corporation. I want to note before I get started into some information that the visiting specialist has been at capacity now since 2014 and 2015, so this is not a new phenomenon for Yukon. What we are doing with the Department of Health and Social Services — we have identified that there is a growing need and there are pressures for cataract surgeries. We also heard, specifically in this Legislative Assembly, from the Yukon Hospital Corporation about the plan around the reduction of wait-times for cataract surgery.

Over the last several months, we have been actively working on a proposed solution to reduce the wait-times over the next year. We are still aiming to do that.

We have been working with the Hospital Corporation on the procurement of the optical coherence tomography

machine, and we expect to have that within the next month. We are also looking at the patient wait times. We have received consultation and supports from the specialists and we hope to release some strategies in the next few days.

Ms. McLeod: We have heard from a number of Yukoners and their families who are struggling as a result of this rapidly growing wait-list for cataract surgery, and we've heard from physicians and Yukoners who are telling us that things are so bad that it's essentially creating a two-tier health system. There are those Yukoners who are stuck on the waiting list but can afford to fly south to get that surgery out of their own pocket, and there are those Yukoners who can't afford to do this.

This is an essential surgery and Yukoners who are in need of cataract surgery are finding the quality of their life is severely impacted. So enough with the delays of this government — we need the minister to take action now.

She has referred to a couple of actions that are on the horizon, so I would just like the minister to commit to seeing these things through this month, as she said.

Hon. Ms. Frost: Very interesting comments or questions — as noted, this is not something new. It has been there since 2014. I might ask the member who is raising the question what plan they had to eliminate the pressures back then.

Right now, what I have committed to, as minister, and what my team is committed to, is to work with the Hospital Corporation, work with the visiting specialists and reduce the wait times. As a matter of fact, we just met with them last week, and we are continuing to do that. We will have a plan in place, and then once we have a robust plan in place to address the pressures we will make an appropriate announcement.

At the moment, it's not something that I can come out and say until we have that finalized with the Hospital Corporation. Currently, the patients who receive consultation from a specialist — it's three months or less for surgery, so the objective is to ensure that the number of patients waiting on the list for surgery is reduced. We know that once we have the results from the ophthalmologist we will then look at performing the necessary surgeries and ensure that we have the supports at the hospital and also look at the operating rooms and efficiencies at the hospital.

Question re: Medical travel

Ms. McLeod: This is a new question. Regarding the health care review that the Liberals launched, I just wanted to go back to some comments that the Member for Porter Creek Centre made during debate on October 3. When we were discussing the health care review, the Member for Porter Creek Centre mentioned that currently Yukon does not require patients to copay for medical travel. He seemed to be implying that the Liberals would be looking at requiring Yukoners who rely on medical travel to start copaying.

I'm not sure why we're getting more information about the health care review from a government private member than from the minister but perhaps the Premier listened to our

advice from last session and has asked him to step in and lend the minister a hand.

I'm wondering if the minister could provide some clarity. Are the Liberals considering requiring patients to copay for medical travel?

Hon. Ms. Frost: I am pleased to speak to the health care review. I think it is a great approach to look at efficiencies across our spectrum of health care. Really, I think the objective is to ensure that we provide essential services and supports to all Yukoners.

Ironically enough, the opposition seems to have problems with the fact that we are looking at a review — a health care review. One was conducted in 2008 — a reminder that the Yukon Party government did a review on health care and part of that review was to look at medical travel. The objective there was also to look at efficiencies and to seek efficiencies in the health care system. That was in 2008, and now we see a growth in pressures, and we are working diligently with our partners to address the added pressures that we are seeing. The pressures with the ophthalmologists and the visiting specialists are some of the issues that we are seeing.

We are working — very effectively, I might add — and looking at coming forward with some strategic objectives to ensure that Yukoners are provided the best care that we can possibly provide for them. We will continue to do that, and we will do that in good faith with our partners.

Ms. McLeod: On the topic of copayments for medical services, the Member for Porter Creek Centre also told us during debate on October 3 that the health care review was going to look at pharmacare. Well, according to the Financial Advisory Panel, one of the areas that they suggested for the health care review was for the government to look at increasing copay levels for medication.

Can the Minister of Health and Social Services tell us if the government is considering increasing the copay levels for medications?

Hon. Ms. Frost: With the comprehensive health review, what we are seeing is historical expenditure growth in order to provide long-term, sustainable health care and social support systems across the Yukon. The review is intended to provide for efficient programs and services.

Across the country, we are seeing complex issues arising, but we are, of course, looking at focusing our spending not only on resolving the complex issues that we are seeing but looking at preventive measures and working with our partners. The health care review's objective is to look at that — to look at ensuring that Yukoners receive the best possible health care in the central location in Whitehorse and also in our rural Yukon communities. We are clearly watching the national pharmacare panel as it works closely with our governments and with our partners across Canada. The recommendations out of that in the spring will feed into our comprehensive review process.

Ms. McLeod: The Member for Porter Creek Centre was quite clear in his remarks. When explaining why medical travel was being rolled into the health care review, he went out of his way to highlight that Yukoners are currently not

required to copay for medical travel. He further said that the health care review would look at pharmacare while highlighting the links to the Financial Advisory Panel. As we have discussed, the Financial Advisory Panel suggested that requiring higher copayments for medications is one way to alleviate pressures on the budget.

My question for the minister and perhaps the Member for Porter Creek Centre is: Is this how the Liberals are intending to reduce the budget in the Department of Health and Social Services by two percent — by requiring Yukon patients to pay more to access health care?

Hon. Ms. Frost: Maybe we should go back to 2014 and talk about the reviews that were conducted in 2018. The reviews and recommendations around cataract surgeries and pressures have long existed in Yukon and continue to grow. When we talk about efficiencies, we are really starting that process now. Before we have even begun, we're already hearing some grumblings across the way about how perhaps it's not working. I think what we're hoping to accomplish through this process is to look for accuracy, efficiencies and appropriate services to all communities in the Yukon. Every citizen is required to have and should be given transparent and fair services, and that has not been consistent historically. Our medical travel expenses, as noted, were conducted historically and not something that we're going to look at one off. We're going to look at it as a comprehensive review. Pharmacare is part of that process. There is a national initiative currently happening. We will tie the results into our recommendations and work closely with our federal colleagues.

The conclusions that are drawn will be drawn in collaboration with our partners.

Question re: Impaired driving and distracted driving legislation

Ms. Hanson: Alcohol was a factor in 31 percent of car accidents that caused serious injury in Yukon in 2015. Yukon has the second highest rate of impaired driving charges in Canada, and the statistics are not decreasing. In fact, as we heard earlier this afternoon, they continue to go up.

In the last election campaign, the Liberal government promised to toughen the law when it comes to drunk driving. Last year, the Minister of Community Services said he was hoping to address drunk-driving legislation at the same time as legalizing cannabis. I guess that ship has sailed, so let me ask the minister: When will he deliver on his promise to bring in stronger penalties for drunk driving?

Hon. Mr. Mostyn: Yukon's *Motor Vehicles Act* dates back to 1977 and has not had a full overhaul since. Amendments to the act are necessary for the continued safety of Yukoners. The act is large and complex, and because it touches on a wide range of issues that are important to Yukoners, we expect the revision process to take several years to complete. The member opposite is talking about improvements to the way we deal with intoxicated drivers, and of course, distracted driving comes into that as well.

Rewriting the act will allow us to address and modernize several long-standing issues with the existing legislation,

including impaired driving, distracted driving and off-road vehicle use. We're committed to working with our stakeholders, including Mothers Against Drunk Drivers, the RCMP, the City of Whitehorse, industry and the public. Together, we can update this important act and make our roads safer.

Highways and Public Works is currently researching best practices across the country to compare and learn how we can best modernize this legislation and ensure public safety. We plan to have many discussions and will be engaging with the public on a number of issues in the coming months and years.

Ms. Hanson: I'm getting really used to hearing "we're working toward".

In Yukon, police can only suspend a driver's licence for 24 hours. BC and Alberta changed their laws to allow for roadside suspensions for three, seven or even 30 days in the case of repeat offenders. Within a few years, this has led to a real change in culture, with alcohol-related deaths reduced by 53 percent in Alberta and 25 percent in BC.

In this impending legislative review, will this government commit to implementing longer roadside suspensions in cases of impaired driving, and when will they be bringing in these changes?

Hon. Mr. Mostyn: I thank the member opposite for this question. I know it is a question and a concern of many, many Yukoners. I have been hearing it on the doorsteps; I have heard it in my conversations with Yukoners over the last two and a half to three years since starting this whole process. It is an issue of very grave concern to Yukoners, and I take the responsibility very seriously.

Last year, we took a first step toward fixing this problem by increasing the fines in the *Motor Vehicles Act* as far as we could go, given the Byzantine and clunky legislation that we have. The fact that this act is subpar is no secret in this territory, and we're going to fix it. That process has begun.

I'm going to talk to the community. As I have said, I'm going to make sure that we talk to Mothers Against Drunk Driving, the RCMP, the City of Whitehorse, industry and the public. We're going to have widespread consultations to see how the public wants to proceed on a lot of these issues. There are good pieces of legislation across the country that the Department of Highways and Public Works is currently looking at as a model for our new legislation, which will become one of the newest acts in the country. I'm hoping it will be one of the better acts in the country. That work is in process right now, Mr. Speaker, and I look forward to continuing with it.

Ms. Hanson: The minister is correct that it doesn't always take legislative change. You don't have to change legislation to make change, and we applauded the government last year when they did increase the fines for distracted driving from \$250 to \$500. The fact is that distracted driving is as dangerous as — or more than — impaired driving. We see across the country and in this territory — in this city — the incidence of impaired driving going up, not down.

Unfortunately, there aren't any serious impediments to people for distracted driving. Clearly, there is a need to have

more information and more campaigns. Beyond increasing fines, what is this minister's plan to change the culture around distracted driving and to make sure that Yukoners understand the dangers of distracted driving?

Hon. Ms. McPhee: I'm happy to have an opportunity to weigh in on this, because I think that the points being raised by the Leader of the Third Party are extremely important. I know that all of us believe that too. We took the interim measure last year of increasing the fines for distracted driving to as high an amount as legislatively possible, pursuant to the legislation that restricts the limits on those. We doubled those fines and increased them to the highest possible limit.

We have been working with the RCMP. I don't know if you have seen lately their notifications about seeking distracted drivers, impaired drivers and people who are running lights and stop signs and how they are having an effect on this community.

I also note that, while the Leader of the Third Party is not wrong, it is not always a legislative change in respect to the administrative response that she is asking about where RCMP roadside would be able to impound vehicles or restrict licences for a number of days immediately upon a charge. There is a unique situation in the north where we have the federal prosecutors dealing with *Criminal Code* matters and we have territorial issues being dealt with — which the *Motor Vehicles Act* is — by our own prosecutors. There does need to be attention to that, but it is an administrative issue that needs to be dealt with in legislation.

Question re: Access to information and protection of privacy

Ms. Hanson: On Tuesday, Yukon's Information and Privacy Commissioner made an unprecedented appearance in the Legislative Assembly to address shortcomings she highlighted in the new ATIPP act. The focus of her attention is how governments collect, use and disclose personal information. She expressed concern that municipal governments are not covered by the new act unless they opt in. This issue isn't new. In 2009, the then-minister said that local governments would be covered within 18 months. Yet here we are, almost a decade later, and no progress has been made.

On Tuesday, the commissioner said that she spoke to privacy commissioners across the country, who reported that — and I quote: "... every jurisdiction in Canada has municipalities that are subject to the legislation. There has never been an opt-in provision that they have heard of." Why does the minister think Yukon municipalities should not be required to respect the privacy and personal information they collect, unlike everywhere else in the country?

Hon. Mr. Mostyn: I thank the Leader of the Third Party to address this issue and to talk about access to information and the protection of privacy. These are two halves of very important legislation and I look forward to talking about it this afternoon.

She has mentioned municipalities, and I absolutely encourage all of our Yukon municipalities to opt into or adopt

access to information and protection of privacy rules. I think it is important for our citizens, whether in municipal, federal or territorial jurisdictions. I am a big advocate of access to information and protection of privacy — and clarity over those issues.

Where the member opposite and I disagree is how we get there. I have been fairly clear on the floor of this House that I believe that municipalities should come on. I encourage them to come forward to talk to us and to the Information and Privacy Commissioner to find ways to come on board through the legislation that we are discussing this afternoon. I look forward to that discussion. I will debate this further, but the fact is that municipalities are capable of opting into this legislation. I think that is a good option for our municipal leaders to take.

Ms. Hanson: I don't think any municipal government would object to respecting access to information and privacy provisions if they had the proper supports, and that includes financial support by this government.

The Information and Privacy Commissioner was clear as to why municipal governments should be covered by the act.

I quote her again from last Tuesday: "... the primary reason is that they do collect, use and disclose personal information."

She goes on to say that ATIPP legislation creates a level of trust for the sharing of information across jurisdictions, including between municipal and territorial governments.

Mr. Speaker, the minister has heard the commissioner's call for the inclusion of municipalities under the ATIPP act. Will he introduce amendments to the act to include municipalities, and will he provide the financial support needed for municipalities to respect privacy and access to information provisions that are expected of any level of government?

Hon. Mr. Mostyn: I thank the member opposite again for this question. Any time we have an opportunity to discuss access to information and protection of privacy, it is a great thing to do.

First of all, I would like to say that not all municipalities in Canada are subject to provincial access to information and protection of privacy acts. It is often negotiated. There is a clarification on that point.

The second point I would like to make — I ran out of time last time — is that our legislation enables all municipalities in the territory to come in and adopt access to information or protection of privacy rules. I say "or", Mr. Speaker, because the way the legislation has been carefully crafted is that municipalities or other public bodies can opt into whatever they want. If they want to bolster their access-to-information rules, they can opt in on that side. If they want to protect personal privacy — and I encourage all governments to do that — I think it's very important that we have a responsibility for our citizens' personal information. As elected leaders, I hope that municipal governments do the right thing and come in and start to enact rules to protect their citizens' privacy. I am not going to provide a "father knows

best and you are going to do this immediately" type of approach. I don't think that's the right approach.

Ms. Hanson: Mr. Speaker, municipalities across the country are subject to access to information and privacy laws. It's feasible and the commissioner has clearly explained why it's needed.

Why did the minister agree to have the commissioner appear in this House if he is not willing to heed her advice? I have no doubt that municipal leaders support the rights to privacy and access to information for their citizens. What they need is the resources to comply with the act. The minister has decided to ignore the Information and Privacy Commissioner's advice. Whether or not municipalities choose to opt in will have a lot to do with the level of support this government is willing to provide.

Let me ask the minister: Will this government provide any financial support or incentives for municipalities to opt into the ATIPP act? When does he expect Yukoners to know that all levels of government abide by the same privacy rules?

Hon. Mr. Mostyn: Again, Mr. Speaker, I thank the member for the supplementary question. Municipalities have objected because they don't have the proper infrastructure. We have to encourage municipalities to get there. I am doing that on the floor of the House today. I am encouraging our municipal leaders to do the right thing and to adopt access to information and protection of privacy rules within their boundaries. I hope that they can do the right thing by their citizens and make that choice. They were elected to make choices on behalf of their constituents and I hope they make the right choice. I think that these rules are the right choice.

The member opposite has talked about not heeding the Information and Privacy Commissioner. We have had a very fulsome discussion with the Information and Privacy Commissioner and adopted many of the recommendations that she put before us. On some things we don't agree, and it is fair in a democracy to not agree with some of the things and to do what we think best and in the best interest of the people of the territory. In this, Mr. Speaker, we believe the municipalities, as responsible governments, have the role to do what is best by their constituents when they feel it is best to do it. We are going to make it as easy for them to adopt those rules as we possibly can.

If the member opposite would like to help us by taking this cause up with municipalities at the Association of Yukon Communities AGM this year, I welcome her to do so, and we will certainly be there by her side.

Question re: Daylight saving time

Mr. Istchenko: Mr. Speaker, this weekend, Yukoners will be setting their clocks back one hour as daylight saving time is here again. On March 14 last year, this House passed a Yukon Party motion calling on the government to investigate the possibility of eliminating daylight saving time. You will remember that, at the time, the Liberals amended our motion and used their majority vote here to remove any mention of consultation or reporting back to this House, which was disappointing, but I have heard again from constituents — I

know Yukoners — and we are still looking for an update. Given that seven and a half months have gone by without us hearing anything about what the government has done to follow up on this motion, I am wondering if the minister or Premier can tell us what actions they have done on this file since March 14 when the motion was passed.

Hon. Mr. Streicker: I just want to start by saying that this situation that we have with changing the clocks didn't happen in the last two years. It has been ongoing for decades. It's great that the members opposite now want to do it — terrific.

I have had many conversations — I will turn back to the departments that have been looking into this, and I will try to get an update. It is a timely issue, given that we are coming to changing the clocks, although “fall back” is always a little bit better than “spring forward”, Mr. Speaker.

I am sorry that I don't have a specific update for the member opposite here, but I would also be happy, when he gets up for his supplementary, to hear how they dealt with the problem during the 14 years they were in government.

Speaker: Leader of the Official Opposition, by my calculation, the time has elapsed.

The time for Question Period has now elapsed.

Member for Takhini-Kopper King, introduction of visitors outside of the time provided, please.

INTRODUCTION OF VISITORS

Ms. White: Just before he leaves the Chamber, I would just like to take a second to welcome back a man who is very familiar with this, and that is Mr. Fred Horrocks. He joined us today for Question Period — and just a hello to him.

Thank you.

Applause

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

ORDERS OF THE DAY

GOVERNMENT BILLS

Bill No. 23: *Lobbyists Registration Act* — Second Reading

Deputy Clerk: Second reading, Bill No. 23, standing in the name of the Hon. Mr. Silver.

Hon. Mr. Silver: I move that Bill No. 23, entitled *Lobbyists Registration Act*, be now read a second time.

Speaker: It has been moved by the Hon. Premier that Bill No. 23, entitled *Lobbyists Registration Act*, be now read a second time.

The Member for Takhini-Kopper King wanted to introduce a visitor please.

INTRODUCTION OF VISITORS

Ms. White: What I tried to do a couple of seconds ago, which I'll ask my colleagues to do now, is to welcome back to the gallery a man who is well familiar with the activities of this Chamber, Mr. Fred Horrocks.

Applause

Speaker: The Hon. Premier, on second reading of Bill No. 23.

Hon. Mr. Silver: Mr. Speaker, it is my pleasure to introduce Bill No. 23, the *Lobbyists Registration Act*, for the Legislative Assembly's consideration. We committed to creating a public disclosure lobbyist registry over the course of the last election, and I have reiterated this commitment in the Legislative Assembly since then.

I want to clarify for those less familiar with the topic what we mean by “lobbying”. Lobbying refers to communication with a public office holder in an attempt to influence decisions related to legislation, programs, services, procurement and funding arrangements. The critical element here is the attempt to influence a government decision. This is the distinction between routine communications and attempts to persuade a public official, like influencing a department to change a permitting process.

We see the value in making interactions between lobbyists and elected or public officials more open and transparent. This is why the proposed act establishes a lobbyist registration in Yukon, which will be used by the public to identify who is lobbying the government and what issues they are bringing forward.

The proposed act will also make registration mandatory to ensure that lobbyists are accountable for disclosing their activities. To be clear, we are not trying to impede access to decision-makers; we are recognizing that lobbying is a legitimate part of the decision-making process.

I want to point out that the public has a right to communicate with public officials. Communication with government, either to request information or to provide suggestions for improvement, is a function of democracy that we take very seriously. The Government of Yukon depends on the input and expertise of industry, non-profits, First Nations and members of the public to develop policies, programs and services in the interest of Yukoners.

We recognize that communications are regularly occurring between government, stakeholders, other governments and the public. In particular, we recognize that the Government of Yukon initiates many of those communications. It is important to remember that not all communications with government constitute lobbying. For example, providing feedback during a public engagement or submitting paperwork to receive a permit are not lobbying activities. Also, members of the public who contact the government on personal matters are not lobbyists and will not be expected to register.

What we are trying to do is to shed some light on who has access to decision-makers by making this information publicly available. This is why I am pleased to bring this bill forward. The purpose of creating a lobbyist registry for Yukon is to bring attention to the circumstances where organizations or businesses are influencing the decisions of public officials. We asked Yukoners what they thought about our plan to develop a lobbyist registry for our territory, including who

should be classified as a lobbyist and what the requirement should be when lobbyists register.

I would like to thank everyone who provided feedback. We received suggestions to consider other criteria in terms of who would need to register as a lobbyist, aside from focusing on paid positions. We also received suggestions to consider an approach that balances an interest in providing meaningful information to the public while minimizing the impact on small organizations and companies.

To summarize, the act will make registration mandatory for those who meet the criteria set out in the act. It will also identify who needs to register and will establish timelines and other reporting requirements. It will identify the information that lobbyists must provide when reporting on their lobbying activities, it will establish penalties for non-compliance with the act and it will also expand the role of the Conflict of Interest Commissioner to be the independent oversight body for the lobbyist registry.

All provinces in Canada and the federal government have passed lobbying legislation. The *Lobbyists Registration Act* will make Yukon the first northern jurisdiction to require lobbyists to disclose their activities publicly.

In closing, I would like to thank everyone involved in developing this new piece of legislation. With this new legislation, we are aiming to improve transparency regarding who has access to decision-makers by requiring lobbyists to identify themselves. It is every Yukoner's right to know who is lobbying public officials in an attempt to influence the decisions that are made by government.

It has been a privilege introducing this bill, and I look forward to hearing the other Members of the Legislative Assembly here today.

Mr. Hassard: I appreciate the opportunity to stand in the House today to speak to Bill No. 23.

When this legislation was first announced, we initially had concerns about the cost to government of implementing and operating it. We also had concerns about the impacts on groups such as NGOs, both on their costs and on their administrative burden.

We also had concerns about the chilling effect that the bill may have on discussions that groups have with opposition members. As you know, groups bring forward their concerns about actions that the government is taking. This can include the fact that we've heard that several NGOs have been told that they will now only get one-year funding agreements rather than three-year funding agreements. We had questions about whether or not those groups have to register if they want to raise concerns about this with us.

Mr. Speaker, as you know, this government does have a growing reputation of being very thin-skinned and self-conscious. We were worried about whether or not retribution would come to a group registering because it met with the opposition parties. As you know, it's not unheard of, under this government, that public servants, groups and individuals have been criticized or targeted, both privately and publicly, for nothing more than their affiliation with the Yukon Party.

Some Hon. Member: (Inaudible)

Mr. Hassard: It's quite obvious.

In fact, there is a growing push from the Cabinet itself to politicize the public service. We hear many complaints from public servants who say that they are being asked to do things that they see as being political and that the previous governments would never have asked them to do.

We have seen, over the last two years, ministers who refused to comment on news stories that were political in nature — instead, forcing officials to go out and insert themselves into discussions with either the Official Opposition or the NDP.

In the past, as you know, the minister understood their files well enough and showed the leadership to go out and comment on those issues. We have seen the Liberals use government resources to advertise political messaging. We have seen them fire the entire housing board merely for partisan reasons. Finally, we have even seen the Liberal Party hang up political advertising in government buildings. We did have concerns about the growth of partisanship in the way the Liberals are running government; however, I am pleased to say that, based on our briefings with officials regarding the legislation, many of our concerns with the legislation have been addressed.

We have been told by officials that the implementation and operations will be done with existing resources, so they are not planning for increased costs. There are thresholds in place for the amount of time you have to spend lobbying before you register. This in large part addresses our concerns about overburdening NGOs or requiring them to register simply for bringing an issue to our attention. Finally, we are happy to see a clause in the bill for a five-year review. I think that will be key in case this legislation does end up overburdening NGOs.

I would like to thank very much the officials for their hard work on this legislation as it is very much appreciated. I would also like to thank the officials for the briefing and for answering our questions. As I said, we no longer have concerns with this legislation; so with that, I am happy to say that the Yukon Party does support the legislation and will be voting in favour.

Ms. Hanson: I'm very pleased to stand today in support of Bill No. 23, the *Paid Lobbying Act* — or the *Lobbyists Registration Act*. I just did exactly as the Premier did, I think, earlier this summer. I will come back to that in a moment.

The NDP has long supported legislative efforts to create more transparent and accountable government. One of the first things when I got elected in 2010 was to table resolutions and ultimately legislation in this Legislative Assembly with respect to how we would reform our democratic traditions in this territory. I was following on the heels of my former colleague Steve Cardiff and my predecessor in Whitehorse Centre, Todd Hardy.

As I was preparing to speak this afternoon, I was reminded of an article that was published July 21, 2011, about two weeks after Steve Cardiff was killed in a car crash. The

article was in a comment — an op-ed basically — in the *Yukon News* by Guy Giorno, who was the expert on anti-bribery and corruption law for the law firm Fasken in Toronto. He is widely recognized as Canada's leading expert in lobbying law.

In that article he said — and I quote: “The tragic death of MLA Steve Cardiff has silenced a strong voice for open government and democratic reform in the Yukon.

“A fitting legacy would be for politicians of all parties to embrace a cause that Cardiff long championed — a law to make lobbying transparent and accountable.”

I am pleased to have a government that has finally introduced lobbying legislation that will make government accountable.

He also said: “The issue, of course, is the creation of a lobbyist registry, so Yukoners can see who is being paid to influence government decisions.” He said, “Cardiff sensibly wanted the registry to be accompanied by a code of conduct — to ensure professional lobbyists act with ethics and integrity.”

As the Premier said, lobbying legislation does exist at the federal and provincial level. There are over 5,000 lobbyists registered across this country. This is not a secret little activity.

Mr. Giorno said, “This legislation doesn't prevent people from lobbying; after all, it is our democratic right to make representations to government.” But what it does do and what we have repeated over and over in this Legislative Assembly, Mr. Speaker, is that it requires people paid to make representations to government to have to do it openly. We look to have legislation such as this that forces the public reporting of the lobbyist's identity. We need to know who they are. We have the right to know the names of their employers and their clients, the government departments they contact and the subjects they discuss. We will look to this legislation to see that this is achieved.

Mr. Giorno went on to say, “It comes down to transparency. Every Canadian has the right to influence government policy. Nobody has the right to influence government policy in secret.”

He said that a good lobbyist disclosure law would give Yukoners one more tool to hold their government accountable.

Here is a key point, because we have talked a lot about our economy: “As the Yukon economy continues to grow, numerous interests — local, from elsewhere in Canada, and from around the globe — want to affect territorial decision-making. Precisely who is paying lobbyists to approach Yukon politicians and bureaucrats? How often and on which topics? No one can say for sure. Yukoners will never know until the territory adopts a lobbying-transparency law.”

This is critical, Mr. Speaker, because I can tell you that, in this Legislative Assembly, this has been a very difficult subject. Mr. Giorno said in 2011, “Lobbying disclosure should not be a partisan issue. Elsewhere in Canada we often see a multiparty consensus in favour of lobbying registration.”

I am so pleased to hear that, finally, in November 2018, it sounds like we have a multi-party consensus on the importance of lobbying registration.

We have heard in the past that some MLAs — and it has been expressed by former ministers in this House who are worried that a lobby registration law might prevent Yukoners from approaching the government. The expert in lobbying in Canada, Mr. Giorno, says that the concern is groundless. Lobbying laws only apply to people — for example, employees, consultants or lawyers — who are paid to influence government decisions. The law will not affect communications between MLAs and constituents. We will still have long and protracted conversations in the grocery aisles. We will still have those conversations at every social event we go to. That is different, Mr. Speaker. That's not included in lobbying laws.

In any event, a lobbying law does not stop people from talking to government. It simply requires disclosure by people who do so for money.

The fact of the matter is that professional lobbying in Canada is a hundreds-of-millions-of-dollars-a-year industry. For those who would deny that lobbying is happening here, Steve Cardiff said that to deny that or say that there is no need to regulate it — I can remember him saying that it flies in the face of common sense and good governance.

The NDP felt so strongly about it that, in April 2014, I tabled Bill No. 104, the *Paid Lobbying Act*, with a view to trying to encourage the government of the day to support the notion of paid lobbyist legislation. We felt that it was important to have this legislation contain provisions for ministerial accountability, so that ministers would have to report regularly on their meetings. I will be looking to see, in this legislation, how that is reflected in their meetings with paid lobbyists. We made it clear that the lobbyist legislation would not apply to non-profit organizations, except if they represent industry, unions and professional groups. We will be looking to how this legislation that has been tabled today reflects that. We do recognize that lobbying is a legitimate activity. A key thing is ensuring that it is done in an open and transparent way. There are some questions that we will have about the legislation that has been tabled before us.

In the Bill No. 104, which I tabled in April 2014, we included a best practice that we had in terms of reviewing legislation across the government. It was an enabling provision that municipal or local governments may enact a bylaw declaring that the act applies to lobbying public office holders. We did that, Mr. Speaker, because across this country, municipal governments are also under increased pressure from lobbyists. It has caused not just scandals, but it has caused the disruption of municipal government activities from BC to Quebec and beyond. We think that the enabling provision is something that needs to be considered and discussed, and I will be seeking clarification as to what I understand is complaint driven, as opposed to a proactive requirement, with respect to registration. Perhaps when the Premier stands again, he can clarify whether or not I misread or misunderstood the provision. We would expect that all paid

lobbyists would be required to register, and we wouldn't expect that somebody would have to make a complaint and have to say, "These guys didn't register" — and that is the way you go about it. I think we want to make it as open and transparent as possible, with the stated and explicit expectation that if you are conducting lobbying activity in this territory, we expect you to register, and then we will talk about the process pursuant to that.

We are very happy to see Yukon finally moving forward on paid lobbyist legislation, and we will look forward to getting into the details of it when we go through it in Committee of the Whole. Having spent way too many hours looking at this kind of legislation across the country, I'm really keen to have the details laid out for us here in the Yukon and having that debate when we get to Committee of the Whole.

Speaker: If the member now speaks, he will close debate on second reading.

Does any other member wish to be heard?

Hon. Mr. Silver: Where to start, Mr. Speaker? I want to start by thanking the Leader of the Third Party, the Member for Whitehorse Centre, for her well-researched analysis — not just today, but on this file over the years. We all do remember the grocery lines argument from the Yukon Party as we asked for lobbyist registration — about how, as you are buying your cantaloupe, who is to say whether you are being lobbied or not? Again, not much analysis, I think, went into that statement or this topic, even though both opposition parties at that time spent a lot of time talking about the importance of Yukoners knowing who is talking to the decision-makers.

The inaccuracies and the misleading statements from the members opposite — sorry, the Official Opposition, obviously, and not the Leader of the Third Party — again, imputing false motives that this would have anything to do with trying to find out who is speaking to the opposition, to the Yukon Party — it is shameful, actually. It is absolutely shameful that they would go there. I guess that the only people thinking about that in the Legislative Assembly here today or ever, when talking about lobbyist registration, seems to be the Yukon Party. Again, we see a smattering of insults and misstatements versus a well-researched analysis by the Third Party.

I welcome the debate in the Committee of the Whole when it comes to these important topics, but again, I just want to address a few things. We can all remember the past Yukon Party government using the Cabinet office to send partisan news releases. I am looking at one with the Yukon Party logo on it right now and from just this year — a couple of days ago. The hypocrisy of the statements coming out of the Leader of the Third Party are just astounding —

Some Hon. Member: (Inaudible)

Hon. Mr. Silver: Sorry, the Official Opposition. I won't make that mistake again.

Then to say, "No, we have no problems with the bill. We talked to your officials, and we got all of our questions

answered" — it is an interesting approach, and it is definitely the opposite of what we see from the NDP, which is a well-researched and well-analyzed position. I look forward to the debate. The Leader of the Third Party and I have sat down and spoken about this particular legislation. I extended the offer to the Leader of the Official Opposition, and he declined, so I had a great conversation with the Leader of the Third Party on this.

Again, I think we may agree to disagree on some of the details of this lobbyist registration. We went to certain jurisdictions. I have read the bill that the Leader of the Third Party gave to the Legislative Assembly, and it is going to be a good and interesting debate — a good and thorough debate — between the two parties on how to move forward on lobbyist registration, and I look forward to that conversation.

I want to thank all of my colleagues in the Legislative Assembly. It is about time that we have this debate and have this bill. It is another one of those steps, as we mature as a government, to make sure that we are accountable to the taxpayers and to make sure that the conversations happening with all elected officials are conversations that are registered for the good people of the Yukon to know who is effectively influencing the decision-makers.

With that, I thank you. I want to thank the departments for the whole-of-government approach that we took to this legislation. I am very proud to be debating it here on the floor of the Legislative Assembly.

Speaker: Are you prepared for the question?

Some Hon. Members: Division.

Division

Speaker: Division has been called.

Bells

Speaker: Madam Deputy 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.

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

Speaker: The yeas have it. I declare the motion carried.
Motion for second reading of Bill No. 23 agreed to

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

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

Motion agreed to

Speaker leaves the Chair

COMMITTEE OF THE WHOLE

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

The matter before the Committee is general debate on Bill No. 24, entitled *Access to Information and Protection of Privacy Act*.

Do members wish to take a brief recess?

All Hon. Members: Agreed.

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

Recess

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

Bill No. 24: Access to Information and Protection of Privacy Act

Chair: The matter before the Committee is general debate on Bill No. 24, entitled *Access to Information and Protection of Privacy Act*. Is there any general debate?

Hon. Mr. Mostyn: I want to welcome the officials this afternoon from the Department of Highways and Public Works who have done a tremendous job drafting this piece of legislation and guiding me through the whole process. Jeff Sunstrum and Teri Cherkewich are with us this afternoon. I thank them for being here.

Mr. Chair, the purpose of this bill is to establish an act that provides better service and meets the changing needs of Yukoners in a digital and information age. This bill concerns the actions and obligations of public bodies in managing data so that private information is protected and public information is accessible.

Yukon passed the *Access to Information and Protection of Privacy Act* in 1995. While the act is sound, it is modelled on a paper-based world that is quite different from today's more digital way of operating. Digital technologies and innovations have fundamentally changed how we manage public records and personal information, interact with government and live our lives.

Individuals have a huge online presence and are constantly contributing to the mass of information available online. The public expects comprehensive access to services online and to conduct their affairs when it is convenient for

them. This includes accessing those services delivered by public bodies. They also expect, and even demand, that public bodies make more information and data accessible.

At the same time, public bodies at all levels are working to increase information sharing, integrate data and facilitate cross-agency sharing of personal information, all with the goal of better service to our citizens. Rather than making numerous amendments to the existing act, we are presenting a new bill — this new bill.

The core principles of transparency, protection of privacy and accountability continue to be the foundation for this legislation. Starting fresh with a new act that incorporates clear, updated language will make it easier for Yukon government staff and the public to understand, interpret and ultimately use this important piece of legislation.

This new bill is well crafted. It contains new definitions that will help the user interpret and understand the rules around privacy and access. It clearly outlines the rules for which the public can get access to public records and establishes rules about the collection, use and disclosure of personal information that is collected and maintained by public bodies in the Yukon. We have included defined timelines to give our citizens confidence in how long our processes take.

I believe this new bill is a tremendous piece of legislation that provides a robust and flexible legal framework that includes dynamic oversight in maintaining government accountability and protecting the public's personal information. It also demonstrates the government's commitment to protecting privacy and providing access to information. This new bill encompasses a comprehensive approach addressing the privacy and access needs of Yukoners. It also provides for a legislative framework that allows innovation to occur while ensuring that privacy and access rights are protected.

Let me give you an example. It will allow for the sharing of information between public bodies to enhance client service delivery. For example, two public bodies will be able to share personal information to benefit an individual.

It supports a government framework that allows citizens access to more online services through a single government web portal. It allows for public bodies to carry out data-linking activities. For example, through regulation, one or more public bodies or partner agencies could combine personal information contained in one dataset with personal information contained in another dataset for a purpose other than the purpose for which it was originally collected. This means that our citizens who are receiving services from more than one department or agency will be better served.

Allowing for government to make evidence-based policy decisions also benefits the public interest. For example, injuries reported at our medical centres combined with types of road accidents will inform whether or not any targeted public-safety campaigns should be made in order to improve road safety. We can certainly see other benefits of this type of initiative.

The proposed bill will entrench privacy-by-design principles as a part of new programs and services, including systems, or if a program or service is changed in a way that impacts the collection, use or disclosure of personal information. This will be accomplished by completing privacy impact assessments. Privacy impact assessments will become an effective way to assess, manage and address potential privacy risks for government initiatives that involve the collection of personal information. As a now-mandatory tool, the privacy impact assessment will allow government to proactively examine organization-wide practices that impact personal information. It will also assist public bodies to be compliant with the act.

The new bill will establish three prescriptive categories of public bodies: ministerial bodies, prescribed statutory bodies and prescribed entities. This closed definition of “public bodies” replaces the non-exhaustive definition of “public body” in the current act to provide greater certainty and clarity as to what type of bodies are public bodies under the new act.

The bill also provides Cabinet with the option to apply certain parts of the act — for example, privacy provisions only to different types or classes of statutory bodies, offices or entities so that provisions can be tailored to the different needs of different types of entities. Two examples of where this power could be exercised are in respect of municipalities or officers of the Legislative Assembly. For example, the privacy provisions only could be applied through regulation to officers of the Legislative Assembly. In that case, the access provisions of the act would not apply to them.

The bill establishes specific roles and responsibilities within a public body related to personal information and the processing of access requests. For example, a privacy officer will be appointed by the head of each public body — that is to say, each department. This privacy officer will be the point of contact for employees of a public body to address issues related to compliance with the privacy provisions in this bill.

It expands the right of access to information. Ministerial briefing notes will be accessible through an access to information and protection of privacy request. Rather than exempting an entire record if it is deemed confidential Cabinet information, the government will be more surgical and exempt parts of documents as opposed to the whole thing.

The new bill narrows the exceptions to access to information by reducing the amount of time that Cabinet information is kept secret from 15 to 10 years. It establishes a specific public interest override in respect of the exception to access Cabinet information, repealing the power to deny access to information that reveals the consultations or deliberations involving officers who are employees of a public body and establishing a general public interest override in respect of all exceptions other than the exception to access Cabinet information.

Mr. Chair, this government acknowledges the important oversight role of the office of the Information and Privacy Commissioner. No access-to-information regime is complete without powerful and meaningful oversight. We heard from the Information and Privacy Commissioner earlier this week.

It was the very first time we had such an officer before the House, and it was a really great discussion. I was happy to have been a part of bringing her into this Legislative Assembly.

We are clarifying and expanding the Information and Privacy Commissioner’s powers and duties by providing an ability to conduct compliance audits in specific privacy matters. For example, if a recommendation from the Information and Privacy Commissioner is accepted by a head of public body, the Information and Privacy Commissioner may choose to audit the public body to ensure that the recommendation was implemented and/or implemented properly. The IPC will be able to conduct investigations even without a complaint where the commissioner has reason to believe that a public body is not complying with the act relating to a correlation to an individual’s personal information and access-to-information or protection-of-privacy matters. The IPC will be able to conduct investigations without a complaint where they have reason to believe that a public body is not complying with the act. It is important.

To help public entities mitigate privacy risks, we are providing the Information and Privacy Commissioner with the authority to review and make recommendations on privacy impact assessments related to specialized programs, services and activities, including integrated program service, personal identity service and data-linking activities — again, Mr. Chair, checks and balances.

We are improving compliance with the act by increasing the fines for an offence and expanding the offences. Currently, if a person willfully contravenes the act, the person is liable for a fine up to \$5,000. We are proposing new offences and increasing the maximum penalty for existing offences to \$25,000 or imprisonment for a term not exceeding six months.

I hasten to add that new legislation, however well crafted, will, by itself, not be enough to ensure open and transparent government. The government needs to promote a strong right-to-information culture — a culture that should permeate all levels of government. We fully realize that this is easier said than done, but we must pursue it with determination in the interest of good government and a healthy representative democracy. This means, in turn, that government officials should not ask, as a matter of fact, why citizens shouldn’t have access to government information, but rather, why shouldn’t they? Why not?

This new bill includes legislative requirements to support a culture of openness while, at the same time, protecting the personal information of individuals. We are confident that this bill will provide the needed clarity and efficiency that both the Yukon government, stakeholders and the public want.

Thank you for the time today, Mr. Chair, and I look forward to any questions that the members opposite may have this afternoon.

Mr. Hassard: I would like to thank the minister for the opening comments and, as well, thank the officials for being here today to work with the minister in answering the questions coming from this side of the floor.

My first question for the minister would be: Has anyone from the Cabinet office or Cabinet office staff ever weighed in or asked to approve or review direction given to the department with respect to how ATIPP requests are handled?

Hon. Mr. Mostyn: To the best of my knowledge, no. I have never heard of any such thing.

Mr. Hassard: Would such an action be allowable under the current legislation? Will it be allowable under the new legislation?

Hon. Mr. Mostyn: I thank the member opposite for the question. Under the existing piece of legislation currently, it is policy to not share the identity of people making access-to-information applications and also, of course, the privacy provisions that set out how information will be shared within government. That's the current practice. In the new piece of legislation we're talking about this afternoon, it puts into law the protection of an individual's privacy when they make an application under the ATIPP law. That protection rests with the access and privacy officer. It's detailed in division 3, section 45 of the legislation before us today.

Mr. Hassard: If the minister is able to speak a little louder — I don't know what is going on, but it's really hard to hear.

Previously in the House, we have heard the Premier make suggestions and comments that he's aware of who is submitting access-to-information requests. Could the minister comment on what provisions exist in the act to protect the identity of those submitting ATIPP requests?

Hon. Mr. Mostyn: Under the new piece of legislation, it is section 45 of the act that lays that out. That protection rests with the access and privacy officer.

Mr. Hassard: Have Cabinet ministers ever been informed about who is submitting ATIPP requests?

Hon. Mr. Mostyn: It is policy within the Yukon government not to share the identity of the person who is making an access-to-information request. I can certainly speak for myself that I have never asked for nor received any indication about who was making an access to information and protection of privacy request.

Mr. Hassard: Are there any penalties for those who breach the identity of those who submit ATIPP requests currently? How will that change under the new legislation?

Hon. Mr. Mostyn: Under the legislation currently, there's no offence for the disclosure of such an identity, but under the new piece of legislation — under the bill — it is an offence to disclose information contrary to the privacy provisions within the legislation and, should that be done, it would trigger the offence of up to \$25,000 and possibly up to six months in jail.

Mr. Hassard: Can the minister tell the House if anyone in the Cabinet or Cabinet offices has ever asked officials or stakeholders or the media who is submitting ATIPP requests?

Hon. Mr. Mostyn: This act certainly predates my time in office. I don't think I could ever say with certainty if anybody had ever asked for that information. I can repeat what I said earlier: I can certainly state for the record that I have never asked for and never received any such information,

and I have absolutely no knowledge of any of my colleagues ever having done so.

I can talk about myself. I can't police or talk about what happened in previous governments or going back to the time the original act was passed. To my knowledge, in my own experience, I have never asked for nor received that information.

Mr. Hassard: Is it possible the minister could tell us what the process is in the Cabinet offices for tracking ATIPPs and how that will change, or if will it change, under the new legislation?

Hon. Mr. Mostyn: Honestly, I can tell the member opposite that any tracking of ATIPPs that I have done, I have done through the public website where we currently track all the ATIPP requests that are made online. I think there is a 30-day delay, if I'm not mistaken, before that information is posted on our website. This was a new initiative by the government to make more information available to the public more quickly and let people know the status of ATIPP requests.

If the member opposite is interested in that, he can go on to the Highways and Public Works website and see the tracking. It is done by month, and it shows what ATIPP requests have been made — as I said, I think there is a 30-day delay — and what stage they are at in terms of the provision of information.

Mr. Hassard: Would the minister be able to inform us whether anyone from the Cabinet office or Cabinet office staff have ever weighed in or asked to approve or review direction given to the department with respect to how ATIPP requests are handled? A follow-up to that would be: Is such an action allowable under the current legislation? Will it be allowable under the new legislation?

Hon. Mr. Mostyn: This is certainly an interesting line of questioning. I can tell the member opposite that currently, information requests made to the Department of Highways and Public Works staff go to the respective information officer. They are professionals and they handle the requests with all of the due diligence that they are supposed to under the act, to the best of my knowledge.

Mr. Hassard: Would the minister be able to tell us what the current policy or rules are surrounding political direction with respect to how ATIPPs are processed?

Hon. Mr. Mostyn: I am more than happy to go over the process under the existing act that we have. We have a new act before us that I am happy to talk about as well, but the old act has been in existence since 1995. The rules under that act are well-established. They have been used by previous governments for decades now, but I am more than happy to talk about what the process is for the handling of information requests.

The request comes from the member of the public or a citizen to the ATIPP office. They process that application, it goes to the department and the department fulfills the application. I believe the deputy head signs off on the application and sends the information back down to the citizen

who is asking for the information. That process is well-established and has been in place for a long time.

Mr. Hassard: In terms of the fines in the new legislation, can the minister tell us how they compare to other jurisdictions?

Hon. Mr. Mostyn: The fines proposed in our new piece of legislation are middle-of-the-road. The highest we see in the country are Manitoba and Saskatchewan; they sit at about \$50,000 for a fine. Jurisdictions such as Newfoundland are about \$10,000. We are at \$25,000, so squarely, right in the middle — sort of a split decision there.

We are empowering the commissioner to look into these things so that we have more proactive compliance with the act — we don't actually get to the fine stage, and that is also important to note. Nobody wants to get to the fine stage. We want to prevent that, so we have the commissioner given some powers so that they can actually help us with that.

Mr. Hassard: One of the concerns that we heard from the Information and Privacy Commissioner was that public bodies have too much authority to collect dues and disclose information in the public domain. The potential was highlighted that, with the growth of social media, governments could start collecting and using information from citizens.

Would the minister be able to tell the House what is being done to alleviate these concerns?

Hon. Mr. Mostyn: Under the new piece of legislation we are discussing this afternoon, there is the audit function for the commissioner. As well, the access and privacy officer can also conduct audits of these things. Citizens can also complain, so there are provisions based through the Information and Privacy Commissioner to actually have some say over what the departments are doing, but also — and perhaps more importantly — there is more control. If a government decides to take a new direction in terms of information, it has to do a privacy impact assessment. That also provides some control, oversight and restraints on the government's ability to get information from publicly available sources.

Mr. Hassard: Another concern 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. Just as an example: our office had asked for what I felt was a fairly simple request and was told that it would cost in the neighbourhood of \$70,000.

My question for the minister is: Does he believe that the bill, as drafted now, allows for adequate recourse if someone believes that the estimated costs are not reasonable? What oversight is there for instances such as this?

Hon. Mr. Mostyn: This is a great question from the member opposite and I thank him for making it. It is one where I have had personal experiences and frustrations similar to the ones that he has expressed. I have put in applications myself in a former life and been given ridiculous sums of money that I had been told to pay to fulfill what seemed to be a relatively innocuous request. It got fairly expensive for me

to actually follow through with some of these requests. I share his concerns on this point.

In the new bill, the access and privacy officer will provide an estimate of the cost. This position is separate from the department. Under the current system, we have every department coming forward with their own requests. There is no consistency. You go to one department, you get asked for something and it costs you nothing or \$50. You go to another and it is \$10,000. There is no consistency. We're centralizing this into a central place and putting forward a position that will provide an estimated cost, and then the department itself will fulfill that request.

If there is a problem, the person asking for the information can go to the Information and Privacy Commissioner and lodge a complaint and it will be investigated. That is another piece that isn't currently well-defined. So you have a separation between the person handling the request — the access and privacy officer — and the department doing the work, so we have a third party in there. The APO can actually work with the person coming in with the request, hone the request to get the information that they can work with and if they so desire, make sure they get the information they want so that it's not so costly. The APO can also assess it and actually say the cost is too much. The APO can actually grant a waiver of those costs if they feel that the cost is too high. That's another piece in this legislation to make sure that we get information as easily and as cost effectively as we possibly can.

The goal is, as well, to get more information to the public in a more reasonable time frame and to also put more information before the public so they don't have to come through and do these requests. That's really the goal. These requests should actually be an exception rather than the rule.

There are a number of things going on here: more provision of information; a refining of the process to actually make the request; some help available through a centralized agency to make sure you're asking for the right thing; an appeal process; and powers granted to the Information and Privacy Commissioner to actually investigate and look at the costs if they are exorbitant — and to make sure that they were being charged. We're actually coming up with a standardized cost — an hourly rate. That's going to be standardized as well.

So all of these things are in place to protect the public and make sure that they're getting the information they request for the least amount of money as possible.

Mr. Hassard: If I could just go back for a minute, I asked the minister what the process was for Cabinet tracking ATIPPs.

He gave an explanation of how the department does, but I guess what I was asking about was what the process for Cabinet is for tracking ATIPP requests.

Hon. Mr. Mostyn: I thought I answered that question earlier. I did say that there's a public website, and we track the access requests through the public website. There is a one-month delay on the information — I believe it's a 30-day delay on the information — that is posted online. That's how the Department of Highways and Public Works and the Public

Service Commission track information requests — through the public website.

Ms. Hanson: Thank you to the officials who are here and to the officials who provided the briefing. This is a massive piece of legislation. It is 144 pages, which is kind of daunting.

My intention, with the minister's cooperation, is — in order to understand it, because we have a new act that is based on — and it's an evolution of the older act and the amendments that were made to that act, but it's new, so it's not simple enough. I can't simply go and say — to the existing act — that it's structured in a different way.

Mr. Chair, in order to facilitate my understanding and our caucus' understanding of this new legislation, I propose to go through the recommendations that were made by the Information and Privacy Commissioner and ask the minister to respond by clarifying where in the new act those recommendations are reflected so that, when we are going through line by line, we can facilitate getting through that — zip-zip — and not have as much challenge — at least there's a structure to that, and it's focused on the act as opposed to whatever. I can have lots of conjecture about lots of stuff, but I don't have time with 144 pages.

We'll start with recommendation 1, if it pleases the Chair. The minister can correct me if I'm incorrect, but when I looked at this new act versus the old act, I don't see the same things contained in the various parts, so that's why I'm trying to do it this way.

The first recommendation that the Information and Privacy Commissioner made when she circulated the document in December 2015 with these recommendations — and, as the minister is aware and has read, I'm sure — she gave a lot of background and examples as to what led her to make those recommendations. I'm not going to repeat those in this Legislative Assembly.

I simply want to ascertain how that recommendation was considered and if that recommendation is reflected in the new legislation, and if so, where in the new legislation so that I can highlight that off, and then it will be a lot easier when I get to the next section of this.

The first recommendation is about consideration to be given to amending part 3 of the ATIPP act to expand the authority of Yukon public bodies to collect and disclose personal information to facilitate innovation. I just want to make a comment here. The Information and Privacy Commissioner makes frequent reference throughout these recommendations to the fact that Yukon public bodies are moving toward a citizen-centred service delivery model and are using technology to support this model. She noted that, in some cases, they are seeking the use of technology to combine and share personal information within and between themselves and with other public bodies or private bodies located in Yukon and elsewhere. I think that's the backdrop, in general, to the sharing of information and the collection of information elements of this act.

If applicable, the IPC said that consideration should be made to amending the ATIPP act to authorize the creation of a

service provider in a Yukon public body to be responsible for centralized citizen services. Does the act reflect that and, if so, where?

Hon. Mr. Mostyn: I welcome the Leader of the Third Party to the debate this afternoon. I am looking forward to a thoughtful debate with her about this bill this afternoon. We are talking about a new piece of legislation, and we are talking about correlating that to a very large, well-crafted, new bill, and then we are pulling in recommendations from the Information and Privacy Commissioner from 2015. There are a lot of moving pieces in her questions, and I'm sure that over the next few minutes — tens of minutes, an hour or whatever it takes — we will come up with a process through which we can actually answer these questions efficiently.

The first question that she asked has to do with the first recommendation of the Information and Privacy Commissioner — that consideration should be given to amending part 3 of the *Access to Information and Protection of Privacy Act* to expand the authority of Yukon public bodies to collect and disclose personal information to facilitate innovation. I believe that's the one that she was talking about — correct?

Some Hon. Member: (Inaudible)

Hon. Mr. Mostyn: Public body authority has been expanded to collect and disclose personal information to facilitate innovation within the following sections. Section 27 allows for Cabinet to approve an integrated service, which may include one or more public bodies or partner agencies — this term is defined in the definitions — to work collaboratively to deliver a service. We also have section 28. Section 28 enables the government to create a personal identity service. This will allow citizens to access more services online through a government account — a web portal, for example.

Section 29 allows Cabinet to approve a data-linking activity. Data can be combined with data from other public bodies or partner agencies. Section 33 of the proposed bill supports an information management service where the public body may provide another public body or person — an information manager — with access to personal information held for the purpose of an information management service to the public body. That is where that recommendation has been implemented in the new bill.

Ms. Hanson: The latter part of that recommendation is the creation of a “service provider” in the Yukon public body to be responsible for centralized citizen services. Is that reflected in the bill?

Hon. Mr. Mostyn: Section 28 is the section that I think the member opposite is looking for clarity on as far as the service provider piece. It enables the government to create a personal identity service. This will allow citizens to access more services online through a government account. There has to be a privacy impact assessment, of course, to bring this about. That is called for under the act. They have to do a privacy impact assessment on that, and it has to go to the Information and Privacy Commissioner before that comes into being. It has to be reviewed.

Ms. Hanson: I may want to come back to the concept of service provider at a later time, because I am not sure if the minister and I are talking about the same concept here.

The second recommendation is that the duties of Yukon public bodies to protect personal information should be increased in the ATIPP act. At minimum, these duties should include a requirement that the public bodies complete a privacy impact assessment for any proposed enactment system, use of technology, project, program or activity that involves personal information and submit them to the office of the Information and Privacy Commissioner for review and comment. What section is that contained in, Mr. Chair?

Hon. Mr. Mostyn: This is a long recommendation and it has many components to it.

Some Hon. Member: (Inaudible)

Hon. Mr. Mostyn: Section (a) — the first one — is the requirement that Yukon public bodies complete a privacy impact assessment for any proposed enactment system use of technology, project, program or activity that involves personal information and submit them to the office of the Information and Privacy Commissioner for review and comment. Privacy impact assessments are required for a proposed program or activity. Specialized service includes identity and integrated service, data-linking, information management service and a significant change to an existing activity. That is all contained in section 11(1) of the new bill.

Ms. Hanson: Does that section 11 include the requirement to submit these privacy impact assessments to the IPC for review and comment?

Hon. Mr. Mostyn: I draw the member opposite to subsection 11(2). A privacy impact assessment is required to be submitted to the Information and Privacy Commissioner for projects that involve highly sensitive information, specialized service that includes identity and integrated service and data linking. Public bodies can still submit all other privacy impact assessments to the Information and Privacy Commissioner, but they are not legally required to do so. They must do so with highly sensitive information, but it certainly doesn't preclude a department or a public body from proactively going to the Information and Privacy Commissioner to discuss these matters.

Ms. Hanson: The minister is anticipating, I think, this next point, which is (b), where there is a requirement for the Yukon public bodies to notify the Information and Privacy Commissioner at an early stage. It is looking for advance warning of any proposed enactment system, use of technology, project, program or activity that involves personal information and for which a privacy impact assessment will be developed before the enactment is drafted, system acquired or program or activity plan is finalized and consider comments made by the IPC.

Can the minister tell us in which section the "before the action is taken" provision is set out in the legislation? If it is not, I just need to know that, but I am trying to track this against the recommendations.

Hon. Mr. Mostyn: Section 11 is the section.

Ms. Hanson: Section (c) is a requirement that a privacy impact assessment be completed for the development of a centralized service provider and that the privacy impact assessment be submitted to the Information and Privacy Commissioner for review and comment — so this goes back to the centralized service provider. When I talk about a service provider, I understand we are talking about support and information technology like we currently have — a service provider for the Official Opposition. We are behind a firewall. We are not part of Yukon government.

Is that what we are talking about here?

Hon. Mr. Mostyn: I think some of the confusion arises because we are talking about some of recommendations that were made in 2015. When the IPC was talking about a centralized service provider, they were talking about, really, a personalized identified service — a central agency for the provision of personal information within government.

That personal identity service is required to have a privacy impact assessment done, and it must be submitted to the Information and Privacy Commissioner for review.

Ms. Hanson: That is reflected in which section?

Hon. Mr. Mostyn: Again, it is section 11.

I wanted to add as well — my officials have reminded me that the commissioner can also audit that service as well, so she has that authority under the new legislation.

Ms. Hanson: Section (d) is that, prior to the development of a centralized service provider, the Information and Privacy Commissioner is provided with the plan for centralized services before the plan is finalized — and consider any comments.

I guess the first part of my question is: Is that also reflected in section 11? Is section 11 one big, long basket case? Does the legislation also explicitly provide for — that the government would consider comments from the IPC about the plan?

Hon. Mr. Mostyn: Again, under section 11, a privacy impact assessment is required before such a service is approved.

The second piece of this is that a regulation must go to Cabinet before any identity service goes live. The privacy impact assessment must go to the Information and Privacy Commissioner for review and approval so we have that for review before it goes before Cabinet. That's how it goes.

Ms. Hanson: I'll come to (e) again, but when the minister stands again, could he confirm that the requirement to go to Cabinet is reflected in the legislation in section 11? Then (e) is a requirement that Yukon public bodies enter into information-sharing agreements when sharing personal information — if he could just clarify which section and subsection that is in.

Hon. Mr. Mostyn: Okay, first the easy part, Mr. Chair. The requirement to go to Cabinet is contained under section 28 of the legislation. Now, the requirement that Yukon public bodies enter into information-sharing agreements when sharing personal information — that's evaluated through a privacy impact assessment, as required under section 11.

Ms. Hanson: I appreciate a number of things — one is that the minister has two able-bodied and able-brained people there beside him to help him walk through this and help us, because as I said at the outset, most of us aren't schooled in legislation or the drafting of it.

In (f) is a requirement that Yukon public bodies submit draft information-sharing agreements to the Information and Privacy Commissioner for review and comment, or the recommendation was that the minister responsible for ATIPP works with the Information and Privacy Commissioner to develop an information-sharing code of practice. I'm curious as to which was chosen, if any, and where that choice is reflected in the legislation — which section or subsection.

Hon. Mr. Mostyn: On this next recommendation, submit draft information-sharing agreements, a written agreement — again, it comes back to a written agreement being required for the information management service and data-linking, so a privacy impact assessment will have to be done. There is a requirement for the Information and Privacy Commissioner to review and comment on written agreements, so it's covered there as well.

The APO — access and privacy officer — can establish minimum requirements that may be included in an agreement. That officer can also make a protocol to require agreements when sharing personal information, and the Information and Privacy Commissioner must review — those protocols must be submitted to the Information and Privacy Commissioner for review. This is referenced in section 11.

Ms. Hanson: A requirement that the Yukon public bodies notify individuals about a breach of their privacy — theft, loss or unauthorized access, disclosure or disposition of personal information — and submit a report about the breach to the Information and Privacy Commissioner for review and comment: What section or subsection is that contained in?

Hon. Mr. Mostyn: I have to agree with the Leader of the Third Party. My 1963 processor is sorely taxed going through this legislation, so I appreciate the assistance of the two civil servants beside me.

We're talking about subsection 32(7) for this recommendation. In response to a suspected privacy breach, the privacy officer will conduct an assessment. If it is determined that there was a risk of significant harm to the individual, they must notify the head of the public body and a notice of the privacy breach to the affected individual. They are also required to provide the Information and Privacy Commissioner with a report and a copy of the notice to the affected individual.

Ms. Hanson: I note that the Information and Privacy Commissioner, in her October 9, 2018, notice to members of the Legislature, commented that a concern with respect to this particular recommendation made three years ago is that the bill as drafted doesn't include an offence for failure to notify individuals about a breach of their personal information when there is a risk of significant harm as a result of that breach.

I further note that she made a point that, because of the pervasiveness of privacy breaches and the ease with which large amounts of personal information can be breached, as we

see every single day and again today with CRA and others, most modern privacy laws include privacy breach notification provisions with a failure to notify being an offence. She says Yukon's HIPMA is a good example of this.

Failure to notify individuals about a risk of significant harm can have significant consequences for those individuals. However, she says that under this Bill No. 24, when a public body fails to meet this obligation, there are no consequences for the public body. She suggested a remedy that would be to include an offence when a required notification does not occur.

Can the minister explain why there is no offence for what could be a very serious breach — well, any breach of personal information is serious, but some could be more serious than others — and why there is no offence contemplated in this legislation? Has the minister considered amending it, given the explanation given by the Information and Privacy Commissioner here in this Legislative Assembly this week?

Hon. Mr. Mostyn: Right off the hop, I'm going to say that underlying any potential privacy breach — and god knows that's a constant danger and it's something we have to take very seriously — there could be an offence under the act. There could have been improper collection of information or any number of things, so that can underline an offence under the act. It's not like there is no potential for something to happen — there is — under the act, because the act does lay out some of the offences.

But unlike HIPMA, this bill gives more power to the commissioner to proactively identify and resolve issues about non-compliance. As well, the Information and Privacy Commissioner can write public reports and audit the actions of the department and has full authority to audit on any privacy matter across government. This is a power that, to the best of my knowledge, does not occur in HIPMA. It's not something that HIPMA allows — that I'm aware of — so it's a new authority that the commissioner has and it provides a proactive power that will, I would hope, prevent the accidental or inappropriate disclosure of personal information to entities outside of the government that weren't allowed to have it.

Ms. Hanson: Thanks, Mr. Chair, but I think that's an apples-to-oranges question, because I'm talking about if somebody breaches personal information and discloses that information — and I would be assuming this is a deliberate act — I have no recourse as that individual when you have disclosed, as a public body, that personal information.

I'm not convinced that having an audit by the IPC is going to remedy that breach, Mr. Chair. I'm not going to get into a debate about it, but I just don't believe that the answer was an answer to the question I was asking nor to the question that was raised by the IPC.

It's not about an audit; we are talking about, as she said: "... 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."

We are talking about significant harm as a result of a breach of privacy of information that is held by a public body. It's not about doing an audit. If the minister was referring to

there being some way that the breach might be caught in the broader — there are other offences here in this legislation. Is he suggesting that somehow you might roll it into another interpretation of other offences and then catch it that way? The IPC didn't get that. I'm not getting it from the response that I have heard so far from the minister. I'm just looking to have that clarified. It's just a need to have clarity as to what the government's intentions are with respect to the potential implications — how to remedy the serious harm that could accrue to an individual as a result of a breach of privacy by a Yukon public body.

Hon. Mr. Mostyn: This is a fascinating question and I appreciate the Leader of the Third Party for bringing it forward. There are so many things wrapped up in that question.

I think purposeful disclosure of information — but often these privacy breaches aren't purposeful at all. They are inadvertent, careless and unforeseen. We have hackers coming into the government all the time trying to hack our systems, or quite frankly, at times we saw it — I think, federally, we had a bunch of CDs in the back of a car stolen and had a privacy breach that way. I suppose there could be purposeful disclosure, but most of the time we are talking about inadvertent, careless, thoughtless practices that lead to the loss of information. HIPMA says that you will be fined if this happens. It is punitive and you will go to court.

This legislation takes a different approach. It says that when we are doing things that deal with private information, we will do a privacy assessment. In the most severe cases, the most important cases, we will give that to the Information and Privacy Commissioner for review. The commissioner will have a look at it and say: "You know, you haven't thought about this, this or this — and there are possible problems or possible failures in these areas." What the commissioner can then do is comment publicly. When a privacy breach occurs, we will notify the Information and Privacy Commissioner, and they can actually go public and say, "This is how it was managed." Really, what we're talking about is public shaming on the part of the commissioner, and that, in our view, is a much more effective tool in managing privacy breaches. Rather than going in and hammering people with a fine, we are actually enabling, getting an audit tool and giving the Information and Privacy Commissioner the tools and the authority to proactively come forward and review what we are doing. When things go awry, we are notifying her, and she has the ability to publicly say that the department of X failed to do this in this time and go public and say that this is how they are doing it. That will lead to a more thoughtful resolution and will perhaps teach other departments to handle their information in a much more thoughtful, measured way.

It is a different approach — granted — but the tools are there to make sure that privacy breaches are handled, closed and fixed in a way that protects public information going forward.

Ms. Hanson: I think we may have gone sideways here. If that breach occurs — and whatever the internal machinations of how the government deals with how, when,

whatever — our public bodies — the concern being raised by the commissioner here is if your private information and my private information is leaked, breached or whatever, you don't have to — as a public body — notify me. That is the concern. I don't know that the information has gone out there until there is some deleterious or negative impact on me. She says, "There is no offence for failure to notify affected individuals about a breach of privacy."

That's why she said, "Failure to notify individuals about a risk of significant harm can have significant consequences..." She said, under the current bill, "... when a public body fails to meet this obligation, there are no consequences for the public body. To remedy this, Bill 24 should include an offence when required notification does not occur."

Again, Mr. Chair, you don't have to be a slave to CBC *Marketplace* or whatever to see that privacy breaches do occur on a regular basis, and people have not been notified until something happens and then the government or the agency is caught trying to rectify it. What we're trying to do is prevent that and also ensure that you don't wait until there are negative consequences for individuals or groups of individuals. It's a notification issue that we're trying to raise here and trying to understand. If there is no requirement to notify, what's the rationale for that? How would that be — well, I guess there's no remedy because you don't know until it sort of hits you in the face.

Hon. Mr. Mostyn: At the heart of the question, if I am to understand it — in some ways, we're talking about abstractions — to fine or not to fine: that is the question. We are saying that fining can actually inhibit the reporting of data breaches in that, if a data breach happens and you face a fine, you may not actually report it. What we're saying is that, in this bill, you have to report. You must report; you must report to the head, you must report to the individual and you must report to the commissioner. You must report; you have to do that about a breach.

Then the Information and Privacy Commissioner is authorized to report on how we're handling the breach, to investigate that and to audit it ahead of time to make sure that we're following the rules; so that is substantial authority. To be clear, you have to notify. You have to notify the individual, the head and the commissioner. There are only three jurisdictions in the country that have that written into their piece of legislation, and that's Yukon, Newfoundland and New Brunswick. It's substantial; it's not insignificant.

The deterrent comes down to public shaming, allowing the commissioner to comment publicly on how privacy breaches are managed. It comes down to a separate approach to fine or not to fine. We believe that's a more effective tool to foster compliance within the public service and to foster reporting and the whole bit.

There's a difference of opinion here, but this is the approach we've taken in this piece of legislation.

Chair: Do members wish to take a brief recess?

All Hon. Members: Agreed.

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

Recess

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

The matter before the Committee is general debate on Bill No. 24, entitled *Access to Information and Protection of Privacy Act*.

Ms. Hanson: Mr. Chair, I think it's probably best to move on in the interest of time, because we're at recommendation 2 of 35. The last part of recommendation 2 was the requirement that Yukon public bodies make information available to the public about information-sharing agreements entered into and privacy impact assessments and breaches of privacy.

Does the legislation contain that requirement?

Hon. Mr. Mostyn: I just want to clarify something, so I'm going to go back in time — here we're on the cusp of fall-back — for just a few minutes. I wanted to say, before I answer the member opposite's questions, that not only are Newfoundland and New Brunswick the only jurisdictions to have the notification clause, it's also not an offence in those other jurisdictions. The reason why is that it's not felt to work. It is working in those other jurisdictions, from what I hear, and there has never been a fine issued under ATIPP legislation that we're aware of on this. It is a disincentive to report and, frankly, I guess in the end, I'll have to agree to disagree with the Information and Privacy Commissioner on that point.

We are now on recommendation 3, that the ATIPP act should require Yukon public bodies to develop and maintain a privacy management program.

Some Hon. Member: (Inaudible)

Hon. Mr. Mostyn: I'm sorry; it's a requirement that Yukon public bodies make information available to the public about information-sharing agreements entered into, privacy impact assessments developed and breaches of privacy.

Hon. Mr. Mostyn: We are talking about section 85(2), according to my officials.

Ms. Hanson: I have recorded that as section 85(2).

Leaping ahead to recommendation 3, as the minister started to say, the recommendation was that: "The ATIPP Act should require Yukon Public Bodies to develop and maintain a privacy management program consisting of: the ability to demonstrate accountability for privacy management through executive management support, designation of a privacy officer, and development of a reporting structure in respect of the privacy officer's activities; a personal information inventory and program controls: privacy policies and procedures, use of risk management tools (PIAs, security threat risk assessments, and ISAs); employee training programs and tools, service provider management, and external communications to the public including: privacy policies and procedures; notices about collection, use and disclosure of personal information, and information about rights and how to exercise them; and an oversight and review plan to identify and address deficiencies in the program."

Does the act contain a privacy management program? It sounds to me like this would be quite a large section of an act, and I'm wondering if it's a part, or how it's contained or reflected in the legislation.

Hon. Mr. Mostyn: Recommendation 3 is an omnibus.

What we're going to talk about — and it is spread through a few different sections — the hallowed section 11 — privacy impact assessments. Under recommendation 3, you must report breaches — that's section 37. We now have privacy officers in place, and the rules about information management practices will be worked into the regulations.

In total, as I said, section 11, section 39, section 84(2)(a) and section 87(1)(a) are the relevant sections that I have been directed toward.

Section 39 is open access to information. This section requires the heads of ministerial bodies to identify the types and classes of information that will be made proactively available. Cabinet can also prescribe types and classes of information that all ministerial bodies will be required to make available to the public. We have already talked about privacy impact assessments. They are required, as well, as written agreements. If retaining the services of an information manager, the access and privacy officer can conduct compliance audits, and the Information and Privacy Commissioner can also audit privacy matters relating to personal information.

Finally, the head of each public body must appoint a designated privacy officer. Procedures on reporting have been included in the act for correcting personal information and privacy breaches.

Ms. Hanson: Recommendation 4 — based on what I heard this week from the Information and Privacy Commissioner here in the House, I believe — but I would ask the minister to confirm — that each of those four points contained in recommendation 4 are contained in the act, and I would ask the minister, in replying, to indicate that, yes, they are — or if they are — and which section that is.

In recommendation 4, she has recommended that the Information and Privacy Commissioner be given the following additional general powers in the act, because I'm not sure which part it is now: conduct own-motion investigations where the Information and Privacy Commissioner has reason to believe a Yukon public body is not complying with the ATIPP act; conduct audits to ensure Yukon public bodies are complying with their obligation under the act; comment on the implications to privacy in respect of data-linking; and comment on use of information technology in the collection, storage or transfer of personal information. Are these four points contained in some measure in the legislation? Could the minister just point us to the sections so that we can cross reference them?

Hon. Mr. Mostyn: They are, Mr. Chair, and I can. Under recommendation 4, section 94 enables the commissioner to conduct an investigation on matters that an individual could complain about. It allows the commissioner to proactively resolve issues through an investigation. The commissioner must decide to exercise this authority within

one year after the matter arises, and they must notify the head of the issue to be investigated and why an own-motion investigation is practicable in the circumstances.

Paragraph 11(1)(b) allows the commissioner to conduct client's audits on privacy matters related to personal information. The access and privacy officer can also conduct clients' audits. Subparagraph 112(f)(i) enables the commissioner to comment on potential privacy issues related to data-linking activities, and subparagraph 112(f)(i) enables the commissioner to comment on potential privacy issues related to the use of information technology services.

Ms. Hanson: I am going to move on to recommendation 5. I would just like the minister to clarify: Was that section 112 or was it 11-point something or other?

Recommendation 5 says that the IPC should be given the power under the act to share personal information as necessary with other commissioners' offices for the purpose of conducting joint investigations or audits. I would like the minister to confirm with me — my understanding is that the other commissioners' offices are effectively the other hats that the commissioner wears as ombudsman, PIDWA and so on. If that is correct — great. If there are any of those commissioner offices' titles that have been hived off or not covered under that recommendation, can he clarify that? So there are two things, Mr. Chair: one is the last point that he referenced under recommendation 4 and if he can he just give us the citation again — which section of the act — and for recommendation 4, where in the act is the IPC given the power to share personal information with other commissioners' offices?

Hon. Mr. Mostyn: To answer the question from the Leader of the Third Party about recommendation 4, we are talking about subparagraph 112(f)(i). I hope that clarifies it for her.

As for recommendation 5, I had visions of our Information and Privacy Commissioner who, of course, shares many offices, having this sort of existential crisis about what she can share with herself or not. I have been assured that this has been resolved through the legislation. Subparagraph 111(1)(d) clarifies that the commissioner may share personal information with the territorial, federal or provincial counterpart to conduct a joint investigation. That should resolve that conflict.

Ms. Hanson: I just had the image of many hats, and so we have different ways of imaging things.

Recommendation 6 is that consideration be given to granting the Information and Privacy Commissioner the power under the act to provide education to inform Yukon public bodies about their duties and to give advice to a public body. These powers would be beneficial, she says, for promoting improved privacy management practices. This is more of an enabling provision, but is it contained in the legislation anywhere, and if so, in what section?

Hon. Mr. Mostyn: Once again, I am happy to report that there is enabling legislation. We are talking about subsection 112(a), which enables the commissioner to inform the public about this act. This could include raising the profile

of the act or informing the public about issues that they should be aware of — for example, informing the public about how to ensure personal information is protected when interacting with this government and hopefully other governments.

Subsection 112(b) specifies that the commissioner has to deliver educational campaigns to inform the public about their rights under the act as well as public bodies responsible under the act.

Ms. Hanson: I'll go back to clarify that later. In recommendation 7, the Information and Privacy Commissioner said that the IPC should be given the power under the act to: make any recommendations necessary to remedy any non-compliance with the ATIPP act in respect of any power granted; publish investigation and review reports, including recommendations made; and publish special reports in respect of any authority granted under the ATIPP act. It is to make recommendations regarding non-compliance, to publish investigations and reviews, and to publish special reports.

Could the minister confirm whether or not the act reflects recommendation 7 and if so, which subsections?

Hon. Mr. Mostyn: Once again, I am happy to comply. Subsection 112(e) enables the commissioner to provide recommendations to public bodies in the exercise of their powers or duties under the act.

Subsection 117(2) requires the commissioner to include the following information in their report: a list of each privacy impact assessment that the commissioner commented on; each complaint made to the commissioner and the manner in which it was resolved — for example, successfully mediated or if an investigation was required; each investigation conducted and results — for example, recommendations accepted or refused; any identified persistent failure by a head when responding to an ATIPP request; and any concerns with the performance of the access and privacy officer, designated access officers or privacy officers.

Finally, subsection 117(3) enables the commissioner to write a special report, if it is in the public interest to do so, regarding any of the commissioner's powers or duties.

Ms. Hanson: I am looking at recommendation 8. It speaks to the powers granted to the IPC for reviews — and she specified section 53 of the old act — that was speaking about expanding that power that was in the old act so that they apply to all the IPC's powers, including the power to comment and audit.

Could the minister just confirm whether or not that is already contained in one of the sections that he has already identified, or if there is a specific new section for that?

Hon. Mr. Mostyn: I am happy to do that. Subsection 111(2) clarifies what authority the commissioner has when conducting an audit. The commissioner can compel any information or record that is not subject to legal privilege, can examine any record, enter any premise, converse with any person, conduct interviews with the head or employee of a public body and receive any other type of information relevant to the audit. Any information given in the course of an audit is inadmissible in proceedings unless in limited circumstances

— committing perjury, for example. The audit must be completed in 90 days. After 90 days, an audit report is required to be completed in 30 business days. Any information provided in the course of an audit must be kept confidential by the commissioner.

Ms. Hanson: I thank the minister for that. That's a significant improvement.

Recommendation 9: "The ATIPP Act should enable a binding order to be issued following an investigation, review or audit by the IPC where the IPC finds a Yukon Public Body to have contravened or is contravening the ATIPP Act, the Public Body refuses to comply with the IPC's recommendation to remedy the non-compliance, and the IPC is of the view that there is a significant risk to privacy as a result of the non-compliance."

I'm just looking to know if this recommendation has been incorporated into the new act and where we would find provisions with respect to enabling a binding order to be issued.

Hon. Mr. Mostyn: This recommendation 9 is one in which the Information and Privacy Commissioner and I agree to disagree.

In this case, redress mechanisms are established under the act. Granting order-making power would be a significant increase to the current powers, there is no doubt about that, but we are not going to go in that direction. Individuals can appeal to the Supreme Court if a head refuses to comply with a recommendation. When the Information and Privacy Commissioner was in here on Tuesday, we spoke a little bit about that. I think there have been two times in her tenure — maybe one other — where a recommendation from the Information and Privacy Commissioner has not been followed.

Generally, public bodies follow the IPC recommendations. We have seen that. I have seen it, certainly, in my former life, as the court of public opinion certainly does wield a lot of weight in this territory. The process we have outlined is far less adversarial than others, and is timely and less costly.

In Canada, information and privacy commissioners either follow an Ombudsman model, which is based on recommendations, or order-making power. There are only four jurisdictions in the country that have provided the Information and Privacy Commissioner's office with order-making powers. In this case, we are continuing with not granting that power to the Information and Privacy Commissioner.

Ms. White: Just to speak to this, although the Information and Privacy Commissioner said that, at this point in time, there have only been two orders that haven't been followed, if you'll remember, we had the Hospital Corporation here and I asked about an order that was given by the IPC in which the hospital has implied consent. The hospital has said they will not seek consent, because there is implied consent when you seek medical care. The specific person who had followed this process through was unable to pursue it through the court system due to cost and time. The

big concern was that if the hospital just uses implied consent, if you are a medical worker in a community and you choose not to seek that attention in your community, the information can be passed through implied consent and get back to your community.

There were big concerns around that. That person had to drop it. The person couldn't take it further because the next step was court. So although I appreciate that the minister says that, at this point, there have only been two orders that haven't been followed, I did ask the Hospital Corporation about their implied consent — they don't get consent; they have a blanket of implied consent — and how that was viewed as being problematic by the Information and Privacy Commissioner.

The reason we flagged this one is that if you send a citizen to court to defend their right to protect their own information when they're trying to make sure that other people have that same protection, that's the concern. I appreciate that the minister said it has only been two, but understanding that one of those orders was made to the Hospital Corporation, which has said they will not follow that and will continue on with implied consent, may be of concern.

Hon. Mr. Mostyn: I have been consulting with my officials with the Department of Highways and Public Works as this was rolling out. My understanding is that the Hospital Corporation issue is contained under HIPMA, not the *Access to Information and Protection of Privacy Act*. According to my officials, it's a different process. Under our process, we have said that this bill includes a new provision that enables the court to award costs to the applicant, even if the applicant is not successful, if it is in the public's interest.

Some Hon. Member: (Inaudible)

Hon. Mr. Mostyn: Sorry; my mic — my voice — something. I have a booming voice and I moderate it.

The new bill includes a provision that enables the court to award costs to the applicant, even if the applicant is not successful, if it is in the public's interest. The bill enables the commissioner to intervene in the matter and be heard during the court process, that is, to be a friend to the court and assist the court in a determination of the application. The bill retains and strengthens the current act's non-adversarial approach of achieving compliance by public bodies through mediation, audits, et cetera. The bill enables the commissioner to undertake audits related to the conduct of a public body in relation to personal information matters.

The commissioner is not empowered to make an application to the court on a complainant's behalf, because doing so would transform the existing advisory model to an adjudicative model.

This policy change would also shift the role of the commissioner to an adversarial one, as opposed to that of an independent investigator and, at times, a mediator of conflicts between parties. We did have this discussion on Tuesday with the commissioner. Again, it is a point on which we will agree to disagree on this matter.

An adjudicative approach is not only costly for the public — the taxpayers — but it's also time consuming. This non-adversarial model that we are promoting is proving to be very

effective, with a high compliance rate of public bodies complying with the recommendations from the commissioner. We have had very few examples that show that we need to change this model.

Ms. Hanson: I think we would find that there is very little experience, because I think we will find that there is not a heck of a lot of trust in the current process. This is why we're going through this process of doing a new act. The minister should reflect back on his opening comments about the need to have this new legislation — there were reasons why.

Before I ask the minister to clarify how these redress measures are contained, he made some comment that there are redress measures included. I would like him to put on the record why the government chose not to follow the other recommendation that the Information and Privacy Commissioner made, because she made two recommendations that would prevent placing the onus on the individual to go to court. It doesn't matter how nice everybody is along the process in terms of once you have to go to court, but the onus of having you or me foot the cost up front to go to court is quite significant.

In Newfoundland and Labrador, their ATIPP act requires the public body to go to court to refuse a recommendation. So put the onus on the powerful as opposed to the individual. If the public body doesn't want to follow a recommendation, then let them carry it, as opposed to — it is David and Goliath and we're reversing it. Why can't we have Goliath defend why they are putting that individual in peril?

Two questions: Why did they choose not to follow the Newfoundland and Labrador ATIPP act provision, which requires the public body to go to court to refuse a recommendation? Where in the legislation are — if not binding orders — the redress measures included — what sections?

Hon. Mr. Mostyn: I hope you can hear me out there.

The redress section in the act — the bill that we're currently debating this afternoon — is 108. As far as the approach we're taking, I think I have been fairly clear on that point. We don't want to get into that conflict or change the role of the Information and Privacy Commissioner. The Commissioner is — we're taking a non-adversarial model and it is proving relatively effective. We have high compliance rates with our public bodies. They do comply with the recommendations from the commissioner in almost all cases. It's a rare exception — I think three times in the last 14 or 15 years — where a recommendation from the Information and Privacy Commissioner has not been followed.

Of course, the act itself does have a review period baked into it, and if we do find that there is a change or if there is something that is happening that is requiring us to — if we find evidence that suggests that many issues are going to court or the government is not following the Information and Privacy Commissioner's recommendations, we can certainly fix the legislation at that time. At this time, there is no evidence to suggest — very little, scant evidence — suggesting that there is a problem here. We want to continue

with this model and I think, for the most part, it is working. With the changes inherent in this act and in the improvements we're making to the way we handle government information and protect individual privacy with the audit provisions and with the additional powers we're giving the commissioner, we think there will be even fewer problems going forward.

On this, again, the Information and Privacy Commissioner and I will agree to disagree respectfully, so that's our rationale.

Ms. Hanson: I thank the minister. We will disagree.

Recommendation 10 is a fairly important section. When you look at the context within which these recommendations were extracted, the minister will understand why I think it's quite important to see how these are reflected in the legislation.

The Information and Privacy Commissioner recommended that the ATIPP act should require Yukon public bodies to apply information management practices that include development of policies and procedures in support of the right to access information — a key concept. At minimum, these requirements should include a requirement that Yukon public bodies develop policies and procedures to ensure that — now, for each one of these, I would ask if there is a section in the act that captures this — deliberations and actions undertaken and any decisions made by an employee that relates to his or her employment responsibilities are documented.

Does the act require that deliberations and actions undertaken and any decisions made by an employee that relates to his or her employment responsibilities are, in fact, documented?

The second part of that is that it is 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.

So we all know that everybody uses cells with all the data management systems and everything on there, so the issue here is that there is a ton of public information. If we believe in the right of the public to that information, then we need to ensure we have our systems in place. I'm looking for how this is reflected in the legislation.

The third thing was that 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 — and technology, as I alluded to, is fairly broadly defined here and expanding as we go on — the public body considers 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.

Finally, there's a requirement that Yukon public bodies consult with the IPC during the development of information management policy and procedure.

I look forward to hearing from the minister where this category of applying information management practices, in support of the right to access information, is contained in the legislation.

Hon. Mr. Mostyn: I would refer the Leader of the Third Party to section 86 of the new bill. The access and privacy officer may write compliance protocols if needed, and of course, the Information and Privacy Commissioner would have to review those protocols.

Section 121 specifies which provisions, if contravened, would constitute an offence. Lying and obstructing the Information and Privacy Commissioner's investigation is an offence, and destroying records that have been requested in an access to information and protection of privacy request is another offence.

Section 11 again clarifies the requirements to conduct a privacy impact assessment, including if retaining an information management service. An agreement is also required to be entered into for any specialized service, identity and integrated services and information management service. The access and privacy officer can also establish minimum requirements for those agreements, including a section on access to information.

Compliance protocols must be submitted to the Information and Privacy Commissioner, and types of privacy impact assessments are also required to be submitted to the Information and Privacy Commissioner. These acronyms are killing me, but we are talking about privacy impact assessments and the Information and Privacy Commissioner.

Ms. Hanson: The next series of recommendations were in respect of a number of specified areas that the Information and Privacy Commissioner had identified in her recommendations.

She had a whole section on rethinking the role of the records manager. I believe this will be fairly straightforward. Can the minister confirm recommendation 11 — “The responsibilities of the records manager in the ATIPP Act should be eliminated or significantly reduced”? If so, where is it in this act?

Hon. Mr. Mostyn: I can say the records manager is now called the “access and privacy officer”. Section 84 creates the role of the access and privacy officer, including establishing its authority and responsibilities. The access and privacy officer may conduct compliance inspections and audits of public bodies to ensure compliance with this act. This responsibility is intended to allow government to proactively assess or measure compliance. For example, the access and privacy officer can assess how a privacy breach has been conducted to make sure public bodies are properly identifying breaches that are — quote: “significant risk of harm” — as well as ensuring the proper protocol is being followed regarding individuals and the commissioner being notified, as required by the act.

Ms. Hanson: Could the minister clarify what section that is?

Hon. Mr. Mostyn: Section 84, Mr. Chair.

Ms. Hanson: Recommendation 12 — we have already discussed this. I probably keep coming back to it over and over again, but I am not going to belabour the point this afternoon because I want to go on.

Recommendation 12 — the minister will know that the Information and Privacy Commissioner, as she did on Tuesday, as she did in our October 9 memo to all members of the Legislature and as she did in her December 2015 recommendations with respect to review of the *Access to Information and Protection of Privacy Act*, clearly recommends that Yukon municipalities should be made subject to the ATIPP act.

Recommendation 13 is that boards, commissions, foundations, corporations or other similar agencies that are public bodies under the ATIPP act should be specified in designated regulation.

Is that the intention under this act, Mr. Chair?

Hon. Mr. Mostyn: I as well will not belabour the point again. The issue of municipalities is where the Information and Privacy Commissioner and I will agree to disagree.

We have spoken about this. I believe that as elected representatives, city councils and town councils across the territory can certainly opt to come into an access to information or protection of privacy provision under this act. We would be happy to work with them to do that, but they will have to come forward on their own volition. I will, of course, be encouraging them to do so. I think it would be a great step forward for our municipalities and for the elected representatives' constituents.

I think it's an important step and I encourage them to do so. I hope, as I said, the member opposite, the Leader of the Third Party, will come to AYC and help us make that case. I think it would be great to opt them in. This piece of legislation is crafted so as to make that opting into this legislation relatively easy.

As for the next recommendation, all public bodies will be identified through regulation.

Ms. Hanson: Can the minister tell us where in the legislation that's referenced?

Hon. Mr. Mostyn: Section 1, definition of a public body and a statutory body, and also section 125.

Ms. Hanson: Recommendation 14 from the IPC is: “The ATIPP act should be amended to ensure that: ATIPP Coordinators in each Yukon Public Body are given sole delegated authority to handle requests for access to information; no officials in Yukon Public Bodies other than the ATIPP coordinator are involved in the request unless they are consulted for advice in connection with the matter or giving assistance in obtaining and locating the information; and the identity and type of requester remains anonymous until the final response is sent to the requester by the ATIPP coordinator, except for requests made for personal information or the requests where the identity of the requester is necessary to respond to the request.”

So there are three distinct but linked proposed amendments to the act. Can the minister clarify if they have

been accommodated in the new act, and if so, where in the new act?

Hon. Mr. Mostyn: I'm happy to report that this is reflected in the new act. The new act creates an access officer position that is to be appointed by the head of each public body. That's section 87 of the legislation — of the bill. Section 45 protects the identity of the requestor with the exception of responding to access requests related to personal information. Contact information will be shared with consent or if necessary for the access officer to respond to the request, and section 45 meets the recommendations.

Ms. Hanson: Recommendation 15 is not a legislative recommendation — I am just going through this. Recommendation 16 is: "A public interest override provision similar to that recommended by NL's ATIPPA Review Committee..." should be included in the ATIPPA act. Is it included? Is there a public interest override provision and if the minister would like to clarify the scope of it and where it is if it is in the act.

Hon. Mr. Mostyn: I am happy to report that the public interest override is in the legislation. Section 82 creates a public interest override that applies to all exceptions, excluding Cabinet confidence. Cabinet confidence was excluded as the secretary of Executive Council Office has the ability to make Cabinet information available under subsection 67(3). The relevant sections that you are looking at with regard to recommendation 16 are section 82 and section 67(3).

Ms. Hanson: Mr. Chair, I am going to ask the minister's indulgence because he has the lawyers beside him, and I am not one. Recommendation 17 of the Information and Privacy Commissioner was that subsections 5(4) and (5) of the existing act should be repealed. Could the minister tell us what those were and whether or not they have been repealed?

Hon. Mr. Mostyn: The short answer to the recommendation made by the Information and Privacy Commissioner is that yes, the sections have been repealed.

The longish answer — and it's not that long — is that we are talking about the now infamous ministerial briefing binder provisions — the veil of secrecy that descended over briefing notes — and those have been repealed.

The section that the members opposite will be interested in will be section 38, and that determines what information is accessible. The briefing notes are accessible by the breadth of section 38. Section 38 gives that breadth to allow briefing notes to be accessible.

Ms. Hanson: Recommendation 18 is again a policy recommendation, not a legislative one, so I will skip it. Recommendation 19 was that section 69 of the existing ATIPPA act should be amended to include a requirement that any provision in a Yukon law that is paramount over the provisions in the ATIPPA act are reviewed each six years during the comprehensive review of the ATIPPA act to evaluate whether these paramountcies are necessary.

Is there an amendment that does include that kind of requirement with respect to paramountcy?

Hon. Mr. Mostyn: The relevant section that the members opposite are looking for is section 127, which states that the minister responsible for this act must, at least once every six years after the day this act comes into force, undertake a review of the act, and during this review, other acts may also be reviewed. That breadth gives us the opportunity to do that — exactly what the Information and Privacy Commissioner was asking.

Ms. Hanson: Recommendation 20 — we are going to go pretty quickly, I think, now.

Section 1 of the ATIPPA act should be evaluated to ensure the purposes are still accurately reflected, given the shift from paper to electronic information management and greater emphasis on accountability.

Can the minister clarify whether this evaluation occurred, and does the act now reflect this?

Hon. Mr. Mostyn: Section 1 gives the scope of the act, and section 6 of the new bill identifies and expands the purposes of the act. These will be reviewed during the required review period every six years, so recommendation 20 is covered through that.

Ms. Hanson: Recommendation 21 is that the IPC should be granted authority in part 4 of the old act to require production of records relating to disputes about whether a request for access to records involves those records. I will ask the minister to ask his legal counsel what the corresponding sections of the ATIPPA act are. I could say them aloud, but they are not going to help. It is basically to, I think, require a production of records when there is a dispute, and there is a specified series of those in the old act.

Could he confirm how that has been dealt with in the new act?

Hon. Mr. Mostyn: Section 66 is the relevant section. An individual can make a complaint to the Information and Privacy Commissioner about a public body's decision not to release records — section 66.

Ms. Hanson: The Information and Privacy Commissioner made a recommendation — recommendation 22 — that was, it looks to me, making recommendations to improving how words are defined — specifically the terms "applicant", "complaint", "review", "request" and "third party". She suggested that the minister look at Newfoundland's ATIPPA act for wording.

I'm wondering how that is reflected in the relevant section of the ATIPPA act and whether or not the minister found the Newfoundland ATIPPA act wording to his liking.

Hon. Mr. Mostyn: On this, the Information and Privacy Commissioner and I agree to agree. These terms are included as definitions. We're looking at section 1 and section 89 of the new bill.

Ms. Hanson: Recommendation 23 is that the relationship of the ATIPPA act with the HIPMA should be specified in the new act. Can the minister confirm that this is, in fact, the case?

Hon. Mr. Mostyn: I'm happy to report that section 10 is intended to provide clarity for when access to information and protection of privacy or the health information applies —

HIPMA. Currently, public bodies or programs or activities of public bodies that are also custodians include the Department of Health and Social Services, the Yukon Hospital Corporation and Emergency Medical Services as a program or activity of the Department of Community Services.

Despite the act not applying to the Department of Health and Social Services when they are acting as a custodian of personal health information, they are still required to complete a privacy impact assessment in accordance with section 11 of this act. The rationale for this requirement is that access to information and protection of privacy has more stringent requirements than HIPMA regarding privacy impact assessments, and government wants to apply standards across the government.

Ms. Hanson: Recommendation 24 is simple. It recommended that paragraph 16 (1)(b) of the old act be repealed.

Hon. Mr. Mostyn: The cryptic 16(1)(b) is the consultation deliberations clause within the old ATIPP act, and it has been repealed. Section 74 is the relevant section that the members opposite will be seeking.

Ms. Hanson: I thank the minister for that. I'll move to recommendation 27 — that section 26 of the ATIPP act should be repealed and a new section 11.1 be added — this is the old numbering in the old act — following section 11 that is similar to the third party notification provisions in section 19 of Newfoundland's ATIPP act.

I don't know what section 19 of Newfoundland's ATIPP act is. I know the minister's legal counsel will. Can he just explain whether or not this recommendation has been followed and, if so, where we would find it?

Hon. Mr. Mostyn: I am going to ask for a very brief clarification. I believe the member opposite has moved to recommendation 27. Is that correct?

Section 26 is replaced with section 59(1): "Division 5, Third Party Notice — Seeking Third Party's view on granting access."

Ms. Hanson: Recommendation 28 was that timelines to process a request for correction should be included in the ATIPP act. Is that reflected in the legislation, and if so, what section, please?

Hon. Mr. Mostyn: The relevant section the members opposite will be looking for is section 35, which enables an individual to request a correction to their personal information. It also identifies a response timeline and process to follow if such a request is submitted.

It is also required to notify any other public body or a third party to whom the information was disclosed in the preceding year of the correction or annotation. The other department or third party must also make the correction or notation on any record of that information. Public bodies cannot charge a fee for correction requests.

Ms. Hanson: I think following on that is recommendation 29. I'm presuming it's going to be close to section 35 that he's talking about it. It's amending the act to add a requirement that, upon receipt by a Yukon body of a request for personal information or to correct personal

information from an individual, the public body must retain the information for as long as necessary to allow the individual to exhaust any recourse under the ATIPP act that she or he may have with respect to the request. That is recommendation 29.

Could the minister say whether or not that is reflected in the new legislation?

Hon. Mr. Mostyn: I am happy to report that it is. Section 22 requires personal information to be accurate and to be retained for a minimum of one year if a public body is using it to make a decision that directly affects an individual. This provides the individual with the opportunity to access the information used by the public body if the individual chooses to challenge the decision that affected them.

Ms. Hanson: We are moving in for the close here — recommendation 30. The recommendation is that the ATIPP act should authorize a Yukon public body to disclose personal information to an individual if the request is made by the individual for his or her own personal information. Is that reflected in the legislation? What section?

Hon. Mr. Mostyn: Section 36 is all about disclosure. In the current act, subparagraph 25(h)(i) supports this type of disclosure.

Ms. Hanson: I'm hoping that we can ask for legislative forbearance. If we can get through this — we have four more to go — then we won't have to come back to this until we do line-by-line. Recommendation 31 is that the IPC should be authorized under — whatever — should be authorized to discontinue an investigation or review in certain circumstances. Does the new legislation provide that authorization to discontinue an investigation or review in certain circumstances?

Hon. Mr. Mostyn: In support of the lightning round, I will tell the member opposite that section 91 is the relevant section they are looking for. The Information and Privacy Commissioner can now disregard a complaint. However, once the Information and Privacy Commissioner decides to investigate, the commissioner needs to complete the investigation.

Ms. Hanson: Recommendation 32 — the IPC should be authorized to delegate any duty or power under the act, including for conducting reviews. Is that contained in the legislation and, if so, in what section?

Hon. Mr. Mostyn: Subparagraph 111(1)(g) allows the commissioner to delegate any of their powers under the act with the exception of the power to delegate.

Ms. Hanson: Yes, I get that one — thank you. Recommendation 33 is that the ATIPP act should be amended to place the burden of proof where personal information is at issue in a review on the public body to prove that the disclosure of the information should not be contrary to the ATIPP act. That is recommendation 33.

Hon. Mr. Mostyn: Subsection 102(b) places the burden of proof on the third party who does not want their personal information or non-confidential business information to be disclosed. Subsection 102(c) clarifies that the burden of

proof is on the respondent for any decision made under this act — ding.

Ms. Hanson: Mr. Chair, can you confirm that it is not the respondent — not the body — that has to justify? It is the person who has to justify the information?

Hon. Mr. Mostyn: It's the head who has to justify that — the head of the public body has to justify that.

Ms. Hanson: Recommendation 34 is a recommendation that section 67 of the old ATIPP act should be repealed and replaced. She has made the recommendation with specific language. I'm not going to read this into the record this afternoon, but it has to do with when somebody knowingly collects, uses or discloses personal information in contravention of the act — so it's about the offences. Could the minister clarify what section that is covered in, including — so she has a whole list of things that would happen and describes the activities of a person who knowingly —

Some Hon. Member: (Inaudible)

Hon. Mr. Mostyn: We're talking about section 121, yes — bonus marks for the Member for Takhini-Kopper King — and section 122 is the second one — no bonus marks for that one. Offences have been expanded and penalties have increased to \$25,000, as the Leader of the Official Opposition and I discussed earlier. Thank you very much — ding.

Ms. Hanson: And the game closer here is recommendation 35, that the act should be amended to authorize the Commissioner in Executive Council to make a regulation authorizing the waiving of fees to process a request for access to information if disclosure is in the public interest. I think this is going to be very simple for the minister. I just want him to tell me what section it is.

Hon. Mr. Mostyn: We are talking about section 55 for the waiver and section 125 for the regulations. Waiver of fees will be addressed in the regulation.

Ms. Hanson: I would like to thank the minister and particularly his officials who have gone through this at rapid —

Some Hon. Member: (Inaudible)

Ms. Hanson: — and Hansard, yes, of course — who will be trying to figure out exactly what the heck they were doing in there.

I do want to extend a special thanks to the officials for helping us get through this, because I think having the opportunity to go through the recommendations that were made by the Information and Privacy Commissioner, along with having her in the Legislative Assembly this week, has given us a better understanding of where we stand with this new piece of legislation, and so that is very helpful.

Mr. Chair, I move that you report progress.

Chair: It has been moved by Ms. Hanson that the Chair report progress.

Motion agreed to

Hon. Ms. McPhee: 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 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. 24, entitled *Access to Information and Protection of Privacy Act*, and directed me to report progress.

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

Are you agreed?

Some Hon. Members: Agreed.

Speaker: I declare the report carried.

Hon. Ms. McPhee: I move that the House do now adjourn.

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

Motion agreed to

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

Have a good weekend.

The House adjourned at 5:25 p.m.

The following sessional papers were tabled November 1, 2018:

34-2-78

Yukon Police Council Annual Report 2017-18 (McPhee)

34-2-79

Health Care Insurance Programs — Health Services - FY 2008-09 to FY 2017-18 — Annual Report April 1, 2017 to March 31, 2018 (Frost)

The following legislative returns were tabled November 1, 2018:

34-2-162

Response to Written Question No. 28 re: ATIPP requests related to the Yukon Coroner's Service (McPhee)

34-2-163

Response to Written Question No. 29 re: competition for position of chief coroner (McPhee)

34-2-164

Response to oral question from Ms. Hanson re: Whitehorse Correctional Centre inmates' mental health — Yukon Review Board dispositions (McPhee)

34-2-165

Response to matter outstanding from discussion with Mr. Istchenko related to general debate on Bill No. 207, *Second Appropriation Act, 2018-19* — staffing for cannabis operations (Streicker)