



# Yukon Legislative Assembly

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Number 14

3<sup>rd</sup> Session

34<sup>th</sup> Legislature

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## HANSARD

Tuesday, October 29, 2019 — 1:00 p.m.

Speaker: The Honourable Nils Clarke

# YUKON LEGISLATIVE ASSEMBLY

## 2019 Fall Sitting

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

### CABINET MINISTERS

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

### GOVERNMENT PRIVATE MEMBERS

#### Yukon Liberal Party

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

### OFFICIAL OPPOSITION

#### Yukon Party

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

### THIRD PARTY

#### New Democratic Party

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

### LEGISLATIVE STAFF

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

**Yukon Legislative Assembly**  
**Whitehorse, Yukon**  
**Tuesday, October 29, 2019 — 1:00 p.m.**

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

*Prayers*

## DAILY ROUTINE

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

Introduction of visitors.

## INTRODUCTION OF VISITORS

**Hon. Ms. Dendys:** I would ask colleagues to help me in welcoming some very special guests here today for a tribute that we will be doing in a few moments. First, I would like to welcome Joe Sparling and Debra Ryan.

We also have with us Sally Robinson, Greg Skuce, Marie Cox, Myrna Kingscote, Tracy Bernier, Angela Salé-Roche, Helen Blattner, Barb Bouvier, Sarah Usher, Elsa Cheeseman, Jonathan Parker from Tourism and Culture, Pierre Germain, Daintry Chapple, and Lesley Buchan. I think I have everyone — and Barb — I'm not sure how to pronounce your last name, but welcome. Thank you so much for coming here today for this great tribute.

*Applause*

**Ms. White:** I also invite my colleagues to welcome Paul Johnson, the vice-president of the Yukon Employees' Union here again today.

*Applause*

**Mr. Kent:** It's Barb Zaccarelli who has joined us as well. Thanks, Barb.

*Applause*

**Hon. Mr. Pillai:** I also see Mr. David Ashley here today. I would like to also welcome to the Assembly a long-time entrepreneur, a supporter of all things history in the Yukon, and a big contributor to our community.

*Applause*

**Speaker:** Tributes.

## TRIBUTES

### In remembrance of Goodie Sparling

**Hon. Ms. Dendys:** I rise today on behalf of the Yukon Liberal government to pay tribute to the late Goodie Sparling who passed away November 5, 2018. I was honoured to host the family and friends of Goodie today so that we could celebrate her life together. She did so much for our community and she is someone I admire greatly. I would like to thank Joe for sharing personal stories. I know there are so, so many more that you could share. Goodie was a mother, a grandmother, a community leader, an advocate for the preservation of Yukon

history and culture, a small business owner, a dedicated volunteer, and a good, good friend to many.

Over the years, she was actively involved in more than a dozen local organizations including — just to name a few — the Yukon Tourism Industry Association, Whitehorse Chamber of Commerce, MacBride Museum Society, Yukon Transportation Museum, Yukon Historical and Museums Association, and the Golden Age Society.

For many years, Goodie and her brother managed the Regina Hotel in downtown Whitehorse. The hotel was run by her family for more than 70 years, from 1926 to 1997. She donated a tremendous amount of materials to the Yukon Archives, including photographs, registers, and newspaper clippings. Contributions like this help our territory preserve the history of her family and our community.

Goodie was well-recognized in the community and across the country for her community involvement. In 2002, she received the Queen Elizabeth II Golden Jubilee Award, awarded for her contribution to public life. In 2008, she received a Yukon Lifetime Achievement Award from the Yukon Historical and Museums Association.

Goodie is one of the many inspirational women whose portraits are displayed in this building, which I was honoured to unveil a few weeks ago in recognition of Women's History Month. These paintings are selections from the series "Yukon Women: 50 Over 50" by artist Valerie Hodgson. Recognizing that this year marks 90 years since women were officially declared persons under the law, I have been reflecting, for sure, on what a short time period that is — one person's lifetime. This monumental gain for human rights in 1929 happened when Goodie was just three years old, having been born in 1926. It was even later, in 1960, that aboriginal women, including the matriarchs of my family, were recognized as people under the law. Less than a lifetime ago, so many of the women in our community today — women like my mother and my aunties, women like Goodie Sparling — would not have been able to cast their ballot — something that we did just one week ago.

Although we must remember that inequalities still exist for women and gender-diverse Yukoners in terms of rates of violence and poverty, access to housing, and so much more, we must also think about how powerful it is that all of us are now seen as citizens. We have a voice in shaping our government. Accomplishments like this do not happen by accident. Women like Goodie Sparling, strong leaders, community advocates, and active volunteers make this happen.

I urge Yukoners to join me in honouring the life and contribution of Goodie Sparling and to take this time to reflect on women like Goodie who have shaped Yukon's history.

*Applause*

**Ms. Van Bibber:** I rise today on behalf of the Yukon Party Official Opposition and the Third Party to pay tribute to Gudrun Ingeborg Sparling.

A true Yukoner, Gudrun was born in Whitehorse to John and Kristina Erickson. She was known to all as Goodie. Thinking of all the wonderful adjectives to describe this lovely

lady, they are boundless — a true litany of Goodie's character. So I will add some nouns to complete the picture: her beautiful smile, lovely dimples, twinkling eyes, and well-manicured sparkling nails. Her love of pink and pastel colours made Goodie very recognizable wherever she appeared. She was one of a kind and someone I knew as an elegant lady.

Her parents purchased the Regina Hotel in 1925, and a year later, she was born. Growing up around such an establishment carved out her interest in people and her community and of course honed her hospitality skills. She and her younger brother, John Erik, had the lobby as their living room, and the busy hotel dining room was also where their family meals happened. With a clientele from the sternwheelers, the military, and the locals, there was always a hub of activity in and around the Regina Hotel.

After high school teacher training, working, marrying, and raising a family of four, Goodie became a widow in 1978. At this time, Goodie decided to return to Whitehorse to help run the family hotel with her brother. Through the years, she was also very active in our community. Goodie and I sat on the board of directors of the Tourism Industry Association of Yukon a few — well, many years ago. We were involved with some strong tourism characters, such as Barry Bellchambers and Giovanni Castellarin. She was full of ideas and was a constant voice for tourism. I am sure that the many other groups she was involved with appreciated her commitment to share and participate.

She was an avid reader and delighted in the performing arts and participated in the Senior Games. I remember one particular day vividly. It was Yukon Day at the 2010 Vancouver Olympics. A plane filled with Yukoners — sponsored by Yukon's airline, Air North — flew out for a day trip to Vancouver. We left at some terrible morning hour, took the SkyTrain downtown, had lunch at Canada's Northern House, and then off we went to explore before meeting again at BC Place for the evening show, hosted by Yukon performers.

But most notable to me in this huge group waving Yukon flags and scarves donated by Air North was Goodie Sparling. Using her walking cart and keeping up with everyone, she outdid many with her energy and enthusiasm. What a day to remember with Goodie as we then SkyTrained back to YVR, with wheels up by 11:45, returning home at some terrible morning hour.

She so loved to attend the seniors' city tea and the various events that occurred about town, and even from McDonald Lodge, she would stay connected. Goodie was born here. She knew the history, the stories, and the people. She was so much part of the fabric that is Yukon. She will be missed.

*Applause*

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

## TABLING RETURNS AND DOCUMENTS

**Ms. White:** I have for tabling two documents. One is a letter written to the president of Many Rivers from the Deputy Minister of Health and Social Services.

The second is a document from Crowe MacKay to the budget officer for Health and Social Services regarding the executive summary of findings, report of factual findings, and financial information of Many Rivers Counselling and Support Services Society for the year ended March 31, 2019.

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

Are there any reports of committees?

Petitions.

## PETITIONS

### Petition No. 1 — received

**Clerk:** Mr. Speaker and honourable members of the Assembly: I have had the honour to review a petition, being Petition No. 1 of the Third Session of the 34<sup>th</sup> Legislative Assembly, as presented by the Leader of the Third Party on October 28, 2019.

The petition presented by the Leader of the Third Party meets the requirements as to form of the Standing Orders of the Yukon Legislative Assembly.

**Speaker:** Accordingly, I declare Petition No. 1 is deemed to be read and received. Pursuant to Standing Order 67, the Executive Council shall provide a response to a petition which has been read and received within eight sitting days of its presentation.

Therefore, the Executive Council response to Petition No. 1 shall be provided on or before November 12, 2019.

Are there any petitions to be presented?

Are there any bills to be introduced?

Are there any notices of motions?

## NOTICES OF MOTIONS

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

THAT this House urges the Government of Yukon to track progress on the implementation of the calls for action from the Truth and Reconciliation Commission of Canada.

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

THAT this House urges the Members' Services Board to invite the former Clerk of the Legislative Assembly to meet with the board to discuss his letter of August 2, 2019, regarding electoral reform and problem with the Liberal government's approach to electoral reform.

I also give notice of the following motion:

THAT this House urges the Members' Services Board to waive confidentiality regarding all e-mails and correspondence between members of the board related to the August 2, 2019, letter from the former Clerk of the Yukon Legislative Assembly in the interest of allowing that correspondence to be shared with the public.

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

THAT this House urges the Standing Committee on Rules, Elections and Privileges to formally establish a code of conduct for the Speaker of the Yukon Legislative Assembly, covering matters including abstaining from partisan activities which might undermine the perception of the Speaker's neutrality.

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

THAT this House urges the Government of Yukon to fully comply with the order of the Legislative Assembly issued on Wednesday, October 23, 2019, by providing any evidence which may exist that shutting down Central Stores and restructuring the Queen's Printer Agency will save money.

**Speaker:** Are there any further notices of motions?  
Is there a statement by a minister?

## MINISTERIAL STATEMENT

### Leave for victims of domestic violence

**Hon. Mr. Streicker:** Our Liberal government is committed to a people-centred approach to wellness that helps Yukoners thrive. Across the country, governments are changing labour laws to give victims of domestic violence additional leave to receive the help they need. All 10 provinces have enacted some version of leave for domestic violence, family violence, and/or sexualized violence. The Northwest Territories and Nunavut are also considering implementing domestic violence leave.

I rise to inform Yukoners that our Liberal government is committed to making domestic violence leave available in the Yukon. Currently, the length of leave and whether it is paid or unpaid varies in different Canadian jurisdictions. Paid leave ranges from two to five days, and unpaid leave ranges from two to 10 non-consecutive days in a calendar year and from 15 to 26 continuous weeks unpaid. Three jurisdictions provide unpaid leave only. The new federal leave provides five days of paid and five days of unpaid leave and includes time off for victims and parents of children who are victims of family violence.

Mr. Speaker, we are beginning to assess Yukon's specific needs for this type of leave. In conjunction with the Women's Directorate, we will engage with Yukon groups and experts who deal with gender-based and domestic violence in the community in order to understand the best way to support those who experience violence.

Yukon has rates of domestic violence three times greater than the national average, and indigenous people in the territory experience this crime at rates up to four times greater than non-indigenous Yukoners. Even still, this crime is often under-reported due to many complex and systemic barriers, which sometimes include a lack of support in the workplace. Reducing job and financial insecurity as a barrier that victims face will help to support long-term healing and stability of victims of domestic violence.

Leave for domestic violence provides victims with time to seek supports such as medical treatment or legal advice, or to report to police if they choose. We are committed to implementing a leave that best fits the needs of Yukoners. Both employees seeking to use domestic violence leave and employers providing the leave will need support and educational materials to ensure that victims can access this leave readily, but also so that their confidentiality and dignity are respected. The employment standards office along with the Women's Directorate will work together to create support materials and resources to educate employers of their obligations and give them tools on how to support their employee. Victims will also have access to materials on domestic violence leave and information on how to access it.

We look forward to introducing these leave provisions in 2020 as part of our commitment to building safer, healthier communities.

**Ms. Van Bibber:** Mr. Speaker, thank you for the opportunity to respond. Although we support this policy in principle, this ministerial statement appears to be mostly a re-announcement of the throne speech from three weeks ago.

As noted by the minister, 10 other provinces and territories have done this and now Yukon says that it wants to do this. So then, why wait until sometime in 2020 to actually do it? The government could have spent the summer consulting on and designing this policy so that we could implement it now during this Sitting.

So, because the minister has not provided us with any details on the policy, it is hard for us to comment or ask questions; however, I will provide some input into the consultations that I'm sure will be forthcoming. I encourage the government to visit rural Yukon and meaningfully consult them. This means properly advertising the meetings so that there can be a good attendance.

Also, the government has a tendency to launch biased surveys that push the respondent to give the answers the government wants. So, I think the government should refrain from doing that in order to facilitate a proper and meaningful consultation.

With that, Mr. Speaker, thank you to the minister for the re-announcement. As I referenced, we support the principle of this initiative and look forward to further details coming sometime in 2020.

**Ms. White:** We're pleased to know that next year an amendment to the *Employment Standards Act* will be brought forward that will see a person who is a victim of domestic violence be able to take time from their work without penalty. Although we appreciate that these amendments will be brought forward in 2020, it's too bad that these changes weren't considered this spring when 10 provinces had already made some changes to their legislation to address the issue of domestic violence. It seems like we missed an opportunity when this very act was debated and amended earlier this year.

The minister has indicated that this government will begin to assess Yukon's specific needs for this type of leave, and we

hope the minister prioritizes conversations with non-governmental organizations and women's organizations asking for input because, as experts, we know that they will have thorough responses.

While we're on the topic of the rights of individuals experiencing domestic violence, I will take this opportunity to remind the minister — the same minister responsible for the *Residential Landlord and Tenant Act* — that we debated a motion in the spring of 2016 that urged the government to amend the *Residential Landlord and Tenant Act* to allow victims of domestic violence to (1) terminate a lease early and without penalty and (2) remove an abuser's name from a lease.

We know from having spoken to women's groups and groups keen on seeing this legislation strengthened to protect victims of domestic violence that nothing has happened.

Mr. Speaker, experts can be found at Kaushee's Place, Victoria Faulkner Women's Centre, Betty's Haven, the Yukon Aboriginal Women's Council, Help and Hope for Families Society in Watson Lake, Dawson City's Women's Shelter, and others — all of whom support victims of domestic violence and will have good ideas on other areas of Yukon law that could benefit from a lens of helping those who find themselves in domestic violence situations.

We hope that when the minister refers to 2020, he means the Spring Sitting, because it is a long wait until the fall of 2020 to see these suggested changes come into law.

We look forward to these changes and are hopeful that others will follow that will improve the lives of Yukoners who find themselves living with domestic violence.

**Hon. Mr. Streicker:** First of all, thank you to both the parties opposite and the members opposite in speaking for their support in principle. Thank you as well for their suggestions to work with rural Yukon, which I think is an excellent suggestion. I have that intention and I will certainly follow up with it.

Also, thank you very much for the list of all of the women's groups and non-governmental organizations who are doing tremendous work to support victims of violence and address domestic violence. As I said in the ministerial statement, we plan to work with the Women's Directorate, who also has a terrific relationship with those organizations — that was for that very reason.

We did introduce legislation to support employees on leave this spring. We had gone out and engaged with Yukoners on that. It was after that engagement that this came forward from the federal government. So, we felt that the important thing to do was to go out and talk with Yukoners again. So that is why it was — I don't want to call it "unfortunate", but the timing was just — we had already just finished talking with Yukoners about it. We believe that it is important to engage with Yukoners and hear their perspectives on this because there is a lot of detail here that is very important and will make a difference for those suffering from domestic violence.

I thank all the members of this Legislature for their support for victims of domestic violence and I will work hard to bring back the legislation here for us to consider.

**Speaker:** This then brings us to Question Period.

## QUESTION PERIOD

### Question re: Many Rivers Counselling and Support Services

**Ms. McLeod:** The Minister of Health and Social Services has a track record of giving incorrect information. The minister said the third-party audit of Many Rivers alerted her to concerning practices by the organization. Yesterday, the minister said — and I quote: "The third-party review was not shared with the RCMP as this report did not investigate whether or not criminal activity occurred." Then, Mr. Speaker, 10 minutes later, the minister said, "We undertook a third-party audit to determine if there was evidence of criminal wrongdoing..."

So, first the minister said that the third-party audit did not investigate if criminal activity occurred, but then the minister said that the third-party audit did investigate if criminal activity occurred. These contradictions occurred over the course of just 10 minutes with this minister. Of the two versions of events the minister gave yesterday, which are we supposed to believe?

**Hon. Ms. Frost:** I would like to just respond to Yukoners. What I will commit to — and what I have committed to from the very beginning of this file — is to be as transparent as we possibly can. For the record, if I misspoke, I corrected that and I will continue to do that in good faith so that Yukoners know exactly what happened.

Mr. Speaker, we have information that shows Many Rivers misspent the money it was given. The information we have shows that the board spent 75 percent higher than the budget they received. We know that we gave them the money at the beginning of October. They had to report by the middle of October. We did not receive the financial report. They went on strike in November.

At that point in time, the acting executive director made it known to us that they — she and the board — had significant concerns about how the previous board spent its resources, going back years — years. So it will take some time. We conducted an assessment and an evaluation at that point, because they triggered it and wanted us to proceed. We brought that information to the RCMP. That's exactly what we have done.

Now we have some more information and I would be happy to answer further questions.

**Ms. McLeod:** So, we just highlighted how the minister contradicted herself over two key points yesterday, and we did not get a clear explanation for it. Over the course of 10 minutes yesterday, the minister went from saying that the third-party audit did not investigate whether criminal activity occurred to saying that it did. If the minister can't keep her story straight for 10 minutes, it's no wonder she can't keep track of the \$500,000 her department gave Many Rivers. Yesterday, I asked the minister if the Liberals would release the third-party audit publicly and the minister refused to answer.

So, I will ask again: Will the Liberals release this third-party audit?

**Hon. Ms. Frost:** I think it's very interesting coming from the member opposite — because the representation we give to Yukoners is one that is transparent, honest, and open. We will continue to communicate effectively with Yukoners on where the taxpayers' money was spent. Where it was inappropriately spent, we will do our due diligence and review that exactly. Perhaps that is where we will land, but at this moment in time, it is not for us to determine on the floor of the Legislative Assembly.

We will review the files, we will conduct the due diligence with our partners through the Department of Justice to assess and determine, we will take the advice of the previous board that indicated wrongdoing happened, and we will assess to determine. It's not our choice to make — whether or not criminal activity occurred. That will be determined by the authorities who will make that decision. That will perhaps be the RCMP; perhaps it will come from our Justice team.

Mr. Speaker, we will look at the results that were conducted by the third-party review of the finances from 2018-19. We will look to see where the \$500,000 went that was spent on legal fees, that was spent on professional development and for — well, a whole bunch of other things that are not accounted for. We will do that work.

**Ms. McLeod:** Two simple questions — no answer. It looks like it's just one of those days.

Mr. Speaker, here are some questions the minister refused to answer yesterday: How many times has the Department of Health and Social Services met with the RCMP to discuss Many Rivers? When did those meetings occur? What information was shared during those meetings?

**Hon. Mr. Silver:** I am a little concerned with the opposition's approach to this issue.

On Thursday, after recognizing that she spoke in error, my colleague did issue a clarification to the media, and on Monday, she corrected her statements here in the Legislative Assembly. We are now seeing members opposite mock her for this approach and that troubles me, Mr. Speaker.

I stand here every day with a team of very dedicated elected officials in the Legislative Assembly, and at times, mistakes are made in statements. Although we do our utmost to avoid those, we correct them in the time that we need to correct them — in a very timely fashion. I would hope that the elected officials in the Assembly — all elected officials in the Assembly — would approach their work the exact same way.

To think that somebody — to think that we, as a group of leaders — would choose to mock somebody for correcting the record — I think that's extremely unacceptable, Mr. Speaker.

### **Question re: Many Rivers Counselling and Support Services**

**Ms. McLeod:** As we have discussed, the minister gave incorrect information to the Legislature last week and her staff were forced to send a clarifying statement. This isn't the first time that this has had to happen. It's part of a trend, I suppose, of the minister maybe not being on top of her files.

The clarifying statement that the minister's staff sent to the media said the third-party audit did "... alert Health and Social

Services to practices and procedures within the organization that were of significant concern."

Since the minister apparently refuses to release the third-party audit publicly, can she tell us: What were the practices and procedures "of significant concern"?

**Hon. Ms. Frost:** I don't think the member opposite is hearing the answer. We did not do an audit. We did a financial review, and the review revealed that there were significant concerns. Now that the Many Rivers board is no longer active, we are not able to conduct a complete and thorough audit. We will continue to work on the information that we have available with our partners in the Department of Justice to review the details of the assessments that we conducted. That assessment will then reveal to us what the issues were — the concerns that have been brought to our attention by the executive director.

There are some grave concerns. We certainly want to look at the information that we have that shows Many Rivers misspent the money and shows that the money was not spent on providing counselling services to Yukoners. We are working with our legal team and of course with the Department of Justice on the next steps.

What will the next steps be? That will be determined once we have completed the legal analysis.

**Ms. McLeod:** We might have just heard the story change again.

Yesterday, in response to questions by the Leader of the Third Party, the minister said — and I quote: "When the executive director brought the concerns to our attention, we proceeded with what we felt was necessary, and that was to follow through on an internal review of their expenditures."

Now, obviously we have already discussed the third-party review, but this is the first we heard of an internal review of their expenditures in addition to the third-party audit that the minister referenced previously.

Can the minister tell us when this internal review was completed? What were the findings?

**Hon. Ms. Frost:** So, let me once again offer some context to the situation. We have some serious concerns. We agree with that. Apparently, the members opposite also agree. We have some serious concerns with financial decisions that were made by the Many Rivers board. As a result, the Government of Yukon conducted a third-party review — not an audit, a review — of Many Rivers and their finances for 2018-19. They readily provided — as required under the transfer payment agreement — the information that we needed to make the determination and to help them to come back on track.

They advised; we proceeded. As part of the process, they indicated that they had grave concerns around wrongdoing. We brought that to the RCMP to notify them immediately, and in that process, the third-party review was not shared with the RCMP because what happens there — to clarify further — the initial concerns brought to our attention did not warrant, in our view at that time, criminal proceedings which meant that the RCMP would intervene and investigate.

We are still doing that work, and we will continue to do our good work to ensure that we appropriately represent

Yukoners and bring the services to Yukoners. Those are mental wellness supports that Many Rivers was paid to do on behalf of Yukoners.

**Ms. McLeod:** According to the *Yukon News*, after Question Period on Thursday, the Minister of Health and Social Services told the media: “The only time you can trigger a forensic audit and bring in the RCMP is when there’s criminal wrongdoing.” Then she went on to say, “The third party audit did not find criminal behaviour and, therefore, there wouldn’t be a forensic audit.” Then in Question Period yesterday, the minister said that the third-party review did not investigate whether or not criminal activity occurred.

The minister says that you can’t trigger a forensic audit unless there is criminal wrongdoing, she says that the third-party audit did not find criminal wrongdoing, and yet she admits that the third-party audit didn’t even investigate whether there was criminal wrongdoing.

Can the minister perhaps explain again how she came to the decision not to share this third-party audit with the RCMP?

**Hon. Ms. Frost:** I think perhaps the member opposite is clearly not listening to the answer. She keeps asking the same question.

With respect to trends, Mr. Speaker — if we want to talk about trends of the previous government and about accountability, responsibility, and not reporting appropriately — well, they have a long history, Mr. Speaker.

Let me once again offer some certainty to Yukoners about the situation. We agree that there are serious concerns with Many Rivers and how they spent the resources that they received. What we have concerns about are what they indicated to us on misappropriation of funds — a fear that the funds were not spent appropriately on the essential services for which they received the resources — professional development for a business centre in Paris; professional development for an all-expenses-paid trip to Vancouver. There are many questions that we have yet to answer and we need to do our due diligence to assure Yukoners that we then conduct the accountability.

Of course, who is responsible? Ultimately, Mr. Speaker, we are trying to be responsible and responsive. I will say to Yukoners here and now: If ever there’s a point in time that I misspeak, I will always stand up and correct the record, and I will continue to do that.

#### **Question re: Waterside boundaries**

**Ms. Hanson:** A number of Yukon residents have recently raised concerns about the potential legal impact of waterside boundaries on privately owned parcels of land fronting Yukon’s waterways and navigable waters.

We understand that these concerns have been brought forward to at least one Cabinet minister and senior officials in the lands branch and that officials have discussed the matter.

Will the Minister responsible for Lands acknowledge that this issue is on his radar and that he is working to address the legitimate concerns brought forward to him and his colleagues?

**Hon. Mr. Pillai:** I will acknowledge that this is on my radar. I will acknowledge that I have spoken with our officials. We have great officials in our lands branch who look at all

situations like this. This information was brought to our attention by someone who has a long history in the surveying sector and understands it well. We are ground-truthing the due diligence that this individual has done and we’ll continue to do that work. If there is something significant to bring to the Legislative Assembly, I will do that in the near future.

**Ms. Hanson:** The Yukon New Democratic Party caucus received a background note that was shared with both a Cabinet minister and officials from the Government of Yukon’s lands branch that identifies potentially serious implications for the validity of a number of Yukon citizens’ legal title to their land. This concern stems from historic mistakes made by both federal and territorial governments to properly apply the law set out in the *Territorial Lands (Yukon) Act* and its pre-devolution predecessor.

The *Territorial Lands (Yukon) Act* says that where property abuts a body of water — a lake or a river — a 100-foot strip of land perpendicular to the ordinary high-water mark is reserved to the Crown — now the Yukon government.

Subsequent governments have failed to take into account this statutory exclusion, and as a result, there may be implications for Yukon waterfront landowners.

Does the minister acknowledge the potentially serious implications for landowners, and can he reassure them that his department places a high priority on examining and finding a resolution to this issue?

**Hon. Mr. Pillai:** Yes. To reiterate, at this point, we do understand that the issue may have originated during pre-devolution or post-devolution. We will continue to fact-check a number of these waterfront title lots. When we get more of a sense of these particular cases that have been brought forward, we will be able to get a better sense. Do we put a high priority on situations like this? Absolutely. To be fair, this is not — in the work in the last couple of years — and I know the members across in the Official Opposition would know — waterfront lots and challenges with them and trying to rectify situations that are past — this has not been uncommon for us — this type of work. There was also some policy work that was done previously that I had to work with our officials to rectify as well.

These are things we absolutely take to heart. We are working on it. It’s new — this information just came out last week, and we take it very seriously. The Minister of Community Services and I have dialogued a lot. I met with our officials today on it. We will continue to do the work that Yukoners want us to do and expect of us.

**Ms. Hanson:** This is a complicated issue and it has apparently eluded subsequent federal and territorial land officials, who have routinely issued Crown grants, letters patent, and title notifications to the Registrar of Land Titles directing him to raise titles to the land exactly as described in these various forms. It deals with the *Territorial Lands (Yukon) Act* — both pre- and post-devolution — the *Canada Lands Surveys Act*, the Yukon lands branch, the Land Titles Office, and conveyancers, not to mention the landowners who may be impacted by these mistakes.



Resolution of this issue cannot be accomplished exclusively through the Government of Yukon's lands branch. It is really a case of "you don't know what you don't know".

Will this government accept the recommendation made to it — that an independent panel composed of individuals familiar with the *Territorial Lands (Yukon) Act* and the Yukon's land titles system be tasked with reviewing this matter, with a view to presenting workable recommendations to mitigate any potential risk to current and future landowners?

**Hon. Mr. Pillai:** We take this seriously. Hearing that there was going to be a panel that would be formed — or suggested — by the person who signalled that there was an issue — that is news to me. They must have shared that with the Leader of the Third Party previously, or the Third Party.

What we are going to do is we are going to take this very seriously. There are a lot of challenges with waterfront lots. Previous ministers would know. There are a number of cases we are working through.

We will respect the comments that have been made. We will take the proper measures. The good thing is — it's nice that we are working on moving our successor legislation forward on lands. It also gives us a number of tools. This is a challenge. If everything that has been brought to us is accurate — and we're still trying to move through all the information that has been provided — if accurate, this is something that has been compiled over decades and decades, and there will not be a silver bullet or a magic wand that fixes this issue in the short run, but we will have a measured approach and make sure that we take into consideration that we have to respect Yukoners and their rights and make sure that we have the proper policy in place to rectify it. We need to figure out if there is big problem first.

#### Question re: Electoral reform

**Mr. Hassard:** So, last week, it was publicly revealed that the former Clerk of the Legislative Assembly sent a letter to MLAs on Members' Services Board expressing concerns with the Liberals' approach to electoral reform. Now, according to the Legislative Assembly website, this committee is made up of the MLA for Riverdale North, the Premier, the Justice minister, the MLA for Lake Laberge, and the MLA for Whitehorse Centre. Local media made public a copy of a letter sent from the chair of the Members' Services Board indicating that this topic would not be discussed. This is public thanks to someone who thought that Yukoners should know how decisions respecting our democracy are being made.

The letter from the former Clerk is also public. In that letter, he states that the Liberal process is unfair and it puts all the power in the hands of just the Liberal Party. The letter suggests a process moving forward similar to the Yukon Electoral District Boundaries Commission or an all-party select committee. So would the Liberals agree to either of these processes?

**Hon. Mr. Silver:** I've said in the Legislative Assembly a few times now in this fall session that I'm absolutely willing to sit down with the members opposite and discuss how we move this process forward. If they want to take all their ideas

and just have me go through Hansard and take those as the recommendations, I will do that and I will accept those as the recommendations. I would prefer having a meeting with both the Leader of the Official Opposition and the Leader of the Third Party — and maybe their chiefs of staff and my chief of staff — where we could actually put this back on.

Again, the conversation about Members' Services Board and discussing the process that has been stalled and that we do want to get back on — that's an interesting tack to bring that up again in the Legislative Assembly, but I'm more interested in taking the good suggestions from both parties and moving forward. Am I willing to consider all of the suggestions that the members opposite made? Yes.

**Mr. Hassard:** I am not sure why the Premier appears to be so afraid to discuss this right here and right in the open. There is a written record of what we say here. We have Yukoners listening on the radio, and decisions about our democracy should be debated in the open and not behind closed doors. We would hope that the Liberals would stop trying to hide these decisions from the public eye either by shutting down discussions in secretive committees or by refusing to put things on the record.

Again, Mr. Speaker: Will the Premier agree to an electoral reform process similar to the Yukon Electoral District Boundaries Commission or an all-party select committee?

**Hon. Mr. Silver:** It is interesting that, after 14 years in government, now the members opposite want to change the rules of the Members' Services Board — which is fine. I have always said that a more open process and more transparent process — but that's another conversation.

It's also interesting to hear that members opposite think that I don't want to have this conversation in the Legislative Assembly. I relish the opportunity to hear from the opposition what their opinions are, because I won't get that from a meeting since they refuse to meet with me. So again, I'm happy if the members opposite want to give me all the recommendations on the floor of the Legislative Assembly. I am glad that we had a debate during the private members' day. Bring it on. I want to have these conversations.

What I don't want to see is this being overly politicized by a political party that wants the status quo and another political party that wants proportional representation. That is what they want to lead us to. I want to have a conversation with Yukoners. I want to ask them the question. But again, how we trigger the select committees or special committees or Members' Services Board — all that will be part of a process, because there are legitimate concerns that would have to be addressed by the departments, by the Clerk's office — sorry, by the select committees and the individual committees of the legislative process — absolutely.

So, to answer the questions from the members opposite: yes, yes, and yes.

**Mr. Hassard:** Earlier today, we tabled a motion calling on the Members' Services Board to release confidentiality on conversations related to the former Clerk's letter expressing concerns about the Liberals' approach to electoral reform.

Mr. Speaker, will the Liberals support this motion?

**Hon. Mr. Silver:** Mr. Speaker, I don't think that there is any confidentiality left based on what we've seen from the opposition. But again, if the members opposite want to have a conversation in the Members' Services Board, or in SCREP, or in any of the relative select committees or special committees of the Legislative Assembly about the process or about how we share information, let's have that conversation. Or is that, I guess, some sort of "convening of a meeting behind closed doors"? I don't know which message I'm getting here from the members opposite.

But again, if we want to have that conversation on how the Members' Services Board conducts their business, I think the Members' Services Board is where that conversation should be had.

If we want SCREP — the Standing Committee on Rules, Elections and Privileges — to meet and have that conversation — absolutely. Let's have that as well. Let's change what the Yukon Party did — which was to not have those as open conversations. Let's have that conversation. Absolutely. We have nothing to hide, Mr. Speaker.

What we would like to do, for the sake of electoral reform, is to get this process back on. The only way to do that is for the Leader of the Official Opposition to stop hiding and to actually respond to our request for a meeting.

#### **Question re: Whitehorse Emergency Shelter**

**Ms. McLeod:** Yesterday, the government announced several initiatives to address community concerns around the Whitehorse Emergency Shelter. Yesterday, I asked the minister how much was budgeted for these initiatives that she announced yesterday and she was unable to answer.

Again, can the minister tell us how much new money is budgeted for all the initiatives she announced yesterday?

**Hon. Ms. Frost:** I would like to perhaps start by saying that the services that are now being provided by the staff at the Whitehorse Emergency Shelter are going above and beyond what they were handed in January. Prior to January, we had no services and we had no programming.

The previous owner was given the facility — a \$14.5-million facility; in excess of \$14.5 million — to say, "Here, take this and provide shelter" — shelter, Mr. Speaker.

We are providing services to the vulnerable populations of our community. Do you put a price on health and wellness of our community — shelter services? Do you put a price on the essential services that our citizens require?

The member opposite is wanting me to put a price on individuals. What I will put a price on, Mr. Speaker, is the services that are necessary. That is essential. I will not get into a debate on how much — how much staff are we putting in. The consistency is there. What we started with in January, we still have in place. We have 37 staff who we hired and that is continuing. We are not adding more staff. We are working with our partners. We are working with the Safe at Home community. We are working with Community Services and we will continue to do that in good faith.

**Ms. McLeod:** It's astounding to have a minister stand in this House and refuse to answer questions on taxpayers' money.

Mr. Speaker, we will assume that the minister does not know the answer to how much money is being spent. So perhaps we will try something a little different. Given that yesterday's announcement will presumably cost something, we are surprised to see no supplementary budget from the Department of Health and Social Services. So can the minister possibly tell us why there is no supplementary budget for Health and Social Services so that the department can get the finances appropriated to pay for yesterday's announcement?

**Hon. Ms. Frost:** Very interesting narrative — refuse to provide an answer on the allocation of taxpayers' funding. Very interesting, Mr. Speaker — because they built a \$14.5-million facility in the downtown of our city without much thought around programming and services, and now they are questioning around what goes into that facility.

We will take — in good faith, with our partners — the necessary steps to ensure that we provide essential services. We will do that with the neighbours. We will do that with the businesses. We have had open and transparent discussions and dialogue.

Our government is focused on prevention, and we know that, by supporting vulnerable members of our society — ensuring that they have food, shelter, and access to services — we will reduce wider pressures in other areas. We are reducing pressures at the Whitehorse hospital, at the RCMP, and at the Sarah Steele facility. We will continue to provide core services in the Whitehorse Emergency Shelter.

**Ms. McLeod:** I am happy to hear the minister speak about focus, and I would like her to focus her attention now. As we discussed yesterday, the minister was unable to tell us how much was budgeted for the announcement that she made yesterday. We also asked her how many employees the government is hiring as a result of yesterday's announcement — and again today, she is unable to answer.

So I am going to ask the minister once more: Can the minister tell us how many new employees the government will be hiring as a result of yesterday's announcement, including those to replace EMS staff who are reassigned?

**Hon. Ms. Frost:** Focus attention — now I am focusing attention? The members opposite didn't focus attention on these complex needs and complex issues in our community.

Mr. Speaker, we are not creating or adding more positions. It is a continuation of what we discussed previously. We are working with our partners through Community Services. Graciously, they brought in the support that we needed.

We are working with the mental wellness hubs and we are bringing in supports there as well. We're working with Yukon Housing Corporation and we're working with our Safe at Home community groups. We have had intensive discussions with the neighbours. We will continue to have dialogue with the City of Whitehorse.

The members opposite may not like to hear that, but that's the direction we are going in, and we will continue that path and that journey with the vulnerable community members.

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

### Notice of government private members' business

**Hon. Ms. McPhee:** Pursuant to Standing Order 14.2(7), I would like to identify the items standing in the name of government private members to be called on Wednesday, October 30, 2019. They are Motion No. 32, standing in the name of the Member for Mayo-Tatchun, and Motion No. 4, standing in the name of Member for Copperbelt North.

### ORDERS OF THE DAY

**Hon. Ms. McPhee:** Pursuant to Standing Order 14(3), and notwithstanding Standing Order 27(1), I request the unanimous consent of the House to move, without one clear day's notice, a motion to amend the membership of the Standing Committee on Public Accounts, a motion to amend the membership of the Standing Committee on Statutory Instruments, a motion to amend the membership of the Members' Services Board, and a motion to amend the membership of the Standing Committee on Appointments to Major Government Boards and Committees.

#### Unanimous consent re moving Motions No. 71, 72, 73, and 74

**Speaker:** The Government House Leader has, pursuant to Standing Order 14(3), and notwithstanding Standing Order 27(1), requested the unanimous consent of the House to move, without one clear day's notice, a motion to amend the membership of the Standing Committee on Public Accounts, a motion to amend the membership of the Standing Committee on Statutory Instruments, a motion to amend the membership of the Members' Services Board, and a motion to amend the membership of the Standing Committee on Appointments to Major Government Boards and Committees.

Is there unanimous consent?

**All Hon. Members:** Agreed.

**Speaker:** There is unanimous consent.

### GOVERNMENT MOTIONS

#### Motion No. 71 re membership of Standing Committee on Public Accounts

**Hon. Ms. McPhee:** I move:

THAT the membership of the Standing Committee on Public Accounts, as established by Motion No. 6 of the First Session of the 34<sup>th</sup> Legislative Assembly, and amended by Motion No. 380 of the Second Session of the 34<sup>th</sup> Legislative Assembly, be amended by:

- (1) rescinding the appointment of Liz Hanson; and
- (2) appointing Kate White to the committee.

**Ms. White:** I thank my colleagues for agreeing to have the conversation about these motions today. My colleague from Whitehorse Centre has just told me that she will say something brief about Public Accounts, but what I wanted to say is that this is a committee that I am really looking forward to, especially based on the conference — I now have a better understanding of what Public Accounts are. I look forward to working with the members on that committee, and I thank the House for their patience.

**Ms. Hanson:** I just wanted to make a comment to the effect that, having served on Public Accounts since 2011, I have had the privilege of watching the evolution of this incredibly important committee which is integral to the functioning of a good democracy. I will give credit to all members who are currently on it and past members on this committee and particularly to the fact that, under the Chair of this Legislature, we have seen regular meetings and reports of the Public Accounts Committee. When I took over as chair in 2011, the previous government wouldn't meet with the chair of the Public Accounts Committee, so we have come a long way. We have a heck of a long way to go before this committee is fully matured and to where we are actually dealing with the Public Accounts on a regular basis. I am so encouraged by the fact that the Public Accounts Committee is geared to meet with the Auditor General's team this fall — later on when the Public Accounts are tabled — to actually begin the process of looking at and reviewing the Public Accounts, which are essentially our responsibilities as Members of the Legislative Assembly, to hold government to account for the stewardship of the territory's financial resources.

**Speaker:** Is there any further debate on this motion? Are you prepared for the question?

*Motion No. 71 agreed to*

#### Motion No. 72 re membership of Standing Committee on Statutory Instruments

**Hon. Ms. McPhee:** I move:

THAT the membership of the Standing Committee on Statutory Instruments, as established by Motion No. 8 of the First Session of the 34<sup>th</sup> Legislative Assembly, be amended by:

- (1) rescinding the appointment of Kate White; and
- (2) appointing Liz Hanson to the committee.

**Speaker:** You have heard the motion from the Government House Leader.

Are you prepared for the question?

*Motion No. 72 agreed to*

#### Motion No. 73 re membership of Members' Services Board

**Speaker:** Motion No. 73, appointments to the Members' Services Board.

**Hon. Ms. McPhee:** I move:

THAT the membership of the Members' Services Board, as established by Motion No. 5 of the First Session of the 34<sup>th</sup> Legislative Assembly, be amended by:

- (1) rescinding the appointment of Liz Hanson; and
- (2) appointing Kate White to the committee.

**Speaker:** You have heard the motion from the Government House Leader.

Are you prepared for the question?

*Motion No. 73 agreed to*

**Motion No. 74 re membership of Standing Committee on Appointments to Major Government Boards and Committees**

**Hon. Ms. McPhee:** I move:

THAT the membership of the Standing Committee on Appointments to Major Government Boards and Committees, as established by Motion No. 9 of the First Session of the 34<sup>th</sup> Legislative Assembly, and amended by Motion No. 381 of the Second Session of the 34<sup>th</sup> Legislative Assembly, be amended by:

- (1) rescinding the appointment of Kate White; and
- (2) appointing Liz Hanson to the committee.

**Speaker:** You have heard the motion from the Government House Leader.

Are you prepared for the question?

*Motion No. 74 agreed to*

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

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

*Motion agreed to*

*Speaker leaves the Chair*

**COMMITTEE OF THE WHOLE**

**Chair (Mr. Hutton):** I will now call Committee of the Whole to order.

The matter before the Committee is general debate on Bill No. 6, entitled *Act to Amend the Corrections Act, 2009*.

Do members wish to take a brief recess?

**All Hon. Members:** Agreed.

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

*Recess*

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

**Bill No. 6: Act to Amend the Corrections Act, 2009 — continued**

**Chair:** The matter before the committee is general debate on Bill No. 6, entitled *Act to Amend the Corrections Act, 2009*. Is there any general debate?

**Hon. Ms. McPhee:** Thank you, Mr. Chair. I am just going to welcome the officials from the department and have them get seated and I would like to take the opportunity to introduce them. Seated immediately to my right is Andrea Monteiro. She is the director of Corrections with the Department of Justice. I can also indicate that to her right is Bhragh Dabbs, who is with the Legislative Counsel Office and the senior drafter with respect to this piece of legislation that is before the House today.

I don't have any opening comments — there is lots I could say — but I took some opportunity during second reading of this bill to outline the importance of it and some of the primary changes. I am keen to answer specific questions. My colleagues may have some opening comments, but I will cede the floor at this point to them to see if that is the case. Otherwise, we are all here and ready to answer any specific questions that there might be.

**Mr. Cathers:** Thank you, Mr. Chair, and I would like to thank the officials for being here today, as well as for the briefing provided on this legislation. I don't have a long list of questions regarding Bill No. 6. I understand the intent behind it, but while recognizing as I did in my remarks in second reading — that we recognize that there needs to be appropriate protection of the rights of all inmates, including those who will be addressed by this piece of legislation — the question of ours relates to — if there are issues around an inmate who is violent or at risk of becoming violent, what measures would be taken once this legislation is in force and in effect to ensure that the government is meeting its legal and moral duty to provide for the safety of staff of the Whitehorse Correctional Centre, as well as other inmates and those on remand? What steps would be taken pursuant to this legislation to address the other part of this important balance?

**Hon. Ms. McPhee:** I will draw the member opposite's attention to Bill No. 6 and section 19.05(1) which sets out the opportunities subject to what's put between sections 19.01 and 19.03, which are the prohibitions on segregations and time limitations. An inmate may only be held in non-disciplinary segregation or restrictive confinement if an authorized person believes on reasonable grounds that the inmate plans to, has attempted to, or has committed acts that pose serious or immediate threat to the security of the Correctional Centre or the safety of any person at the Correctional Centre.

The authorized person might also believe that the inmate's association with others would interfere with the disciplinary process or a criminal investigation, and they could therefore be held in non-disciplinary segregation or restrictive confinement in that case.

If an authorized person believes that an inmate's association with another would jeopardize their own safety, they could be held in that case in non-disciplinary segregation or restrictive confinement. In those cases, all other options to manage the inmate must have been exhausted.

I can also note that, in 19.06 — maybe I should be clear that I understood the question to be: What were the options for holding an inmate in a particular form of segregation or restrictive confinement when there are concerns about violent behaviour?

There is also, in section 19.06(1) of Bill No. 6 and throughout that section, a note that, when an inmate is being held in non-disciplinary segregation or restrictive confinement, their circumstance must be reviewed in accordance with the regulations. That section also speaks to inmates who might be held for more than for the 60 days in that status in the event that certain things occur. Of course, that decision has to be made by an individual who has the authority to make that. Those are

situations where a violent behaviour might be continuing, and the limits that are in the changes proposed in Bill No. 6 would have to be surpassed in that case by a thorough assessment and decision with respect to the inmate and an opportunity for the caps or the provisions here in this legislation to be dealt with. I can also note that, in the cases of inmates who may be diagnosed with or suffering from fetal alcohol syndrome disorder, the amendments to the *Corrections Act, 2009* will allow for the creation of alternative housing to better support the individualized needs of all Corrections clients, including those with FASD. That is partly answering what I think is the question about violent behaviour and the protection of inmates who might be subject to those situations.

**Mr. Cathers:** I do appreciate the minister's comments. I had read through the legislation, and as mentioned, the briefing that we were provided by officials was also very helpful.

What I was actually looking for is just if the minister is able to describe operationally what that might look like versus the specific sections in the legislation. If she is able to, I would welcome that now. If not, recognizing that — as we were told by officials previously — there is still some work to be done in developing the regulations — if the minister isn't able to provide more context at this point in time, then I would welcome that at a later date.

Again, the primary thrust of my questions on this specific part of the legislation is recognizing that there needs to be appropriate protection of the rights of inmates, but of course it's also important that government keep that balanced with its duty to ensure the safety of staff, other inmates, and those on remand in cases where there may be a risk to their safety from an inmate who may be behaving violently or at risk of behaving violently.

If the minister is able to elaborate on that, I would welcome any additional comments she can provide to that specific question.

**Hon. Ms. McPhee:** The member opposite is quite correct. A lot of this work is to be done through regulation development, but certainly there is laid out here in Bill No. 6 a story — an opportunity to shift the way in which the inmates are first classified and assessed when they enter the Whitehorse Correctional Centre.

The shift will involve individual assessments of every inmate to determine how they can best be provided with the services that they require. We expect that this will also require an assessment of course of their risk factors and that doing this assessment, the analysis, and the determinations with respect to each individual inmate will in fact increase safety.

The member opposite is quite correct. The protection of inmates, staff, and others who work at the Whitehorse Correctional Centre is absolutely key and absolutely paramount in this process, balancing that, as has been said, with the services that inmates require and balancing that yet again with the proper classification and determination and services for inmates who do present a violent threat to others in the Whitehorse Correctional Centre.

I can indicate that the individual assessment process — we expect to have a number of benefits throughout the Whitehorse Correctional Centre and, in particular, it's noted here — and

these changes are important for making sure that segregation and that separate confinement are properly used and used as noted throughout the legislation in the least restrictive way possible.

Operationally, those assessments will be done as inmates come into the Whitehorse Correctional Centre. When an assessment needs to determine — a determination needs to be made that someone should be placed in segregation, either through a hearing process because it's a disciplinary matter or through an assessment process when it is not a disciplinary matter — those individuals — that assessment needs to be made; the determination needs to be made; the records need to be kept. Review of that has to be constant in that inmates in segregation or in separate confinement need to be constantly assessed to make sure that's still necessary, because again, this concept of "least restrictive" is over-arching and always in place with respect to those individuals.

Of course, the reference I made — maybe not "of course" — the reference I made to 19.06 would be if any of the status of those inmates goes beyond the caps or the time limits that are set in Bill No. 6. That can only be done with an authorized person making that decision and the external review of an independent person looking at that.

Again, I think I noted it earlier, but in my view, those might primarily be done when we're looking at safety issues or when looking at long-term investigation issues or issues involving other criminal investigations that could be affected by someone — those kinds of things are set out in 19.06.

**Mr. Cathers:** I do appreciate the answers from the minister. While recognizing her points about the intent of having the least restrictive custody option used, I do just want to note — I'm sure we're not going to get much further on this point here today, recognizing that the minister has stated that some of this work will evolve as regulations are developed — but I do just want to emphasize that, while recognizing the intent of this legislation and the importance of ensuring appropriate protections for the rights of all inmates, as well as dealing with mental health issues, it's also very important to ensure that the other side of that balance not be forgotten — that being ensuring that, if there is a risk of someone being violent or likely to become violent, that government is also taking the necessary steps to ensure the safety of guards, other staff, other inmates, and those on remand. I look forward to hearing further developments from the minister on this area as work progresses on the regulations.

We were also advised at the briefing that, with this legislation, there is expected to be both capital and O&M costs related to changes being required at the Whitehorse Correctional Centre. At the time of the briefing, officials were not in a position to provide us with an estimate of the capital and O&M costs going forward. Is the minister now able to provide an estimate of the capital and O&M costs associated with the passage of this legislation? If so, would she do so now? If she is not, would she be able to provide an estimate of when she expects to be able to provide those cost estimates to the Legislative Assembly?

**Hon. Ms. McPhee:** I can indicate that the material that has come through the process here is of course realistically trying to assess what this might cost overall. I would say that, initially, there will not likely be capital costs. Amendments to the *Corrections Act, 2009* do have the potential to create additional costs, but it is our belief that amendments — certainly these ones to this legislation — and the early phasing in of the regulations can be completed without creating too many unnecessary costs. We're not looking at more personnel, for instance.

But there is the potential here in amendments through Bill No. 6. I will say that in future, through the additional recommendations made by Mr. Loukidelis in the Whitehorse Correctional Centre inspection report, that we're being realistic. Some of what may come as a result of the committee — the implementation working group committee — to implement those recommendations could come with costs. So, we want to be respectful of that and realistic about that.

The extent to which additional resourcing or changes to the infrastructure will be required will depend on a number of factors. They include: the content, of course — as mentioned by the member opposite; what's in the regulations, and they will be developed over the coming months; and the results of the engagement work that's being undertaken with First Nation partners and stakeholder groups. For instance, one example that I am well aware of — and I know the director of Corrections is as well, and her work has continued as she has come on board — is outside space — improvements in the outside space. That work is being done — not only being driven by the department but certainly with our partners, for instance, in First Nation governments — because it simply was not adequate when the building was first completed and I would say it is only marginally adequate now. We're continuing that work. Those things have been funded from within the department.

There haven't been additional processes or funds required. But if that operation or the recommendations that come from that work, for instance, become quite elaborate or more elaborate, then it may be appropriate to enter that into the budgeting process which will occur almost immediately. The preparation of the budget for 2020-21 — it won't surprise anyone — is already beginning. I don't have any information at the moment about that sort of thing, but improvements are happening. They are being funded from within the department at the moment and priorities are being set.

One of the other factors will be the operational considerations such as the number of inmates and the specific needs of the inmates at any given time. That is, again, a realistic recognition of the fact that, in some cases, there may be separate locations required or separate housing units required depending on the kinds of inmates and the issues that those inmates have coming in.

But we are mindful of all of this going forward — that the signal is that there may be some capital costs required. There will likely not be staffing requirements immediately, other than if perhaps there are vacancies — I'm not aware of that at the moment — in that work or in the positions that are held at Whitehorse Correctional Centre. These costs or additional costs

are properly signalled to the House at this time, but there is nothing that will be immediately held up as a result of us requiring additional capital costs.

We are taking a very long-term view of the changes that have to occur at the Whitehorse Correctional Centre. I can also indicate that the very good news is that the inmate count is quite low and has been quite low in comparison to other times in our history. As a result, I think that much of the work that we anticipate — individual work with inmates, individual assessments of inmates, the opportunity to provide them services that may not have been available before — is available to us. As of today, there are, for instance, 37 inmates in the Whitehorse Correctional Centre. Any of my colleagues who have worked in Justice over the years — and some of them are here, of course — or who have been working in this House will know that this number is markedly lower than has been the case. Of course, things change, but there has been a pretty steady — at the most, I would say, between 35 and 50 inmates over the last year or year and a half. I won't be held to that. I can certainly get those numbers, if that is of interest to my colleagues, but I do get reports weekly or bi-weekly, and that is not an unfamiliar number — in the high 30s. The average for this year has been 64 — so maybe I was reducing that a little. There are few opportunities for it to be higher.

That said, I think there is a real opportunity for us to provide services to inmates at the Whitehorse Correctional Centre within current budgets, being very mindful that the future might require us to properly bring applications through the budgeting process for proper funding.

I should also indicate that we are working very carefully to align our work with the current reasons for judgment that were issued by Chief Justice Veale and the international standards, while being fiscally responsible in implementing the services and supports for individuals in the Whitehorse Correctional Centre that are anticipated through Bill No. 6 through the international standards and through the recent decision by Judge Veale that indicated changes were needed. I am very pleased to say that they are well in line obviously with the changes that were presented in Bill No. 6 and plans to be presented in Bill No. 6. The timing is fortuitous, in my view. Those of you who had an opportunity to review that decision by Judge Veale will note that — I think it's a nine-month time limit that was provided by him in that case decision to make improvements, and not even we and this amazing team could have done it that quickly. We are very pleased that the work was certainly in line with what details his decision set out.

**Mr. Cathers:** I appreciate the information the minister provided.

It is a bit concerning as a general rule, when dealing with legislation, if the government doesn't have a clear understanding or ministers aren't able to provide a clear understanding of the anticipated costs associated with legislation, which of course is binding on government once it's passed and proclaimed.

The passage of this legislation will create obligations for government once it is proclaimed. Debating legislation of course is the time where members who are not part of Cabinet

have an opportunity to scrutinize the impacts of legislation and the costs — both O&M and capital — that are among the impacts of this legislation.

Recognizing that if the minister does not have the costs here today — I'm not going to be able to get the cost estimates from her that she doesn't currently have. I would just note that I think it would have been appropriate to have a better sense of the cost estimates when this legislation was debated. I will leave that point and move on to my next question and simply note that, when those cost estimates do become available, I would encourage the minister to proactively share them with the Official Opposition as well as — I would assume that the Third Party would likely also be interested in having that information, although I won't speak for them. They can ask their own questions regarding this legislation.

My other questions that I had relate to timing for the development of the regulation and the anticipated date of the coming into force of this legislation — since of course the act will not take effect upon passage, but on a day or days to be fixed by the Commissioner in Executive Council.

**Hon. Ms. McPhee:** I thank the member for the question. I think that perhaps the most important timeline that we will be keen to meet is the one imposed by the recent Supreme Court of Yukon decision by Chief Justice Veale. As I have noted, that is a nine-month period of time. So clearly, the process involves us having debate here in the Legislative Assembly, and hopefully Bill No. 6 passes. As a result, regulations need to be worked on to make sure that the very important elements of Bill No. 6 come into force and effect.

The coming-into-force date of Bill No. 6 will be dependent on the regulations or some of the regulations. I want to note that one of the major pieces of Bill No. 6 is the implementation of an external, independent reviewer of these decisions regarding segregation and separate confinement.

As a result, that person or those persons who will be tasked with that job need the criteria that they will be taking into account. Getting the proper persons into those positions will all come as a result of the regulation process, but it is probably the most important change and the change that will bring — as I've noted in my second reading speech — this particular piece of legislation into the forefront in Canada.

The changes proposed in the legislation represent a large and comprehensive shift, Mr. Chair, in how we view and operate corrections here in the territory. We are committed to implementing these changes in a methodical and diligent manner. Bill No. 6 is the first phase or step one. The Department of Justice will work with its partners on the development of the regulations. I don't think that will surprise anyone.

We are careful because work is ongoing with the implementation working group with respect to the recommendations from Mr. Loukidelis, and those are an important part of us changing and evolving the services and the structure at the Whitehorse Correctional Centre and the way in which it works — or as my colleague across the way has said, the operationalization of those programs and services. That work is ongoing with the working group and our partners there.

We will of course be working closely with those individuals, but also with other First Nations in the territory to determine how the regulations should be developed and the engagement on that process.

The proposed amendments to the *Corrections Act, 2009*, Mr. Chair, address the issues that were raised by Judge Veale, as I've said, by legislating the ability to provide care for individuals who are in custody beyond that provided in a general population of those individuals. Amendments to the corrections regulations will be required to bring the proposed legislative amendments into force — I think I've said that.

We are confident that we can meet the timelines set out by the Supreme Court of Yukon case, and it's important to acknowledge that the proposed changes extend beyond the scope that were contained in that decision. It's a guideline and certainly something we want to meet. But what is proposed here by Bill No. 6 goes beyond what is suggested by Judge Veale in his decision; therefore, the implementation of the proposed amendments and the supporting regulations is expected to occur in a phased-in approach — I think I have noted that — following engagement with our partners.

It will not surprise anybody at the Department of Justice that I will be saying "as soon as possible" — that I will be asking for this to be a priority piece of work, that I will be asking — in particular — that the unique elements of Bill No. 6 that will make the Yukon a leader in correctional services are critical. They have all heard me say this before, but passing a piece of legislation, as I hope to do here, without almost immediately working on the regulations and getting those in place does not progress make.

They have heard that message. I know that all of my colleagues have heard that message. I have said it here before in the House. We have passed an extraordinary amount of legislation since coming to government — all pieces of legislation that I am very proud of, that are very important — and the work that has to come as a result of us finishing our work here in this House is not for the faint of heart. It is also widely and appropriately recognized by all my colleagues in this House as critical work and the important piece that bring these pieces of legislation — or these new laws — to life for Yukoners and result in real changes to their lives. I am proud of that work, as it happens. I hope this has answered, as best I can at this moment, the answer to my colleague's question from across the way.

Judge Veale has given us nine months to reach some of those limits. I expect it will take every minute of that, just based on engagement and the reality of working with partners in going forward, but it is critical for this piece — and for all pieces — but for this piece of legislation for us to get the amendments to the regulations done so that these can be new provisions of the *Corrections Act, 2009* that provide real protection and real balance for inmates at the Whitehorse Correctional Centre.

**Mr. Cathers:** I appreciate the partial answer from the minister. It is unfortunate that we don't have a clearer timeline for the development of the regulations and a clearer cost

estimate — or actually any cost estimate — from the minister regarding the impacts of this legislation.

I do understand that the government was somewhat constrained by the court decision and the timelines associated with it. I do think that it was incumbent on the minister to come up with a preliminary estimate regarding the costs, in particular, as well as timelines for regulations. However, since the minister is apparently not able to provide either of those today, I will move on.

I would just like to close by thanking officials for working on what I understand were tight timelines related to this legislation — including the director of Corrections and the legislative drafter. I thank them as well as the other staff who provided us a briefing on this legislation for their work, as well as at the briefing.

I will conclude my remarks and pass this over to the Third Party for their questions regarding this legislation.

**Ms. Hanson:** I join in welcoming officials to the Assembly today. I want to pick up with where we left off last week.

In her closing remarks, the minister made a couple of comments with respect to looking forward to conversation about certain matters that I had raised in the discussion.

At the time, the minister will recall that I had quoted Mr. Loukidelis's report a number of times. In the first instance — I would like to refer to the quote that I made with respect to the designation of Whitehorse Correctional Centre as a hospital under applicable legislation. He was specifically referring to the Michael Nehass case. The comment was that no one interviewed believes that this is appropriate, and the Supreme Court of Yukon strongly recommended that the Whitehorse Correctional Centre's status as a hospital be revoked. Whitehorse Correctional Centre is a correctional facility, not a hospital. We've gone over this before.

The minister said last week: "I ... look forward to the conversation about the designation of the Whitehorse Correctional Centre as a hospital." She said, "It is not affected by these particular amendments being brought forward before the Legislature in Bill No. 6..." I entirely agree, but she also went on to say, "... we should have that conversation. It's completely appropriate, and as part of the conversation in Committee of the Whole..."

Mr. Chair, I would be interested in hearing from the minister what the government's intentions are with respect to implementing this recommendation that was both made in the report and in this Legislative Assembly quite directly by Mr. Loukidelis.

It wasn't the first time that this statement has been made. We have heard it through court decisions, through the various justices of the Yukon Supreme Court making the same kind of finding — that it's inappropriate to use a jail as a hospital. He had identified that because Whitehorse General Hospital was not secure enough — that the existing forensic unit at Whitehorse General Hospital is not secure enough to confidently handle forensic patients, but notwithstanding that, Mr. Loukidelis and the courts have said it's inappropriate to be designating a jail as a hospital.

I'm just picking up on the minister's willingness to have that conversation. I'm not intending to belabour the point, but I would like to have on the record where the minister foresees this conversation going and what resolution we may find, hopefully in the near future.

**Hon. Ms. McPhee:** The designation of the Whitehorse Correctional Centre as a place, when necessary, for individuals to be held as an alternative to that of the hospital remains in place. I haven't spoken personally to Mr. Loukidelis about this, but I know that he is aware of this information.

I will give just a bit of background because I think it's important to understand that, Mr. Chair.

In October 1993, pursuant to section 672.1 of the *Criminal Code*, the then-Minister of Health and Social Services ordered that the three facilities here in the territory be designated as hospitals for the purposes of custody, treatment, or assessment of an individual in respect of whom an order, a disposition, or a placement has been made under the *Criminal Code*. Those three locations were Whitehorse General Hospital, a place at the time called "Mental Health Services, Health Canada" — which, in my understanding, no longer exists — and the Whitehorse Correctional Centre. The Whitehorse Correctional Centre provides all inmates with medical and mental health assessments upon intake and makes appropriate referrals as needed to health services, to a physician on contract, or now, to a contracted psychiatrist or psychologist for further evaluation.

Let me just back up to say that these designations under the *Criminal Code* are required as places where an individual who is having severe mental health issues could be held if necessary, pursuant to an order made under this section of the *Criminal Code*.

I should also say — the information I have is that the Whitehorse Correctional Centre has only ever been used on one occasion for someone who has been held pursuant to the orders under the *Criminal Code* of this nature. That was prior to 2010.

Now, I am not for a moment suggesting that we don't agree in principle with the fact that the Whitehorse Correctional Centre is not a hospital. It is not a place where individuals would normally receive the necessary and appropriate medical attention that they would need if they were diagnosed as someone who required such attention in a mental health unit in a hospital. But this designation has remained because there literally needs to be a location if and when an individual could not be held at the hospital based on their particular situation involving, perhaps, violence or safety to themselves or to others at the hospital.

In all of those years — since at least 1993, let's say — there have not been many conversations with Health and Social Services about having the appropriate unit at Whitehorse General Hospital. Those conversations are in fact happening now, Mr. Chair. It is appropriate for that to be the case.

I don't know that it would change the designation. Certainly, it wouldn't change it immediately. It's an application to change the *Criminal Code of Canada* on the designation under the *Criminal Code of Canada* — not to change it for the designated locations — but I can indicate that we believe that those services should be properly meted out and provided to



individuals at Whitehorse General Hospital. I know that the conversations between Health and Social Services and Justice are ongoing so that we might make that the case.

I can indicate — since this provision has never been used regarding the Whitehorse Correctional Centre except for the one occasion that I have noted — that in fact those services are often and for the most part provided at Whitehorse General Hospital, if appropriate, and in fact that an individual is also not being held at Whitehorse Correctional Centre under separate orders. If somebody is held at Whitehorse Correctional Centre under other court orders, then that is the appropriate place. We work to make sure that individuals have the mental health services that they need while there, but this is for individuals who would be simply designated to be in a hospital otherwise and could be held there if necessary, based on specific circumstances — which are extremely rare in the Yukon Territory, I am happy to say.

At this time, that designation remains because it only names two locations. If, for instance, the designation under the *Criminal Code* only named one location — Whitehorse General Hospital — and there were circumstances that did not permit someone to safely be held there, there would be no other opportunity to hold them anywhere. Based on the severity of an illness or the activity that was occurring at the time, they would need to be held, presumably for their own safety or the safety of others. It is an option. It is not an option we use or want to use. It is a designation based on history. Yes, we should probably make the application to clear up the “Mental Health Services, Health Canada” office. It probably shouldn’t be there either, because it literally does not exist — but that is the current situation.

I should add that the Government of Yukon is committed to ensuring that such individuals are housed in the least restrictive conditions that are required to maintain public and institutional safety based on their level of risk, but our hospital personnel and the personnel at the Whitehorse Correctional Centre — their safety absolutely must be taken into account.

I should also note that the Whitehorse Correctional Centre does not have the capacity to house individuals who require forensic care on a long-term basis without compromising client care. These individuals are more appropriately placed in long-term care in an accredited psychiatric facility outside of the Yukon Territory. That has generally been the practice if someone has been found either not criminally responsible under that section of the *Criminal Code* or unfit for a trial on a short-term basis to ensure public safety. That is how those folks are provided service.

I hope that is helpful.

**Ms. Hanson:** I appreciate the minister’s answer.

Not related directly to this legislation, but I think there probably are other stories related to some of those issues in terms of the willingness or not to make those referrals to Outside institutions. But that’s a whole other issue.

Mr. Chair, when we were talking last week, the minister said that — I had raised some issues with respect to FASD and some of the recommendations and findings of Mr. Loukidelis’ report. The minister noted that — and I’m quoting here: “They

are of primary concern for the work of the professionals at the Whitehorse Correctional Centre — again, not necessarily affected by these particular changes, unless a designation or separate confinement was necessary. That is not often the case, but we can discuss that more.”

I would like to discuss that, Mr. Speaker, because one of the things that concerns me — and I note that Mr. Loukidelis made a particular comment with respect to — and I’ll just read, if I may. He said, “Ongoing efforts to reduce the use of separate confinement should also keep in mind that separate confinement may not be effective in deterring misconduct, including assault, by clients who suffer mental wellness challenges, including FASD, trauma and cognitive deficits. This is another reason why WCC is encouraged to continue its efforts to manage such behaviour using alternatives to disciplinary separate confinement wherever possible.

“Concern has been expressed that correctional managers have increasingly been using separate confinement to manage individuals exhibiting challenging or disruptive conduct. Both the Correctional Investigator of Canada and Ontario’s Ombudsman have expressed their concern based on their investigations.”

He went on to say that there are indications that the Corrections branch regards separate confinement as a tool for managing individuals’ behaviour.

So, Mr. Chair, the reason I raise this — he went on to say, “Regardless of whether WCC actually uses separate confinement to manage behaviour, the clear priority should be to not do so...” I will come back to how this may or may not be reflected in the legislation.

I am going to raise a series of questions, and then I am going to ask how this act or these amendments to the *Corrections Act, 2009* will address them. I had identified in the conversation that we had last week that one of the challenges that Mr. Loukidelis and so many others — and the minister, in previous roles with the CBA and the Yukon’s bar association, is totally familiar with the issues associated with interaction of those with FASD or FAE and the criminal justice system and the inability of those with a permanent brain injury acquired before birth to understand consequences, so behaviour management doesn’t work.

The notion that we would be attempting to use the same tools — Mr. Loukidelis, in his 40 recommendations, recommendations 4 and 5 were specifically talking about implementing programs for managing the behavioural difficulties that FASD clients exhibit. He said that whatever program is used “... should be informed by the FASD in Yukon Corrections strategy as it moves forward and be informed by best healthcare practice.”

Can the minister explain how these legislative amendments — Bill No. 6 — address those concerns in terms of not using “separate confinement” or whatever other phrase we want to call it with respect to working with those individuals who are at WCC and who exhibit behaviours typical of FASD or who have actually been diagnosed? I would say that the latter is a smaller number than the prevalence.

**Hon. Ms. McPhee:** I very much appreciate the question. I hope it won't surprise anyone that we are in agreement with Mr. Loukidelis that segregation is not a tool to manage behaviour. There are some occasions in which behaviour — I am not talking about anyone in particular or any individuals in particular, but there is behaviour that occurs at the Whitehorse Correctional Centre for which disciplinary processes might occur. As a result of that, a decision might be made that — for the safety of individuals and others and in a disciplinary context — an individual might be segregated or indicated as an inmate for which segregation is their designation, or separate confinement. But it is not a tool to manage behaviour. I think we should start there.

The provisions in Bill No. 6 clearly say that, and I will show you several of them, I hope, in this answer. I am happy to have my colleagues point them out if I miss a few.

The provision of least restrictive, I think, is the underpinning of this bill and is a new way or a shift for detaining individuals in certain conditions of confinement. That is not something that has existed in the current *Corrections Act, 2009*. It is not something that has existed in the past in legislation. It will live as a result of Bill No. 6. It will be a guiding principle as a result of all of the information and details that are set out in Bill No. 6.

I will come back to the FASD question in a moment. I will speak more generally about section 19.01, which indicates that there are prohibitions. Bill No. 6 contains prohibitions that will, as a result of passing Bill No. 6, live in the *Corrections Act, 2009*, which will indicate that there are prohibitions on segregation of any kind. One of those, 19.01(c), indicates that if someone "... has a mental disorder, or an intellectual disability, that meets the prescribed conditions..." — of course, prescribed in regulation — there is a vast opportunity there to put a number of issues in regulation that will qualify with respect to section 19.01. We know in particular that, while individuals might suffer from a designation of segregation or separate confinement and the lack of human contact, individuals with mental disorders, issues of intellectual disability, or issues of mental health or mental wellness might well be more seriously affected by those situations.

The conditions of the prohibitions set out in section 19.01 will be prescribed in regulation, but it's important to note there that it might well include individuals categorized in that regulation, including possibly FASD.

The amendments to the *Corrections Act, 2009*, Mr. Chair, will allow for the creation of alternative housing, which I have noted earlier, to better support the individualized needs of all corrections clients, including those with FASD.

The departments of Justice and Health and Social Services are working together to increase the support and the services for clients with FASD, including inmates at Whitehorse Correctional Centre. The FASD — I probably should be saying the full title — the fetal alcohol spectrum disorder action plan — was released early in September of this year to provide a vision, principles, goals, and actions for improving Yukon's response to FASD and for clients. I think that work is so important. I know that the member opposite has mentioned the

CBA — the Canadian Bar Association — and the role that they have taken in the past with respect to recognizing FASD.

I can indicate that one of the first letters that I ever wrote when I was given the honour of this job as Minister of Justice was to the other ministers of Justice, because I had not been there in 2016, and they were taking consideration of a question asking the federal government to change provisions of the *Criminal Code* to make sure that individuals with fetal alcohol syndrome disorder had that taken into account in their sentencing. Unfortunately, that did not happen. I was pretty lonely in that group of ministers at the time that was asking for that.

But I think it is so important in our community and it is so important across the justice system for us to recognize that, as the member opposite has said, there are certain behaviours, certain activities, and certain thought processes and patterns that afflict individuals with fetal alcohol syndrome disorder that affect their understanding of consequence and, ultimately, their understanding, perhaps, of criminal behaviour in some contexts — although, of course, the criminal justice system is somewhat of a blunt instrument — although we are trying to change that incrementally and make sure that it is responsive to the needs of individuals who come into contact with it — in particular, individuals with fetal alcohol syndrome disorder — because it does bring them into contact, sometimes in a minor way, with the criminal justice system due to their difficulties with some behaviours.

As a result of that, I know there has been much work, and the Yukon has been a leader in this area. I am pleased to see the changes that will be, I think, brought about by Bill No. 6 that will allow for regulations to come about and that will allow for programming and changes to be made at the Whitehorse Correctional Centre to identify and properly work with individuals who have such a designation.

I should also note that the Department of Health and Social Services and the Department of Justice are working together on the implementation of the action plan. In fact, Andrea Monteiro, who is here with us today, sits as the Justice representative on that, and the connection between her as the director of Corrections and that work with the action plan, I think, is genius. It was not my decision, so I can say that with much credit to whoever's decision that was. I think it's a great idea because it's important for that work to be relevant in both departments and make sure that the decisions made and the process to go forward and the action plan implementation results in real results for individuals with fetal alcohol syndrome disorder.

The final report and the prevalence study for Yukon Corrections regarding fetal alcohol syndrome disorder that was released in November — it was released in November 2017. Individuals may recall that it was issued in 2017. I'm here to say the results have been used to inform program and policy decisions within the work that is undertaken to develop the action plan, as well as other areas of policy programs and service development. I know that Ms. Monteiro, as the director of Corrections, has been taking that into account in a very serious way with respect to determining how the programming

at the Whitehorse Correctional Centre will proceed in relation to individuals with mental health issues, with mental wellness issues, with intellectual disabilities, and in particular with clients and inmates who suffer from fetal alcohol syndrome disorder.

**Ms. Hanson:** I thank the minister for her response. I'm very pleased to hear that the director of Corrections is involved with the interdepartmental work and — it sounds like — national work on these matters.

We have had many long and challenging debates in this Legislative Assembly with respect to even getting this House to urge the federal government to address the matters raised by the CBA in the first instance when, at the behest of the Yukon bar association, they made the pitch to have changes made to the *Criminal Code* with respect to the ability of the sentencing judge to take into consideration issues associated with FASD. Subsequent to that, when that sort of petered out over a number of years, we then had the subsequent debate — again, the Yukon bar association made recommendations to keep focused on the criminal aspects in terms of sentencing opportunities for the justices — but also the need to actually ensure that corrections systems and corrections officer training — corrections environments — were mindful and that it became part of the training and the culture.

So we made recommendations for changes to the Yukon corrections legislation and regulations with respect to the training of all officials associated there — I think much to the dismay of the then-federal Member of Parliament under a previous government — he actually stood up and tried to push this one through, and he got defeated not only in his own caucus, but by his cohort here.

I just want to clarify that — if I understand correctly from the minister, there are no circumstances, pursuant to 19.01(c), that an individual who is considered to be mentally ill would be confined — would have any administrative or separate confinement — not even for a short-term period. I am referencing back to Loukidelis' report where he identified that if there was a situation where there was a need to protect an individual — a suicide risk or self-harm. He talked about it — I guess it would be a risk analysis, but in this case that it, "... should not exceed the maximum of 48 to 72 hours..."

I am wondering if that was a scenario that played out — under the provisions of the amendments to the legislation — that the hospital would be deemed to be the better place for that individual, as opposed to the Whitehorse Correctional Centre.

**Hon. Ms. McPhee:** Thank you very much, Mr. Chair, and I appreciate your patience in making sure that I can answer this direct question that was asked. I appreciate it.

Let me just make reference to Bill No. 6 in relation to Mr. Loukidelis' report — the recommendations made in that report that are addressed in Bill No. 6 — and say in a quite direct and specific way that the amendments proposed in Bill No. 6 go above and beyond the recommendations made by Mr. Loukidelis. I know that there is an 18-hour or a 22-hour question. I assume we'll get to that, so I will leave that one for now.

With respect to his recommendations regarding segregation being used in relation to individuals with mental wellness issues — sorry, I have the wrong page here for a second — either self-harming or mental disorders, intellectual disabilities, as I've noted — I'm back to section 19.01. That is an absolute prohibition on the use of segregation in those circumstances.

That is not something that was anticipated by his recommendation. Under no circumstances would someone who — for instance, under 19.01(b) — "... is suicidal or chronically self-harming..." be placed in segregation. The law does not permit it.

The practical aspect of determining how individuals will receive service will be a responsibility of the Whitehorse Correctional Centre. They are, of course, dependant on the circumstances. If an individual is most appropriately managed in those circumstances in the hospital, then that will be the placement for the individual. If clinical safeguards could be provided for them in place at the Whitehorse Correctional Centre, that might be the decision, but it will be an independent assessment of the individual needs of that person.

I also noted earlier that there is an opportunity through the provisions of Bill No. 6 to create alternate housing and opportunities for individuals to be dealt with or provided service and programming care in a situation that doesn't exist at the moment — that will be done within the Whitehorse Correctional Centre — or provisions for that will occur in relation to that care — in relation to someone still being in custody — but having those opportunities provided or the care provided to them. Of course, that is based on the individual assessments, circumstances, or medical assessments of individuals who are incarcerated or being held under certain orders at the Whitehorse Correctional Centre.

**Ms. Hanson:** I appreciate that. I am raising some of these matters because, as we go through the legislation — unless you have the whole act in front of you, which nobody does, or most of us don't — I think it's helpful to have the context. That is the reason for raising these questions — so the minister can put on the record the contextual response that is either reflected or, as she mentioned in this latter example, exceeds or differs from the recommendations made by Mr. Loukidelis in his report.

I listened to the conversation from my colleague for Lake Laberge earlier and his questions to the minister with respect to concerns being expressed about the safety of staff at Whitehorse Correctional Centre.

I certainly think that it is an important aspect, but I also note that, in his report, he talked, in recommendation 18 — he is referring to regulations, but I am presuming that the language that I see on page 9 — it's going to come after 51(f). Anyway, the gist of this is that he wanted to make amendments to eliminate risk to the management or operation as grounds — basically, it shouldn't be just because somebody has a perception or there is a potential for perceiving that there is a risk to management or operation to be used as grounds for the use of non-disciplinary administrative separate confinement. He said that administrative separate confinement should be

limited to real and imminent safety needs grounded in clear evidence. Confinement on those grounds should be for no longer than is necessary or to remove or sufficiently mitigate the threat.

I thought I heard the notion of “potential” — and maybe I misheard or maybe it was confusion between the questioner and the respondent. Is the intention to keep it to just “real and imminent” throughout this legislation, or is it potential — apprehended — possible? We are talking about where management thinks there is a problem and is concerned.

**Hon. Ms. McPhee:** I really appreciate the question because I think there’s a distinction here that doesn’t exist in the current act that is important to note. I’m looking at section 19.05. I think that’s the reference that was being made. But I will answer it in this way and then if I’ve missed something, I’m happy to get up again.

So 19.05(1)(a)(i) indicates that the inmate has committed — so let me just back up to say “... an authorized person may order that an inmate be held, or continue to be held, in non-disciplinary segregation or non-disciplinary restrictive confinement only if...” — and I’ll make reference to the little (i) — “... the person believes on reasonable grounds (i) that the inmate has committed, attempted to commit or plans to commit acts representing a serious and immediate...” — so that is an addition — “... threat to the physical security of the correctional centre...” — so it’s not a perception of anything; it has to be serious and immediate — “... threat to the physical security of the correctional centre or... any person...” — so that’s important to add — “... in the correctional centre...” That would be staff or another inmate.

I think you have to read that in connection with 19.05(1)(b), which is partway down that page: “... all other options to manage the inmate without segregating them or imposing restrictive confinement... have been exhausted.” So again, an additional safeguard there.

Then 19.05(3) — I think I misspoke the other one, sorry. It was 19.05(2) that I’ve just noted. I think I said that correctly.

I’m now going to make reference to 19.05(3) which is on the next page: “If, at any time, the director of corrections or an authorized person determines that the requirements...” that require that segregation no longer exist, then they must be removed from it — so I’m paraphrasing that.

If the director of Corrections or an authorized person finds that the circumstances that identified the requirement for the segregation or the restrictive confinement in 19.05(1) are not met or do not continue to be met, the inmate must be removed from the segregation or the restrictive confinement. So there are safeguards built into there with respect to the changes that are brought here that do not exist in the current *Corrections Act, 2009*.

I hope that answers your question about first, the perception; and second, they must have exhausted every other opportunity for confinement to meet the safeguards that are needed; and last, if that is required and ultimately it is no longer in existence, then the person has to be released from that status.

**Ms. Hanson:** I do believe that answers that question.

Now, the next question is probably one that — last week, I had said that the challenge will be to make sure that this legislation is making substantive changes and that it is not a matter of semantics. When I look at recommendation 20, it is pretty clear that it, “... should be amended to prohibit use of any kind of separate confinement for more than 15 days in any one-year period, running from the date on which an individual is first placed in separate confinement. Pending this change, the Corrections branch should undertake that no individual will ever be held in separate confinement of any kind other than in compliance with this recommendation.”

Then I see, in this legislation, we are talking about segregation, 15-day maximum, and then segregation, 60-day limit. It is like — well, that is more than 15 days. So I am not quite sure — I understood the minister when she said at the outset that this was in compliance with international standards and the Mandela Rules, but it just sounds like it’s playing with the concept — and this goes back to when I said to the officials that some of the language being used was sort of like it wasn’t a physical place; it was a sense of whether you’re isolated or not or segregated.

So, I am really looking to understand how this fits with the 15 days, because I see 60 days and it seems to be able to continue — if you take a five-day break, you can do another 15 days.

**Hon. Ms. McPhee:** Thank you for the question. It brings us to the concept of a condition versus a place for the concepts of segregation. I will go through that and then make some more general comments. Again, if I haven’t answered the question specifically, I’m happy to get up again.

The proposed amendments to — what is contained in Bill No. 6 redefines our approach to segregation of all kinds, separate confinement included. Through the new approach, segregation will be defined as a form of custody or — as I’ve mentioned a couple times today — a status of custody or individual status for an inmate where an inmate is held absent association with others for a period of 22 hours or more a day. That will be the definition — you’ve seen it here — the definition of “segregation”.

With these amendments, the Department of Justice will be moving away from identifying individuals as being in segregation or in a particular place based on a unit that he or she is housed in. In fact, the designation or the condition will attach to them as an individual. We will instead be recognizing that any inmate who is held in a condition that meets the definition, regardless of their physical placement in the institution, is in fact being identified as in segregation and is therefore subject to the same oversight and accountability.

So perhaps in the past there could have been opportunities or circumstances — let’s say it that way — where an individual wasn’t actually in a physical place that was named “segregation”, but they were deprived of these opportunities to see other people or meet with other people and therefore were actually being segregated in a way that was not recognized properly. The concept of understanding that this is a condition rather than a place, we believe, will protect individuals and trigger requirements for services, care, programming, et cetera

— opportunities for those individuals — and the same oversight and accountability that is robust here in Bill No. 6. This approach will ensure, Mr. Chair, that appropriate oversight for individuals who are segregated and therefore make more accountable the Government of Yukon, the Corrections branch and, in fact, the Whitehorse Correctional Centre.

Let me go on to something that is a little more specific. The 15-day cap — I appreciate that Mr. Loukidelis says 15 days, the international standards recognized by the Mandela Rules under the UN and others — although not this defined in any jurisdiction in Canada yet — and what is presented here in Bill No. 6 is in fact the international standard. I think I mentioned earlier a conversation with Mr. Loukidelis — not that I had, but I understand the assistant deputy minister had — and he certainly understands the choices made here, which is to go with the international standard. I want to be clear that the 15-day cap for consecutive days in a condition of segregation is in fact a hard cap, so it cannot be exceeded in any circumstance.

The 60-day limit is in fact in a calendar year and is an aggregate cap. So it could be extended if an external independent oversight individual reviews the case and determines that, for safety factors or for other reasons — potential risk of violence, not self-harm — this could be exceeded, but that requires independent external oversight.

I want to be clear and say that the reason that this piece of legislation, or Bill No. 6, in the Yukon Territory has been noted to be robust and a forward-thinking piece of legislation is that it has two things: It has hard caps on time limits, and it has the external independent oversight piece. The federal government recently — last year, I think — indicated some changes to the hours and the definitions of “segregation”, but it did not implement the oversight piece and was criticized for doing so. The reason that this piece of legislation — and hopefully the changes that will come to our *Corrections Act, 2009* — has been found to be forward-thinking and progressive is that both of those elements are there. That’s an important, critical piece of better oversight for the Yukon Territory and better oversight of the decisions that are being made, and the caps set out in this legislation are in line with the Mandela Rules from the United Nations.

**Ms. Hanson:** I hear what the minister is saying, but the fact of the matter is that 60 days, aggregate over a year, is four times what 15 is, and Mr. Loukidelis was very clear when he said, “... prohibit use of any kind of separate confinement for more than 15 days in any one-year period...” One-year period; 15 days — I don’t get how it’s progressive to allow up to 60 days. That’s a statement and a question: How is that progressive?

**Hon. Ms. McPhee:** The hard answer, and maybe the difficult answer, to this is that — and I don’t want to speak for him. Mr. Loukidelis would say that he’s not a corrections expert. While this appeared to be his recommendation — and it was, in fact, his recommendation — that the international standards in place with the Mandela Rules accepted by the UN are in fact more days, then that’s the case. They are recognized, and the aggregate number is recognized as a tool.

Let me just say that there are very few cases in which it would be necessary to manage the behaviour — certainly at the Whitehorse Correctional Centre — of an individual where the aggregate number would be imposed or exceeded in only rare circumstances.

The international standards also recognize that, in order to safeguard inmates and staff who work there, there certainly are situations in which an individual’s behaviour would require a status of segregation for the protection of perhaps themselves or others, and as a result, that is progressive in that it meets the international standard, which no other jurisdiction in Canada does at the moment and certainly most jurisdictions in North America would not.

**Ms. Hanson:** We will probably be dealing with this matter — and hopefully we won’t be dealing with it in the context of incidents where issues arise because of the perceived need to apply the provisions of the legislation that allow for the segregation of somebody for 60 days in a year.

I want to go on to the next question. The minister has referenced this several times. I am referencing again the text of the report of Mr. Loukidelis. I think there must be some merit to the fact that Mr. Loukidelis was asked to do this report because of his expertise in this area. He may not be a corrections officer, but he understands and has studied these systems extensively. I treat quite seriously the kind of observations and findings that he made and the recommendations.

I am referring to the difference between what the minister has outlined as the legislative amendment here on the maximum daily period of confinement. I think this again is at the root of some of the challenges that were posed outside of this House in reported concerns expressed by legal counsel — that what is happening is not really a change. It is a change of the words to describe what is happening.

I just want to spend a moment, if I can, just reminding us of what he had said in that report. In this report, he said that the term “separate confinement” denotes an individual’s separation from the general population.

He said, “As already noted, a consensus exists that ‘solitary confinement’ involves confinement in a cell for 22 to 24 hours a day. This covers...” — Whitehorse Correctional Centre’s — “... use of disciplinary separate confinement and administrative separate confinement (short-term and long-term), both of which involve an individual being confined to his or her cell for up to 22 hours a day.”

He said, “An important question is whether, given the similarities between the in-cell nature of secure supervision placement, separate confinement and segregation, there is any meaningful difference given the risks for the mental wellness of clients. They each involve significant deprivation of the liberty to be out of one’s cell and thus interact with peers, underscoring the importance of this question.”

I will go on, Mr. Chair — and I’m quoting here: “... there is no doubt that administrative separate confinement, whether short- or long-term amounts to solitary confinement. This is also the case for disciplinary separate confinement. This ... applies whether any of these kinds of separate

confinement are served in a regular living unit, the segregation unit or special living unit. Again, the labels attached to where someone is held are not the issue. The conditions of confinement are what matter for the mental wellness of individuals who are confined.”

He went on to say, “Given the acknowledged risks for mental wellness associated with significant periods isolated from others, serious consideration should be given to defining separate confinement (solitary) as any confinement of an individual apart from others for 18 or more hours a day, regardless of whether the confinement is a disciplinary or administrative disposition.”

He also went on to make a qualified — if the government wouldn’t accept this 18-hour recommendation, it should define “separate confinement” as isolating an individual from others for no more than 20 hours a day. His recommendation, as we know, is that the legislative amendments should include a definition of “separate confinement” — whether called disciplinary, administrative or secure supervision placement — “... as confinement of an individual apart from others for 18 or more hours a day...”

I’m curious as to if the minister could explain what the rationale is for the approach being taken in this legislation.

**Hon. Ms. McPhee:** I appreciate the question. There’s a bit to unpack in there, so I’m going to go first to the part about a condition rather than a place. I think that’s what Mr. Loukidelis is saying. I think that’s clearly what this Bill No. 6 is saying, and there’s a way in which it gets there.

There are a couple of things. Segregation and separate confinement are, in fact, a status, a state, or a condition that attaches to an individual and not actually a place. If it were a place and there was nobody in there and nobody was assigned to be residing in that place, then an institution could say that there is nobody in separate confinement, but individuals could still be restricted in their opportunities to have meaningful contact with other inmates, with guards, with individuals who are correctional officers, or with medical personnel or programming, and they might still be, by definition, in separate confinement.

There was no real definition — or there exists no real definition — of “separate confinement” or “segregation” in the *Corrections Act, 2009*, so the definition will get us there. I’ll come back to that in a second. What I described earlier as the condition versus the place is exactly what Mr. Loukidelis was saying in his recommendations — that individuals must be treated in a way that provides them with the care and services that they require, regardless of the place.

In fact, changes in Bill No. 6 do that. I won’t go over them again. As I noted earlier, I completely agree that the labels are not what is at issue. In fact, the status of how someone is being treated, in fact, describes them as being segregated or not.

Meaningful changes that are in Bill No. 6 hinge on the new definition of “segregation”, which exists in the front part of Bill No. 6 under the definitions section. As I have said, it didn’t exist before. It cleans up the language. It indicates that segregation is a condition and not a place, and, as a result, it

will bring into force and effect the manner in which an individual inmate must be treated if those conditions apply.

I appreciate the 18-hour recommendation made by Mr. Loukidelis. I will just take a moment to repeat that our assistant deputy minister did have a discussion with him about the change in Bill No. 6 from the 18 hours that was in his recommendation as a maximum period to be considered. Through that discussion, Mr. Loukidelis reported that he appreciated that we had considered his recommendation and was very supportive of using the international standard, which is the 22 hours that is in this Bill No. 6.

I will note here that the bill provides that a lesser period of time could be prescribed through regulations, but this is an evolving area of law, Mr. Chair, on the international stage and across the world, frankly. Corrections is reviewing its actions, its definitions, and its categorization of inmates in the past, not only in relation to the United Nations international standards, but in relation to human rights law across the world. Certainly, there are places not as progressive as Canada. I am happy to say that we live here and that we have an opportunity, through the work that this Chamber is doing, to make things better on that stage, but the provision here — that those time periods could be changed in regulation — is recognizing that this is a quickly changing area of law, that case law is affecting what those standards might be in the future, and that it is an opportunity to recognize that these numbers might not always be what is the international standard.

Without necessarily having to change the legislation, it is just that quick that we considered opportunities to amend those periods of time in the regulations. I am not saying that this will be the case, clearly. This is the international standard, and we are suggesting that Bill No. 6 comply with that and that our *Corrections Act, 2009* do so, but it is a future-looking opportunity.

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

The matter before the Committee is continuing general debate on Bill No. 6, entitled *Act to Amend the Corrections Act, 2009*.

Is there any further general debate?

**Ms. Hanson:** We left off when the minister was reiterating that the choice of using the 22 hours was because it complied with international standards.

Earlier today, we heard that the average this year has been 64 inmates. This is a correctional facility that is designed for at least twice that. We currently have about 37 inmates in this facility.

Wouldn’t we want to be creating a situation or environment where we’re trying to move toward normalizing, as opposed to exacerbating, the situations for those who are

incarcerated? Why wouldn't we choose to try, as Yukon, to choose a lower threshold, as opposed to going to the upper maximum threshold that has been tolerated internationally for confinement of individuals who are incarcerated?

I'm struggling to understand why — given all that we know and all that has been described in terms of the impact on an individual's mental capacity, mental status, and mental condition — we wouldn't choose to go with a lower threshold as opposed to taking the maximum that's allowable without being sanctioned by the international community?

**Hon. Ms. McPhee:** Mr. Chair, I certainly understand the premise and the details in the question, but I think I will say it this way: Bill No. 6 is, in fact, progressive. It has no intention whatsoever of exacerbating anything with respect to these provisions or the changes to the *Corrections Act, 2009* or to any of the activities of the inmates. Bill No. 6 is about giving tools and services that will ultimately protect inmates and be useful in the job that the Whitehorse Correctional Centre is tasked with doing, which is housing inmates, providing services and care to them, hopefully providing opportunities for them to not come back — but in that context, their behaviour or their activities that have landed them in the Correctional Centre need to be dealt with. That is the job of the Correctional Centre. I'm probably not describing it very well, but we have to remember that's the context in which this is happening and these provisions are in the *Corrections Act, 2009* and these new provisions will hopefully be in the *Corrections Act, 2009*.

It's not about the hours that are in the definition of "segregation" but the segregation structure itself and the opportunity for it to be more clear — properly and well-defined — and give the tools and opportunities for the Corrections officials to deal with the needs of a variety of complex clients.

Regardless of the size of the institution or of the inmate count, we're looking to provide a nimble piece of legislation that contemplates the conditions versus the place in regard to segregation and an opportunity for inmates to be required to comply with those or those being tools that are permitted for to use with respect to inmates if necessary — reminding ourselves that the least restrictive opportunities for segregation or for confinement of any kind or conditions of confinement for inmates must be complied with.

I can also remind all of us, in response to this question, that we're not talking about individuals who identify with mental health or mental wellness or issues regarding suicidal ideation or self-harming in any way, because they are prohibited from being held in segregation. That's an important piece to remind ourselves of — because I don't disagree whatsoever with the premise of this question which is that, in the past, there have been all kinds of segregation — administrative, disciplinary. This is no longer the case. These conditions of confinement must be considered and must only be meted out as a last resort in the least restrictive way. Certainly, there are prohibitions for individuals that will not in any circumstances be permitted to be held in segregation.

The other piece I should note — which may be of interest in response to this question — is that there is a mandatory review of these provisions built into Bill No. 6 so that we are in

a rapidly changing and modernizing — an opportunity to modernize the law around these activities in the Correctional Centre — recognizing that a review will be necessary as we go forward as we develop regulations. But there is a mandatory review built in within five years so that we can turn our minds to this and not just have a piece of legislation that sits on the books year after year without any attention.

**Ms. Hanson:** I just want to ask the minister to confirm whether or not there is a different mandatory review. I thought I read that this act would be reviewed within seven years and that, within seven years, there would be something else happening — but maybe it is another piece of legislation. Perhaps it's the *Liquor Act* — we are doing both today. That is just an aside.

I wanted to ask the minister to confirm, with respect to 19.01(c) — does FASD or any of the FAE — all the continuum of fetal alcohol spectrum disorder — does that qualify, or is that considered to be captured by 19.01(c)?

The reason I asked that question is because I want to confirm that an individual with FASD or FAE would not be subject to any of the forms of isolation, segregation, or administrative separation.

**Hon. Ms. McPhee:** All good questions. The five-year review — I am just looking before I say it. I certainly expect the officials to have it right, but I better look at it myself, just to be sure — 19.09(1): "Within five years after this section comes into force, the Minister must cause there to be a comprehensive review of the following..." Then there are sections noted there. 19.09(1) notes the five-year — and to be clear, it is after that section comes into force, but we talked about that earlier — about hoping that is soon.

With respect to the question regarding the parameters of section 19.01(c) — the question is whether FASD will be considered in that definition of (c), which is a possible mental disorder, intellectual disability, or that meets the prescribed conditions. The last part of that allows there to be other prescribed conditions. FASD is a possibility to be described there. It will be determined after consultation with our stakeholders going forward, but the provisions of this section are, as noted, to take into account an individual with a mental disorder or intellectual disability, other conditions of mental wellness, mental illness issues — because we know the devastating impact this kind of condition or status can have with individuals with those kinds of difficulties.

The short answer is no, it's not automatically contained in that definition. Do I expect it to be? I expect it to be a conversation going forward and to exist in the regulations when those conditions are set out.

**Ms. Hanson:** Certainly the minister will know that I will be strongly urging that to be a consideration, given all of what we have read in Mr. Loukidelis' report with respect to FASD and the consequences of trying to do corrective behaviour on somebody with a permanent brain injury acquired before birth, which makes it impossible to comply or necessarily respond to behavioural management techniques, including isolation. We would certainly urge that to be high on the priority list with respect to the consultation on 19.01(c).

Does the legislation speak to — I'm looking, because I couldn't see it — speak to the requirement as suggested or recommended by Mr. Loukidelis with respect to reporting on the use of separate confinement with respect to requiring the publishing of stats and analyses — quarterly statistics — with respect to the use of separate confinement by any of the definitions at WCC?

**Hon. Ms. McPhee:** Mr. Chair, I note that the reference being made by the member opposite is to recommendation 40 by Mr. Loukidelis. Work is underway at the Whitehorse Correctional Centre to enable statistics to be kept in a much more extensive manner than is currently the case. Ultimately, there is the opportunity for those reports to come as a result of that. The difficulty at the moment is that there is not the most up-to-date data-collecting system with respect to the Whitehorse Correctional Centre, but certainly that work is underway. It is hoped that this will enable us to not only have those statistics, but to provide those statistics going forward.

I certainly think it will be something that is of interest to Yukoners. For those who are interested in this process going forward, it is perhaps even more critical that we, as the Department of Justice, understand and fully analyze how these provisions are being used. Certainly, there is a system underway for the purposes of analyzing individuals, how they are being assessed, how the services that are identified for them are being provided, and ultimately what the results and success of that are. I know that's early work in the mandate of the director of Corrections, and I know it's certainly some of the skillset that she brings to this position.

**Ms. Hanson:** I was actually referring to recommendation 26, which was the reporting on the use of separate confinement. I recognize the importance of the overall use — the broader recommendation was to design and implement appropriate program data-collection systems. It just strikes me that it's pretty easy to count 1, 2, 3 when you only have 37 inmates. If we're told that we're not very frequently using any aspects of separate confinement, we should be able to have that kind of quarterly information provided to us by hand count.

I would be concerned that, if we leave everything to very sophisticated data-collection systems when we have a system that has about 100 people maximum — it is kind of a strange approach. Hopefully there are more appropriate — in the sense of appropriate technology, which sometimes is less technology and actually just writing out the numbers and reporting them.

**Hon. Ms. McPhee:** I appreciate that there is not necessarily a question there, but I completely agree with the member opposite. I'm sure those at the department who are listening will have heard me say exactly that. That's part of the work that's underway.

I agree that there is a way in which we can get to the file management system — the statistics collection process — that is not elaborate in the circumstances but perhaps will leave room for growth.

I can indicate that — with respect to, in particular, number 26 in Mr. Loukidelis' report — the Yukon government Department of Justice does publish statistics on our website. I

know that there are issues with the website, but we're in line to get over that hump, I think, and those are numbers that are available to the public. I'm happy to produce the most recent ones for the member opposite if that's helpful.

**Ms. Hanson:** I appreciate the minister's response on that. I just have a couple of other questions. One has to do with the appointment of review adjudicators. I did ask this question in the briefing with officials, but I think it's important to have it on the record. The provision in 19.08(1) is that the minister may appoint persons in accordance with this section as review adjudicators to review the segregation and restrictive confinement of inmates in a correctional centre and to do a number of functions that are related to that review.

My question is: Does the appointment of a review adjudicator, or review adjudicators require a trigger or will there be an appointment once the *Act to Amend the Corrections Act, 2009* is in force?

**Hon. Ms. McPhee:** I appreciate the question as well. The review adjudicators anticipated and described in 19.08 — and the subsections that follow — are, of course, independent of the process and require that the opportunity to review independently the decisions made regarding restrictive confinement or segregation rest with them. It is an integral part of what I noted earlier to be the progressive approach of this particular bill. They can be appointed under that section for up to a five-year term. We anticipate that there would be more than one, so there is a small roster of individuals who are properly qualified and trained so that the responsibility will fall to them — there may be a conflict in some circumstances — and to make sure that there are always people available. Some of these decisions will have to be made quite quickly and in a timely fashion.

I can also indicate that the criteria with respect — I should back up a step to say that, of course, review adjudicators are an integral part of this and are required to make this system work. We would anticipate that, upon it coming into force or prior to it coming into force, review adjudicators would be properly appointed, and then the criteria based on which they would be making decisions, depending on the kind of review they are doing, will be set out in regulation.

**Ms. Hanson:** I thank the minister for that response. I think it's important to have the capacity built and ready should there be a need for a review.

I just have one more question, I hope, before we move to just reviewing the clauses. Recommendation 36 dealt with the importance of ensuring that, if a First Nation individual at WCC is requiring discipline — which would include, in my mind, any of these segregations or separate confinements that we have discussed this afternoon — any existing Gladue reports that were used perhaps in the sentencing — I have one more question after this, and this reminds me. If they are not available, then the Corrections branch should be required to provide the adjudicator with the information sufficient to enable the adjudicator to consider Gladue factors in fashioning an appropriate disciplinary approach.

I would presume that this would be incorporated into the appointment of adjudicators. He also further recommended that



they be provided with training and information necessary to enable them to apply the Gladue factors.

It's not in the legislation, but how is that contemplated being put into effect within this new regime at the Whitehorse Correctional Centre?

**Hon. Ms. McPhee:** I just want to get the terminology right. It's a bit late in the day for me at the moment. With respect to — first of all, let's make reference to recommendation 36 in Mr. Loukidelis' report. I completely understand and agree that the more information decision-makers have with respect to the background of an inmate — or of anyone who comes before them, but let's tap in this context the background of an inmate — will of course be useful.

The concept of a Gladue report's court-ordered documents are in fact, just that — they belong to the court — and at the moment, we do not have access to those, as the Corrections branch. That being said, work is underway through the implementation working group on recommendation 36. I should say clearly that Bill No. 6 doesn't speak to that particular issue, but that is one of the recommendations that is before the implementation working group — to provide guidance and figure out how to have it implemented — working with our partners on that implementation working group. Of course, the implementation working group has authority to have guidance and expertise brought in to be considered by it, and the help from others to get results with respect to these decisions. That is where that work is currently happening.

I want to be clear that there is of course the hearing adjudicators and the review adjudicator — so two different parts of that puzzle anticipated by Bill No. 6. By the same token, the concepts and the issues dealt with by Gladue reports would probably be helpful in both contexts.

I will leave it there other than to say that I agree about the backgrounds provided by Gladue reports. It is not an insurmountable problem, but they are court-ordered documents and they are currently not provided to Corrections because they are the property of the court and they contain the personal information of inmates or of individuals who come before the court.

So there are a few puzzles to undo there, but they're not insurmountable — appreciating that the sentiment in recommendation 36 is that more information — certainly more information about the background of individuals of First Nation descent who come before these kinds of decision-makers — is critical.

**Ms. Hanson:** I appreciate the minister's response. I would just point out that Mr. Loukidelis said that, if you couldn't get access to the report, sufficient information should be made available to the adjudicator to consider Gladue factors. I think that is the key element.

Just one last question, Mr. Chair, I hope. We've been having this conversation, but I didn't ask at the outset whether all of the provisions that we have been debating apply to those in remand, as well as those who are sentenced inmates. Somebody is in remand, hasn't been sentenced; they're awaiting trial — they haven't been found guilty of anything, other than they're there.

**Hon. Ms. McPhee:** It's a great question. The provisions will apply to anybody who is in the Whitehorse Correctional Centre by court order, including individuals who are there by remand order.

I can note that we specifically chose the word "inmate", and that is used throughout the legislation in Bill No. 6. An "inmate" is defined in the *Corrections Act, 2009* as: "... an offender serving a sentence at a correctional centre or other person lawfully detained at a correctional centre but does not include a police prisoner..." because they wouldn't be there.

By definition, it includes both individuals who are serving and otherwise held under bail provisions; therefore, the protections are appropriately required to apply to everyone.

**Ms. Hanson:** Then I guess I would look to the minister to provide some assurance that the provisions that are built into this with respect to the review adjudicator would be intended to prevent the kind of nightmare scenario that we saw with Nehass, where we have somebody in remand who is disciplinary, disciplinary, disciplinary, solitary, solitary — so we drive somebody crazy before we get them to trial.

Is that the intention — ensuring that we will never see that scenario occur, with the amendments that are being made in this legislation, to somebody who is on remand?

**Hon. Ms. McPhee:** Thank you very much for the question. The purpose of Bill No. 6 is to provide proper definitions, proper structure, proper oversight, and proper review provisions for anyone in the Whitehorse Correctional Centre with respect to the possibilities of a condition of segregation or separate confinement. I can also indicate that there are regular review intervals built in which — I won't comment on whether they did exist in this form. I will say that they didn't. This is a concept going forward which is to improve the current *Corrections Act, 2009* to bring it to international standards, to be a leader here in the territory, and to provide the proper service oversight and care for individuals who are in the Whitehorse Correctional Centre going forward. That's the purpose of Bill No. 6 — to provide the tools necessary, including appropriate review and independent review going forward which does not currently exist in our *Corrections Act, 2009*.

**Deputy Chair (Mr. Adel):** Do we have any further general debate on Bill No. 6, entitled *Act to Amend the Corrections Act, 2009*? Seeing none, we will proceed to clause-by-clause debate.

*On Clause 1*

*Clause 1 agreed to*

*On Clause 2*

**Ms. Hanson:** I would ask the minister to provide an explanation of "alternative housing", because the definition of that says that it means "... housing of a prescribed type..." That isn't a very clear definition. It just says that someone is going to tell us later what it is. What do we mean by "alternative housing"?

**Hon. Ms. McPhee:** Thank you for the opportunity to rise on clause 2, because this was an opportunity also for me to say that these are the new definitions in clause 2(b). I think it is important to note that these are the terms that are not currently

defined in the current *Corrections Act, 2009* and really give life to Bill No. 6 and the provisions of Bill No. 6.

With respect specifically to alternative housing, a prescribed type will be prescribed in the regulation. That work is ongoing. There are a couple of references to “prescribed type”. As noted by the answers to questions brought forward by the Member for Lake Laberge, they will come as a result of regulation, but the alternative housing in particular is contemplating the future of corrections — how we might meet the individual needs of some inmates — and whether that is prescribed on the property or elsewhere. There has been some work in corrections across the country that actually contemplates other types of housing or other types of opportunities to have inmates continue to be under the correctional services, but have the opportunity in the future to be provided services in a different, perhaps more modern, way.

It is very open to interpretation and to the regulations going forward, and it will ultimately be defined there so that the correctional services here in the Yukon Territory can be in step and mindful of the future and modernized in a way that will better serve inmates.

**Ms. Hanson:** I would appreciate it if the minister could give us an example, perhaps, of best practice from another jurisdiction of what alternative housing looks like.

**Hon. Ms. McPhee:** One example might be — let me just back up to say that “alternative housing” is not defined in almost any jurisdiction in Canada, so this is forward-looking. It anticipates that, as an example, we could, through this definition, create a medical unit at the Correctional Centre where individuals might receive particular services, but housed within the Correctional Centre itself — again, being a condition rather than a place. It does permit the definition of a place, which will be fleshed out through our partners in consultation and ultimately with our partners through the making of regulations.

There are a number of versions of service provision, if I could say that, across Canada. For the most part, their legislation doesn’t contain an opportunity to define “alternative housing”, and it was something that was decided to do here as a provision for the future.

**Ms. Hanson:** Could the minister provide an illustrative explanation of the difference between “disciplinary restrictive confinement” and “disciplinary segregation”? Because the rest of the sentences are exactly the same.

**Hon. Ms. McPhee:** So, the wording in 2(b) regarding the differences between “disciplinary restrictive confinement” and “disciplinary segregation” exist there for the purposes of the definition section to line up with, later on, the definition of “segregation”. “Segregation” is defined in Bill No. 6 as more than 22 hours. “Restrictive confinement” is defined as between 18 and 22 hours and adds an additional layer of oversight and review for individuals who are serving 18 to 22 hours. It’s not just that you have to get over the 22-hour limit for the definition of “segregation” — but, in fact, recognizing that restrictive confinement can also carry difficulties, problems, and concerns that require proper oversight, require proper definition, and require proper care, attention, and review, and that kicks in at

the 18-hour mark — between 18 and 22 — which is defined as “restrictive confinement”.

It is designed to address some of the concerns in the recommendations from Mr. Loukidelis. It is designed to address some of the concerns that have been expressed in what has sometimes been defined in the federal process as “segregation light” or something that is less than meeting the definition of “segregation” but still needs to be recognized as seriously restricting the services and care provided to inmates who are being restricted in their movement and in their confinement with respect to their conditions of confinement at the 18-hour mark.

**Ms. Hanson:** The minister just highlighted the last definition, which is one that I had wanted to address. I have it highlighted in bright pink. It is: So what the heck have we been talking about all afternoon if we are now saying that, in fact, you can put somebody in segregation for more than 22 hours, when we said that the whole purpose of this was not to have people in segregation, isolation, or whatever other separate confinement for more than 22 hours? I have heard repeatedly that international standards and Mandela Rules don’t allow that. Why would we have some definition in here that would allow for the segregation, separate confinement, isolation — whatever you want to call it — of somebody for more than 22 hours?

I don’t get how that is logically consistent. It is certainly not morally consistent with what we have been saying throughout the whole course of the discussion of these amendments to the *Corrections Act, 2009*. I don’t understand, and I am really looking for a real serious explanation of this.

**Hon. Ms. McPhee:** I think it’s a fair question and a wise question. I think it can be answered by noting that the international standards do not abolish segregation as a tool to manage individuals in a correctional facility. Neither does Bill No. 6, but it has in it — in the international standard and in Bill No. 6 — all of the elements. Bill No. 6 matches all of the elements in the international standard that permit this tool to be used appropriately, by definition, in rare circumstances where the safety of individuals in Whitehorse Correctional Centre — either inmates, staff, or others — needs to be properly protected.

The elements in the international standard and in Bill No. 6 that are built in for the purposes of using segregation in certain circumstances only are that it be used as a last resort and that it be the least restrictive opportunity for individuals to be held in particular conditions — and that those conditions be attached to them. There must be accountability built in — regular review and the opportunity for challenges — that information must be available to those who ask — accountability within the entire process. There must be the third element, which is evident and built specifically into Bill No. 6, which is oversight — independent, external oversight.

Those are the elements that are required by the international standards. Those are the elements that are required and built into Bill No. 6 here before the House. Again, they remind us that they are to be used in the rarest of circumstances

as a last resort in the least restrictive manner possible to deal with individuals.

With respect to the definition in Bill No. 6, 22 hours is the minimum standard for this particular tool and safeguard, which is why it was chosen for this particular bill. Certainly there will be, as the minimum standard, recognition that individuals need, even in this condition of detention, meaningful contact during the other hours of the day and that an individual could meet the definition of “segregation” and still have contact during that period of time that provides them with the appropriate care that they need.

But I think I need to make sure that we note that the elements of the international standards are built in here and that this is a tool for dealing with inmates who might otherwise present a threat to other individuals. We are mindful of the fact that their care must also be directed in a balance to maintain their own opportunities and their own care within a correctional facility.

**Ms. Hanson:** I would just remind and ask the minister to confirm, again, that what we’re saying here is that somebody could be put into segregation for over 22 hours a day for up to 15 days at a time, for a cumulative total of 60 days a year. We have seen, not just in Mr. Loukidelis’ report — but in his report, he talks about how the impact of isolation, segregation, administrative separation — whatever you want to call it — starts at 48 hours.

So what are we — I don’t quite get what the big difference is going to be here if you’re still using this tool against — 22 hours seemed to be — I was hearing the rationalization that maybe we’ll move toward a better standard of the recommended 18 hours, but when I see something that now says “or more”, that gives me great pause. So we’re saying 15 days, 22 hours or more, potentially up to 60 days — I’m not sure what the improvement is.

The question is: Is my interpretation correct? Could somebody be in segregation for more than 22 hours a day for 15 days? Could they be in segregation for 23 hours — 22 hours and 50 minutes — I don’t care — for 60 days, cumulative over a year?

**Hon. Ms. McPhee:** I certainly appreciate the concern being noted by the member opposite, but I will challenge the idea that this is not an improvement.

In fairness, in our current situation in our current *Corrections Act, 2009*, there is literally no cap with respect to the use of segregation or separate confinement — or, as it has been called in the past, “solitary confinement”, which exists in some pieces of legislation across the country. Any of the provisions with respect to separate confinement or segregation currently exist only in regulation, not in the legislation. Bill No. 6 provides that these would live in the legislation, which is a significant improvement and a significant protection.

I can also indicate that of course there are circumstances in Bill No. 6 that prohibit the use of segregation or separate confinement — in particular, in any circumstances where mental health is an issue for individuals or other categories of an individual’s personal circumstances are in place. Bill No. 6 requires review. It requires adjudicators who will be

independent of government. All these are improvements with respect to not only our current piece of legislation but improvements well above and beyond other jurisdictions in Canada.

With respect to the specific question about 15 days and whether that could be added and become 60 days, I want to be clear. Bill No. 6 requires a hard cap — a hard time limit of 15 days, consecutively. If somebody were to be held — in the rare circumstance that somebody would be held in segregation or separate confinement under any of the definitions in Bill No. 6, the 15-day hard cap requires that they be released from that condition of confinement at the 15-day mark and that they must be released from that for at least five days. So clearly, individual attention is going to have to be brought to each of those cases to determine how to protect that individual and to protect the individuals around that person in that period of time if the circumstances are such that there are safety concerns or others. The 60-day limit in Bill No. 6 is not consecutive and is aggregate over the period of 365 days.

I appreciate that what we know is that there is impact on individuals who are held under this condition of confinement — for some individuals, at an earlier stage than 15 days. This is meeting the international standard. It is to be used only as a last resort — only in the rarest of circumstances and only if no other condition of confinement is satisfactory to deal with a particular inmate.

Maybe that is a good opportunity to end. I am happy to answer more questions and I look forward to us bringing this matter back. But perhaps at this point, seeing the time, Mr. Deputy Chair, I move that you report progress.

**Deputy Chair:** It has been moved by Ms. McPhee that the Chair report progress.

*Motion agreed to*

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

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

*Motion agreed to*

*Speaker resumes the Chair*

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

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

### Chair’s report

**Mr. Adel:** Mr. Speaker, Committee of the Whole has considered Bill No. 6, entitled *Act to Amend the Corrections Act, 2009*, and directed me to report progress.

**Speaker:** You have heard the report from the Deputy 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. tomorrow.

*The House adjourned at 5:26 p.m.*

**The following documents were filed October 29, 2019:**

34-3-15

Financial investigation of Many Rivers Counselling and Support Services, letter re (dated August 9, 2019) from Stephen Samis, Deputy Minister, Department of Health and Social Services, to Dena Zavier, President, Many Rivers (White)

34-3-16

Executive Summary of Findings, Report of Factual Findings, and Financial Information of Many Rivers Counselling and Support Services Society For the year ended March 31, 2019, letter re (dated July 31, 2019) from Erik Hoenisch, CPA, CA, Incorporated Partner, Crowe Mackay LLP, to Will Friesen, Budget Officer, Health and Social Services (White)

**Written notice was given of the following motions October 29, 2019:**

Motion No. 80

Re: reappointment of Annette King as the Child and Youth Advocate for Yukon (McPhee)

Motion No. 81

Re: reappointment of Conflict of Interest Commissioner David Phillip Jones (McPhee)